

## New Procedural Rules for Trade Secrets in Germany

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On April 1, 2025, the *Act to Strengthen Germany as a Location for Justice*—formally titled *Justizstandort-Stärkungsgesetz* of October 7, 2024 (Federal Law Gazette 2024 I No. 302)—entered into force. This legislation aims to enhance Germany’s attractiveness as a venue for international commercial litigation by, among other things, establishing commercial courts and permitting the use of English in civil proceedings.

To strengthen the protection of trade secrets, the new law amends both the German Code of Civil Procedure (ZPO) and the Introductory Act to the Code of Civil Procedure (EGZPO). These changes respond to a growing practical need for stronger procedural safeguards for trade secrets across a broader range of legal disputes.

Procedural protection for trade secrets is primarily governed by Sections 16–20 of the Trade Secrets Act (*Geschäftsgeheimnisgesetz*, or *GeschGehG*). However, these provisions only apply directly to proceedings involving claims brought under the Trade Secrets Act itself. They do not extend to other civil cases where trade secrets could be relevant—such as disputes over confidentiality obligations in employment or service contracts, or in copyright matters.

This limited scope was confirmed by the Higher Regional Court of Düsseldorf in a decision dated January 11, 2021 (Case No. 20 W 68/20, GRUR-RS 2021, 7875, paras. 12–13), where the court held that Sections 16 ff. *GeschGehG* could not be applied analogously to copyright disputes.

While certain provisions of the German Courts Constitution Act (GVG)—namely Sections 172 no. 2, 173(2), and 174(3)—do allow for some restriction of public access in civil proceedings, they offer only limited protection. For one, parties do not have a legal entitlement to a non-public hearing. More importantly, these provisions only take effect from the oral hearing onward and do not protect sensitive information disclosed in earlier stages, such as in the statement of claim. As a result, litigants may be forced to choose between withholding crucial information—thereby risking procedural disadvantages—or disclosing trade secrets and compromising confidentiality.

Furthermore, under the current legal framework, the confidentiality obligation in Section 174(3) sentence 1 GVG does not restrict the use of information acquired through the proceedings. This means an opposing party may legally use trade secret information for their own benefit outside the courtroom (see Bundestag printed matter 20/8649 of October 6, 2023, p. 32).

To address this gap, the newly introduced Section 273a ZPO now provides a comprehensive framework for the procedural protection of trade secrets in all civil proceedings governed by the ZPO—not just in commercial court matters. Upon request by a party, the court may designate certain disputed information as confidential, in whole or in part, if it qualifies as a trade secret under Section 2 no. 1 GeschGehG. Notably, it is sufficient for the information to *potentially* be a trade secret.

Once such a designation is made, the procedural protections of Sections 16–20 GeschGehG apply accordingly. This includes, for example, the obligation to treat the information confidentially under Section 16(2) GeschGehG, and the prohibition on using or disclosing it outside the proceedings—unless the information was already known to the parties independently of the litigation.

According to the transitional provision in Section 37b EGZPO, the new Section 273a ZPO applies immediately upon the Act's entry into force, including to cases that were already pending at the time. Parties and practitioners must therefore be aware that the new rule is applicable to ongoing proceedings.

## Why This Matters

The new Section 273a ZPO marks a significant shift in the procedural protection of trade secrets in German civil litigation. Whether you're navigating ongoing proceedings or planning future litigation strategy, it's crucial to understand how these changes affect your rights and obligations.

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National Law Review, Volume XV, Number 140

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