



Resolution 571 (1974)¹

Protection of manufacturing and commercial secrets

Parliamentary Assembly

The Assembly,

1. Considering the need for adequate legal protection of manufacturing and commercial secrets, and the need to combat industrial spying, i.e. the misappropriation of such secrets ;
2. Considering that industrial spying may not only cause serious damage to an industrial enterprise, but also harm vital national economic interests ;
3. Considering that manufacturing and commercial secrets, which sometimes are the fruit of long and costly research, years of experience or special skills, are not, as a rule, covered by the protection accorded to the traditional components of industrial property ;
4. Considering that all the Council of Europe member states have enacted legislation severely punishing military and political spying, which frequently involve industrial spying (e.g. where military production is concerned), whereas the legislation governing industrial spying is generally insufficient and inadequate to present needs ;
5. Considering that adequate protection is impossible nationally without internationally harmonised legislation or an international agreement on industrial spying ;
6. Considering that it is desirable to establish a legal framework in which industrial spying could be combated effectively by provisions of penal and civil law ;
7. Welcoming the substantial work which its Legal Affairs Committee has done in this field, and considering that there is no need to elaborate a European convention or other agreement in the framework of the Council of Europe,
8. Adopts the appended model law on the protection of manufacturing and commercial secrets ;
9. Invites members of parliaments to present this model law as a private members' bill in their national parliaments and to take whatever action may be necessary to introduce the provisions of the model law in their national legislation ;
10. Instructs its Committee on Parliamentary and Public Relations to take the necessary steps in order to promote and coordinate the action envisaged in paragraph 9 above.

1. Text adopted by the Standing Committee, acting on behalf of the Assembly, on 3 July 1974. See [Doc. 3440](#), report of the Legal Affairs Committee.



Appendix

TEXT OF THE MODEL LAW

Article 1 - Subject-matter to be protected

1.1 For the purpose of this act, a secret means any manufacturing or commercial information which is of value to a firm or private person in their non-public possession, with the exception of information already protected.

Article 2 - Conditions for protection

2.1 No person may claim protection of a secret in accordance with this act, unless he is entitled to the secret.

2.2 A secret can only be protected in accordance with this act if it is not accessible to outside persons.

Article 3 - Offences punishable under this act

3.1 Any act committed for the purpose of unlawful investigation, appropriation, communication or utilisation of a secret, by a person not authorised to do so by the person entitled to such secret, shall be liable to the penalties prescribed in Article 5.

3.2 For the purpose of this act, investigation means any act committed for the purpose of acquiring knowledge of a secret or of helping the acquisition of such knowledge.

3.3 For the purpose of this act, appropriation means any act, carried out by whatever means, through which a person acquires knowledge of a secret.

3.4 For the purpose of this act, communication means the transmission of a secret to another person.

3.5 For the purpose of this act, utilisation means any use of a secret.

Article 4 - Employee or former employee

4.1 Utilisation, as defined in Article 3, paragraph 5, shall also be deemed to include the use of a secret by an employee or former employee of the person entitled to the secret, or by any other person having had knowledge of the secret.

4.2 If a former employee has himself developed a secret or himself played an essential role in the development of a secret during the period of his employment by the person entitled to the secret, no obligation whatsoever to keep the secret shall exist after two years have elapsed since the termination of his contract of employment.

Article 5 - Penalties

5.1 Any of the offences listed in Article 3 shall be punishable by a term of imprisonment of (one month to) two years or a fine of (..... to).....or both.

(5.2 Attempt to commit any of the offences listed in Article 3 and complicity in their commission shall be liable to the same penalties.)

(5.3 If any one of the offences listed in Article 3 has been committed by a firm, the firm shall be punishable by a fine of (..... to) 1000 000 European units of account.)

5.4 A person who, acting in good faith, informs the public or users that a manufacturer or commercial enterprise is using a secret which he knows, or has good reason to believe, is or might be harmful shall not be deemed to commit an offence within the meaning of this act.

Article 6 - Complaint

6. Prosecution may take place only upon complaint by the person regarding himself as having been injured by any of the offences listed in Article 3.

Article 7 - Civil proceedings

7.1 Nothing in this act shall preclude a person from taking civil proceedings.

7.2 In addition to compensation of damages, a person entitled to a secret may demand that a person in unlawful possession of a secret cease to make any use whatsoever of it.

Article 8 - Short title and commencement

8.1 This act may be cited as the "Manufacturing and Commercial Secrets Act 19 ..".

8.2 This act shall come into force at.....