

Suppliment tal-Gazzetta tal-Gvern ta' Malta, Nru. 20,025, 13 ta' Lulju, 2018

Taqsim A

MALTA

ATT Nru XXIX tal-2018

ATT maħruġ b'liġi mill-Parlament ta' Malta.

ATT biex jittrasponi Direttiva 2016/943/UE dwar il-protezzjoni ta' konoxxenza u ta' informazzjoni kummerċjali kunfidenzjali (sigrieti kummerċjali) kontra l-ksib, l-użu u l-iżvelar illegali tagħhom.

ACT No. XXIX of 2018

AN ACT enacted by the Parliament of Malta.

AN ACT to transpose Directive 2016/943/EU on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure.

Nagħti l-kunsens tiegħi.

(L.S.)

**MARIE-LOUISE
COLEIRO PRECA
President**

13 ta' Lulju, 2018

ATT Nru XXIX tal-2018

ATT biex jittrasponi d-Direttiva 2016/943/UE dwar il-protezzjoni ta' konozzjoni ta' informazzjoni kummerċjali kunfidenzjali (sigrieti kummerċjali) kontra l-ksib, l-użu u l-iżvelar illegali tagħhom.

IL-PRESIDENT bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità tal-istess, ħarġet b'liġi dan li ġej:-

1. (1) It-titolu fil-qosor ta' dan l-Att huwa l-Att tal-2018 dwar is-Sigrieti Kummerċjali. Titolu fil-qosor u bidu fis-sehħ.

(2) Dan l-Att għandu jidhol fis-sehħ f'dik id-data jew dawk id-dati li l-Ministru responsabbli għall-proprjetà intellettuali jista' jstabbilixxi b'avviż fil-Gazzetta, u jistgħu jiġu hekk stabbiliti dati differenti għal għanijiet differenti u għal dispożizzjonijiet differenti ta' dan l-Att.

TAQSIMA I - ĠENERALI

2. F'dan l-Att, kemm-il darba r-rabta tal-kliem ma tkunx teħtieġ Tifsir. xort'ohra:

"detentur tas-sigriet kummerċjali" tfisser kull persuna fiżika jew ġuridika li legalment tikkontrolla sigriet kummerċjali;

"kontraventur" tfisser kull persuna fiżika jew ġuridika li tkun kisbet, użat jew żvelat illegalment sigriet kummerċjali;

"kuntrarju għal prattiċi kummerċjali onesti" tfisser mill-inqas prattiċi bħal ksur ta' kuntratt, ksur ta' kunfidenzjalità u

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inkoraġġiment biex isir xi ksur, u tinkludi l-akkwist ta' informazzjoni mhux żvelata minn partijiet terzi li kienu jafu, jew kienu għalkollox negligenti meta naqsu milli jkunu jafu, li daww il-prattiċi kienu involuti fl-akkwist;

"il-Ministru" tfisser il-Ministru responsabbli għall-Proprietà Intellettwali;

"oġġetti kontraventorji" tfisser oġġetti li d-disinn, il-karatteristiċi, il-funzjonament, il-proċess ta' produzzjoni jew kummerċjalizzazzjoni tagħhom b'mod sinifikanti jibbenefikaw minn sigrieti kummerċjali miksuba, użati jew żvelati illegalment;

"qorti kompetenti" u "Qorti", kemm-il darba ma jiġix ordnat xort'oħra b'regolamenti magħmulin taħt dan l-Att, tfisser il-Qorti li tkun kompetenti tisma' każ kif hemm fir-regoli stabbiliti fil-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili;

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"sigrieti kummerċjali" tfisser informazzjoni li tissodisfa r-rekwiżiti kollha li ġejjin:

(a) tkun sigrieta fis-sens li mhux, bħala korp jew fil-konfigurazzjoni preċiża u l-assemblaġġ tal-komponenti tagħha, magħrufa ġeneralment jew aċċessibbli b'mod faċli għall-persuni ta' ġewwa li ġeneralment jitrattaw din it-tip ta' informazzjoni;

(b) ikollha valur kummerċjali minħabba li hija sigrieta;

(ċ) kienet soġġetta għal passi raġonevoli taħt iċ-ċirkostanzi, mill-persuna li għandha l-kontroll legali tal-informazzjoni, biex tinzamm sigrieta.

Għan.

3. (1) Dan l-Att jistabbilixxi regoli dwar il-protezzjoni kontra l-ksib, l-użu u l-iżvelar illegali tas-sigrieti kummerċjali.

(2) Dan l-Att jittrasponi d-Direttiva (UE) 2016/943 tal-Parlament Ewropew u tal-Kunsill tat-8 ta' Ġunju 2016 dwar il-protezzjoni ta' konozzenza u ta' informazzjoni kummerċjali kunfidenzjali (sigrieti kummerċjali) kontra l-ksib, l-użu u l-iżvelar illegali tagħhom.

Non-applikabilità.

4. (1) Dan l-Att m'għandux jaffettwa:

(a) l-eżerċizzju tad-dritt tal-libertà tal-espressjoni u tal-informazzjoni kif stipulat fil-Karta Tad-Drittijiet Fundamentali tal-Unjoni Ewropea, il-Kostituzzjoni ta' Malta u l-Att dwar il-Konvenzjoni Ewropea, inkluż ir-rispett għal-libertà u l-pluraliżmu

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tal-mezzi tal-informazzjoni;

(b) l-applikazzjoni ta' regoli li jirrikjedu li d-detenturi tas-sigrieti kummerċjali jiżvelaw, għal raġunijiet ta' interess pubbliku, informazzjoni, inklużi sigrieti kummerċjali, lill-pubbliku jew lil awtoritajiet amministrattivi jew ġudizzjarji għall-qadi tad-dmirijiet ta' dawk l-awtoritajiet;

(ċ) l-applikazzjoni ta' regoli li jirrikjedu lill-awtoritajiet pubbliċi biex jiżvelaw informazzjoni ppreżentata minn negozji li dawn l-awtoritajiet pubbliċi jkollhom kif hemm, u f'konformità mal-obbligi u l-prerogattivi stipulati fil-liġi;

(d) l-awtonomija tas-shab soċjali u d-dritt tagħhom li jidhlu f'kull xorta ta' ftehim kollettiv, f'konformità mal-liġi.

(2) Ebda haġa f'dan l-Att m'għandha tinftiehem li toffri xi raġuni għar-restrizzjoni tal-mobilità tal-impjegati. B'mod partikolari, dan l-Att m'għandu joffri ebda raġuni biex:

(a) jillimita l-użu mill-impjegati ta' informazzjoni li ma tikkostitwixxix sigriet kummerċjali kif definit fl-artikolu 2 ta' dan l-Att;

(b) jillimita l-użu mill-impjegati ta' esperjenza u ħiliet miksuba b'mod onest matul l-impjieg tagħhom;

(ċ) jimponi xi restrizzjonijiet addizzjonali fuq l-impjegati fil-kuntratti ta' impjieg tagħhom ħlief dawk ir-restrizzjonijiet imposti bil-liġi.

TAQSIMA II - KSIB, UŻU U ŻVELAR TA' SIGRIETI KUMMERĊJALI

5. (1) Il-ksib ta' sigriet kummerċjali għandu jitqies li jkun wieħed legali meta s-sigriet kummerċjali jinkiseb b'xi wieħed mill-metodi li ġejjin:

Ksib, użu u żvelar legali ta' sigrieti kummerċjali.

(a) skoperta jew kreazzjoni indipendenti;

(b) osservazzjoni, studju, żarmar jew ittestjar ta' prodott jew oġġett li jkun sar disponibbli għall-pubbliku jew li jkun legalment fil-pussess tal-akkwired tal-informazzjoni li jkun liberu minn kull dmir legalment validu biex jiġi limitat il-ksib tas-sigriet kummerċjali;

(ċ) eżerċizzju tad-dritt tal-ħaddiema jew tar-rappreżentanti tal-ħaddiema għal informazzjoni u konsultazzjoni

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f'konformità mal-ligijiet u l-prattiçi;

(d) kull prattika oħra li, fiċ-ċirkostanzi, hija konformi ma' prattiçi kummerċjali onesti.

(2) Il-ksib, l-użu jew l-iżvelar ta' sigriet kummerċjali għandu jitqies bħala legali sakemm dak il-ksib, użu jew żvelar ikunu meħtieġa jew permessi mil-ligi.

Ksib, użu u
żvelar illegali
ta' sigriet
kummerċjali.

6. (1) Il-ksib ta' sigriet kummerċjali mingħajr il-kunsens tad-detentur tas-sigriet kummerċjali għandu jitqies bħala illegali, kull meta jitwettaq permezz:

(a) ta' xi aċċess mhux awtorizzat għal, l-appropriazzjoni ta', jew l-ikkupjar ta' kull dokument, oġġett, materjal, sustanza jew fajl elettroniku, legalment taħt il-kontroll tad-detentur tas-sigriet kummerċjali, li jkun fihom is-sigriet kummerċjali jew li minnhom wieħed jista' jiddeduċi s-sigriet kummerċjali;

(b) ta' kull imġiba oħra li, taħt iċ-ċirkostanzi, titqies kuntrarja għal prattika kummerċjali onesta.

(2) L-użu jew l-iżvelar ta' sigriet kummerċjali għandu jitqies bħala illeġittimu kull meta dan isir, mingħajr il-kunsens tad-detentur tas-sigriet kummerċjali minn persuna li tkun instabet li tissodisfa xi kondizzjoni minn dawn li ġejjin:

(a) għax tkun kisbet is-sigriet kummerċjali illegalment;

(b) għax tkun qiegħda tikser ftehim ta' kunfidenzjalità jew kull dover ieħor biex ma tiżvelax is-sigriet kummerċjali;

(ċ) għax tkun qiegħda tikser kuntratt jew kull dover ieħor li jillimita l-użu tas-sigriet kummerċjali.

(3) Il-ksib, l-użu jew l-iżvelar ta' sigriet kummerċjali għandu wkoll jitqies bħala illegali kull meta persuna, waqt il-ksib, l-użu jew l-iżvelar, kienet taf jew fiċ-ċirkostanzi kellha tkun taf li s-sigriet kummerċjali kien inkiseb direttament jew indirettament minn persuna oħra li kienet qed tuża jew tiżvela sigriet kummerċjali b'mod illegali fit-tifsira tas-subartikolu (2).

(4) Il-produzzjoni, l-offerta jew it-tqegħid fis-suq ta' oġġetti kontraventorji, jew l-importazzjoni, l-esportazzjoni jew il-ħażna tal-oġġetti kontraventorji għal dawk il-finijiet, għandhom ukoll jitqiesu bħala użu illegali ta' sigriet kummerċjali meta persuna li twettaq attivitajiet bħal dawk kienet taf, jew, taħt iċ-ċirkostanzi, tkun taf li s-sigriet kummerċjali jkun intuża illegalment kif hemm fit-tifsira tas-

subartikolu (2).

7. Rikors għall-miżuri, proċeduri u rimedji previsti f'dan l-Att għandu jiġi miċħud meta l-allegat ksib, użu jew żvelar tas-sigriet kummerċjali jkun sar f'xi każ minn dawn li ġejjin: Eċċezzjonijiet.

(a) fl-eżerċizzju tad-dritt tal-libertà tal-espressjoni u tal-informazzjoni kif stipulat fil-Karta tad-Drittijiet Fundamentali tal-Unjoni Ewropea, il-Kostituzzjoni ta' Malta u l-Att dwar il-Konvenzjoni Ewropea, inkluż ir-rispett għal-libertà u l-pluraliżmu tal-mezzi tal-informazzjoni; Kap. 319.

(b) fl-iżvelar ta' kondotta hażina, għemil hażin jew attività illegali, sakemm l-intimat ikun aġixxa biex jiproteġi l-interess pubbliku ġenerali;

(ċ) l-iżvelar mill-ħaddiema lir-rappreżentanti tagħhom bħala parti mill-eżerċizzju legittimu minn dawk ir-rappreżentanti tal-funzjonijiet tagħhom f'konformità mal-liġi, sakemm dak l-iżvelar kien meħtieġ għal dak l-eżerċizzju;

(d) l-iżvelar minn impjegat lill-uffiċjal li jirrapporta dwar żvelar ta' informazzjoni protetta jew lill-unità dwar rapporti ta' żvelar ta' informazzjoni protetta, skont id-dispożizzjonijiet tal-Att dwar il-Protezzjoni ta' Informatur; Kap. 527.

(e) għall-fini tal-protezzjoni ta' interess legittimu rikonoxxut mil-liġi.

TAQSIMA III - MIŻURI, PROĊEDURI U RIMEDJI

8. (1) Il-qorti kompetenti għandha tapplika l-miżuri, proċeduri u rimedji previsti f'dan l-Att b'mod li: Proporzjonalità u użu abbużiv tal-proċedura ġudizzjarja.

(a) ikun proporzjonat;

(b) jevita l-ħolqien ta' xkiel għall-kummerċ legittimu fis-suq intern; u

(ċ) jipprovdi salvagwardji kontra l-abbuż tagħhom.

(2) Meta rikors dwar il-ksib, l-użu jew l-iżvelar illegali ta' sigriet kummerċjali jkun b'mod evidenti bla bażi u r-rikorrent jinstab li jkun beda l-proċedimenti legali b'mod abbużiv jew b'*mala fede*, il-qorti kompetenti, fuq talba tal-intimat, tista' tapplika miżuri xierqa. Dawk il-miżuri jistgħu, kif ikun xieraq, jinkludu li jingħata kumpens għall-ħsara lill-intimat, li jiġu imposti sanzjonijiet fuq ir-rikorrent jew li jiġi ordnat it-tixrid ta' informazzjoni dwar deċiżjoni kif imsemmi fl-artikolu 15.

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Preservazzjoni tal-kunfidenzjalità tas-sigrieti kummerċjali matul il-kors tal-proċedimenti legali.

9. (1) Il-partijiet, l-avukati jew rappreżentanti oħra tagħhom, l-uffiċjali tal-qorti, xhieda, esperti u kull persuna oħra li tkun qed tipparteċipa fi proċedimenti legali dwar il-ksib, l-użu jew l-iżvelar illegali ta' sigrieti kummerċjali, jew kull min ikollu aċċess għal dokumenti li jiffurmaw parti minn daww il-proċedimenti legali, ma jithallewx jużaw jew jizvelaw l-ebda sigrieti kummerċjali jew allegat sigrieti kummerċjali li l-qorti kompetenti tkun, b'rispons għal rikors motivat kif dovut minn parti interessata, tidentifika bħala kunfidenzjali u li jkunu saru jafu biha bħala riżultat ta' parteċipazzjoni bħal dik jew aċċess għall-proċedimenti.

(2) L-obbligu li ma jiġi użat jew żvelat ebda sigrieti kummerċjali jew sigrieti kummerċjali allegat imsemmi fis-subartikolu (1) għandu jibqa' fis-seħħ wara li jintemmu l-proċedimenti legali. Madankollu, dan l-obbligu m'għandux jibqa' jeżisti f'xi ċirkostanza minn dawn li ġejjin:

(a) meta l-allegat sigrieti kummerċjali jinsab, permezz ta' deċiżjoni finali, li ma jkunx jissodisfa r-reqwiziti stabbiliti għal sigrieti kummerċjali kif definit fl-artikolu 2; jew

(b) meta maż-żmien, l-informazzjoni inkwistjoni ssir generalment magħrufa fost jew faċilment aċċessibbli għall-persuni ta' ġewwa li generalment jittrattaw dik it-tip ta' informazzjoni.

(3) Il-qorti kompetenti tista' *ex officio* tiegħu miżuri speċifiċi meħtieġa biex jippreservaw il-kunfidenzjalità ta' kull sigrieti kummerċjali jew allegat sigrieti kummerċjali użat jew imsemmi matul proċedimenti legali li jirrigwardaw il-ksib, l-użu jew l-iżvelar illegali ta' sigrieti kummerċjali.

(4) Meta jsir ir-rikors imsemmi fis-subartikolu (1) il-qorti kompetenti tista':

(a) tirrestringi l-aċċess għal kull dokument li fih sigrieti kummerċjali jew allegati sigrieti kummerċjali ppreżentati mill-partijiet jew mill-partijiet terzi, kollha jew x'uhud minnhom, għal numru limitat ta' persuni;

(b) tirrestringi l-aċċess għas-smiġħ, meta s-sigrieti kummerċjali jew allegati sigrieti kummerċjali jistgħu jiġu żvelati, u l-inkartament jew traskrizzjoni korrispondenti ta' dak is-smiġħ għal numru limitat ta' persuni;

(c) tagħmel disponibbli għal kull persuna għajr daww inklużi fin-numru limitat ta' persuni msemmija fil-paragrafi (a) u (b) verżjoni mhux kunfidenzjali ta' kull deċiżjoni ġudizzjarja, li fiha s-siltiet li jinkludu s-sigrieti kummerċjali jkunu tneħħew jew tgħattew:

Iżda n-numru ta' persuni msemija fil-paragrafi (a) u (b) m'għandux ikun akbar minn dak li jkun meħtieġ sabiex tiġi żgurata l-konformità mad-dritt tal-partijiet fil-proċedimenti legali għal rimedju effettiv u għal proċess imparzjali, u għandu jinkludi, tal-inqas, persuna fiżika waħda minn kull parti u l-avukati rispettivi jew rappreżentanti oħra ta' dawk il-partijiet fil-proċedimenti legali.

(5) Meta tiddeċiedi dwar il-miżuri msemija f'dan l-artikolu, il-qorti kompetenti għandha tqis il-ħtieġa li jiġi żgurat id-dritt għal rimedju effettiv u għal proċess imparzjali, l-interessi legittimi tal-partijiet u, meta jkun adatt, ta' partijiet terzi, u kull ħsara potenzjali għal xi waħda mill-partijiet, u, meta jkun adatt, għal partijiet terzi, li jirriżultaw mill-għoti jew ir-rifjut ta' dawk il-miżuri.

(6) Kull ipproċessar ta' *data* personali kif hawn f'dan l-artikolu għandu jitwettaq f'konformità mal-Att dwar il-Protezzjoni u l-Privatezza tad-*Data*, u r-Regolament 2016/679 tal-Parlament Ewropew u tal-Kunsill tas-27 ta' April 2016 dwar il-protezzjoni tal-persuni fiżiċi fir-rigward tal-ipproċessar ta' *data* personali u dwar il-moviment liberu ta' dik id-*data*, u li jhassar id-Direttiva 95/46/KE (Regolament dwar il-Protezzjoni tad-*Data* Ġenerali).

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10. Il-qorti kompetenti tista', fuq rikors tad-detentur tas-sigriet kummerċjali toħroġ atti kawtelatorji kontra l-allegat kontraventur:

Miżuri proviżorji u kawtelatorji.

(a) għall-waqfien, jew, skont il-każ, il-projbizzjoni tal-użu jew l-iżvelar tas-sigriet kummerċjali fuq bażi proviżorja;

(b) għall-projbizzjoni tal-produzzjoni, l-offerta, it-tqegħid fis-suq jew l-użu ta' oġġetti kontraventorji, jew l-importazzjoni, l-esportazzjoni jew il-ħażna ta' oġġetti kontraventorji għal dawk l-iskopijiet;

(ċ) għall-konfiska jew iċ-ċessjoni ta' oġġetti suspettati bħala kontraventorji, inklużi oġġetti importati, sabiex jiġu evitati d-dhul, u ċ-ċirkulazzjoni tagħhom, fis-suq.

(2) Bħala alternattiva għall-miżuri msemija fis-subartikolu (1), il-qorti kompetenti tista' tagħmel il-kontinwazzjoni tal-allegat użu illegali ta' sigriet kummerċjali soġġett għall-preżentazzjoni ta' garanziji maħsuba biex jiġi żgurat il-kumpens tad-detentur tas-sigriet kummerċjali:

Iżda m'għandux ikun permess l-iżvelar ta' sigriet kummerċjali kontra l-preżentazzjoni ta' garanziji.

(3) Meta jiġi applikat dan l-artikolu, għandhom japplikaw *mutatis mutandis* id-dispożizzjonijiet tat-Titolu VI tat-Tielet Ktieb tal-Kodiċi ta'

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Organizzazzjoni u Proċedura Ċivili, hliet kif provdut xort'ohra f'dan l-Att.

Kondizzjonijiet ta' applikazzjoni u salvagwardji.

11. (1) Il-qorti kompetenti għandha biss tapplika l-miżuri li jinsabu fl-artikolu 10 meta r-rikorrent jipprova evidenza li tista' titqies raġonevolment disponibbli biex tissodisfa ruħha b'livell suffiċjenti ta' ċertezza li:

- (a) jeżisti sigriet kummerċjali;
- (b) ir-rikorrent ikun id-detentur tas-sigriet kummerċjali; u
- (c) is-sigriet kummerċjali jkun inkiseb illegalment, ikun qed jiġi użat u żvelat illegalment, jew il-ksib, l-użu jew l-iżvelar illegali ta' sigriet kummerċjali jkun imminenti.

(2) Il-qorti kompetenti għandha tiżgura li, meta tiddeċiedi li tagħti jew tiċhad ir-rikors u tivvaluta l-proporzjonalità tiegħu, il-qorti għandha tqis iċ-ċirkostanzi speċifiċi tal-każ, inkluż, fejn ikun adatt:

- (a) il-valur u karatteristiċi speċifiċi oħra tas-sigriet kummerċjali;
- (b) il-miżuri meħuda biex jiġi protett is-sigriet kummerċjali;
- (c) l-imġiba tal-intimat biex jikseb, juża jew jiżvela s-sigriet kummerċjali;
- (d) l-impatt tal-użu jew l-iżvelar illegali tas-sigriet kummerċjali;
- (e) l-interessi legittimi tal-partijiet u l-impatt li l-għoti jew rifjut tal-miżuri jista' jkollu fuq il-partijiet;
- (f) l-interessi legittimi ta' terzi persuni;
- (g) l-interess pubbliku; u
- (h) is-salvagwardja tad-drittijiet fundamentali.

(3) Il-qorti, meta ssir talba mill-intimat, għandha tirrevoka jew inkella twaqqaf l-atti kawtelatorji msemmija fl-artikolu 10, jekk:

- (a) ir-rikorrent ma jibdiex proċedimenti legali li jwasslu għal deċiżjoni dwar il-merti tal-każ quddiem il-qorti kompetenti, f'perjodu raġonevoli ta' żmien determinat mill-qorti kompetenti li jordna l-miżuri meta liġi tippermetti dan jew, fin-nuqqas ta' determinazzjoni bħal dik, fi żmien mhux aktar minn 20 jum tax-

xogħol jew 31 jum kalendarju, liema minnhom ikun l-itwal; jew

(b) l-informazzjoni inkwistjoni ma tkunx għadha tissodisfa r-rekwiżiti ta' sigriet kummerċjali kif definit fl-artikolu 2, għal raġunijiet li ma jistgħux jiġu attribwiti lill-intimat.

(4) Il-qorti kompetenti għandha tiżgura li l-miżuri msemmija fl-artikolu 10 ikunu soġġetti għal preżentazzjoni mir-rikorrent ta' sigurtà adegwata jew assigurazzjoni ekwivalenti intiża biex tassigura l-kumpens mingħajr preġudizzju soffert mill-intimat jew fejn xieraq, minn kull persuna oħra milquta mill-miżuri.

(5) Meta l-miżuri msemmija fl-artikolu 10 jiġu revokati fuq il-bażi tal-paragrafu (a) tas-subartikolu (3), meta dawn jiskadu minhabba f'xi att jew ommissjoni tar-rikorrent, jew meta sussegwentement jinstab li ma kien hemm ebda ksib, użu jew żvelar illegali ta' sigriet kummerċjali jew theddid ta' kondotta bħal dik, il-qorti kompetenti jkollha l-awtorità biex tordna lir-rikorrent, fuq talba tal-intimat jew ta' terza parti li ssofri danni, biex jipprovdli lill-intimat, jew lill-parti terza li ssofri danni, b'kumpens xieraq għal kull dannu kawżat minn dawk il-miżuri.

12. (1) Meta deċiżjoni ġudizzjarja meħuda fuq il-merti tal-każ tiddeċiedi li kien hemm ksib, użu jew żvelar illegali ta' xi sigriet kummerċjali, il-qorti kompetenti tista', fuq talba tar-rikorrent, tordna xi waħda jew aktar mill-miżuri li ġejjin kontra l-kontraventur:

Ingunzjonijiet u miżuri korrettivi.

(a) il-waqfien, jew, kif ikun il-każ, il-projbizzjoni tal-użu jew l-iżvelar ta' sigriet kummerċjali;

(b) il-projbizzjoni tal-produzzjoni, l-offerta, it-tqegħid fis-suq jew l-użu ta' oġġetti kontraventorji, jew l-importazzjoni, l-esportazzjoni jew il-ħażna ta' oġġetti kontraventorji għal dawk l-iskopijiet;

(ċ) l-adozzjoni tal-miżuri korrettorji xierqa fir-rigward tal-oġġetti kontraventorji;

(d) il-qerda totali jew parzjali ta' kull dokument, oġġett, materjal, sustanza jew fajl elettroniku li jkun fih jew li jinkorpora s-sigriet kummerċjali jew, kif ikun il-każ, l-għoti ufficjali lir-rikorrent ta' dawk id-dokumenti, oġġetti, materjali, sustanzi jew fajls elettronici kollha jew parti minnhom.

(2) Il-miżuri korrettivi msemmija fil-paragrafu (ċ) tas-subartikolu (1) għandhom ikunu jinkludu:

(a) is-sejha lura tal-oġġetti kontraventorji mis-suq;

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(b) li l-prodotti kontraventorji titneħhielhom il-kwalità kontraventorja tagħhom; jew

(ċ) il-qerda tal-oġġetti kontraventorji jew, fejn xieraq, l-irtirar tagħhom mis-suq, sakemm dan l-irtirar ma jdgħajjifx il-protezzjoni tas-sigriet kummerċjali inkwistjoni.

(3) Meta l-qorti tordna li jitwettqu l-miżuri msemmija fis-subartikolu (1)(ċ) u (d), dawk il-miżuri għandhom jitwettqu għas-spejjeż tal-kontraventur, sakemm ma jkunx hemm raġunijiet partikolari biex dan ma jsirx. Dawk il-miżuri għandhom ikunu mingħajr preġudizzju għal kull danni li jistgħu jiġġarrbu mid-detentur tas-sigriet kummerċjali minhabba l-ksib, l-użu jew l-iżvelar illegali tas-sigriet kummerċjali.

Kondizzjonijiet tal-applikazzjoni, salvagwardji u miżuri alternattivi.

13. (1) Meta l-qorti kompetenti tkun qiegħda tikkunsidra rikors biex jinħarġu mandati ta' inibizzjoni u miżuri korrettivi previsti fl-artikolu 12 u tkun qiegħda tagħmel valutazzjoni tal-proporzjonalità tagħhom, il-qorti għandha tqis iċ-ċirkostanzi speċifiċi tal-każ, inkluż, meta jkun adatt:

(a) il-valur jew karatteristiċi speċifiċi oħra tas-sigriet kummerċjali;

(b) il-miżuri meħuda biex jiġi protett is-sigriet kummerċjali;

(ċ) l-imġiba tal-kontraventur biex jikseb, juża jew jiżvela s-sigriet kummerċjali;

(d) l-impatt tal-użu jew l-iżvelar illegali tas-sigriet kummerċjali;

(e) l-interessi legittimi tal-partijiet u l-impatt li l-għoti jew rifjut tal-miżuri jista' jkollu fuq il-partijiet;

(f) l-interessi legittimi ta' terzi persuni;

(g) l-interess pubbliku; u

(h) is-salvagwardja tad-drittijiet fundamentali:

Iżda, meta l-qorti kompetenti tillimita d-dewmien tal-miżuri msemmija fil-paragrafi (a) u (b) tas-subartikolu (1) tal-artikolu 12, dak iż-żmien għandu jkun biżżejjed biex jelimina kull vantaġġ kummerċjali jew ekonomiku li l-kontraventur seta' jikseb mill-ksib, l-użu jew l-iżvelar illegali tas-sigriet kummerċjali.

(2) Il-qorti kompetenti għandha tiżgura li l-miżuri msemmija fil-

paragrafi (a) u (b) tas-subartikolu (1) tal-artikolu 12 jiġu revokati jew inkella ma jibqax ikollhom effett, meta l-intimat hekk jitlob, jekk l-informazzjoni inkwistjoni ma tkunx għadha tissodisfa r-rekwiżiti tas-subartikolu (1) tal-artikolu 12 għal raġunijiet li ma jistgħux jiġu attribwiti direttament jew indirettament lill-intimat.

(3) Il-qorti kompetenti tista', fuq talba tal-persuna responsabbli li tkunu soġġetta għall-miżuri previsti fl-artikolu 12, tordna kumpens fi flus li għandu jithallas lill-parti li ssofri danni minflok ma jiġu applikati dawk il-miżuri jekk jiġu ssodisfati l-kondizzjonijiet kollha li ġejjin:

(a) il-persuna involuta fil-mument tal-użu jew l-iżvelar la kienet taf u lanqas kellha, taht iċ-ċirkostanzi, tkun taf li s-sigriet kummerċjali kien miksub minn persuna oħra li kienet qed tuża jew tiżvela sigriet kummerċjali b'mod illegali;

(b) l-eżekuzzjoni tal-miżuri inkwistjoni tikkawża lill-persuna dannu sproporzjonat; u

(ċ) kumpens pekunjarju lill-parti li ssofri danni jidher li jkun raġonevolment sodisfaċenti:

Iżda meta jkun ġie ordnat kumpens pekunjarju minflok il-miżuri msemmija fil-paragrafi (a) u (b) tal-artikolu 12(1), dan m'għandux jaqbeż l-ammont ta' *royalties* jew miżati li kienu jkunu dovuti, li kieku dik il-persuna kienet talbet awtorizzazzjoni biex tuża s-sigriet kummerċjali inkwistjoni, għall-perjodu ta' żmien li matulu l-użu tas-sigriet kummerċjali seta' ġie projbit.

14. (1) Il-qorti kompetenti tista', fuq talba tal-parti danneġġata, tordna lill-kontraventur li kien jaf jew li kellu jkun jaf li hu kien qed jagħmel il-ksib, l-użu jew l-iżvelar illegali ta' sigriet kummerċjali, tħallas lid-detentur tas-sigriet kummerċjali d-danni xierqa għall-ħsara attwali mgarrba, b'riżultat tal-ksib, l-użu jew l-iżvelar illegali tas-sigriet kummerċjali. Danni.

(2) Meta jiġu stabbiliti d-danni msemmija fis-subartikolu (1), il-qorti kompetenti għandha tikkunsidra l-fatturi xierqa kollha, bħall-konsegwenzi negattivi ekonomiċi, li jinkludu qligħ mitluf, li l-parti li sarulha d-danni sofriet, xi profitti ingusti li saru mill-kontraventur u, f'każijiet adatti, elementi barra fatturi ekonomiċi, bħall-preġudizzju morali kkawżat lid-detentur tas-sigriet kummerċjali bil-ksib, l-użu jew l-iżvelar illegali tas-sigriet kummerċjali:

Iżda l-qorti kompetenti tista', bħala alternattiva, f'każijiet speċifiċi, tistabbilixxi d-danni bħala somma li tithallas f'daqqa fuq il-baži ta' elementi bħal, ta' mill-inqas, l-ammont tar-*royalties* jew tat-tariffi li kienu jkunu dovuti li kieku l-kontraventur talab awtorizzazzjoni

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biex juża s-sigriet kummerċjali inkwistjoni.

Pubblikazzjoni
tad-deċiżjoni
gudizzjarja.

15. (1) Fi proċedimenti legali istitwiti għall-ksib, l-użu jew l-iżvelar illegali ta' sigriet kummerċjali, il-qorti kompetenti tista' tordna, fuq talba tar-rikorrent u għas-spejjeż tal-kontraventur, miżuri xierqa għat-tixrid tal-informazzjoni li tirrigwarda d-deċiżjoni, li jinkludu l-pubblikazzjoni tagħha sħiħa jew parti minnha.

(2) Kull miżura msemmija fis-subartikolu (1) għandha tippreserva l-kunfidenzjalità tas-sigrieti kummerċjali kif previst fl-artikolu 9.

(3) Biex jiġi deċiż jekk tiġix ordnata miżura msemmija fis-subartikolu (1) u meta tkun qiegħda tiġi valutata l-proporzjonalità tagħha, il-qorti kompetenti għandha tqis, meta jkun adatt, il-valur tas-sigriet kummerċjali, l-imġiba tal-kontraventur biex jikseb, juża jew jiżvela s-sigriet kummerċjali, l-impatt tal-użu jew l-iżvelar illegali tas-sigriet kummerċjali, u l-probabbiltà ta' aktar użu jew iżvelar illegali tas-sigriet kummerċjali mill-kontraventur:

Iżda l-qorti kompetenti għandha tqis ukoll jekk l-informazzjoni dwar il-kontraventur tkunx dik li tippermetti li tiġi identifikata persuna fiżika u, f'dak il-każ, jekk il-pubblikazzjoni ta' dik l-informazzjoni tkunx ġustifikata, b'mod partikolari fid-dawl tad-dannu possibbli li miżura bħal dik tista' tikkawża għall-privatezza u r-reputazzjoni tal-kontraventur.

TAQSIMA IV - SANZJONIJIET, PRESKRIZZJONI, RAPPURTAR U DISPOŻIZZJONIJIET FINALI

Sanzjonijiet
għan-non-
konformità ma'
dan l-Att.

16. Il-qorti kompetenti tista' timponi fuq kull persuna li tonqos jew tirrifjuta li tikkonforma ruħha ma' xi miżura adottata kif hemm fl-artikoli 9, 10 u 12 penali ta' mhux inqas minn ħames mitt euro (€500) imma mhux iżjed minn mija u ħamsin elf euro (€150,000). Il-qorti kompetenti tista' iktar minn hekk timponi penali ta' pagament rikorrenti kull jum ta' mhux inqas minn ħamsin euro (€50) imma mhux iżjed minn elf euro (€1,000) f'każ ta' non-konformità ma' miżura adottata kif hemm fl-artikoli 10 u 12.

Preskrizzjoni.

17. (1) Il-perjodu preskrittiv għal talbiet sostantivi u l-azzjonijiet għall-applikazzjoni tal-miżuri, proċeduri u r-rimedji previsti f'dan l-Att għandu jkun ta' sentejn.

(2) Il-perjodu preskrittiv imsemmi fis-subartikolu (1) għandu jibda jgħodd mill-ġurnata fejn id-detentur tas-sigriet kummerċjali jaf jew suppost kien jaf dwar xi akkwist, użu u iżvelar illegali tas-sigrieti tal-kummerċ.

18. Il-Ministru jista' jagħmel regolamenti biex jimplimenta u jagħti effett aħjar lid-dispożizzjonijiet ta' dan l-Att, u mingħajr preġudizzju għall-ġeneralità ta' dak kollu hawn qabel imsemmi, jista' jordna kull haġa li jkollha ssir jew li tista' tiġi ordnata u jipprovdi dwar kull haġa konsegwenzjali, inċidentali jew konnessa mad-dispożizzjonijiet ta' dan l-Att.

Setgħa li jsiru regolamenti.

Mgħoddi mill-Kamra tad-Deputati fis-Seduta Nru 137 tal-4 ta' Lulju, 2018.

CLAUDETTE BUTTIGIEG
Deputy Speaker

RAYMOND SCICLUNA
Skrivan tal-Kamra tad-Deputati

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I assent.

(L.S.)

**MARIE-LOUISE
COLEIRO PRECA
President**

13th July, 2018

ACT No. XXIX of 2018

AN ACT to transpose Directive 2016/943/EU on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

Short title and commencement.

1. (1) The short title of this Act is the Trade Secrets Act, 2018.

(2) This Act shall come into force on such date or dates as the Minister responsible for Intellectual Property may by notice in the Gazette establish, and different dates may be so established for different purposes and for different provisions of this Act.

PART I - GENERAL

Interpretation.

2. In this Act, unless the context otherwise requires:

"competent court" and "Court", unless otherwise prescribed by regulations made under this Act, means the Court that is competent to take cognizance of a case according to the rules established in the Code of Organization and Civil Procedure;

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"contrary to honest commercial practices" shall mean at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition;

"infringer" means any natural or legal person who has unlawfully acquired, used or disclosed a trade secret;

"infringing goods" means goods, the design, characteristics, functioning, production process or marketing of which significantly benefits from trade secrets unlawfully acquired, used or disclosed;

"the Minister" means the Minister responsible for Intellectual Property;

"trade secret" means information which meets all of the following requirements:

(a) it is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

(b) it has commercial value because it is secret;

(c) it has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret;

"trade secret holder" means any natural or legal person lawfully controlling a trade secret.

3. (1) This Act lays down rules on the protection against the unlawful acquisition, use and disclosure of trade secrets. Scope.

(2) This Act transposes Directive (EU) 2016/943 of the European Parliament of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure.

4. (1) This Act shall not affect:

Non
Applicability.

(a) the exercise of the right to freedom of expression and information as set out in the Charter of Fundamental Rights of the European Union, the Constitution of Malta and the European Convention Act including respect for the freedom and pluralism of the media;

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(b) the application of rules requiring trade secret holders to disclose, for reasons of public interest, information, including trade secrets, to the public or to administrative or judicial

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authorities for the performance of the duties of those authorities;

(c) the application of rules requiring public authorities to disclose information submitted by businesses which public authorities hold pursuant to, and in compliance with obligations and prerogatives set out in law;

(d) the autonomy of social partners and their right to enter into collective agreements in accordance with law.

(2) Nothing in this Act shall be understood to offer any ground for restricting the mobility of employees. In particular, this Act shall not provide any ground for:

(a) limiting employees' use of information that does not constitute a trade secret as defined in article 2 of this Act;

(b) limiting employees' use of experience and skills honestly acquired in the normal course of their employment;

(c) imposing any additional restrictions on employees in their employment contracts other than those restrictions imposed by law.

PART II - ACQUISITION, USE AND DISCLOSURE OF TRADE SECRETS

Lawful
acquisition, use
and disclosure
of trade secrets.

5. (1) The acquisition of a trade secret shall be considered lawful when the trade secret is obtained by any of the following means:

(a) independent discovery or creation;

(b) observation, study, disassembly or testing of a product or object that has been made available to the public or that is lawfully in the possession of the acquirer of the information who is free from any legally valid duty to limit the acquisition of the trade secret;

(c) exercise of the right of workers or workers' representatives to information and consultation in accordance with law and practices;

(d) any other practice which, under the circumstances, is in conformity with honest commercial practices.

(2) The acquisition, use or disclosure of a trade secret shall be considered lawful to the extent that such acquisition, use or disclosure is required or allowed by law.

6. (1) The acquisition of a trade secret without the consent of the trade secret holder shall be considered unlawful, whenever carried out by:

Unlawful acquisition, use and disclosure of trade secrets.

(a) unauthorised access to, appropriation of, or copying of any documents, objects, materials, substances or electronic files, lawfully under the control of the trade secret holder, containing the trade secret or from which the trade secret can be deduced;

(b) any other conduct which, under the circumstances, is considered contrary to honest commercial practices.

(2) The use or disclosure of a trade secret shall be considered unlawful whenever carried out, without the consent of the trade secret holder, by a person who is found to meet any of the following conditions:

(a) having acquired the trade secret unlawfully;

(b) being in breach of a confidentiality agreement or any other duty not to disclose the trade secret;

(c) being in breach of a contractual or any other duty to limit the use of the trade secret.

(3) The acquisition, use or disclosure of a trade secret shall also be considered unlawful whenever a person, at the time of the acquisition, use or disclosure, knew or ought, under the circumstances, to have known that the trade secret had been obtained directly or indirectly from another person who was using or disclosing the trade secret unlawfully within the meaning of sub-article (2).

(4) The production, offering or placing on the market of infringing goods, or the importation, export or storage of infringing goods for those purposes, shall also be considered an unlawful use of a trade secret where the person carrying out such activities knew, or ought, under the circumstances, to have known that the trade secret was used unlawfully within the meaning of sub-article (2).

7. An application for the measures, procedures and remedies provided for in this Act shall be dismissed where the alleged acquisition, use or disclosure of the trade secret is carried out in any of the following cases:

Exceptions.

(a) for exercising the right to freedom of expression and information as set out in the Charter of Fundamental Rights of the European Union, the Constitution of Malta and the European Convention Act including respect for the freedom and pluralism of

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the media;

(b) for revealing misconduct, wrongdoing or illegal activity, provided that the respondent acted for the purpose of protecting the general public interest;

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(c) disclosure by workers to their representatives as part of the legitimate exercise by those representatives of their functions in accordance with the law, provided that such disclosure was necessary for that exercise; or

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(d) any disclosure by an employee to a whistle-blowing reporting officer or a whistle-blowing reports unit as provided for in the Protection of the Whistleblower Act;

(e) for the purpose of protecting a legitimate interest recognised by law.

PART III - MEASURES, PROCEDURES AND REMEDIES

Proportionality
and abuse of the
judicial process.

8. (1) The competent court shall apply the measures, procedures and remedies provided for in this Act in a manner that:

(a) is proportionate;

(b) avoids the creation of barriers to legitimate trade in the internal market; and

(c) provides for safeguards against their abuse.

(2) Where an application concerning the unlawful acquisition, use or disclosure of a trade secret is manifestly unfounded and the applicant is found to have initiated the legal proceedings abusively or in bad faith, the competent court, upon the request of the respondent, may apply appropriate measures. Such measures shall, as appropriate, include awarding damages to the respondent, imposing sanctions on the applicant or ordering the dissemination of information concerning a decision as referred to in article 15.

Preservation of
confidentiality
of trade secrets
in the course of
legal
proceedings.

9. (1) The parties, their lawyers or other representatives, court officials, witnesses, experts and any other person participating in legal proceedings relating to the unlawful acquisition, use or disclosure of a trade secret, or who has access to documents which form part of those legal proceedings, is not permitted to use or disclose any trade secret or alleged trade secret which the competent court has, in response to a duly reasoned application by an interested party, identified as confidential and of which they have become aware as a result of such participation or access to the proceedings.

(2) The obligation not to use or disclose any trade secret or alleged trade secret referred to in sub-article (1) shall remain in force after the legal proceedings have ended. However, such obligation shall cease to exist in any of the following circumstances:

(a) where the alleged trade secret is found, by a final decision, not to meet the requirements of a trade secret as defined in article 2; or

(b) where over time, the information in question becomes generally known among or readily accessible to persons within the circles that normally deal with that kind of information.

(3) The competent court may *ex officio* take specific measures necessary to preserve the confidentiality of any trade secret or alleged trade secret used or referred to in the course of legal proceedings relating to the unlawful acquisition, use or disclosure of a trade secret.

(4) Upon an application referred to in sub-article (1) the competent court may:

(a) restrict access to any document containing trade secrets or alleged trade secrets submitted by the parties or third parties, in whole or in part, to a limited number of persons;

(b) restrict access to hearings, when trade secrets or alleged trade secrets may be disclosed, and the corresponding record or transcript of those hearings to a limited number of persons;

(c) make available to any person other than those comprised in the limited number of persons referred to in paragraphs (a) and (b) a non-confidential version of any judicial decision, in which the passages containing trade secrets have been removed or redacted:

Provided that the number of persons referred to in paragraphs (a) and (b) shall be no greater than necessary to ensure compliance with the right of the parties to the legal proceedings to an effective remedy and to a fair trial, and shall include, at least, one natural person from each party and the respective lawyers or other representatives of those parties to the legal proceedings.

(5) When deciding on the measures referred to in this article, the competent court shall take into account the need to ensure the right to an effective remedy and to a fair trial, the legitimate interests of the parties and, where appropriate, of third parties, and any potential harm for either

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of the parties, and, where appropriate, for third parties, resulting from the granting or rejection of such measures.

Cap. 586. (6) Any processing of personal data pursuant to this article shall be carried out in accordance with the Data Protection Act and Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

Provisional and precautionary measures.

10. The competent court may, upon an application of the trade secret holder issue precautionary acts against the alleged infringer for:

(a) the cessation of or, as the case may be, the prohibition of the use or disclosure of the trade secret on a provisional basis;

(b) the prohibition of the production, offering, placing on the market or use of infringing goods, or the importation, export or storage of infringing goods for those purposes;

(c) the seizure or delivery up of the suspected infringing goods, including imported goods, so as to prevent their entry into, or circulation on, the market.

(2) As an alternative to the measures referred to in sub-article (1), the competent court may make the continuation of the alleged unlawful use of a trade secret subject to the lodging of guarantees intended to ensure the compensation of the trade secret holder:

Provided that the disclosure of a trade secret in return for the lodging of guarantees shall not be allowed.

Cap. 12. (3) In the application of this article, the provisions of Title VI of Book Third of the Code of Organization and Civil Procedure shall *mutatis mutandis* apply, save as otherwise provided in this Act.

Conditions of application and safeguards.

11. (1) The competent court shall only apply the measures in article 10 upon the applicant providing evidence that may reasonably be considered available in order to satisfy itself with a degree of certainty that:

(a) a trade secret exists;

(b) the applicant is the trade secret holder; and

(c) the trade secret has been acquired unlawfully, is being unlawfully used or disclosed, or unlawful acquisition, use or disclosure of the trade secret is imminent.

(2) The competent court shall ensure that in deciding or granting or rejecting an application and assessing its proportionality, it shall take into account the specific circumstances of the case, including where appropriate:

- (a) the value and other specific features of the trade secret;
- (b) the measures taken to protect the trade secret;
- (c) the conduct of the respondent in acquiring, using or disclosing the trade secret;
- (d) the impact of the unlawful use or disclosure of the trade secret;
- (e) the legitimate interests of the parties and the impact which the granting or rejection of the measures could have on the parties;
- (f) the legitimate interests of third parties;
- (g) the public interest; and
- (h) the safeguard of fundamental rights.

(3) The court, upon a request of the respondent, shall revoke or otherwise cease the precautionary acts referred to in article 10, if:

- (a) the applicant does not institute legal proceedings leading to a decision on the merits of the case before the competent court, within a reasonable period determined by the competent court ordering the measures where the law permits or, in the absence of such determination, within a period not exceeding 20 working days or 31 calendar days, whichever is the longer; or
- (b) the information in question no longer meets the requirements of a trade secret as defined in article 2, for reasons that cannot be attributed to the respondent.

(4) The competent court shall ensure that the measures referred to in article 10 are subject to the lodging by the applicant of adequate security or an equivalent assurance intended to ensure compensation for any prejudice suffered by the respondent and, where appropriate, by any other person affected by the measures.

(5) Where the measures referred to in article 10 are revoked on the

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basis of paragraph (a) of sub-article (3), where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no unlawful acquisition, use or disclosure of the trade secret or threat of such conduct, the competent court shall have the authority to order the applicant, upon the request of the respondent or of an injured third party, to provide the respondent, or the injured third party, appropriate compensation for any injury caused by those measures.

Injunction and
corrective
measures.

12. (1) Where a judicial decision is taken on the merits of the case finds that there has been unlawful acquisition, use or disclosure of a trade secret, the competent court may, at the request of the applicant order one or more of the following measures against the infringer:

(a) the cessation of or, as the case may be, the prohibition of the use or disclosure of the trade secret;

(b) the prohibition of the production, offering, placing on the market or use of infringing goods, or the importation, export or storage of infringing goods for those purposes;

(c) the adoption of the appropriate corrective measures with regard to the infringing goods;

(d) the destruction of all or part of any document, object, material, substance or electronic file containing or embodying the trade secret or, where appropriate, the delivery up to the applicant of all or part of those documents, objects, materials, substances or electronic files.

(2) The corrective measures referred to in paragraph (c) of sub-article (1) shall include:

(a) recall of the infringing goods from the market;

(b) depriving the infringing goods of their infringing quality; or

(c) destruction of the infringing goods or, where appropriate, their withdrawal from the market, provided that the withdrawal does not undermine the protection of the trade secret in question.

(3) Where the court orders the measures in sub-article 1(c) and (d) to be carried out, any such measures shall be carried out at the expense of the infringer, unless there are particular reasons for not doing so. Those measures shall be without any prejudice to any damages that may be due to the trade secret holder by reason of the unlawful acquisition, use or disclosure of the trade secret.

13. (1) The competent court in considering an application for the adoption of the injunctions and corrective measures provided for in article 12 and in assessing their proportionality, shall take into account specific circumstances of the case, including, where appropriate:

Conditions of application, safeguards and alternative measures.

- (a) the value or other specific features of the trade secret;
- (b) the measures taken to protect the trade secret;
- (c) the conduct of the infringer in acquiring, using or disclosing the trade secret;
- (d) the impact of the unlawful use or disclosure of the trade secret;
- (e) the legitimate interests of the parties and the impact which the granting or rejection of the measures could have on the parties;
- (f) the legitimate interests of third parties;
- (g) the public interest; and
- (h) the safeguard of fundamental rights.

Provided that where the competent court limits the duration of the measures referred to in paragraphs (a) and (b) of sub-article (1) of article 12, such duration shall be sufficient to eliminate any commercial or economic advantage that the infringer could have derived from the unlawful acquisition, use or disclosure of the trade secret.

(2) The competent court shall ensure that the measures referred to in paragraph (a) and (b) of sub-article (1) of article 12 are revoked or otherwise cease to have effect, upon the request of the respondent, if the information in question no longer meets the requirements of sub-article (1) of article 12 for reasons that cannot be attributed directly or indirectly to the respondent.

(3) The competent court may, at the request of the person liable to be subject to the measures provided for in article 12, order pecuniary compensation to be paid to the injured party instead of applying those measures if all the following conditions are met:

- (a) the person concerned at the time of use or disclosure neither knew nor ought, under the circumstances, to have known that the trade secret was obtained from another person who was using or disclosing the trade secret unlawfully;

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(b) execution of the measures in question would cause that person disproportionate harm; and

(c) pecuniary compensation to the injured party appears reasonably satisfactory.

Provided that, where pecuniary compensation is ordered instead of the measures referred to in paragraphs (a) and (b) of article 12(1), it shall not exceed the amount of royalties or fees which would have been due, had that person requested authorisation to use the trade secret in question, for the period of time for which use of the trade secret could have been prohibited.

Damages.

14. (1) The competent court may, upon the request of the injured party, order an infringer who knew or ought to have known that he, she or it was engaging in unlawful acquisition, use or disclosure of a trade secret, to pay the trade secret holder damages appropriate to the actual prejudice suffered as a result of the unlawful acquisition, use or disclosure of the trade secret.

(2) When setting the damages referred to in sub-article (1), the competent court shall take into account all appropriate factors, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the trade secret holder by the unlawful acquisition, use or disclosure of the trade secret.

The competent court may, alternatively, in appropriate cases, set the damages as a lump sum on the basis of elements such as, at a minimum, the amount of royalties or fees which would have been due had the infringer requested authorisation to use the trade secret in question.

Publication of
judicial
decision.

15. (1) In legal proceedings instituted for the unlawful acquisition, use or disclosure of a trade secret, the competent court may order, at the request of the applicant and at the expense of the infringer, appropriate measures for the dissemination of the information concerning the decision, including publishing it in full or in part.

(2) Any measure referred to in sub-article (1) shall preserve the confidentiality of trade secrets as provided for in article 9.

(3) In deciding whether to order a measure referred to in sub-article (1) and when assessing its proportionality, the competent court shall take into account, where appropriate, the value of the trade secret, the conduct of the infringer in acquiring, using or disclosing the trade secret, the impact of the unlawful use or disclosure of the trade secret, and the

likelihood of further unlawful use or disclosure of the trade secret by the infringer:

Provided that, the competent court shall also take into account whether the information on the infringer would be such as to allow a natural person to be identified and, if so, whether publication of that information would be justified, in particular in the light of the possible harm that such measure may cause to the privacy and reputation of the infringer.

PART IV - SANCTIONS, RESOURCES, PRESCRIPTION AND FINAL PROVISIONS

16. The competent court may impose on any person who fails or refuses to comply with any measure adopted pursuant to articles 9, 10 and 12 a penalty of not less than five hundred euro (€500) but not more than one hundred fifty thousand euro (€150,000). The competent court may additionally impose a daily recurring penalty payment of not less than fifty euro (€50) but not more than one thousand euro (€1,000) in the event of non-compliance with a measure adopted pursuant to articles 10 and 12.

Sanctions for non-compliance with this Act.

17. (1) The prescriptive period in relation to substantive claims and actions for the measures, procedures and remedies provided for in this Act shall be of two years.

Prescription.

(2) The prescriptive period referred to in sub-article (1) shall commence to run from the day, when the trade secret holder knows of or ought to have known of any unlawful acquisition, use and disclosure of the trade secrets.

18. The Minister may make regulations to implement and give better effect to the provisions of this Act, and without prejudice to the generality of the foregoing, may prescribe anything which shall be done or may be prescribed and provide for any consequential thing, incidental to or connected to the provisions of this Act.

Power to make regulations.

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Passed by the House of Representatives at Sitting No. 137 of the 4th July, 2018.

CLAUDETTE BUTTIGIEG
Deputy Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives