

**Act LIV of 2018**  
**on the protection of trade secrets**

*CHAPTER I*

*GENERAL PROVISIONS*

**1. Scope of the Act**

**Section 1** (1) Trade secret means a fact, information, other data and an assembly of the foregoing, connected to an economic activity, which is secret in the sense that it is not, as a body or as the assembly of its components, generally known or readily accessible to persons dealing with the affected economic activity and therefore it has pecuniary value, and which is subject to steps made with the care that is generally expected under the given circumstances, by the person lawfully in control of the information, to keep it secret.

(2) Protected knowledge (know-how) means a technical, economic or organisational knowledge, solution, experience or the assembly of the foregoing, classified as trade secret and recorded in an identifiable manner.

**2. Interpretative provisions**

**Section 2** For the purposes of this Act:

1. *lost royalty* means the fee that would have been due, had the infringer requested authorisation to use the trade secret in question;

2. *trade secret holder* means any person lawfully controlling a trade secret, whose economic, financial or trade preferences would be infringed by the infringement of the right in the trade secret;

3. *infringer* means any person who has unlawfully acquired, used or disclosed a trade secret;

4. *infringing goods* means goods or services, the design, characteristics, functioning, production process or marketing of which significantly benefits from trade secrets unlawfully acquired, used or disclosed.

**3. The right in the trade secret**

**Section 3** The trade secret holder is entitled to use the trade secret, communicate it to others and to publish it (communication and publication jointly: “disclosure of trade secret”).

**Section 4** The trade secret holder may transfer the right in the trade secret in whole or in part (contract on the transfer of rights in trade secrets) and also may provide authorisation to another person to use the trade secret (trade secret use contract).

**4. Exceptions from trade secret protection**

**Section 5** (1) The acquisition of a trade secret shall not qualify as the infringement of the right in the trade secret if it is obtained by any of the following means:

a) development, discovery or creation independent from the trade secret holder,

b) observation, study or testing of a publicly available or lawfully acquired product or of a lawfully used service, provided that the acquirer of the trade secret was free from any duty to limit the acquisition or keeping of the trade secret, in particular from an obligation of confidentiality,

c) exercise of the right of workers or workers’ representatives to information and consultation for the purpose specified in paragraph (3) a), to the extent necessary, with the exception of technical knowledge and solutions within the scope of protected knowledge, or

*d)* any other conduct which is in conformity with the requirement of good faith and fair dealing and is generally expected under the given circumstances.

(2) The acquisition of a trade secret from a third person at the market in good faith against consideration shall qualify as acquisition according to paragraph (1) *d)*.

(3) The following shall not qualify as infringement of the right in the trade secret:

*a)* disclosure of a lawfully acquired trade secret by workers to the workers' representatives, provided that such disclosure aimed to facilitate the exercise of the right of workers or their representatives to information and consultation and was necessary for that exercise,

*b)* acquisition of a trade secret or its disclosure to the competent authority with a view to preventing or avoiding the violation of the law or a conduct violating honest business practices, or eliminating or mitigating the consequences of the foregoing, if it is carried out for the purpose of protecting the public interest and to the extent justified by the desired purpose,

*c)* acquisition, use or disclosure of a trade secret required or allowed by a directly applicable legal act of the European Union or an Act.

## **5. Infringement of the right in the trade secret**

**Section 6** (1) The person who unlawfully acquires, uses or discloses a trade secret infringes the right in the trade secret.

(2) The acquisition of a trade secret shall be considered unlawful, whenever carried out by unauthorised access to, appropriation of, or copying of any documents, materials 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.

(3) The acquisition of a trade secret shall be considered unlawful, whenever carried out, without the consent of the trade secret holder, by any other conduct which is contrary to the requirement of good faith and fair dealing.

(4) 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

*a)* has acquired the trade secret unlawfully;

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

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

(5) The right in the trade secret shall also be considered infringed whenever a person acquiring, using or disclosing the trade secret knew or ought to have known at the time of carrying out such conduct 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 paragraph (4).

(6) The production, offering, providing 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 to have known that the trade secret was used unlawfully within the meaning of paragraph (4).

## **6. Sanctions for the infringement of the right in the trade secret**

**Section 7** (1) If the right in the trade secret is infringed, the trade secret holder may claim, based on the fact of the infringement and according to the circumstances of the case, the establishment by the court of the infringement, and may, in addition to the establishment of the infringement, claim

*a)* that the infringement be ceased and the infringer be forbidden from continuing the infringement,

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

*c)* the destruction of the infringing goods or their withdrawal from the market, provided that the withdrawal does not undermine the protection of the trade secret in question;

*d)* the recall of the infringing goods from the market or depriving the infringing goods of their infringing quality;

*e)* the disclosure of information by the infringer on the persons who participated in the production, placing on the market or the provision of infringing goods and on the business ties established for the purpose of the infringing use;

*f)* the termination of the infringing situation and restoration of the situation prior to the infringement;

*g)* the restitution of the enrichment obtained through the infringement;

*h)* the destruction of the whole or a part of the documents, objects, materials or electronic files containing or embodying the trade secret, or the transfer of the same to the trade secret holder; and

*i)* the publication of the decision adopted in the case.

(2) The trade secret holder may also raise the claim specified in paragraph (1) *a)* against the person whose services not falling under the scope of paragraph (1) *b)* were used for committing the infringement.

(3) The trade secret holder may also raise the claim specified in paragraph (1) *e)* against the person not falling under the scope of paragraph (1) *b)* who provided on a commercial scale services not falling under the scope of paragraph (1) *b)* for committing the infringement.

(4) For the purpose of paragraph (3), the service shall be considered to be provided on a commercial scale if it is clear from the nature and quantity of the relevant infringing goods or of the services provided that the service directly or indirectly serves the purpose of obtaining an economic advantage. Unless proven to the contrary, the conducts performed in good faith by the consumer shall not be considered to be of commercial scale.

(5) If the action brought by the trade secret holder is clearly unfounded and it is clear that he initiated the procedure in bad faith, the court may, at the request of the party with opposing interests, order the application of the legal consequence specified in paragraph (1) *i)*.

(6) On the basis of paragraph (1) *i)*, the court, ensuring the preservation of the confidentiality of the trade secret, may order the full or partial publication of the decision adopted in the case. In deciding on the publication, the court shall 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.

(7) In the course of adopting the decision related to the publication of the decision passed on the basis of paragraph (1) *i)*, the court shall take into account in particular

*a)* the value of the trade secret;

*b)* the conduct of the infringer in acquiring, using or disclosing the trade secret;

*c)* the impact of the unlawful use or disclosure of the trade secret, with particular regard to the fact that the use or disclosure of the trade secret may result in the termination of the protection of the trade secret, and

*d)* the likelihood of further unlawful use or disclosure of the trade secret by the infringer.

(8) For the purpose of paragraph (1) *i)*, publication means in particular publishing in a national newspaper or on the internet. The court shall decide on the manner of publication; however, it may not order publication in a manner objected to by both parties.

(9) When ordering the withdrawal of the infringing goods from the market, the court may order, at the request of the trade secret holder, that the goods be delivered up to the holder or to a non-governmental organisation engaged in a charitable activity, determined by the holder.

(10) According to the rules of the Act on the Code of Civil Procedure (hereinafter the "Pp.") on the action brought for the termination of an enforcement procedure, the infringer may request the termination of the enforcement procedure started on the basis of a decision containing the legal consequence set forth in paragraph (1) *a*) and *b*), provided that due to any cause for which the infringer is not liable, the subject of the trade secret does not comply any more with the requirements laid down in the definition of the trade secret.

(11) The court shall decide on ordering the recall or the final withdrawal from the market or destruction taking into account the interest of third parties and ensuring that the ordered measure is proportionate to the seriousness of the infringement.

(12) The costs connected to the application of the legal consequences laid down in paragraph (1) shall be borne by the infringer.

(13) If, in the action brought due to the infringement of the right in the trade secret, any party has substantiated his statements of facts to a reasonable extent, the court may, at the request of the party presenting evidence, oblige the party with opposing interests

*a*) to present a document and other piece of physical evidence in his possession, and to allow the holding of an inspection;

*b*) to disclose banking, financial and commercial data or to present such documents in his possession.

(14) In applying the legal consequences according to paragraph (1), the court shall take into account the specific circumstances of the case, in particular

*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 infringer in acquiring, using or disclosing the trade secret,

*d*) the impact of the unlawful use or disclosure of the trade secret, with particular regard to the fact that the use or disclosure of the trade secret may result in the termination of the protection 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.

**Section 8** (1) At the request of the infringer, in addition to establishing the infringement, the court may order pecuniary compensation to be paid to the holder instead of applying the legal consequences applicable regardless of being at fault if

*a*) the infringer at the time of use or disclosure neither knew nor ought to have known that the trade secret was obtained from another person who was using or disclosing the trade secret unlawfully,

*b*) the application of the legal consequences applicable regardless of being at fault would cause that person disproportionate harm; and

*c*) the compensation to the trade secret holder is reasonably satisfactory considering the harm caused by the infringement.

(2) The application of the legal consequence according to paragraph (1) shall be without prejudice to any other claims that the trade secret holder may have, in particular claims for damages.

(3) If the court orders the infringer to pay pecuniary compensation instead of the legal consequence laid down in section 7 (1) *a*) and *b*), the amount of the compensation shall not exceed the amount of the lost royalty.

**Section 9** (1) If the right in the trade secret is infringed, the trade secret holder may, under the rules on civil law liability, also claim damages.

(2) If the court orders the infringer to pay general damages, the amount of the damages shall not be less than the amount of the lost royalty.

## CHAPTER II

### *SPECIAL RULES FOR CIVIL LAW ACTIONS RELATED TO THE UNLAWFUL ACQUISITION, USE OR DISCLOSURE OF THE TRADE SECRET*

#### **7. Judicial path, applying the provisions of civil procedure**

**Section 10** (1) Unless otherwise provided by an Act, the rights guaranteed in this Act shall be enforced using the judicial path.

(2) The rules of the Pp. shall apply to the civil procedures related to the unlawful acquisition, use or disclosure of the trade secret, subject to the derogations provided in this Act.

(3) Actions brought according to this Act shall fall within the material jurisdiction of the regional court.

#### **8. Preservation of confidentiality of the trade secret in civil law actions related to the infringement of the trade secret**

**Section 11** (1) In civil law action related to the infringement of the trade secret, the parties, the prosecutor, other persons participating in the procedure and their representatives, the court employees as well as other persons having access to the documents of the procedure shall be obliged to keep the trade secret of which they have become aware as a result of their participation in the procedure or access to the documents of the procedure, as well as the alleged trade secret that is the subject of the court action.

(2) The obligation of confidentiality laid down in paragraph (1) shall remain in force after the proceedings have ended.

(3) The obligation of confidentiality laid down in paragraph (1) shall cease to exist if

*a*) the alleged trade secret that is the subject of the action is found, by a final and binding decision, not to qualify as a trade secret, or

*b*) the subject matter of the trade secret becomes generally known or readily accessible to persons engaged in the relevant economic activity.

#### **9. Restriction of the rights to access to the file and to hearing**

**Section 12** (1) The court may order, at the reasoned request by a party, in the interest of protecting the trade secret

*a*) the restriction of access by the parties and their representatives to any document containing trade secrets or alleged trade secrets that are the subject of the action, submitted by the parties or third parties, or to the part of such document which contains trade secrets,

*b*) the exclusion of the public from a hearing or a part of it, and the restriction of access to hearings and the corresponding minutes of those hearings. The restriction of access to the minutes shall be applicable to the inspection and the receipt of the minutes as well as to making a copy or an extract of the minutes.

(2) The right to access to the file and to hearing shall be granted to at least one natural person from the parties and to one representative of each of the representatives of the parties.

These persons may exercise the right to hearing and to access to, and make a copy of, the file according to the order and the rules established by the proceeding judge, provided that they have made a written declaration on the obligation of keeping the secret.

(3) If a measure laid down in paragraph (1) is taken, the court may order that a non-confidential version of any judicial decision, in which the passages containing trade secrets have been removed or redacted, be made available to any person other than those affected by the trade secret protective measures.

(4) The measures laid down in paragraph (1) shall only be applicable to the necessary extent and they shall not restrict the right to an effective remedy and to a fair trial and representation. When assessing necessity, the court shall also take into account the legitimate interests of third parties.

## 10. Provisional measures

**Section 13** (1) The court may, at the request of the trade secret holder, order any of the following provisional measures against the party with opposing interests:

*a)* the cessation or the prohibition of the disclosure or use of the trade secret, including the cessation and the prohibition that may be applied for under section 7 (2),

*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) In the event referred to in paragraph (1) *c)*, the provisions on the impounding of movables laid down in the Act on judicial enforcement shall apply to the seizure or delivery up of the suspected infringing goods.

(3) As an alternative to the provisional measures referred to in paragraph (1), the court may, according to the rules of the Pp. on the provision of security, make the continuation of the alleged unlawful use of a trade secret subject to the lodging of guarantees. Disclosure of a trade secret in return for the lodging of guarantees shall not be allowed.

(4) In addition to the claims under civil law that may be brought forward in the event of an infringement and subject to the conditions applying to provisional measures, the trade secret holder may request the court to

*a)* order a precautionary measure according to the rules laid down in the Act on judicial enforcement, provided that he substantiated that the subsequent satisfaction of his claim for damages or for the restitution of the enrichment obtained through the infringement is at risk,

*b)* oblige the infringer to disclose or present his banking, financial and commercial data and documents for the purpose of ordering a precautionary measure set forth in point *a)*.

(5) An appeal filed against an order on a provisional measure shall be decided by the court of second instance in an order as a matter of priority but within no more than fifteen days of the court of second instance receiving the appeal.

**Section 14** (1) The court may order the provisional measure if, in addition to the existence of the conditions applicable to ordering provisional measures as laid down in the Pp., the applicant substantiates to a reasonable extent 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) In deciding on the application, the court shall take into account the criteria laid down in section 7 (14).

(3) In a case of necessity of extreme urgency where any delay would cause irreparable harm, the hearing of the party with opposing interests may be omitted in the question of ordering the provisional measure. The decision adopted without hearing the party with opposing interests shall be communicated to the party with opposing interests upon carrying out the measure. After the communication of the decision, the party with opposing interests may request a hearing and the amendment or the setting aside of the decision ordering the provisional measure.

(4) The provisions of Pp. shall be applicable to the provisional measure prior to bringing an action with the derogation that the court shall set a time limit of not more than fifteen days for bringing an action.

(5) At the request of the party with opposing interests, the court shall revoke the provisional measure if the subject matter of the trade secret no longer meets the requirements laid down in section 1 for reasons that cannot be attributed to the party with opposing interests.

(6) Third persons affected by the provisional measure may bring a separate action for damages against the applicant in relation to their damage that occurred in relation to the provisional measure.

**Section 15** (1) Preliminary taking of evidence may be performed in an action brought due to the infringement of the right in the trade secret. Preliminary taking of evidence may also be performed before bringing the action if the infringement or the risk of it has been substantiated by the trade secret holder to a reasonable extent.

(2) At the request of the party with opposing interests, the court shall set aside the decision ordering the preliminary taking of evidence before bringing the action, provided that the trade secret holder did not bring the action due to the infringement of the right in the trade secret within fifteen days from the communication of the decision ordering the preliminary taking of evidence. The application for setting aside the decision ordering the preliminary taking of evidence shall be decided by the court as a matter of priority but within no more than eight days from the submission of the application.

(3) In a case of extreme urgency where any delay would cause irreparable harm or the risk of destroying evidence can be substantiated, the hearing of the party with opposing interests may be omitted in the question of ordering the preliminary taking of evidence. The decision adopted without hearing the party with opposing interests shall be communicated to the party with opposing interests upon carrying out the measure. After the communication of the decision, the party with opposing interests may request a hearing and the amendment or the setting aside of the decision ordering the preliminary taking of evidence.

### *CHAPTER III*

#### *FINAL PROVISIONS*

#### **11. Provisions on entry into force**

**Section 16** This Act shall enter into force on the eighth day following its promulgation.

#### **12. Compliance with the law of the European Union**

**Section 17** Sections 1 to 15 and sections 19 to 43 serve the purpose of compliance with Directive (EU) 2016/943 of the European Parliament and 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.

**Sections 18 to 47**