

Protection of Trade Secrets Act

The Bulgarian Parliament recently enacted the Protection of Trade Secrets Act (**Act**) which transposes *Directive (EU) 2016/943 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (Directive)* into Bulgarian law. The Act aims to further protect sensitive business information and to finally create a unilateral legal framework, as trade secrets were insufficiently protected in the past under the Protection of Competition Act and the Commerce Act.

Below we outline certain important rules introduced by the Act.

Scope of the Act

A trade secret is understood to be any business information, know-how or technological information which is a secret (that is, not generally known or readily accessible), has commercial value because it is secret, and in respect of which the trade secret holder has taken reasonable steps to keep it secret. Goods whose design, characteristics, functioning, manufacturing process or marketing benefits from a trade secret, which is unlawfully obtained, used or disclosed are considered infringing goods under the Act. Any legal entity or an individual who unlawfully acquires, uses and/or discloses trade secrets can be liable under the Act.

Distinction between lawful and unlawful activity

A trade secret is considered unlawfully acquired when it is obtained without the consent of the trade secret holder (e.g. via unauthorised ac-

cess to or copying of documents, materials or electronic files, which are lawfully under the control of the trade secret holder) or through any other means which, under the circumstances, are considered contrary to fair commercial practices (such as the violation of a contractual duty or confidentially agreement). The Act also defines when the acquisition of a trade secret is considered lawful, e.g. where it is the result of independent discovery or creation. It is worth noting that the so-called *reverse engineering* of a lawfully acquired product (or a product that has been made available to the public) is considered lawful unless contractually agreed otherwise or where other legally valid obligations exist to limit the acquisition of the trade secret.

Remedies

Victims of trade secret infringements can seek protection by initiating court proceedings and request various measures, such as: the cessation of the unlawful use and further disclosure of misappropriated trade secrets; prohibition of the production, offering, placing on the market or use of infringing goods; destruction of documents, materials or files containing trade secrets; recall of the infringing goods from the market; destruction of the infringing goods.

Damages

Trade secret holders are also entitled to compensation for damage suffered as a result of the unlawful acquisition, use or disclosure of the trade secret (including for lost profits). The compensation is defined by taking into account the specific damage (negative economic consequences) which the injured party has suffered, any profits made by the infringer as a result of the unlawful acquisition, use or disclosure of the trade secret and, to the extent applicable, any



CERHA HEMPEL CEE NEWSLETTER *Bulgaria*

moral prejudice caused to the trade secret holder. Where the exact amount of the compensation cannot be defined, the damages are set as a lump sum on the basis of the amount of royalties or fees which would have been due had the infringer requested authorisation to use the trade secret, as well as the costs incurred by the trade secret holder.

The liability for damage caused by employees towards their employers for the unlawful acquisition, use or disclosure of trade secrets of the employer is limited to three times the amount of their salary. However, there is no such limitation where employees act intentionally.

Limitation period

Under the Directive, Member States are required to establish limitation periods not exceeding six years, applicable to substantive claims and pro-

cedures provided for in the implementing law. The duration of the limitation period under the Act is five years as of the date of the infringement. No special rules are provided in relation to the circumstances under which the limitation period is interrupted or suspended, therefore the general provisions of the Obligations and Contracts Act apply.

Further guidelines on certain trade secret protection matters are expected with the development of the new legislation and the relevant case law.

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