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2014 - 2019

Committee on Legal Affairs

2014/0402(COD)

26.3.2015

AMENDMENTS

172 - 339

Draft report
Constance Le Grip
(PE546.885v01-00)

on Protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure

Proposal for a directive
(COM(2013)0813 – C7-0431/2013 – 2013/0402(COD))

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United in diversity

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Amendment 172

József Szájer

Proposal for a directive

Article 4 – paragraph 2 – introductory part

Text proposed by the Commission

2. Member States shall ensure that **there shall be no entitlement to** the application **for** the measures, **procedures** and remedies provided for in this Directive when the alleged acquisition, use or disclosure of the trade secret was carried out **in any of the following cases:**

Amendment

2. Member States shall ensure that **the following cases are exempted from** the application **of** the measures and remedies provided for in this Directive when the alleged acquisition, use or disclosure of the trade secret was carried out

Or. en

Justification

These cases shall be adjudicated on the merits by the relevant authorities, only the legal consequences (measures and remedies) may not be applied.

Amendment 173

Daniel Buda

Proposal for a directive

Article 4 – paragraph 2 – introductory part

Text proposed by the Commission

2. Member States shall ensure that there shall be no entitlement to the application for the measures, procedures and remedies provided for in this Directive when the alleged acquisition, use or disclosure of the trade secret was carried out in any of the following cases:

Amendment

2. Member States shall ensure, **through the competent judicial authorities**, that there shall be no entitlement to the application for the measures, procedures and remedies provided for in this Directive when, **from the evidence taken during the judicial proceedings**, the alleged acquisition, use or disclosure of the trade secret was carried out in any of the following cases:

Justification

Only the judicial authorities, based on the evidence taken, may determine whether the alleged acquisition, use or disclosure of the trade secret was legal.

Amendment 174

Therese Comodini Cachia

Proposal for a directive

Article 4 – paragraph 2 – introductory part

Text proposed by the Commission

2. Member States shall ensure that ***there shall be no entitlement to*** the application ***for*** the measures, ***procedures*** and remedies provided for in this Directive when the alleged acquisition, use or disclosure of the trade secret was carried out ***in any of the following cases***:

Amendment

2. Member States shall ensure that ***the following cases are exempted from*** the application ***of*** the measures and remedies provided for in this Directive when the alleged acquisition, use or disclosure of the trade secret was carried out:

Or. en

Amendment 175

Julia Reda, Pascal Durand

Proposal for a directive

Article 4 – paragraph 2 – introductory part

Text proposed by the Commission

2. ***Member States shall ensure that there shall be no entitlement to the application for the measures, procedures and remedies provided for in this Directive when the*** alleged acquisition, use or disclosure of the trade secret was carried out in any of the following cases:

Amendment

2. ***The acquisition, use and disclosure of trade secrets Member States shall be considered lawful to the extent that*** alleged acquisition, use or disclosure of the trade secret was carried out in any of the following cases:

Or. en

Justification

What is lawful must be clearly defined

Amendment 176

József Szájer

Proposal for a directive

Article 4 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) for making legitimate use of the right to freedom of expression and information; ***deleted***

Or. en

Justification

It seems that this exception, which we cannot concur with, became even wider with the addition.

Amendment 177

Angelika Niebler, Axel Voss

Proposal for a directive

Article 4 – paragraph 2 – point a

Text proposed by the Commission

Amendment

a) for making legitimate use of the right to freedom of expression and information; ***deleted***

Or. de

Justification

The directive neither amends nor increases the scope of the protection of fundamental rights - such as the right to freedom of expression or freedom of information. This paragraph is therefore unnecessary.

Amendment 178
Tadeusz Zwiefka

Proposal for a directive
Article 4 – paragraph 2 – point a

Text proposed by the Commission

(a) for making legitimate use of the right to freedom of expression and information;

Amendment

(a) ***where it is necessary*** for making legitimate use of the right to freedom of expression and information ***and where the use of the right to freedom of expression and information is proportional to the damage caused to the trade secret holder's legitimate economic interests;***

Or. en

Amendment 179
Henna Virkkunen, Sampo Terho

Proposal for a directive
Article 4 – paragraph 2 – point a

Text proposed by the Commission

(a) for making legitimate use of the right to freedom of expression and information;

Amendment

(a) for making legitimate use of the right to freedom of expression and information; ***except in cases where such freedom is limited with a secrecy obligation following from an employment relationship;***

Or. en

Amendment 180
Sergio Gaetano Cofferati

Proposal for a directive
Article 4 – paragraph 2 – point a

Text proposed by the Commission

(a) for making ***legitimate*** use of the right to freedom of expression and information;

Amendment

(a) for making ***opportune*** use of the right to freedom of expression and information,

*as guaranteed by the Charter of
Fundamental Rights of the European
Union;*

Or. it

Amendment 181
Julia Reda, Pascal Durand

Proposal for a directive
Article 4 – paragraph 2 – point a

Text proposed by the Commission

(a) for making *legitimate* use of the right to freedom of expression and information;

Amendment

(a) for making use of the right to freedom of expression, *media freedom* and *freedom of* information;

Or. en

Justification

The word 'legitimate' could lead to a narrow and restrictive interpretation of the principle of right to freedom of expression. The scope of the directive is not to limit the right to freedom of expression. Such limitation should be considered only in very exceptional circumstances (defamation, hate speech, etc.) and is out of the remit of this proposal.

Amendment 182
Mary Honeyball

Proposal for a directive
Article 4 – paragraph 2 – point a

Text proposed by the Commission

(a) for making legitimate use of the right to freedom of expression and information;

Amendment

(a) for making legitimate use of the right to freedom of expression and information *and the right to media freedom*;

Or. en

Amendment 183
Virginie Rozière

Proposal for a directive
Article 4 – paragraph 2 – point a

Text proposed by the Commission

a) *legitimate* use of the right to freedom of expression and information;

Amendment

a) use of the right to freedom of expression and information;

Or. fr

Amendment 184
Jean-Marie Cavada, Frédérique Ries

Proposal for a directive
Article 4 – paragraph 2 – point a

Text proposed by the Commission

a) *legitimate* use of the right to freedom of expression and information;;

Amendment

a) use of the right to *media freedom*, freedom of expression and of information;

Or. fr

Amendment 185
Emil Radev

Proposal for a directive
Article 4 – paragraph 2 – point a

Text proposed by the Commission

a) for making legitimate use of the right to freedom of expression and information;

Amendment

a) for making legitimate *and fair* use of the right to freedom of expression and information;

Or. bg

Amendment 186
Sergio Gaetano Cofferati

Proposal for a directive
Article 4 – paragraph 2 – point a a (new)

Text proposed by the Commission

Amendment

*(aa) where disclosure is clearly in the
general public interest;*

Or. it

Amendment 187
Angelika Niebler, Axel Voss

Proposal for a directive
Article 4 – paragraph 2 – point b

Text proposed by the Commission

Amendment

*b) for the purpose of revealing an
applicant's misconduct, wrongdoing or
illegal activity, provided that the alleged
acquisition, use or disclosure of the trade
secret was necessary for such revelation
and that the respondent acted in the
public interest;*

deleted

Or. de

Justification

*The wording chosen is very broad and open to contradictory interpretations. In order to
achieve legal certainty, it is better to delete this wording.*

Amendment 188
József Szájer

Proposal for a directive
Article 4 – paragraph 2 – point b

Text proposed by the Commission

Amendment

*(b) for the purpose of revealing **an**
applicant's misconduct, wrongdoing or*

*(b) for the purpose of revealing **a**
misconduct, wrongdoing or illegal activity,*

illegal activity, provided that the alleged acquisition, *use* or disclosure of the trade secret was necessary for such revelation and that the respondent acted in the public interest;

provided that the alleged acquisition, or disclosure of the trade secret was necessary for such revelation and that the respondent acted in the public interest;

Or. en

Justification

Legitimate “whistleblowing” activities should not include the actual use of trade secrets.

Amendment 189
Sergio Gaetano Cofferati

Proposal for a directive
Article 4 – paragraph 2 – point b

Text proposed by the Commission

(b) for the purpose of revealing *an applicant’s* misconduct, wrongdoing or illegal activity, provided that the alleged acquisition, use or disclosure of the trade secret was necessary for such revelation and that the respondent acted in the public interest;

Amendment

(b) for the purpose of revealing *a* misconduct, wrongdoing or illegal activity, provided that the alleged acquisition, use or disclosure of the trade secret was necessary for such revelation and that the respondent acted in the public interest;

Or. it

Amendment 190
Daniel Buda

Proposal for a directive
Article 4 – paragraph 2 – point b

Text proposed by the Commission

(b) or the purpose of revealing an applicant’s misconduct, wrongdoing or illegal activity, provided that the alleged acquisition, use or disclosure of the trade secret was necessary for such revelation

Amendment

(b) or the purpose of revealing an applicant’s *or any other person’s* misconduct, wrongdoing or illegal activity, provided that the alleged acquisition, use or disclosure of the trade secret was necessary

and that the respondent acted in the public interest;

for such revelation and that the respondent acted in the public interest;

Or. ro

Justification

In the case provided for by this legislative text, possible misconduct, wrongdoing or illegal activity that is committed not only by the applicant, but also by any other person should be considered.

Amendment 191
Henna Virkkunen, Sampo Terho

Proposal for a directive
Article 4 – paragraph 2 – point b

Text proposed by the Commission

(b) for the purpose of revealing an ***applicant's misconduct, wrongdoing or illegal activity, provided that the alleged acquisition, use or disclosure of the trade secret was necessary for such revelation and that the respondent acted in the public interest;***

Amendment

(b) for the purpose of revealing an ***applicant's illegal activity to the competent authority.***

Or. en

Amendment 192
Jytte Guteland

Proposal for a directive
Article 4 – paragraph 2 – point b

Text proposed by the Commission

(b) for the purpose of revealing ***an applicant's misconduct, wrongdoing or illegal activity, provided that the alleged acquisition, use or disclosure of the trade secret was necessary for such revelation and that the respondent acted in the***

Amendment

(b) for the purpose of revealing ***what the claimant believes in good faith to be a misconduct, wrongdoing or illegal activity;***

public interest;

Or. en

Amendment 193

Julia Reda, Pascal Durand

Proposal for a directive

Article 4 – paragraph 2 – point b

Text proposed by the Commission

(b) for the purpose of revealing **an applicant's** misconduct, **wrongdoing or** illegal activity, provided that the alleged acquisition, use or disclosure of the trade secret was necessary for such revelation and that the respondent acted in the public interest;

Amendment

(b) for the purpose of revealing misconduct, **fraud, wrongdoing,** illegal activity, provided that the alleged acquisition, use or disclosure of the trade secret was necessary for such revelation and that the respondent acted in the public interest;

Or. en

Justification

To ensure, for instance, protection of whistleblowers, illegal but also unethical activities must qualify as a legitimate purpose for revealing a trade secret.

Amendment 194

Jean-Marie Cavada

Proposal for a directive

Article 4 – paragraph 2 – point b

Text proposed by the Commission

(b) for the purpose of revealing an applicant's misconduct, wrongdoing or illegal activity, provided that the alleged acquisition, use or disclosure of the trade secret was necessary for such revelation and that the respondent acted in the public interest;

Amendment

(b) for the purpose of revealing an applicant's misconduct, wrongdoing or illegal activity **to the security authorities,** provided that the alleged acquisition, use or disclosure of the trade secret was **strictly limited and** necessary for such revelation and that the respondent acted in the public interest;

Amendment 195
Virginie Rozière

Proposal for a directive
Article 4 – paragraph 2 – point b

Text proposed by the Commission

(b) for the purpose of revealing ***an applicant's misconduct, wrongdoing or illegal activity, provided that the alleged acquisition, use or disclosure of the trade secret was necessary for such revelation and that the respondent acted in the public interest;***

Amendment

(b) for the purpose of revealing ***or disproving*** an applicant's misconduct, wrongdoing or illegal activity, ***offence against the environment, consumer or employee rights, or plans for redundancies, outsourcing or transfer of the applicant's assets,*** provided that the respondent acted in the public interest;

Amendment 196
Gilles Lebreton, Marie-Christine Boutonnet

Proposal for a directive
Article 4 – paragraph 2 – point b

Text proposed by the Commission

(b) for the purpose of revealing an applicant's misconduct, wrongdoing or illegal activity, provided that the alleged acquisition, use or disclosure of the trade secret was necessary for such revelation ***and that the respondent acted in the public interest;***

Amendment

(b) for the purpose of revealing an applicant's misconduct, wrongdoing or illegal activity, provided that the alleged acquisition, use or disclosure of the trade secret was necessary for such revelation;

Amendment 197
Julia Reda, Pascal Durand

Proposal for a directive
Article 4 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) decompilation, reverse engineering and performing acts necessary to observe, study or test the functioning of computer programs permitted by Directive 2009/24/EC of the European Parliament and of the Council^{1a};

^{1a}***Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs (OJ L 111, 5.5.2009, p. 16).***

Or. en

Justification

The provision clarifies that trade secret protections do not override the rights under 2009/24/EC software copyright. Computer programs as „services“ do not qualify as „products“ or „objects“ under the existing Article 4(1) b. As a recital to directive 2009/24/EC explains „A person having a right to use a computer program should not be prevented from performing acts necessary to observe, study or test the functioning of the program, provided that those acts do not infringe the copyright in the program.“.

Amendment 198
Sergio Gaetano Coffferati

Proposal for a directive
Article 4 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) disclosure of the information by a public administration was requested or made necessary according to their mandate, as required or allowed by national or Union law;

Or. it

Amendment 199
Giovanni Toti

Proposal for a directive
Article 4 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) the trade secret was disclosed by workers to their representatives as part of the legitimate exercise of their representative functions;

deleted

Or. en

Amendment 200
Tadeusz Zwiefka

Proposal for a directive
Article 4 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) the trade secret was disclosed by workers to their representatives as part of the legitimate exercise of their representative functions;

(c) the trade secret was disclosed by workers to their representatives as part of the legitimate exercise of their representative functions, ***provided that such a disclosure was necessary for that exercise;***

Or. en

Amendment 201
Jiří Maštálka

Proposal for a directive
Article 4 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) the trade secret was disclosed by workers to their representatives as part of

(c) the trade secret was disclosed by workers to their representatives as part of

the legitimate exercise of their representative functions;

the legitimate exercise of their representative functions; ***the worker representatives should be granted a veto right in order to protect their trade secrets in case of mergers or selling of their enterprises;***

Or. en

Amendment 202
Jytte Guteland

Proposal for a directive
Article 4 – paragraph 2 – point c

Text proposed by the Commission

(c) the trade secret was disclosed by workers to their representatives as part of the legitimate exercise of their representative functions;

Amendment

(c) the trade secret was disclosed by workers to their representatives as part of the legitimate exercise of their representative functions ***in accordance with Union and national law and practices;***

Or. en

Amendment 203
Julia Reda, Pascal Durand

Proposal for a directive
Article 4 – paragraph 2 – point c

Text proposed by the Commission

(c) the trade secret was disclosed by workers to their representatives ***as part of the legitimate exercise of their representative functions;***

Amendment

(c) the trade secret was disclosed by workers to their representatives ***in accordance with national and Union law;***

Or. en

Justification

Such information can often only be evaluated afterwards and leads to legal uncertainty for whistleblowers or workers representatives.

Amendment 204
Jean-Marie Cavada

Proposal for a directive
Article 4 – paragraph 2 – point c

Text proposed by the Commission

(c) the trade secret was disclosed by workers to their representatives as part of the legitimate exercise of their representative functions;

Amendment

(c) the trade secret was disclosed by workers to their representatives as part of the legitimate exercise of their representative functions, ***in accordance with Union and national law, provided that the disclosure was strictly limited and necessary to the exercise of their functions.***

Or. fr

Amendment 205
Virginie Rozière

Proposal for a directive
Article 4 – paragraph 2 – point c

Text proposed by the Commission

(c) the trade secret was disclosed by workers to their representatives as part of the ***legitimate*** exercise of their representative functions;

Amendment

(c) the trade secret was disclosed by workers to their representatives as part of the exercise of their representative functions;

Or. fr

Amendment 206
Angelika Niebler, Axel Voss

Proposal for a directive
Article 4 – paragraph 2 – point c

Text proposed by the Commission

c) the trade secret was disclosed by workers to their representatives as part of the legitimate exercise of their representative functions;

Amendment

c) the trade secret was disclosed by workers to their representatives as part of the legitimate exercise of their representative functions, ***provided that such disclosure was absolutely necessary for the exercise of these representative functions;***

Or. de

Amendment 207
Emil Radev

Proposal for a directive
Article 4 – paragraph 2 – point c

Text proposed by the Commission

(c) the trade secret was disclosed by workers to their representatives as part of the legitimate exercise of their representative functions;

Amendment

(c) the trade secret was disclosed by workers to their representatives as part of the legitimate exercise of their representative functions; ***in this case, the representatives must not use or disclose the acquired information constituting a trade secret, except in the cases envisaged for this purpose;***

Or. bg

Amendment 208
Mary Honeyball, Glenis Willmott, Catherine Stihler

Proposal for a directive
Article 4 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

(ca) its disclosure is required under Union or Member State law;

Amendment 209
Julia Reda, Pascal Durand

Proposal for a directive
Article 4 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

***(ca) when fulfilling the terms of the
employment contract of workers;***

Or. en

Justification

*To ensure protection of workers who gain knowledge of or create trade secrets through the
performance of their contract*

Amendment 210
Tadeusz Zwiefka

Proposal for a directive
Article 4 – paragraph 2 – point d

Text proposed by the Commission

Amendment

***(d) for the purpose of fulfilling a non-
contractual obligation;***

deleted

Or. en

Amendment 211
József Szájer

Proposal for a directive
Article 4 – paragraph 2 – point d

Text proposed by the Commission

Amendment

(d) for the purpose of fulfilling a non-contractual obligation;

deleted

Or. en

Justification

These exemptions are too broad presenting a risk for legal certainty and they may offer opportunities for the misappropriation of trade secrets.

Amendment 212

Giovanni Toti

Proposal for a directive

Article 4 – paragraph 2 – point d

Text proposed by the Commission

Amendment

(d) for the purpose of fulfilling a non-contractual obligation;

deleted

Or. en

Amendment 213

Angelika Niebler, Axel Voss

Proposal for a directive

Article 4 – paragraph 2 – point d

Text proposed by the Commission

Amendment

d) for the purpose of fulfilling a ***non-contractual*** obligation;

d) for the purpose of fulfilling a ***legal*** obligation;

Or. de

Justification

The current wording is too general and limits the protection of trade secrets too much.

Amendment 214

Gilles Lebreton, Marie-Christine Boutonnet, Sylvie Goddyn

Proposal for a directive

Article 4 – paragraph 2 – point d a (new)

Text proposed by the Commission

Amendment

d a) disclosure of trade secrets of pharmaceutical or chemical companies which serves to improve public health, in particular the results of clinical or toxicity trials;

Or. fr

Amendment 215

József Szájer

Proposal for a directive

Article 4 – paragraph 2 – point e

Text proposed by the Commission

Amendment

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

deleted

Or. en

Justification

These exemptions are too broad presenting a risk for legal certainty and they may offer opportunities for the misappropriation of trade secrets.

Amendment 216

Giovanni Toti

Proposal for a directive

Article 4 – paragraph 2 – point e

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 217

Therese Comodini Cachia

Proposal for a directive

Article 4 – paragraph 2 – point e

Text proposed by the Commission

Amendment

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

(e) for the purpose of protecting a legitimate interest ***recognised by national law and also through judicial practice.***

Or. en

Amendment 218

Angelika Niebler, Axel Voss

Proposal for a directive

Article 4 – paragraph 2 – point e

Text proposed by the Commission

Amendment

e) for the purpose of protecting a legitimate interest.

e) for the purpose of protecting a legitimate interest ***that is recognised by European or national law.***

Or. de

Justification

The statement is too general without the restriction and therefore limits the protection of trade secrets too much.

Amendment 219
Daniel Buda

Proposal for a directive
Article 4 – paragraph 2 – point e a (new)

Text proposed by the Commission

Amendment

(ea) Obtaining, using and disclosing trade secrets shall also be deemed lawful to the extent that they are required or authorised by the national or EU law, or when such actions serve public interest.

Or. ro

Justification

It is necessary to include this legal text in order to cover those situations where obtaining, using and disclosing trade secrets is legal given a series of national or EU legal provisions, as well as those situations where such actions are necessary from the perspective of public interest.

Amendment 220
Julia Reda, Pascal Durand

Proposal for a directive
Article 4 – paragraph 2 – point e a (new)

Text proposed by the Commission

Amendment

(ea) for the purpose of protecting the public order and the general interest, including health and environment as well human, animal or plant life.

Or. en

Justification

In order to avoid uncertainty between primacy of law, access to information for the aim of ensuring a high level of social and environmental protection must clearly be established as lawful acquisition. Also to facilitate whistle blowing.

Amendment 221
Jytte Guteland

Proposal for a directive
Article 4 – paragraph 2 – point e a (new)

Text proposed by the Commission

Amendment

(ea) for the purpose of protecting the public interest, including the protection of human health, animal welfare and the environment.

Or. en

Amendment 222
Julia Reda, Pascal Durand

Proposal for a directive
Article 4 – paragraph 2 – point e b (new)

Text proposed by the Commission

Amendment

(eb) the trade secret is requested and/or disclosed by a public institution according to their mandate, as required or allowed by national laws or Union regulations.

Or. en

Justification

Enterprises should not be able to use the provisions provided for in this Directive ('trade secret') when receiving requests for information as required by law and public institutions in the fulfilment of their mandate. Many examples of such practice exist and often public authorities or institutions, especially at local level, do not have the capacity to respond to the refusal of their requests for disclosure of information.

Amendment 223
Pascal Durand, Julia Reda

Proposal for a directive
Article 4 – paragraph 2 – point e c (new)

Text proposed by the Commission

Amendment

(ec) The requirement or authorization by Article 4(4)(d) of the United Nations Aarhus Convention, Article 6(1) of Regulation (EC) 1367/2006 and Article 4(1) of Directive 2003/4/EC which require the disclosure of information on emissions relevant to the protection of the environment even in case of confidential commercial and industrial information.

Or. en

Amendment 224

Julia Reda, Pascal Durand

Proposal for a directive

Article 4 – paragraph 2 – point e d (new)

Text proposed by the Commission

Amendment

(ed) the requirement or authorization by Article 5(8) of the United Nations Aarhus Convention which requires sufficient product information to be made available to the public in a manner which enables consumers to make informed environmental choices;

Or. en

Amendment 225

Pascal Durand, Julia Reda

Proposal for a directive

Article 4 – paragraph 2 – point e e (new)

Text proposed by the Commission

Amendment

(ee) for the purpose of addressing security vulnerabilities of information systems.

Amendment 226
Jean-Marie Cavada

Proposal for a directive
Article 4 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a) The practices and exceptions provided for in this Article may be applied only to the extent that they are in accordance with honest commercial practices and do not provide an unfair competitive advantage.

Or. fr

Amendment 227
Virginie Rozière

Proposal for a directive
Article 4 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. This Article applies to any acquisition, use or disclosure of trade secrets, whether or not resulting from the behaviours described in Article 3.

Or. fr

Amendment 228
Emil Radev

Proposal for a directive
Article 4 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The acquisition, use and disclosure of trade secrets shall be deemed lawful insofar as this is required by national or Union law. Information which is publicly available or subject to public disclosure in accordance with national or Union law shall not be deemed a trade secret.

Or. bg

Amendment 229

Daniel Buda

Proposal for a directive

Article 5 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ***provide*** for the measures, procedures and remedies necessary to ensure the availability of civil redress against unlawful acquisition, use and disclosure of trade secrets.

1. Member States shall ***regulate*** the measures, procedures and remedies necessary to ensure the availability of civil ***or, where appropriate, criminal*** redress against unlawful acquisition, use and disclosure of trade secrets.

Or. ro

Justification

It is necessary to also regulate the possibility of criminal redress because, in certain Member States, civil action is possible within the criminal action.

Amendment 230

Julia Reda, Pascal Durand

Proposal for a directive

Article 6 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) is proportionate;

(a) is proportionate ***to the actual economic harm for the holder of the trade secret due to the alleged unlawful access, disclosure or use of it,***

Or. en

Amendment 231
Sergio Gaetano Cofferati

Proposal for a directive
Article 6 – paragraph 1 – point b

Text proposed by the Commission

Amendment

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

(b) avoids the creation of barriers to legitimate trade, ***competition and worker mobility*** in the internal market.

Or. it

Amendment 232
Julia Reda, Pascal Durand

Proposal for a directive
Article 6 – paragraph 1 – point b

Text proposed by the Commission

Amendment

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

(b) avoids the creation of barriers to legitimate trade, ***competition and worker mobility*** in the internal market

Or. en

Justification

According to the latest research, restrictive measures have a clear and considerable negative impact on innovation especially in high-tech clusters/companies. Member States shall ensure that measures do not hinder competition and worker mobility. The provisions of this Directive

must not have a detrimental effect on the fundamental freedoms of the internal market, namely freedom of movement of persons and services

Amendment 233

Julia Reda, Pascal Durand

Proposal for a directive

Article 6 – paragraph 1 – point c

Text proposed by the Commission

(c) provides for safeguards against their abuse.

Amendment

(c) provides for safeguards against their abuse ***and ensures that when defendants are wrongfully accused of unlawful action, they receive compensation for any suffered harm due to unfounded action;***

Or. en

Justification

Safeguards against abuses must also entail sufficient economic disincentives to deter false claims, as well as ensure proportionate compensation for the wrongfully accused. This is even more important for SMEs.

Amendment 234

Julia Reda, Pascal Durand

Proposal for a directive

Article 6 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) the proof that the trade secret was unlawfully acquired and that none of the exceptions mentioned in Article 4 of this Directive applies shall be borne by the person lawfully in control of the trade secret.

Or. en

Justification

Protection of trade secrets does not create any proprietary rights, therefore the protection is against the unlawful nature of the acquisition. This means that the person lawfully in control of the undisclosed information should bear the burden of proof of the fact that this acquisition was indeed unlawful, and no exception applies. If not, this person would de facto enjoy a proprietary right.

Amendment 235

Mary Honeyball, Glenis Willmott, Catherine Stihler

Proposal for a directive

Article 6 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) ensures that, in relation to clinical trials, and in accordance with Regulation (EU) No 536/2014 of the European Parliament and of the Council^{1a}, the trade secret holder has responsibility for proving that the information in question is a trade secret and that this information has been acquired unlawfully.

^{1a} Regulation (EU) No 536/2014 of the European Parliament and of the Council of 16 April 2014 on clinical trials on medicinal products for human use (OJ L 158, 27.5.2014, p. 1).

Or. en

Amendment 236

József Szájer

Proposal for a directive

Article 6 – paragraph 2 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

Member States shall ensure that where competent judicial authorities determine that a claim concerning the unlawful

Member States shall ensure that where competent judicial authorities determine that a claim concerning the unlawful

acquisition, disclosure or use of a trade secret is manifestly unfounded and the applicant is found to have initiated the legal proceedings in bad faith with the purpose of unfairly delaying or restricting the *respondent's* access to the market or otherwise intimidating or harassing the respondent, such competent judicial authorities shall be entitled *to take the following measures:*

(a) impose sanctions on the applicant;

(b) order the dissemination of the information concerning the decision taken in accordance with Article 14.

acquisition, disclosure or use of a trade secret is manifestly unfounded and the applicant is found to have initiated the legal proceedings in bad faith with the purpose of unfairly delaying or restricting the *respondent's* access to the market or otherwise intimidating or harassing the respondent, such competent judicial authorities shall be entitled, *upon request of the respondent, to order the payment to him of damages commensurate to the actual prejudice suffered.*

Or. en

Justification

The consequences of acting in bad faith are governed binational law in an exhaustive manner, therefore there are no grounds for laying down specific rules relating to a party acting in bad faith in trade secret infringement proceedings.

Amendment 237
Emil Radev

Proposal for a directive
Article 6 – paragraph 2 – subparagraph 1 – introductory part

Text proposed by the Commission

Member States shall ensure that *where* competent judicial authorities *determine that a claim* concerning the unlawful acquisition, *disclosure or use* of a trade secret is manifestly unfounded and the applicant is found *to have initiated the legal proceedings in bad faith* with the purpose *of unfairly delaying or restricting the respondent's access to the market or otherwise intimidating or harassing the respondent*, such competent judicial

Amendment

Member States shall ensure that competent judicial authorities *can, at the request of the respondent, apply appropriate measures provided for by national law if a claim* concerning the unlawful acquisition, *disclosure or use* of a trade secret is manifestly unfounded and the applicant is found *to have initiated the legal proceedings in bad faith or for abusive ends*. Such competent judicial authorities shall be entitled to take the following

authorities shall be entitled to take the following measures:

measures:

Or. bg

Amendment 238

Angelika Niebler, Axel Voss

Proposal for a directive

Article 6 – paragraph 2 – subparagraph 1 – introductory part

Text proposed by the Commission

Member States *shall ensure* that where competent judicial authorities determine that a claim concerning the unlawful acquisition, disclosure or use of a trade secret is manifestly unfounded and the applicant is found to have initiated the legal proceedings in bad faith with the purpose of unfairly delaying or restricting the respondent's access to the market or otherwise intimidating or harassing the respondent, such competent judicial authorities shall be entitled to take the following measures:

Amendment

Member States *may ensure* that where competent judicial authorities determine that a claim concerning the unlawful acquisition, disclosure or use of a trade secret is manifestly unfounded and the applicant is found to have initiated the legal proceedings in bad faith with the purpose of unfairly delaying or restricting the respondent's access to the market or otherwise intimidating or harassing the respondent, such competent judicial authorities shall be entitled to take the following measures:

Or. de

Justification

In some Member States there is no need for the stated penalty options, as the applicant already has to bear the costs of the proceedings in some Member States if the case is lost, for example.

Amendment 239

Julia Reda, Pascal Durand

Proposal for a directive

Article 6 – paragraph 2 – subparagraph 1 – introductory part

Text proposed by the Commission

Member States shall ensure that where competent judicial authorities determine that a claim concerning the unlawful acquisition, disclosure or use of a trade secret is ***manifestly*** unfounded and the applicant is found to have initiated the legal proceedings in bad faith with the purpose of unfairly delaying or restricting the ***respondent's*** access to the market or otherwise intimidating or harassing the respondent, such competent judicial authorities shall be entitled to take the following measures:

Amendment

Member States shall ensure that where competent judicial authorities determine that a claim concerning the unlawful acquisition, disclosure or use of a trade secret is unfounded and the applicant is found to have initiated the legal proceedings in bad faith with the purpose of unfairly delaying or restricting the ***respondent's*** access to the market or otherwise intimidating or harassing the respondent, ***or to prevent the disclosure of information of public interest***, such competent judicial authorities shall be entitled to take the following measures:

Or. en

Justification

Measures to sanction unfound claim shall apply to all cases (as outlined in article 4) where the acquisition, disclosure or use is deemed lawful.

Amendment 240

Julia Reda, Pascal Durand

Proposal for a directive

Article 6 – paragraph 2 – subparagraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(aa) ensure proportionate compensation for the economic damages and losses incurred if any, as well as for the potential moral prejudice caused to the alleged unlawful accessor, acquirer or user of trade secrets;

Or. en

Justification

Proportionate and reciprocal compensation must be ensured for the wrongfully accused.

Amendment 241
Sergio Gaetano Cofferati

Proposal for a directive
Article 6 – paragraph 2 – subparagraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(aa) provide for compensation for economic damage and losses incurred, if any;

Or. it

Amendment 242
Emil Radev

Proposal for a directive
Article 6 – paragraph 2 – subparagraph 1 – point a a (new)

Text proposed by the Commission

Amendment

aa) to award compensation for the damages suffered by the respondent;

Or. bg

Amendment 243
Emil Radev

Proposal for a directive
Article 6 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

The measures referred to in paragraph 1 shall be without prejudice to the possibility for the respondent to claim damages, if Union or national law so allows.

Member States may provide for these measures to be determined in separate proceedings.

Or. bg

Amendment 244
Jean-Marie Cavada

Proposal for a directive
Article 7

Text proposed by the Commission

Member States shall ensure that actions for the application of the measures, procedures and remedies provided for in this Directive may be brought within **at least one year but not more than two years** after the date on which the applicant became aware, or had reason to become aware, of the last fact giving rise to the action.

Amendment

Member States shall ensure that actions for the application of the measures, procedures and remedies provided for in this Directive may be brought within **five years** after the date on which the applicant became aware, or had reason to become aware, of the last fact giving rise to the action.

Or. fr

Amendment 245
Jiří Maštálka

Proposal for a directive
Article 7

Text proposed by the Commission

Member States shall ensure that actions for the application of the measures, procedures and remedies provided for in this Directive may be brought within at least one year but not more than two years after the date on which the applicant became aware, or had reason to become aware, of the last fact giving rise to the action.

Amendment

The limitation period should not be more than one year in order to allow the workers' mobility.

Or. en

Amendment 246
Kostas Chrysogonos, Jiří Maštálka

Proposal for a directive
Article 7

Text proposed by the Commission

Member States shall ensure that actions for the application of the measures, procedures and remedies provided for in this Directive may be brought within **at least** one year **but not more than** two years after the date on which the applicant became aware, or had reason to become aware, of the last fact giving rise to the action.

Amendment

Member States shall ensure that actions for the application of the measures, procedures and remedies provided for in this Directive may be brought within one year **or, in exceptional circumstances which shall be enumerated in the relevant legislation, within** two years after the date on which the applicant became aware, or had reason to become aware, of the last fact giving rise to the action.

Or. en

Amendment 247
Virginie Rozière

Proposal for a directive
Article 7

Text proposed by the Commission

Member States shall ensure that actions for the application of the measures, procedures and remedies provided for in this Directive may be brought within **at least one year but not more than two years** after the date on which the applicant became aware, or had reason to become aware, of the last fact giving rise to the action.

Amendment

Member States shall ensure that actions for the application of the measures, procedures and remedies provided for in this Directive may be brought within one year after the date on which the applicant became aware, or had reason to become aware, of the last fact giving rise to the action.

Or. fr

Amendment 248
József Szájer

Proposal for a directive
Article 7

Text proposed by the Commission

Member States shall ensure that actions for the application of the measures, procedures and remedies provided for in this Directive may ***be brought within at least one year but not more than two years after the date on which the applicant became aware, or had reason to become aware, of the last fact giving rise to the action.***

Amendment

Member States shall ensure that actions for the application of the measures, procedures and remedies provided for in this Directive may ***not be made*** more than ***five*** years.

Or. en

Justification

The rules of limitation are generally defined in national civil law. National civil law defines the objective and subjective time limit for the limitation period. Article 7 defines only a subjective time limit. A rule like this, only in connection with infringements of trade secrets would be incompatible with the principle of subsidiarity. If it is necessary to regulate the limitation period in this proposal, then the rule should indicate a final (definitive) time limit not depending on the awareness of the applicant.

Amendment 249
Emil Radev

Proposal for a directive
Article 7

Text proposed by the Commission

Member States shall ensure that actions for the application of the measures, procedures and remedies provided for in this Directive may be brought within at least ***one year*** but not more than ***two*** years after the date on which the applicant became aware, or had reason to become aware, of the last fact giving rise to the action.

Amendment

Member States shall ensure that actions for the application of the measures, procedures and remedies provided for in this Directive may be brought within at least ***three years*** but not more than ***six*** years after the date on which the applicant became aware, or had reason to become aware, of the last fact giving rise to the action.

Or. bg

Amendment 250
Daniel Buda

Proposal for a directive
Article 7

Text proposed by the Commission

Member States shall ensure that actions for the application of the measures, procedures and remedies provided for in this Directive **may be brought within at least one year but not more than two years after the date on which the applicant became aware, or had reason to become aware, of the last fact giving rise to the action.**

Amendment

The time limit for bringing action for the application of the measures, procedures and remedies provided for in this Directive shall be established by the Member States.

Or. ro

Justification

The setting of the limit period should be left to the Member States.

Amendment 251
Henna Virkkunen, Sampo Terho

Proposal for a directive
Article 7

Text proposed by the Commission

Member States shall ensure that actions for the application of the measures, procedures and remedies provided for in this Directive may be brought within at least ***one year but not more than*** two years after the date on which the applicant became aware, or had reason to become aware, of the last fact giving rise to the action.

Amendment

Member States shall ensure that actions for the application of the measures, procedures and remedies provided for in this Directive may be brought within at least two years after the date on which the applicant became aware, or had reason to become aware, of the last fact giving rise to the action.

Or. en

Amendment 252
Sajjad Karim, Angel Dzhambazki

Proposal for a directive
Article 7

Text proposed by the Commission

Member States shall ***ensure that*** actions for the application of the measures, procedures and remedies provided for in this Directive ***may be brought within at least one year but not more than two years after the date on which the applicant became aware, or had reason to become aware, of the last fact giving rise to the action.***

Amendment

Member States shall ***lay down the rules applicable to limitation periods for substantive claims or bringing*** actions for the application of the measures, procedures and remedies provided for in this Directive. ***Those rules shall determine when the limitation period begins to run, the duration of the limitation period and the circumstances under which the limitation period is interrupted or suspended. The duration of the limitation period shall not exceed six years;***

Or. en

Amendment 253
Emil Radev

Proposal for a directive
Article 7 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

The national provisions of each Member State shall apply to the suspension and interruption of the limitation period.

Or. bg

Amendment 254
Julia Reda, Pascal Durand

Proposal for a directive
Article 7 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

In the case of legal action against former employers and employees, the limitation period should not exceed one year in order not to affect or prevent employee mobility.

Or. en

Justification

In the interest of innovation and free competition, the limitation period should be limited to one year. Experience demonstrates that strong non-compete agreements entail brain drain, unemployment, reduced levels of investments and innovation

Amendment 255

Angelika Niebler, Axel Voss

Proposal for a directive

Article 8 – title

Text proposed by the Commission

Amendment

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

Preservation of confidentiality of trade secrets in the course of legal proceedings ***and administrative proceedings***

Or. de

Justification

The same rules for the protection of secrets should apply for trade secrets that are presented in administrative proceedings as apply in legal proceedings. Trade secrets must not be jeopardised by being unlawfully published or disclosed to third parties by an authority, either.

Amendment 256

József Szájer

Proposal for a directive

Article 8 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States shall ensure that the parties, their **legal representatives**, court officials, witnesses, experts and any other person participating in the 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, shall not be permitted to use or disclose any trade secret or alleged trade secret of which they have become aware as a result of such participation or access.

Amendment

Member States shall ensure that the parties, their **lawyers**, court officials, witnesses, experts and any other person participating in the 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, shall not be permitted to use or disclose any trade secret or alleged trade secret of which they have become aware as a result of such participation or access.

Or. en

Amendment 257

Daniel Buda

Proposal for a directive

Article 8 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States shall ensure that the parties, their **legal representatives**, court officials, witnesses, experts and any other person participating in the 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, **shall not be permitted to use or disclose** any trade secret or alleged trade secret of which they have become aware as a result of such participation or access.

Amendment

Member States shall ensure, **through the competent judicial authorities**, that the parties, their legal representatives, court officials, witnesses, experts and any other person participating in the 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 **have been informed with regard to the obligation not to use or disclose** any trade secret or alleged trade secret of which they have become aware as a result of such participation or access.

Or. ro

Justification

Member States may act through the competent judicial authorities that inform the parties of the obligations they have in accordance with Article 8(1). Whether or not the alleged trade secret does not meet the requirements set out in Article 2 (1) may only be established by a final court judgment. The obligation provided for by Article 8(1) must be observed throughout the judicial proceedings before both the first instance and the appellate courts.

Amendment 258 **Jytte Guteland**

Proposal for a directive **Article 8 – paragraph 1 – subparagraph 1**

Text proposed by the Commission

Member States shall ensure that the parties, their legal representatives, court officials, witnesses, experts and any other person participating in the 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, shall not be permitted to use or disclose any trade secret or alleged trade secret of which they have become aware as a result of such participation or access.

Amendment

Member States shall ensure that the parties, their legal representatives, court officials, witnesses, experts and any other person participating in the 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, shall not be permitted to use or disclose any trade secret or alleged trade secret of which they have become aware as a result of such participation or access. ***Member States may also allow competent judicial authorities to take such measures on their own initiative.***

Or. en

Justification

Cf. articles 8(2) "Member States may also allow.." The proposal should be compatible with national law according to which the confidentiality issue is tried by the court on a case-by-case basis. That approach to confidentiality gives at least the same protection for the trade secret holder.

Amendment 259 **Emil Radev**

Proposal for a directive
Article 8 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States shall ensure that the parties, their legal representatives, court officials, witnesses, experts and any other person participating in the 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, shall not be permitted to use or disclose any trade secret or alleged trade secret of which they have become aware as a result of such participation or access.

Amendment

Member States shall ensure that the parties, their legal representatives, court officials, witnesses, experts and any other person participating in the 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, shall not be permitted to use or disclose any trade secret or alleged trade secret of which they have become aware as a result of such participation or access. ***Member States shall ensure that the trade secret holder is given an opportunity at the start of the legal proceedings to notify the court of the information which is subject to some of the restrictions on provision and whose disclosure may endanger the economic interests or reputation of the parties or of a third party. The court shall determine whether the claim has merit.***

Or. bg

Amendment 260
Angelika Niebler, Axel Voss

Proposal for a directive
Article 8 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States shall ensure that the parties, their legal representatives, court officials, witnesses, experts and any other person participating in the 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, shall not be permitted to use or disclose any trade secret or alleged trade secret of

Amendment

Member States shall ensure that the parties, their legal representatives, court officials, witnesses, experts and any other person participating in the legal proceedings ***or administrative 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 ***or administrative proceedings***, shall not be permitted to use

which they have become aware as a result of such participation or access.

or disclose any trade secret or alleged trade secret of which they have become aware as a result of such participation or access.

Or. de

Justification

The same rules for the protection of secrets should apply for trade secrets that are presented in administrative proceedings as apply in legal proceedings. Trade secrets must not be jeopardised by being unlawfully published or disclosed to third parties by an authority, either.

Amendment 261

Julia Reda, Pascal Durand

Proposal for a directive

Article 8 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States shall ensure that the parties, their legal representatives, court officials, witnesses, experts and any other person participating in the 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, shall not be permitted to use or disclose any trade secret or alleged trade secret of which they have become aware as a result of such participation or access.

Amendment

Member States shall ensure that the parties, their legal representatives, court officials, witnesses, experts and any other person participating in the 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, shall not be permitted to use or disclose any trade secret or alleged trade secret of which they have become aware as a result of such participation or access, ***provided that the concerned trade secret has been identified and that the relevant information has been proved as being confidential by the competent judicial authority after consultation of both parties.***

Or. en

Justification

Both parties should be aware of what information must be preserved and confidential

Amendment 262
Jean-Marie Cavada

Proposal for a directive
Article 8 – paragraph 1 – subparagraph 2 – introductory part

Text proposed by the Commission

The obligation referred to in the first subparagraph shall cease to exist in any of the following circumstances:

Amendment

The obligation referred to in the first subparagraph ***shall remain in force after the end of the legal proceedings.***
However, it shall cease to exist in any of the following circumstances:

Or. fr

Amendment 263
József Szájer

Proposal for a directive
Article 8 – paragraph 1 – subparagraph 2 – introductory part

Text proposed by the Commission

The obligation referred to in the first subparagraph shall cease to exist in any of the following circumstances:

Amendment

The obligation referred to in the first subparagraph shall ***remain in force after the legal proceedings have ended.***
However, it shall cease to exist in any of the following circumstances:

Or. en

Amendment 264
Therese Comodini Cachia

Proposal for a directive
Article 8 – paragraph 1 – subparagraph 2 – introductory part

Text proposed by the Commission

The obligation referred to in the first subparagraph shall cease to exist in any of

Amendment

The obligation referred to in the first subparagraph shall ***remain in force after***

the following circumstances:

the legal proceedings have ended.
However, it shall cease to exist in any of
the following circumstances:

Or. en

Amendment 265
József Szájer

Proposal for a directive
Article 8 – paragraph 1 – subparagraph 2 – point a

Text proposed by the Commission

Amendment

(a) where in the course of the proceedings, the alleged trade secret is found not to fulfil the requirements set in point (1) of Article 2;

(a) where in the course of the proceedings, the alleged trade secret is found not to fulfil the requirements set in point (1) of Article 2 ***by a decision that is not subject to appeal or that has become final because it was not appealed,***

Or. en

Amendment 266
Daniel Buda

Proposal for a directive
Article 8 – paragraph 1 – subparagraph 2 – point a

Text proposed by the Commission

Amendment

(a) where ***in the course of the proceedings,*** the alleged trade secret is found not to fulfil the requirements set in point (1) of Article 2;

(a) where, ***by means of a final court judgment,*** the alleged trade secret is found not to fulfil the requirements set in point (1) of Article 2;

Or. ro

Amendment 267
Kostas Chrysogonos

Proposal for a directive
Article 8 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Member States shall also ensure that the competent judicial authorities may, on a duly reasoned application by a party, take specific measures necessary to preserve the confidentiality of any trade secret or alleged trade secret used or referred to in the course of the legal proceedings relating to the unlawful acquisition, use or disclosure of a trade secret.

Amendment

Member States shall also ensure that the competent judicial authorities may, on a duly reasoned application by a party ***or on own initiative***, take specific measures necessary to preserve the confidentiality of any trade secret or alleged trade secret used or referred to in the course of the legal proceedings relating to the unlawful acquisition, use or disclosure of a trade secret. ***These measures shall be duly justified and communicated by the competent judicial authorities to the litigants.***

Or. en

Amendment 268
József Szájer

Proposal for a directive
Article 8 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Member States shall also ensure that the competent judicial authorities may, on a duly reasoned application by a party, take specific measures necessary to preserve the confidentiality of any trade secret or alleged trade secret used or referred to in the course of the legal proceedings relating to the unlawful acquisition, use or disclosure of a trade secret.

Amendment

Member States shall also ensure that the competent judicial authorities may, on a duly reasoned application by a party, take specific measures necessary to preserve the confidentiality of any trade secret or alleged trade secret used or referred to in the course of the legal proceedings relating to the unlawful acquisition, use or disclosure of a trade secret. ***Member States may also allow competent judicial authorities to take such measures on their own initiative.***

Or. en

Amendment 269
Angelika Niebler, Axel Voss

Proposal for a directive
Article 8 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Member States shall also ensure that the competent judicial authorities may, on a duly reasoned application by a party, take specific measures necessary to preserve the confidentiality of any trade secret or alleged trade secret used or referred to in the course of the legal proceedings relating to the unlawful acquisition, use or disclosure of a trade secret.

Amendment

Member States shall also ensure that the competent judicial authorities may, on a duly reasoned application by a party, take specific measures necessary to preserve the confidentiality of any trade secret or alleged trade secret used or referred to in the course of the legal proceedings **or administrative proceedings** relating to the unlawful acquisition, use or disclosure of a trade secret.

Or. de

Justification

The same rules for the protection of secrets should apply for trade secrets that are presented in administrative proceedings as apply in legal proceedings. Trade secrets must not be jeopardised by being unlawfully published or disclosed to third parties by an authority, either.

Amendment 270
Therese Comodini Cachia

Proposal for a directive
Article 8 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Member States shall also ensure that the competent judicial authorities may, on a duly reasoned application by a party, take specific measures necessary to preserve the confidentiality of any trade secret or alleged trade secret used or referred to in the course of the legal proceedings relating to the unlawful acquisition, use or disclosure of a trade secret.

Amendment

Member States shall also ensure that the competent judicial authorities may, on a duly reasoned application by a party, take specific measures necessary to preserve the confidentiality of any trade secret or alleged trade secret used or referred to in the course of the legal proceedings relating to the unlawful acquisition, use or disclosure of a trade secret. **Member States**

may also allow competent judicial authorities to take such measures on their own initiative.

Or. en

Amendment 271
József Szájer

Proposal for a directive
Article 8 – paragraph 2 – subparagraph 2 – point a

Text proposed by the Commission

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

Amendment

(a) to restrict access to any document containing trade secrets submitted by the parties or third parties, in whole or in part *to specific persons*;

Or. en

Amendment 272
Sergio Gaetano Cofferati

Proposal for a directive
Article 8 – paragraph 2 – subparagraph 2 – point a

Text proposed by the Commission

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

Amendment

(a) to restrict access to any document containing trade secrets submitted by the parties or third parties, in whole or in part, *provided that at least one person from each of the parties, their legal representatives and court officials are given full access to the document*;

Or. it

Amendment 273
Daniel Buda

Proposal for a directive

Article 8 – paragraph 2 – subparagraph 2 – point a

Text proposed by the Commission

(a) to restrict access to any document containing trade secrets submitted by the parties or third parties, ***in whole or in part***;

Amendment

(a) to restrict access to any document containing trade secrets submitted by the parties or third parties, ***provided that the right to fair trial and the right to defence are respected***;

Or. ro

Justification

The access to the documents containing any trade secret may not be denied entirely to the parties to a process based on the provisions of this Directive, as that would lead to a breach of the rights of the party being denied access to documents and, therefore, of the right to fair trial. Judicial authorities may restrict access in part, but they should do so while observing the guarantees of a fair trial.

Amendment 274

Henna Virkkunen, Sampo Terho

Proposal for a directive

Article 8 – paragraph 2 – subparagraph 2 – point a

Text proposed by the Commission

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

Amendment

(a) to restrict access to any document containing trade secrets submitted by the parties or third parties, in whole or in part, ***on the understanding that there is no limitation to the access of each party involved or its representative.***

Or. en

Amendment 275

Julia Reda, Pascal Durand

Proposal for a directive

Article 8 – paragraph 2 – subparagraph 2 – point a

Text proposed by the Commission

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

Amendment

(a) to restrict access to any document containing trade secrets submitted by the parties or third parties, in whole or in part, ***provided that both parties involved or their representative have access to them;***

Or. en

Amendment 276
Jean-Marie Cavada

Proposal for a directive
Article 8 – paragraph 2 – subparagraph 2 – point a

Text proposed by the Commission

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

Amendment

(a) to restrict access to any document containing trade secrets submitted by the parties or third parties, in whole or in part, ***to their lawyers or legal representatives;***

Or. fr

Amendment 277
József Szájer

Proposal for a directive
Article 8 – paragraph 2 – subparagraph 2 – point b

Text proposed by the Commission

(b) to restrict access to hearings, when trade secrets may be disclosed, and their corresponding records or transcript. ***In exceptional circumstances, and subject to appropriate justification, the competent judicial authorities may restrict the parties' access to those hearings and order them to be carried out only in the presence of the legal representatives of the parties and authorised experts subject***

Amendment

(b) to restrict access to hearings, when trade secrets may be disclosed, and their corresponding records or transcript, ***to specific persons.***

to the confidentiality obligation referred to in paragraph 1;

Or. en

Amendment 278

Daniel Buda

Proposal for a directive

Article 8 – paragraph 2 – subparagraph 2 – point b

Text proposed by the Commission

Amendment

(b) to restrict access to hearings, when trade secrets may be disclosed, and their corresponding records or transcript. ***In exceptional circumstances, and subject to appropriate justification, the competent judicial authorities may restrict the parties' access to those hearings and order them to be carried out only in the presence of the legal representatives of the parties and authorised experts subject to the confidentiality obligation referred to in paragraph 1;***

(b) to restrict **public** access to hearings, when trade secrets may be disclosed, and their corresponding records or transcript.

Or. ro

Justification

Competent judicial authorities may restrict public access to the conduct of judicial proceedings, but restricting the parties' access to the judicial proceedings would be excessive and would lead to a breach of the right to defence and to a fair trial.

Amendment 279

József Szájer

Proposal for a directive

Article 8 – paragraph 2 – subparagraph 2 – point c

Text proposed by the Commission

Amendment

(c) to make available a non-confidential

(c) to make available **to third parties** a

version of any judicial decision, in which the passages containing trade secrets have been removed.

non-confidential version of any judicial decision, in which the passages containing trade secrets have been removed.

Or. en

Amendment 280

Julia Reda, Pascal Durand

Proposal for a directive

Article 8 – paragraph 2 – subparagraph 2 – point c

Text proposed by the Commission

(c) to make available a non-confidential version of any judicial decision, in which the passages containing trade secrets have been *removed*.

Amendment

(c) to make **publicly** available a non-confidential version of any judicial decision, in which the passages containing **information defined as** trade secrets have been *redacted*.

Or. en

Justification

Redacted means "blacked-out". It makes it clear that no specific document will be edited but that the passages (sentences) of a document containing trade secrets will simply be blacked

Amendment 281

Daniel Buda

Proposal for a directive

Article 8 – paragraph 2 – subparagraph 3

Text proposed by the Commission

Where, because of the need to protect a trade secret or an alleged trade secret and pursuant to point (a) of the second subparagraph of this paragraph, the competent judicial authority decides that evidence lawfully in control of a party shall not be disclosed to the other party and where such evidence is material for

Amendment

deleted

the outcome of the litigation, the judicial authority may nevertheless authorise the disclosure of that information to the legal representatives of the other party and, where appropriate, to authorised experts subject to the confidentiality obligation referred to in paragraph 1.

Or. ro

Justification

Excessive provision leading to the violation of the right to a fair trial.

Amendment 282

Julia Reda, Pascal Durand

Proposal for a directive

Article 8 – paragraph 2 – subparagraph 3

Text proposed by the Commission

Amendment

Where, because of the need to protect a trade secret or an alleged trade secret and pursuant to point (a) of the second subparagraph of this paragraph, the competent judicial authority decides that evidence lawfully in control of a party shall not be disclosed to the other party and where such evidence is material for the outcome of the litigation, the judicial authority may nevertheless authorise the disclosure of that information to the legal representatives of the other party and, where appropriate, to authorised experts subject to the confidentiality obligation referred to in paragraph 1.

deleted

Or. en

Justification

Already covered by our amendments

Amendment 283
Virginie Rozière

Proposal for a directive
Article 8 – paragraph 3

Text proposed by the Commission

3. When deciding on the granting or the rejection of the application referred to in paragraph 2 and assessing its proportionality, the competent judicial authorities shall take into account the legitimate interests of the parties and, where appropriate of third parties, and any potential harm for either of the parties, and where appropriate third parties, resulting from the granting or rejection of such application.

Amendment

3. When deciding on the granting or the rejection of the application referred to in paragraph 2 and assessing its proportionality, the competent judicial authorities shall take into account ***the need to guarantee the right to effective recourse and access to an impartial judiciary***, the legitimate interests of the parties and, where appropriate of third parties, and any potential harm for either of the parties, and where appropriate third parties, resulting from the granting or rejection of such application.

Or. fr

Amendment 284
Jytte Guteland

Proposal for a directive
Article 8 – paragraph 3

Text proposed by the Commission

3. When deciding on the granting or the rejection of ***the application referred to in paragraph 2*** and assessing ***its*** proportionality, the competent judicial authorities shall take into account the legitimate interests of the parties and, where appropriate of third parties, and any potential harm for either of the parties, and where appropriate third parties, resulting from the granting or rejection of such application.

Amendment

3. When deciding on the granting or the rejection of ***measures for preservation of a trade secret*** and assessing ***their*** proportionality, the competent judicial authorities shall take into account the legitimate interests of the parties and, where appropriate of third parties, and any potential harm for either of the parties, and where appropriate third parties, resulting from the granting or rejection of such application.

Or. en

Justification

The proposal should be compatible with national law according to which the confidentiality issue is tried by the court on a case-by-case basis. That approach to confidentiality gives at least the same protection for the trade secret holder.

Amendment 285

József Szájer

Proposal for a directive

Chapter 3 – section 2 – title

Text proposed by the Commission

Amendment

Interim and precautionary measures

Provisional and precautionary measures

Or. en

Amendment 286

Julia Reda, Pascal Durand

Proposal for a directive

Article 9

Text proposed by the Commission

Amendment

Article 9

deleted

Interim and precautionary measures

1. Member States shall ensure that the competent judicial authorities may, at the request of the trade secret holder, order any of the following interim and precautionary measures against the alleged infringer:

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

(b) the prohibition to produce, offer, place on the market or use infringing goods, or import, export or store infringing goods for those purposes;

(c) the seizure or delivery of the suspected

infringing goods, including imported goods, so as to prevent their entry into or circulation within the market.

2. Member States shall ensure that the judicial authorities may make the continuation of the alleged unlawful acquisition, use or disclosure of a trade secret subject to the lodging of guarantees intended to ensure the compensation of the trade secret holder.

Or. en

Justification

There should be a judicial decision, based on the fact that unlawful acquisition has been demonstrated before such a measures are taken, i.e. the principle of being innocent until proven guilty. In the case of an unfounded claim against an SME, a precautionary measure such as the proposed Article 9 could lead to bankruptcy before it can demonstrate its good faith or innocence. This article could lead to abusive claims and be used as an anticompetitive tool

Amendment 287 **József Szájer**

Proposal for a directive **Article 9 – title**

Text proposed by the Commission

Amendment

Interim and precautionary measures

Provisional and precautionary measures

Or. en

Amendment 288 **József Szájer**

Proposal for a directive **Article 9 – paragraph 1 – introductory part**

Text proposed by the Commission

Amendment

1. Member States shall ensure that the

1. Member States shall ensure that the

competent judicial authorities may, at the request of the trade secret holder, order any of the following *interim* and precautionary measures against the alleged infringer:

competent judicial authorities may, at the request of the trade secret holder, order any of the following *provisional* and precautionary measures against the alleged infringer:

Or. en

Amendment 289
József Szájer

Proposal for a directive
Article 9 – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

(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

Or. en

Amendment 290
Kostas Chrysogonos

Proposal for a directive
Article 9 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) any other precautionary measure they deem appropriate

Or. en

Amendment 291
Giovanni Toti

Proposal for a directive
Article 9 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall ensure that the judicial authorities may make the continuation of the alleged unlawful acquisition, use or disclosure of a trade secret subject to the lodging of guarantees intended to ensure the compensation of the trade secret holder.

deleted

Or. en

Amendment 292

József Szájer

Proposal for a directive

Article 9 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall ensure that the judicial authorities may make the continuation of the alleged unlawful acquisition, use or disclosure of a trade secret subject to the lodging of guarantees intended to ensure the compensation of the trade secret holder.

2. Member States shall ensure that the judicial authorities may, ***as an alternative to the measures referred to in paragraph 1***, make the continuation of the alleged unlawful acquisition, use or disclosure of a trade secret subject to the lodging of guarantees intended to ensure the compensation of the trade secret holder.

Or. en

Amendment 293

Therese Comodini Cachia

Proposal for a directive

Article 9 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall ensure that the judicial authorities may make the continuation of the alleged unlawful acquisition, use or disclosure of a trade

2. Member States shall ensure that the judicial authorities may, ***as an alternative to the measures referred to in paragraph 1***, make the continuation of the alleged

secret subject to the lodging of guarantees intended to ensure the compensation of the trade secret holder.

unlawful acquisition, use or disclosure of a trade secret subject to the lodging of guarantees intended to ensure the compensation of the trade secret holder.

Or. en

Amendment 294
Angel Dzhambazki

Proposal for a directive
Article 9 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that the judicial authorities may make the continuation of the alleged unlawful acquisition, **use or disclosure** of a trade secret subject to the lodging of guarantees intended to ensure the compensation of the trade secret holder.

Amendment

2. Member States shall ensure that the judicial authorities may, **in exceptional circumstances**, make the continuation of the alleged unlawful acquisition **or use** of a trade secret subject to the lodging of guarantees intended to ensure the compensation of the trade secret holder. **Disclosure of a trade secret shall not be allowed against the lodging of guarantees.**

Or. en

Amendment 295
Jean-Marie Cavada

Proposal for a directive
Article 10 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that the competent judicial authorities **have**, in respect of the measures referred to in Article 9, **the authority to** require the applicant to provide evidence that may reasonably be considered available in order to satisfy themselves that a trade secret exists, that the applicant is the legitimate trade secret holder and that the trade secret

Amendment

1. Member States shall ensure that the competent judicial authorities, in respect of the measures referred to in Article 9, **are empowered to** require the applicant to provide evidence that may reasonably be considered available in order to satisfy themselves that a trade secret exists, that the applicant is the legitimate trade secret holder and that the trade secret has been

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

acquired unlawfully, that the trade secret is being unlawfully used or disclosed, or that an unlawful acquisition, use or disclosure of the trade secret is imminent.

Or. fr

Amendment 296
Sergio Gaetano Cofferati

Proposal for a directive
Article 10 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that the competent judicial authorities have, in respect of the measures referred to in Article 9, the authority to require the applicant to provide evidence that may reasonably be considered available in order to satisfy themselves that a trade secret exists, that the applicant is the legitimate trade secret holder and that the trade secret has been acquired unlawfully, that the trade secret is being unlawfully used or disclosed, or that an unlawful acquisition, use or disclosure of the trade secret is imminent.

Amendment

1. Member States shall ensure that the competent judicial authorities have, in respect of the measures referred to in Article 9, the authority to require the applicant to provide evidence that may reasonably be considered available in order to satisfy themselves, ***with a sufficient degree of certainty***, that a trade secret exists, that the applicant is the legitimate trade secret holder and that the trade secret has been acquired unlawfully, that the trade secret is being unlawfully used or disclosed, or that an unlawful acquisition, use or disclosure of the trade secret is imminent.

Or. it

Amendment 297
Julia Reda, Pascal Durand

Proposal for a directive
Article 10 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that the competent judicial authorities have, in

Amendment

1. Member States shall ensure that the competent judicial authorities have, in

respect of the measures referred to in Article 9, the authority to require the applicant to provide evidence that ***may reasonably be considered available in order to satisfy themselves that*** a trade secret ***exists***, that the applicant is the legitimate trade secret holder and that the trade secret has been acquired unlawfully, that the trade secret is being unlawfully used or disclosed, ***or that an unlawful acquisition, use or disclosure of the trade secret is imminent.***

respect of the measures referred to in Article 9, the authority to require the applicant to provide evidence that ***the matter involved qualifies as*** a trade secret, that the applicant is the legitimate trade secret holder and that the trade secret has been acquired unlawfully, that the trade secret is being unlawfully used or disclosed.

Or. en

Justification

The applicant must be able to demonstrate that the trade secret exists and qualifies as such by providing concrete proof and information.

Amendment 298 **Giovanni Toti**

Proposal for a directive **Article 10 – paragraph 1**

Text proposed by the Commission

1. Member States shall ensure that ***the competent judicial authorities have, in respect of the measures referred to in Article 9, the authority to require the applicant to provide evidence that may reasonably be considered available in order to satisfy themselves that a trade secret exists, that the applicant is the legitimate trade secret holder and that the trade secret has been acquired unlawfully, that the trade secret is being unlawfully used or disclosed, or that an unlawful acquisition, use or disclosure of the trade secret is imminent.***

Amendment

1. Member States shall ensure that ***where the application is granted, the competent judicial authorities shall be required to assess the proportionality of the decision taking into account the specific circumstances of the case, such as the value of the trade secret and the measures taken to protect it.***

Or. en

Amendment 299
Jean-Marie Cavada

Proposal for a directive
Article 10 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that in deciding on the granting or rejecting of the application and assessing its proportionality, the competent judicial authorities shall be required to take into account the value of the trade secret, **the** measures taken to protect the trade secret, **the** conduct of the respondent in acquiring, disclosing or using of the trade secret, the impact of the unlawful disclosure or use of the trade secret, the legitimate interests of the parties and the impact which the granting or rejection of the measures could have on the parties, the legitimate interests of third parties, the public interest and the safeguard of fundamental rights, including freedom of expression and information

Amendment

2. Member States shall ensure that in deciding on the granting or rejecting of the application and assessing its proportionality, the competent judicial authorities shall be required to take into account ***the particular circumstances of the case. Their assessment should, if appropriate, take into consideration*** the value ***and other characteristics*** of the trade secret, the measures taken to protect the trade secret, ***and*** the conduct of the respondent in acquiring, disclosing or using of the trade secret, the impact of the unlawful disclosure or use of the trade secret, the legitimate interests of the parties and the impact which the granting or rejection of the measures could have on the parties, the legitimate interests of third parties, the public interest and the safeguard of fundamental rights, including freedom of expression and information.

Or. fr

Amendment 300
József Szájer

Proposal for a directive
Article 10 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that in deciding on the granting or rejecting of the application and assessing its proportionality, the competent judicial

Amendment

2. Member States shall ensure that in deciding on the granting or rejecting of the application and assessing its proportionality, the competent judicial

authorities shall be required to take into account the value of the trade secret, the measures taken to protect the trade secret, **the** conduct of the respondent in acquiring, disclosing or using of the trade secret, the impact of the unlawful **disclosure or use** of the trade secret, the legitimate interests of the parties and the impact which the granting or rejection of the measures could have on the parties, the legitimate interests of third parties, the public interest and the safeguard of fundamental rights, **including freedom of expression and information.**

authorities shall be required to take into account the **specific characteristics of the case. This assessment shall include, where appropriate, the** value of the trade secret, the measures taken to protect the trade secret **or other specific features of the trade secret, as well as the intentional or unintentional** conduct of the respondent in acquiring, disclosing or using of the trade secret, the impact of the unlawful **use or disclosure** of the trade secret, the legitimate interests of the parties and the impact which the granting or rejection of the measures could have on the parties, the legitimate interests of third parties, the public interest and the safeguard of fundamental rights.

Or. en

Amendment 301
Therese Comodini Cachia

Proposal for a directive
Article 10 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that in deciding on the granting or rejecting of the application and assessing its proportionality, the competent judicial authorities shall be required to take into account the value of the trade secret, the measures taken to protect the trade secret, **the** conduct of the respondent in acquiring, disclosing or using of the trade secret, the impact of the unlawful **disclosure or use** of the trade secret, the legitimate interests of the parties and the impact which the granting or rejection of the measures could have on the parties, the legitimate interests of third parties, the public interest and the safeguard of fundamental rights, **including freedom of expression and information.**

Amendment

2. Member States shall ensure that in deciding on the granting or rejecting of the application and assessing its proportionality, the competent judicial authorities shall be required to take into account the **specific characteristics of the case. This assessment shall include, where appropriate, the** value of the trade secret, the measures taken to protect the trade secret **or other specific features of the trade secret, as well as the intentional or unintentional** conduct of the respondent in acquiring, disclosing or using of the trade secret, the impact of the unlawful **use or disclosure** of the trade secret, the legitimate interests of the parties and the impact which the granting or rejection of the measures could have on the parties, the

legitimate interests of third parties, the public interest and the safeguard of fundamental rights.

Or. en

Amendment 302
Julia Reda, Pascal Durand

Proposal for a directive
Article 10 – paragraph 3

Text proposed by the Commission

Amendment

3. Member States shall ensure that the interim measures referred to in Article 9 are revoked or otherwise cease to have effect, upon request of the respondent, if:

deleted

(a) the applicant does not institute proceedings leading to a decision on the merits of the case before the competent judicial authority, within a reasonable period determined by the judicial authority ordering the measures where the law of a Member State so permits or, in the absence of such determination, within a period not exceeding 20 working days or 31 calendar days, whichever is the longer;

(b) in the meantime, the information in question no longer fulfils the requirements of point (1) of Article 2, for reasons that cannot be attributed to the respondent.

Or. en

Justification

Following AM deleting Art 9 on interim and precautionary measures

Amendment 303
József Szájer

Proposal for a directive
Article 10 – paragraph 3 – introductory part

Text proposed by the Commission

3. Member States shall ensure that the *interim* measures referred to in Article 9 are revoked or otherwise cease to have effect, upon request of the respondent, if:

Amendment

3. Member States shall ensure that the *provisional* measures referred to in Article 9 are revoked or otherwise cease to have effect, upon request of the respondent, if:

Or. en

Amendment 304
Angelika Niebler, Axel Voss

Proposal for a directive
Article 10 – paragraph 3 – point a

Text proposed by the Commission

a) the applicant does not institute proceedings leading to a decision on the merits of the case before the competent judicial authority, within a reasonable period determined by the judicial authority ordering the measures where the law of a Member State so permits *or, in the absence of such determination, within a period not exceeding 20 working days or 31 calendar days, whichever is the longer;*

Amendment

a) the applicant does not institute proceedings leading to a decision on the merits of the case before the competent judicial authority, within a reasonable period determined by the judicial authority ordering the measures where the law of a Member State so permits;

Or. de

Justification

A time limit on the effect of an interim court decision is alien to some Member States. The last part of the paragraph should therefore be deleted and determination of the time period should be left to the competent judicial authorities in accordance with national law.

Amendment 305
Julia Reda, Pascal Durand

Proposal for a directive
Article 10 – paragraph 4

Text proposed by the Commission

Amendment

4. Member States shall ensure that the competent judicial authorities may make the interim measures referred to in Article 9 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.

deleted

Or. en

Justification

Following AM deleting Art 9 on interim and precautionary measures

Amendment 306
József Szájer

Proposal for a directive
Article 10 – paragraph 4

Text proposed by the Commission

Amendment

4. Member States shall ensure that the competent judicial authorities may make the **interim** measures referred to in Article 9 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.

4. Member States shall ensure that the competent judicial authorities may make the **provisional** measures referred to in Article 9 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.

Or. en

Amendment 307
Julia Reda, Pascal Durand

Proposal for a directive
Article 10 – paragraph 5

Text proposed by the Commission

Amendment

5. Where the interim measures are revoked on the basis of point (a) of paragraph 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, disclosure or use of the trade secret or threat of such conduct, the competent judicial authorities shall have the authority to order the applicant, upon 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.

deleted

Or. en

Justification

Following AM deleting Art 9 on interim and precautionary measures

Amendment 308
József Szájer

Proposal for a directive
Article 10 – paragraph 5

Text proposed by the Commission

Amendment

5. Where the **interim** measures are revoked on the basis of point (a) of paragraph 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, **disclosure or use** of the trade secret or threat of such conduct,

5. Where the **provisional** measures are revoked on the basis of point (a) of paragraph 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

the competent judicial authorities shall have the authority to order the applicant, upon 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.

conduct, the competent judicial authorities shall have the authority to order the applicant, upon 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.

Or. en

Amendment 309
Daniel Buda

Proposal for a directive
Article 11 – paragraph 1 – introductory part

Text proposed by the Commission

1. Member States shall ensure that, where a judicial decision is taken finding an unlawful acquisition, use or disclosure of a trade secret, the competent judicial authorities may, at the request of the applicant order against the infringer:

Amendment

1. Member States shall ensure that, where a **final** judicial decision is taken finding an unlawful acquisition, use or disclosure of a trade secret, the competent judicial authorities may, at the request of the applicant order against the infringer:

Or. ro

Amendment 310
József Szájer

Proposal for a directive
Article 11 – paragraph 2 – point a

Text proposed by the Commission

(a) a declaration of infringement;

Amendment

deleted

Or. en

Amendment 311
Therese Comodini Cachia

Proposal for a directive
Article 11 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) a declaration of *infringement*;

deleted

Or. en

Amendment 312
Julia Reda, Pascal Durand

Proposal for a directive
Article 11 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) a declaration of *infringement*;

(a) a declaration of *unlawful acquisition, disclosure or use*;

Or. en

Justification

The use of the term "infringement" is typically used in the context of intellectual property law and therefore misleading in this context, since trade secret is not an intellectual property right.

Amendment 313
Julia Reda, Pascal Durand

Proposal for a directive
Article 11 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) depriving the *infringing* goods of *their infringing quality*;

(c) depriving the *unlawful* goods of *the quality that derived from the use of the trade secret*;

Or. en

Justification

The use of the term "infringing goods" is typically used in the context of intellectual property law and therefore misleading in this context.

Amendment 314

József Szájer

Proposal for a directive

Article 11 – paragraph 3 – subparagraph 2

Text proposed by the Commission

The judicial authorities shall order that **those** measures be carried out at the expense of the infringer, unless there are particular reasons for not doing so. These measures shall be without 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.

Amendment

The judicial authorities shall order that **the** measures ***referred to in point (c) of paragraph 1*** be carried out at the expense of the infringer, unless there are particular reasons for not doing so. These measures shall be without 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.

Or. en

Amendment 315

Therese Comodini Cachia

Proposal for a directive

Article 11 – paragraph 3 – subparagraph 2

Text proposed by the Commission

The judicial authorities shall order that **those** measures be carried out at the expense of the infringer, unless there are particular reasons for not doing so. These measures shall be without 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.

Amendment

The judicial authorities shall order that **the** measures ***referred to in point (c) of paragraph 1*** be carried out at the expense of the infringer, unless there are particular reasons for not doing so. These measures shall be without 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.

Or. en

Amendment 316
Daniel Buda

Proposal for a directive
Article 12 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that the measures referred to in point (a) of Article 11(1) **are revoked or** otherwise cease to have effect, upon request of the respondent if in the meantime the information in question no longer fulfils the conditions of point (1) of Article 2 for reasons that cannot be attributed to the respondent.

Amendment

2. Member States shall ensure that the measures referred to in in point (a) of Article 11(1) otherwise cease to have effect, upon request of the respondent if in the meantime the information in question no longer fulfils the conditions of point (1) of Article 2 for reasons that cannot be attributed to the respondent.

Or. ro

Justification

The measures cease to have effect, they are not revoked.

Amendment 317
Sergio Gaetano Cofferati

Proposal for a directive
Article 12 – paragraph 3 – subparagraph 1 – introductory part

Text proposed by the Commission

Member States shall provide that, at the request **of the person liable to be subject to the** measures provided for in Article 11, the competent judicial authority may order pecuniary compensation to be paid to the injured party instead of applying those measures if all the following conditions are met:

Amendment

Member States shall provide that, at the request **of one of the parties, in the event of the** measures provided for in Article 11 **being applied**, the competent judicial authority may order pecuniary compensation to be paid to the injured party instead of applying those measures if all the following conditions are met:

Or. it

Amendment 318
József Szájer

Proposal for a directive
Article 12 – paragraph 3 – subparagraph 1 – introductory part

Text proposed by the Commission

Member States **shall** provide that, at the request of the person liable to be subject to the measures provided for in Article 11, the competent judicial authority may order pecuniary compensation to be paid to the injured party instead of applying those measures if all the following conditions are met:

Amendment

Member States **may** provide that ***in appropriate cases***, at the request of the person liable to be subject to the measures provided for in Article 11, the competent judicial authority may order pecuniary compensation to be paid to the injured party instead of applying those measures if all the following conditions are met:

Or. en

Amendment 319
Therese Comodini Cachia

Proposal for a directive
Article 12 – paragraph 3 – subparagraph 1 – introductory part

Text proposed by the Commission

Member States **shall** provide that, at the request of the person liable to be subject to the measures provided for in Article 11, the competent judicial authority may order pecuniary compensation to be paid to the injured party instead of applying those measures if all the following conditions are met:

Amendment

Member States **may** provide that ***in appropriate cases***, at the request of the person liable to be subject to the measures provided for in Article 11, the competent judicial authority may order pecuniary compensation to be paid to the injured party instead of applying those measures if all the following conditions are met:

Or. en

Amendment 320
Giovanni Toti

Proposal for a directive
Article 12 – paragraph 3 – subparagraph 1 – introductory part

Text proposed by the Commission

Member States **shall** provide that, at the request of the person liable to be subject to the measures provided for in Article 11, the competent judicial authority may order pecuniary compensation to be paid to the injured party instead of applying those measures if all the following conditions are met:

Amendment

Member States **may** provide that, at the request of the person liable to be subject to the measures provided for in Article 11, the competent judicial authority may order pecuniary compensation to be paid to the injured party instead of applying those measures if all the following conditions are met:

Or. en

Amendment 321

Jean-Marie Cavada, Frédérique Ries

Proposal for a directive

Article 12 – paragraph 3 – subparagraph 1 – point a

Text proposed by the Commission

(a) the person concerned **originally acquired** knowledge of the trade secret **in good faith and fulfils the conditions of Article 3(4)**;

Amendment

(a) the person concerned **at the time of use or disclosure neither knew nor had reason, under the circumstances, to know that the trade secret was obtained from another person who was using or disclosing the trade secret unlawfully**;

Or. fr

Amendment 322

Sergio Gaetano Cofferati

Proposal for a directive

Article 13 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that the competent judicial authorities, on the application of the injured party, order the infringer who knew or ought to have known that he or she was engaging in

Amendment

1. Member States shall ensure that the competent judicial authorities, on the application of the injured party, order the infringer who knew or ought to have known that he or she was engaging in

unlawful acquisition, disclosure or use of a trade secret, to pay the trade secret holder damages commensurate to the actual prejudice suffered.

unlawful acquisition, disclosure or use of a trade secret, to pay the trade secret holder damages commensurate to the actual prejudice suffered *as a result of the infringement*.

Or. it

Amendment 323

Daniel Buda

Proposal for a directive

Article 13 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that the competent judicial authorities, on the application of the injured party, order the infringer who knew or ought to have known that he or she was engaging in unlawful acquisition, disclosure or use of a trade secret, to pay the trade secret holder damages commensurate to the *actual* prejudice suffered.

Amendment

1. Member States shall ensure that the competent judicial authorities, on the application of the injured party, order the infringer who knew or ought to have known that he or she was engaging in unlawful acquisition, disclosure or use of a trade secret, to pay the trade secret holder damages commensurate to the prejudice suffered. *Damages may also be paid for a future prejudice if the occurrence of such prejudice is undoubted.*

Or. ro

Amendment 324

Jytte Guteland

Proposal for a directive

Article 13 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that the competent judicial authorities, on the application of the injured party, order the infringer who knew or ought to have known that he or she was engaging in unlawful acquisition, disclosure or use of a trade secret, to pay the trade secret holder

Amendment

1. Member States shall ensure that the competent judicial authorities, on the application of the injured party, order the infringer who knew or ought to have known that he or she was engaging in unlawful acquisition, disclosure or use of a trade secret, to pay the trade secret holder

damages commensurate to the actual prejudice suffered.

damages commensurate to the actual prejudice suffered. ***In accordance with their national law and practice, Member States may restrict the liability for damages of employees towards their employers for the unlawful acquisition, use or disclosure of a trade secret of the employer. This option also applies when unlawful acquisition, use and disclosure of trade secrets occurs after the employment of an employee has terminated.***

Or. en

Amendment 325
Jean-Marie Cavada, Frédérique Ries

Proposal for a directive
Article 13 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that the competent judicial authorities, on the application of the injured party, order the infringer who knew or ought to have known that he or she was engaging in unlawful acquisition, disclosure or use of a trade secret, to pay the trade secret holder damages commensurate to the actual prejudice suffered.

Amendment

1. Member States shall ensure that the competent judicial authorities, on the application of the injured party, order the infringer who knew or ought to have known that he or she was engaging in unlawful acquisition, disclosure or use of a trade secret, to pay the trade secret holder damages ***appropriate*** to the actual prejudice suffered ***as a result of the infringement.***

Or. fr

Amendment 326
Julia Reda, Pascal Durand, Max Andersson

Proposal for a directive
Article 13 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that the competent judicial authorities, on the application of the injured party, order the ***infringer who*** knew or ought to have known that he or she was engaging in unlawful acquisition, disclosure or use of a trade secret, to pay the trade secret holder damages commensurate to the actual prejudice suffered.

Amendment

1. Member States shall ensure that the competent judicial authorities, on the application of the injured party, order the ***person who has unlawfully acquired, disclosed or use a trade secret, who*** knew or ought to have known that he or she was engaging in unlawful acquisition, disclosure or use of a trade secret, to pay the trade secret holder damages commensurate to the actual prejudice suffered ***as a result of the unlawful acquisition, disclosure or use of the trade secret.***

Or. en

Amendment 327

Jean-Marie Cavada, Frédérique Ries

Proposal for a directive

Article 13 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

In accordance with their national laws and practices, Member States may limit the liability for damages of employees towards their employers for the unlawful acquisition, use or disclosure of a trade secret of the employer when they act without intent.

Or. fr

Justification

This addition allows a limitation on the indirect liability of employees when a trade secret is obtained, used or disclosed unlawfully but not intentionally.

Amendment 328

Julia Reda, Pascal Durand, Max Andersson

Proposal for a directive
Article 13 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. In accordance with their national law and practice, Member States may restrict the liability for damages of employees towards their employers for the unlawful acquisition, disclosure or use of a trade secret of the employer. This option also applies when unlawful acquisition, disclosure and use of trade secrets occurs after the employment of an employee has terminated.

Or. en

Justification

Reciprocity for both parties regarding damages

Amendment 329
Sergio Gaetano Cofferati

Proposal for a directive
Article 13 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. In accordance with their national law and practice, Member States may restrict the liability for damages of employees towards their employers for the unlawful acquisition, use or disclosure of a trade secret, provided that it was carried out unintentionally.

Or. it

Amendment 330
Sergio Gaetano Cofferati

Proposal for a directive
Article 13 – paragraph 2 – subparagraph 1

Text proposed by the Commission

When setting the damages, the competent judicial authorities 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.**

Amendment

When setting the damages, the competent judicial authorities 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.

Or. it

Amendment 331
Angelika Niebler, Axel Voss

Proposal for a directive
Article 13 – paragraph 2 – subparagraph 1

Text proposed by the Commission

When setting the damages, the competent judicial authorities 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.

Amendment

When setting the damages, the competent judicial authorities 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 **non-material** prejudice caused to the trade secret holder by the unlawful acquisition, use or disclosure of the trade secret.

Or. de

Justification

"Moral damages" is a concept that is not found in German law. These must therefore be non-material damages (fr: *préjudice morale*).

Amendment 332

Angelika Niebler, Axel Voss

Proposal for a directive

Article 13 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

However, the competent judicial authorities may also, 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 if the infringer had requested authorisation to use the trade secret in question.

deleted

Or. de

Justification

Such a lump sum must be based on the fee for authorised use, but this is not usually specified.

Amendment 333

Kostas Chrysogonos

Proposal for a directive

Article 14 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure that, in legal proceedings instituted for the unlawful acquisition, use or disclosure of a trade secret, the competent judicial authorities 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,

1. Member States shall ensure that, in legal proceedings instituted for the unlawful acquisition, use or disclosure of a trade secret, the competent judicial authorities 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 ***in***

including publishing it in full or in part.

printed and electronic media, including the official webpage of the infringer.

Or. en

Amendment 334
Tadeusz Zwiefka

Proposal for a directive
Article 14 – paragraph 3

Text proposed by the Commission

3. In deciding whether to order a ***publicity measure*** and assessing its proportionality, the competent judicial authorities shall take into account ***the possible harm that such measure may cause to the privacy and reputation of the infringer, whenever the infringer is a natural person, as well as the value of the trade secret, the conduct of the infringer in acquiring, disclosing or using the trade secret, the impact of the unlawful disclosure or use of the trade secret, and the likelihood of further unlawful use or disclosure of the trade secret by the infringer.***

Amendment

3. In deciding whether to order a ***measure referred to in paragraph 1*** and assessing its proportionality, the competent judicial authorities shall take into account ***whether publication of that information would be justified, in particular in the light*** of the conduct of the infringer in acquiring, disclosing or using the trade secret.

Or. en

Amendment 335
József Szájer

Proposal for a directive
Article 15 – paragraph 2

Text proposed by the Commission

The sanctions provided for shall include the possibility to impose recurring penalty payments in case of non-compliance with a measure adopted pursuant to Articles 9 and 11.

Amendment

Where provided by the national law, non-compliance with a measure adopted pursuant to Articles 9 and 11 shall, where appropriate, be subject to recurring penalty payment.

Amendment 336
Therese Comodini Cachia

Proposal for a directive
Article 15 – paragraph 2

Text proposed by the Commission

The sanctions provided for shall include the possibility to impose recurring penalty payments in case of non-compliance with a measure adopted pursuant to Articles 9 and 11.

Amendment

Where provided by the national law, non-compliance with a measure adopted pursuant to Articles 9 and 11 shall, where appropriate, be subject to recurring penalty payment.

Amendment 337
József Szájer

Proposal for a directive
Article 17 – paragraph 1

Text proposed by the Commission

1. By XX XX 20XX [three years after the end of the transposition period], the ***European Union Trade Marks and Designs Agency***, in the context of the activities of the European Observatory on Infringements of Intellectual Property Rights, shall prepare an initial report on the litigation trends regarding the unlawful acquisition, use or disclosure of trade secrets pursuant to the application of this Directive.

Amendment

1. By XX XX 20XX [three years after the end of the transposition period], the ***Office for Harmonization in the Internal Market***, in the context of the activities of the European Observatory on Infringements of Intellectual Property Rights, shall prepare an initial report on the litigation trends regarding the unlawful acquisition, use or disclosure of trade secrets pursuant to the application of this Directive.

Amendment 338
Therese Comodini Cachia

Proposal for a directive
Article 17 – paragraph 1

Text proposed by the Commission

1. By XX XX 20XX [three years after the end of the transposition period], the ***European Union Trade Marks and Designs Agency***, in the context of the activities of the European Observatory on Infringements of Intellectual Property Rights, shall prepare an initial report on the litigation trends regarding the unlawful acquisition, use or disclosure of trade secrets pursuant to the application of this Directive.

Amendment

1. By XX XX 20XX [three years after the end of the transposition period], the ***Office for Harmonization in the Internal Market***, in the context of the activities of the European Observatory on Infringements of Intellectual Property Rights, shall prepare an initial report on the litigation trends regarding the unlawful acquisition, use or disclosure of trade secrets pursuant to the application of this Directive.

Or. en

Amendment 339
Sergio Gaetano Cofferati

Proposal for a directive
Article 17 – paragraph 2

Text proposed by the Commission

2. By XX XX 20XX [four years after the end of the transposition period], the Commission shall draw up an intermediate report on the application of this Directive and submit it to the European Parliament and the Council. This report shall take due account of the report prepared by the European Observatory on Infringements of Intellectual Property Rights.

Amendment

2. By XX XX 20XX [four years after the end of the transposition period], the Commission shall draw up an intermediate report on the application of this Directive, ***including with regards to the potential effects thereof on fundamental rights, worker mobility and possible further improvements in relation to cooperation and innovation***, and submit it to the European Parliament and the Council. This report shall take due account of the report prepared by the European Observatory on Infringements of Intellectual Property Rights.

Or. it