

Act on the Protection of Undisclosed Information with Market Value

NN 30/2018 (in force from April 7, 2018)

Zagreb, May 2018

ACT ON THE PROTECTION OF UNDISCLOSED INFORMATION WITH MARKET VALUE

PART ONE GENERAL PROVISIONS

SUBJECT MATTER AND SCOPE OF APPLICATION OF THE ACT

Article 1

This Act lays down and governs the preconditions of protection and the rules for protection against unlawful acquisition, use and disclosure of trade secrets relating to undisclosed information with market (commercial) values.

ACQUIS COMMUNAUTAIRE OF THE EUROPEAN UNION

Article 2

This Act shall transpose the following directives into the legislative framework of the Republic of Croatia:

– Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (SL L 157, 15. 6. 2016)

– Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (SL L 157, 30. 4. 2004).

DEFINITIONS

Article 3

(1) Individual definitions in terms of this Act shall have the following meaning:

1. »trade secret holder« means any natural or legal person lawfully controlling a trade secret;

2. »infringer« means any natural or legal person having unlawfully acquired, used or disclosed a trade secret;

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

4. »court« means a commercial court with territorial jurisdiction competent for the protection of industrial property, copyright and related rights and other intellectual property rights and the High Commercial Court of the Republic of Croatia in accordance with regulations on the organisation, scope of work and jurisdiction of courts;

5. »trade secret« means information which meets the following requirements:

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

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

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

(2) Information referred to in paragraph 1 point 5 of this Article include, inter alia, know-how and experience, business information and technological information.

(3) Information referred to in paragraph 1 point 5 of this Article has market (commercial) value, for example, where its unlawful acquisition, use or disclosure is likely to harm the interests of the person lawfully controlling it, in that it undermines that person's scientific and technical potential, business or financial interests, strategic positions or ability to compete.

(4) Reasonable steps to keep information referred to in paragraph 1 point 5 of this Article secret may include the preparation of an internal act on handling a trade secret and a circle of persons and their rights and obligations with handling a trade secret or measures of physical or virtual protection in accessing and handling a trade secret.

SUBSIDIARY APPLICATION OF OTHER REGULATIONS

Article 4

(1) The provisions of general regulations to govern civil procedures shall be appropriately applied in the procedures of civil protection of trade secrets, unless provided otherwise by this Act.

(2) The damages incurred by unlawful acquisition, use or disclosure of a trade secret are appropriately subject to the provisions of general regulations on civil obligations, unless provided otherwise by this Act.

(3) The procedures of setting provisional measures are appropriately subject to the provisions of general regulations on security, unless provided otherwise by this Act.

GENDER NEUTRALITY OF EXPRESSIONS

Article 5

The expressions used in this Act and the regulations to be adopted pursuant thereto, and which contain gender meaning, refer to males and females equally.

PART TWO
ACQUISITION, USE AND DISCLOSURE OF TRADE
SECRETS

LAWFUL ACQUISITION, USE AND DISCLOSURE OF
TRADE SECRETS

Article 6

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

1. independent discovery or creation;
2. observation, study, disassembly or testing of a product or object that has been made available to the public or that is lawfully in the possession of the acquirer of the information who is free from any legally valid duty to limit the acquisition of the trade secret;
3. exercise of the right of workers or workers' representatives to information, consultation and participation in accordance with specific regulations or the European Union law; or
4. any other practice which, under the circumstances, is in conformity with honest commercial practices.

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

UNLAWFUL ACQUISITION, USE AND DISCLOSURE
OF TRADE SECRETS

Article 7

(1) Trade secret holders are entitled to apply for the measures, procedures and remedies provided for in this Act in order to prevent, or obtain redress for, the unlawful acquisition, use or disclosure of their trade secret.

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

1. unauthorised access to, appropriation of, or copying of any documents, objects, materials, substances or electronic files, lawfully under the control of the trade secret holder, containing the trade secret or from which the trade secret can be deduced; or
2. any other conduct which, under the circumstances, is considered contrary to honest commercial practices.

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

1. having acquired the trade secret unlawfully;
2. being in breach of a confidentiality agreement or any other duty not to disclose the trade secret; or
3. being in breach of a contractual or any other duty to limit the use of the trade secret.

(4) The acquisition, use or disclosure of a trade secret shall also be considered unlawful whenever a person, at the time of the acquisition, use or disclosure, knew or ought, under the circumstances, to have

known that the trade secret had been obtained directly or indirectly from another person who was using or disclosing the trade secret unlawfully within the meaning of paragraph 3 of this Article.

(5) The production, offering or placing on the market of infringing goods, or the importation, export or storage of infringing goods for those purposes, as well as offering or providing services where a trade secret is used, shall also be considered an unlawful use of a trade secret where the person carrying out such activities knew, or ought, under the circumstances, to have known that the trade secret was used unlawfully within the meaning of paragraph 3 of this Article.

EXCEPTIONS

Article 8

The court shall dismiss an application for the measures, procedures and remedies referred to in Article 7 paragraph 1 of this Act where the alleged acquisition, use or disclosure of the trade secret was carried out in any of the following cases:

1. for exercising the right to freedom of expression and access to information and to freedom of reporting as set out in the Constitution of the Republic of Croatia and the Charter of Fundamental Rights of the European Union, and the act governing the right to access to information, as well as the act governing media reporting, all in accordance with respect for the freedom and pluralism of the media;

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

3. disclosure of a trade secret by workers to their representatives as part of the legitimate exercise by those representatives of their functions in accordance with specific regulations or the European Union law, provided that such disclosure was necessary for that exercise; or

4. for the purpose of protecting a legitimate interest recognised by specific regulations or the European Union law.

PART THREE
CIVIL REDRESS

PERSONS ENTITLED TO REQUEST THE
PROTECTION OF RIGHTS

Article 9

In addition to the trade secret holder, the protection of rights referred to in this Act can be requested by the license holder to the extent of his or her authorisation based on a legal transaction or the law..

*PRESERVATION OF CONFIDENTIALITY OF
TRADE SECRETS IN THE COURSE OF LEGAL
PROCEEDINGS*

Article 10

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

(2) The obligation referred to in the paragraph 1 of this Article shall remain in force after the legal proceedings have ended. However, such obligation shall cease to exist in any of the following circumstances:

1. where the alleged trade secret is found, by a final decision, not to meet the requirements set out in Article 3 paragraph 1 point 5 of this Act; or

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

(3) The court 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 legal proceedings relating to the unlawful acquisition, use or disclosure of a trade secret.

(4) The measures referred to in the paragraph 3 of this Article that may be taken by the court include the possibility:

1. of excluding the public from entire proceedings or a part thereof;

2. of restricting access to any document containing trade secrets or alleged trade secrets submitted by the parties or third parties, in whole or in part, to a limited number of persons. Before granting access to such documents, the court shall warn the persons who have access of the obligation referred to in paragraph 1 of this Article. The persons who access the documents shall sign a statement of their being acquainted with such obligation.

3. of prohibiting the copying of documents containing trade secrets or alleged trade secrets and their closing into a separate envelope that can be opened in the court only, where it shall be closed into a separate envelope again with indicating on the envelope that the document was inspected, the date of inspection and who made the inspection;

4. of restricting access to hearings, when trade secrets or alleged trade secrets may be disclosed, and the corresponding record or transcript of those hearings to a limited number of persons; and/or

5. of making available to any person other than those comprised in the limited number of persons

referred to in points 2 and 4 of this paragraph a non-confidential version of any judicial decision, in which the passages containing trade secrets have been removed or redacted.

(5) The number of persons referred to in paragraph 4 points 2 and 4 of this Article shall be no greater than necessary in order to ensure compliance with the right of the parties to the legal proceedings to an effective remedy and to a fair trial, and shall include, at least, one natural person from each party and the respective lawyers or other representatives of those parties to the legal proceedings.

(6) The court shall grant or reject the measures referred to in paragraph 3 of this Article depending on whether the measures are proportionate to the infringement referred to in paragraph 1 of this Article.

(7) When deciding on the measures referred to in paragraph 3 of this Article and assessing their proportionality, the court shall take into account the need to ensure the right to an effective remedy and to a fair trial, the legitimate interests of the parties and, where appropriate, of third parties, and any potential harm for either of the parties.

(8) The decision made by the court to set the measures referred to in paragraph 3 of this Article cannot be appealed.

(9) Any processing of personal data based on the measures set referred to in this Article shall be carried out in accordance with specific regulations on personal data protection.

(10) Submissions and decisions in legal proceedings relating to the unlawful acquisition, use or disclosure of a trade secret shall not be delivered via electronic notice board of the court (e-notice board) but by post.

(11) If the delivery fails, the court shall invite the party via e-notice board to take over a submission or a decision directly at the court within eight days upon such invitation was published.

(12) If the party fails to take over a submission or a decision within the period allowed in accordance with paragraph 11 of this Article, the delivery shall be considered made upon expiry of the eighth day after the date of publishing the invitation to take a submission or a decision on the e-notice board of the court.

*CLAIMS IN CASE OF TRADE SECRET
INFRINGEMENT*

Article 11

(1) The trade secret holder may bring action against the infringer and request the identification, the cessation of the infringement or the prohibition of the use or disclosure of the trade secret.

(2) The trade secret holder may bring action against the person who was unauthorised to undertake an activity causing a serious threat to unlawfully acquire, use or disclose a trade secret, and request the cessation of undertaking such activity and the prohibition of unlawful acquisition, use or disclosure of the trade

secret.

(3) The claims referred to in paragraphs 1 and 2 of this Article may be filed also against a mediator who provides services used by a third party in the activities when unlawfully acquiring, using or disclosing a trade secret or threatening to unlawfully acquire, use or disclose a trade secret.

REQUEST FOR SEIZURE OR DESTRUCTION OF INFRINGING GOODS

Article 12

(1) The trade secret holder may bring action against the person who unlawfully acquired, used or disclosed a trade secret and request that the court:

1. prohibits the production, offering, placing on the market or use of infringing goods, or the importation, export or storage of infringing goods for those purposes, or the offering or providing services using a trade secret;

2. adopts the appropriate corrective measures with regard to the infringing goods, including withdrawal of the infringing goods from the market, depriving such good of its infringing quality and destruction of such goods or their withdrawal from the market, provided that the withdrawal does not undermine the protection of the trade secret in question; and/or

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

(2) When ordering the withdrawal of the infringing goods from the market, the court may order, at the request of the trade secret holder, that the goods be delivered up to the holder or to charitable organisations.

(3) The court shall order that the measures referred to in paragraph 1 of this Article be carried out at the expense of the infringer, unless there are particular reasons for not doing so.

(4) The measures referred to in paragraph 1 of this Article 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.

DECISIONS ON REQUESTS

Article 13

(1) In considering the applications referred to in Articles 11 and 12 of this Act, the court shall take care that the measures are proportional to the nature and intensity of the infringement. It shall also take into account the specific circumstances of the case, including:

1. the value or other specific features of the trade secret;

2. the measures taken to protect the trade secret;

3. the conduct of the infringer in acquiring, using or disclosing the trade secret;

4. the impact of the unlawful use or disclosure of the trade secret;

5. the legitimate interests of the parties and the impact which the granting or rejection of the measures could have on the parties;

6. the legitimate interests of third parties;

7. the public interest; and/or

8. the safeguard of fundamental rights.

(2) Where the court limits the duration of the measures referred to in Article 11 and Article 12 paragraph 1 point 1 of this Act, such duration shall be sufficient to eliminate any commercial or economic advantage that the infringer could have derived from the unlawful acquisition, use or disclosure of the trade secret.

(3) The measures referred to in Article 11 and Article 12 paragraph 1 point 1 of this Act shall be revoked, upon the request of the person subject to the measures anticipated in Articles 11 and 23 of this Act, if the information in question no longer meets the requirements of Article 3 paragraph 1 point 5 of this Act for reasons that cannot be attributed directly or indirectly to the person subject to the measures anticipated in Articles 11 and 23 of this Act.

(4) At the request of the person liable to be subject to the measures provided for in Articles 11 and 12 of this Act, the court may order pecuniary compensation to be paid to the injured party instead of applying those measures if all the following conditions are met:

1. the person subject to the measures anticipated in Articles 11 and 12 of this Act at the time of use or disclosure neither knew nor ought, under the circumstances, to have known that the trade secret was obtained from another person who was using or disclosing the trade secret unlawfully;

2. execution of the measures in question would cause disproportionate harm to the person subject to the measures anticipated in Articles 11 and 12 of this Act;

3. pecuniary compensation to the injured party appears reasonably satisfactory.

(5) Where pecuniary compensation is ordered instead of the measures referred to in Article 11 and Article 12 paragraph 1 point 1 of this Act, it shall not exceed the amount of royalties or fees which would have been due, had the person subject to the measures anticipated in Articles 11 and 12 of this Act requested authorisation to use the trade secret in question, for the period of time for which use of the trade secret could have been prohibited.

REQUEST FOR THE DAMAGES, FOR NORMAL COMPENSATION AND BENEFITS GAINED UNJUSTLY

Article 14

(1) The trade secret holder may bring action against the infringer who knew or ought to have known to

participate in unlawful acquisition, use or disclosure of a trade secret and request the damages in accordance with general rules on the damages and the rules on the damages in accordance with this Act.

(2) The trade secret holder may bring action against the infringer who knew or ought to have known to participate in unlawful acquisition, use or disclosure of a trade secret and who gained benefits from acquiring, using or disclosing the trade secret and request such benefits to be returned or refunded in accordance with general rules on unjust gain.

(3) Requests referred to in paragraphs 1 and 2 of this Article do not exclude each other.

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

(5) Instead of setting the damages referred to in paragraph 4 of this Article, the court may, in appropriate cases, set the damages against the infringer who knew or ought to have known to participate in unlawful acquisition, use or disclosure of the trade secret as the amount of royalties or fees which would have been due had the infringer requested authorisation to use the trade secret in question.

REQUEST FOR THE PUBLICATION OF JUDGMENTS

Article 15

(1) The trade secret holder may request for the final judgment that fulfils in full or in part the request for the protection of a trade secret in case of unlawful acquisition, use or disclosure is published via public media at the expense of the respondent.

(2) The court shall, within the limits of the claim, decide about the public media to be engaged for the judgment to be published and whether it shall be published in full or in part.

(3) If the court decides to publish only a part of the judgment, it shall determine, within the limits of the claim, to publish the operative part and that part of the judgment that contains an evident explanation of the nature of the infringement.

(4) Any measure referred to in paragraph 1 of this Article shall preserve the confidentiality of trade secrets as provided for in Article 10 of this Act.

(5) In deciding whether to order a measure referred to in paragraph 1 of this Article and when assessing its proportionality, the court shall take into account the value of the trade secret, the conduct of the infringer in acquiring, using or disclosing the trade secret, the impact of the unlawful use or disclosure of the trade secret, and the likelihood of further unlawful use or disclosure of the trade secret by the infringer. The court

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

REQUEST FOR DATA DELIVERY

Article 16

(1) The trade secret holder who instituted legal proceedings for the protection of a trade secret against its unlawful acquisition, use or disclosure may request the delivery of data on the origins and distribution channels of infringing goods or services.

(2) The request referred to in paragraph 1 of this Article can be made against the respondent in legal proceedings referred to in paragraph 1 of this Article as a separate claim or as a manifestation request expressed in a gradient lawsuit.

(3) The request referred to in paragraph 1 of this Article can also be made against:

- a person in possession of the suspected infringing goods when performing his or her economic activity;
- a person using the suspected infringing service when performing his or her economic activity;
- a person, when performing his or her economic activity, who provides services used in the suspected infringing actions; or

- a person who is designated by one of the persons referred to in paragraph 2 of this Article or subparagraphs 1 – 3- of this paragraph as the person participating in the production or distribution of the suspected infringing goods or the provision of the suspected infringing services.

(4) The request referred to in paragraph 1 of this Article shall be submitted as a separate claim or as a manifestation request expressed in a gradient lawsuit against the related persons as co-litigators against the person sued in legal proceedings referred to in paragraph 1 of this Article.

(5) The request for delivery of data on the origin of goods and distribution channels of the goods referred to in paragraph 1 of this Article can, inter alia, include:

- the data on the names and addresses of producers and distributors, suppliers and other former possessors of the goods, as well as the wholesale and retail sale traders intended to receive the goods; and/or
- the data on the quantities of the goods produced, made, delivered or ordered, as well as the prices achieved for the related goods.

(6) The person who received the request for delivery of the data referred to in paragraphs 2 or 3 of this Article may refuse to deliver such data for the same reasons for which testimony can be denied in accordance with the rules of general regulations governing legal proceedings.

(7) If the person who received the request for delivery of the data referred to in paragraphs 2 or 3 of

this Article refuses to deliver such data with no justified reason, he or she shall be held liable for the damage incurred in accordance with the provisions of general regulations governing civil obligations.

(8) The provisions of this Article shall not affect the regulations on the manner of using confidential data in civil and criminal procedures, on the regulations governing the liability for misuse of the rights to receive the data and on the regulations governing personal data processing and protection.

PROVIDING EVIDENCE DURING LEGAL PROCEEDINGS

Article 17

(1) When a respondent in legal proceedings is referring to a document or other pieces of evidence defined or definable and claiming that they can be found with or are available to another party or a third party, the court shall invite such persons to submit such documents or evidence within a set deadline.

(2) In the proposal for submitting the evidence, a party shall make it likely that such pieces of evidence can be found with another party or a third party or that they are available to them, and if the applicant is a claimant, he or she shall also make it likely that his or her claim exists.

(3) Where the trade secret holder as a claimant in the lawsuit claims that the trade secret was unlawfully acquired, used or disclosed in performing an economic activity in order to gain economic benefit and makes it likely during the proceedings, and where in the proceedings he or she refers to banking, financial or similar economic documents, deeds and similar pieces of evidence and claims that they can be found with or are available to another party, the court shall invite such party to submit such pieces of evidence, allowing him or her a certain deadline.

(4) Before passing a decision to order another party or a third party to submit the evidence, the court shall invite them to make a statement on the matter.

(5) Where the party or a third party claims not to be in possession of the evidence or having it available, the court may provide evidence in order to establish such fact.

(6) As to the right of the party's denial to submit evidence, the provisions of general regulations governing legal proceedings on the right to deny testimony shall be appropriately applied.

(7) When deciding on the proposal of submitting evidence, the court shall take into account and weigh up the interests of the party requesting evidence to be submitted in relation to the interests of another party and third parties requested to submit evidence, taking account of, inter alia, the interests of such persons:

1. not to submit evidence if the related facts can be established on the basis of other available evidence as well;

2. for evidence to be defined inasmuch as possible

considering the circumstances of an individual case and to be significant for the proceedings;

3. for the range and the costs of submitting evidence not to be as extensive as to be in evident disproportion to the meaning of facts wanting to establish; or

4. to protect one's own or someone else's trade secret.

(8) The interests of the respondent to avoid an action for damages or to prevent the claimant from succeeding in the proceedings are not a justified reason enough for denial of submitting evidence to his or her detriment.

(9) If the provision of evidence referred to in paragraph 3 of this Article or the submitting of evidence on the basis of this Article is connected with certain costs to a third party, the court shall invite the applicant to deposit a down payment.

(10) If the party fails to act by the court's decision ordering him or her to submit evidence, the court shall, considering all the circumstances, assess at its own discretion the meaning of the fact that the party in possession of evidence will not act by the court's decision ordering him or her to submit evidence or contrary to the court's belief denies to have evidence in possession.

(11) The court's decision on the proposal to submit evidence cannot be appealed by the parties to the proceedings.

(12) Based on the decision by which a third party is ordered to submit evidence, the court shall proceed with enforcement upon proposal in accordance with the rules of assurance procedure even before such decision becomes final.

(13) A third person shall be entitled to the compensation of justified costs incurred in connection with the submission of evidence.

(14) A third party needs to request the compensation of costs referred to in paragraph 13 of this Article within 15 days upon the court's final decision.

PROVISIONAL MEASURES DUE TO UNLAWFUL ACQUISITION, USE OR DISCLOSURE OF A TRADE SECRET

Article 18

(1) At the request of the trade secret holder, the court may order any of the provisional measures intended to terminate or prevent unlawful acquisition, use or disclosure of a trade secret, inter alia:

– order an adversary to insurance to terminate unlawful acquisition, use or disclosure of a trade secret or prohibit the use or disclosure of a trade secret; the court may order this against a mediator as well whose services third parties use in order to unlawfully acquire, use or disclose a trade secret;

– prohibit the production, offering or placing on the market or use of infringing goods, or the importation, export or storage of infringing goods for those purposes;

– order the seizure or delivery up of the suspected infringing goods, including imported goods, so as to

prevent their entry into, or circulation on, the market; and or

– prohibit the offering or providing of services using a trade secret.

(2) At the request of the trade secret holder who makes it likely that a trade secret has been acquired unlawfully, is being unlawfully used or disclosed in performing the activity to gain economic benefit and that such infringement poses a threat of irreparable damage, the court may, in addition to the provisional measures referred to in paragraph of this Article, also order the seizure of movable and immovable property owned by the adversary to insurance which are not directly related to the infringement, as well as the prohibition of disposing with the means on the account with financial institutions and of disposing with other assets.

(3) For the purpose of ordering and executing a provisional measure referred to in paragraph 2 of this Article, the court may request from the adversary to insurance or from other parties in disposal thereof to deliver banking, financial and other economic data or access to other necessary data and documents. The court shall ensure the preservation of confidentiality and prohibit any misuse of such data.

(4) A provisional measure referred to in paragraph 1 of this Article may be ordered even without notifying the opposing party if the applicant makes it likely that otherwise the provisional measure would not be effective or that there is a threat of irreparable damage.

(5) A provisional measure referred to in paragraph 2 of this Article may be ordered even without notifying the adversary to insurance if the applicant makes it likely that otherwise the provisional measure would not be effective or that, taking into consideration the particularly difficult circumstance, this would be necessary.

(6) If the provisional measure was ordered without notifying the adversary to insurance, the court shall deliver the decision on the provisional measure to the adversary to insurance immediately upon its execution.

(7) In the decision ordering a provisional measure, the court shall specify also the duration of such measure, and, if the measure has been ordered before the institution of a claim, the period within which the applicant shall institute the claim to justify the measure.

(8) The court shall specify the period referred to in paragraph 7 of this Article not to exceed 31 calendar days upon delivery of the decision to the applicant.

(9) The provisions of this Article shall be without prejudice to the possibility of ordering provisional measures pursuant to other provisions of this Act and of general regulations governing the insurance procedure.

DECIDING ON PROVISIONAL MEASURES

Article 19

(1) In considering an application for the adoption of the provisional measures provided for in Article 18 of this Act, the court shall take care of their proportionality to the nature and intensity of the infringement. Thereby,

it shall take into account the specific circumstances of the case, including:

1. the value or other specific features of the trade secret;

2. the measures taken to protect the trade secret;

3. the conduct of the infringer in acquiring, using or disclosing the trade secret;

4. the impact of the unlawful use or disclosure of the trade secret;

5. the legitimate interests of the parties and the impact which the granting or rejection of the measures could have on the parties;

6. the legitimate interests of third parties;

7. the public interest; and/or

8. the safeguard of fundamental rights.

(2) For the purpose of making it likely that a trade secret has been unlawfully acquired, used or disclosed or that there is a threat of the trade secret to be unlawfully acquired, the court shall request from the applicant to provide evidence that may reasonably be considered available on the grounds that a trade secret exists, that the applicant is the trade secret holder and that the trade secret has been acquired unlawfully, is being unlawfully used or disclosed or that there is a threat of unlawful acquisition, use or disclosure of the trade secret.

(3) Provisional measures referred to in Article 18 of this Act shall be revoked, upon the request of the respondent, if the related information no longer meets the requirements of Article 3 paragraph 1 point 5 of this Act for reasons that cannot be directly or indirectly attributed to the respondent.

(4) Upon the request of the adversary to insurance referred to in Article 18 of this Act, the court may, instead of executing such provisional measures, order the lodging of security to ensure compensation of the damages incurred to the trade secret holder.

(5) The lodging of security in exchange of disclosing a trade secret is not allowed.

PROVISIONAL MEASURES FOR PRESERVING THE EVIDENCE

Article 20

(1) Upon the request of the trade secret holder who makes it likely that the trade secret has been unlawfully acquired, used or disclosed to that there is a threat of unlawful acquisition of the trade secret, the court may order a provisional measure for preserving the evidence.

(2) By the provisional measure referred to in paragraph 1 of this Article, the court may, inter alia, order:

– preparation of a detailed description of the infringing goods, with or without taking of samples;

– seizure of the goods made likely of infringing a trade secret ; and/or

– seizure of the materials and implements used in the production and distribution of the goods made likely of infringing a trade secret and the documents relating

thereto.

(3) The provisional measure referred to in this Article may be ordered without notifying the adversary to insurance, if the applicant makes it likely that there is a risk of evidence being destroyed or irreparable harm of incurring.

(4) If the provisional measure was ordered without notifying the adversary to insurance, the court shall deliver the decision on the provisional measure to the adversary to insurance immediately upon its execution.

(5) In the decision ordering a provisional measure, the court shall specify also the duration of such measure, and, if the measure has been ordered before the institution of a claim, the period within which the applicant shall institute the claim to justify the measure.

(6) The court shall specify the period referred to in paragraph 5 of this Article not to exceed 31 calendar days upon delivery of the decision to the applicant.

(7) The provisions of this Article shall be without prejudice to the possibility of ordering measures for preserving the evidence pursuant to the provisions of general regulations governing the insurance procedure.

FINES

Article 21

(1) The court may impose a fine on or order a fine against a legal or a natural person who fails to comply with any measure adopted pursuant to Articles 10, 12, 18 and 20 of this Act.

(2) A fine may be imposed on or ordered against legal persons referred to in paragraph 1 of this Article in the amount of HRK 10,000.00 to 100,000.00.

(3) If the fine is imposed on or ordered against a legal person, the court shall impose and order a fine referred to in paragraph 1 of this Article in the amount of HRK 5000.00 to 30,000.00 on and against responsible persons in the legal person as well, if it establishes that such persons caused an offence to the legal person by acting or failing to act.

(4) A fine may be imposed on or ordered against natural persons referred to in paragraph 1 of this Article in the amount of HRK 1000.00 to 30,000.00.

(5) If such person who has been imposed a fine by the court, in accordance with this Act, fails to act as ordered by the court, the court shall impose such fine on such person and, if necessary, impose new fines on such person all until such person acts as ordered by the court.

(6) If a natural person against whom a fine has been ordered fails to pay such fine within the period set by the court's decision, such fine shall be substituted by imprisonment pursuant to the rules of the criminal law on substituting a fine with imprisonment. The sum of imprisonments in total substituting the fines ordered to a person cannot exceed six months in the same procedure.

(7) The imprisonment ordered pursuant to the provisions of this Act shall be executed in the manner

provided for the execution of imprisonment ordered in a criminal procedure.

(8) The fine and the sentence of imprisonment ordered shall be executed by the court ex officio, and the execution costs shall be borne by the state budget.

(9) The fine as provided for by this Article shall not affect criminal liability of the persons who have been fined in the procedures by this Act, but the penalty ordered as provided for by this Act shall be included in the penalty ordered in a criminal procedure.

(10) The penalty payment shall be ordered by the court in a decision. The decision on the penalty may be appealed within three days upon delivery date of the decision. The appeal to the decision on the penalty shall be decided on by the court of second instance within eight days upon receipt of the appeal.

(11) The appeal referred to in paragraph 10 of this Article shall delay the enforceability of the decision.

URGENCY

Article 22

(1) Proceedings regarding unlawful acquisition, use or disclosure of a trade secret referred to in this Act are urgent.

(2) The period allowed for a statement of defence in legal proceedings due to unlawful acquisition, use or disclosure of a trade secret is eight days upon delivery of the claim to the respondent.

(3) In disputes due to unlawful acquisition, use or disclosure of a trade secret, the main hearing shall be held within 30 days upon receipt of the statement of defence.

(4) The litigation in legal proceedings due to unlawful acquisition, use or disclosure of a trade secret before the court of first instance shall be completed within one year upon filing a suit.

(5) The litigation in legal proceedings due to unlawful acquisition, use or disclosure of a trade secret shall be completed by the decision of the court of second instance on the appeal submitted against the decision of the court of first instance within six months upon receipt of the appeal.

(6) The decision on a provisional measure shall be passed within 30 days upon the date of submitting a proposal for setting a provisional measure.

PART FOUR FINAL PROVISION

ENTRY OF THIS ACT INTO FORCE

Article 23

This Act shall enter into force on the eighth day following the day of its publication in the »Official Gazette«.