



Plenary sitting

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*****I**
REPORT

on the proposal for a directive of the European Parliament and of the Council on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (COM(2013)0813 – C7-0431/2013 – 2013/0402(COD))

Committee on Legal Affairs

Rapporteur: Constance Le Grip

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ■ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a directive of the European Parliament and of the Council on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure
(COM(2013)0813 – C7-0431/2013 – 2013/0402(COD))**

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2013)0813),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0431/2013),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 25 March 2014¹,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on Industry, Research and Energy and the Committee on the Internal Market and Consumer Protection (A8-0000/2015),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ OJ C 226, 16.7.2014, p. 48.

Amendment 1

AMENDMENTS BY THE EUROPEAN PARLIAMENT*

to the Commission proposal

2013/0402 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

After consulting the European Data Protection Supervisor²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol ■.

¹ OJ C 226, 16.7.2014, p. 48.

² OJ C , , p. .

- (1) Businesses and non-commercial research institutions invest in acquiring, developing and applying know-how and information, which is the currency of the knowledge economy **and gives a competitive advantage**. This investment in generating and applying intellectual capital determines their competitiveness **and innovative performance** in the market and therefore their returns to investment, which is the underlying motivation for business research and development. Businesses have recourse to different means to appropriate the results of their innovative activities when openness does not allow for the full exploitation of their research and innovation investments. Use of **■** intellectual property rights such as patents, design rights or copyright is one of them. Another is to protect access and exploit the knowledge that is valuable to the entity and not widely known. Such **valuable** know-how and business information, that is undisclosed and intended to remain confidential is referred to as a trade secret. Businesses, irrespective of their size, value trade secrets as much as patents and other forms of intellectual property right and use confidentiality as a business **competitiveness** and research innovation management tool, covering a diversified range of information, which extends beyond technological knowledge to commercial data such as information on customers and suppliers, business plans or market research and strategies. **Small and medium-sized enterprises (SMEs), in particular, value and rely on trade secrets more, because the use of intellectual property rights tends to be expensive and SMEs often do not have sufficient specialised human and financial resources to manage and protect such rights.** By protecting such a wide range of know-how and commercial information, whether as a complement or as an alternative to intellectual property rights, trade secrets allow the creator to derive profit from his/her creation and innovations and therefore are particularly important **for business competitiveness as well as** for research and development and innovative performance.
- (2) Open innovation is **a catalyst for new ideas which meet the needs of consumers and tackle societal challenges to find their way to the market.** It is an important lever for the creation of new knowledge and underpins the emergence of new and innovative business models based on the use of co-created knowledge. **■** Collaborative research, including cross-border cooperation, is particularly important to increase the levels of business research and development within the internal market. **The dissemination of**

knowledge and information should be considered essential for the purpose of ensuring dynamic, positive and equal business development opportunities, especially for SMEs. In an internal market where barriers to such cross-border collaboration are minimised and where cooperation is not distorted, intellectual creation and innovation should encourage investment in innovative processes, services and products. Such an environment conducive to intellectual creation and innovation, *and where employment mobility is not hindered*, is also important for employment growth and improving competitiveness of the Union economy. *Trade secrets have an important role in protecting the exchange of knowledge between businesses, including, in particular, SMEs, and research institutions within and across the borders of the internal market, in the context of research and development and innovation.* Trade secrets are amongst the most used form of protection of intellectual creation and innovative know-how by businesses, yet they are at the same time the least protected by the existing Union legal framework against their unlawful acquisition, use or disclosure by third parties.

- (3) Innovative businesses are increasingly exposed to dishonest practices aiming at misappropriating trade secrets, such as theft, unauthorised copying, economic espionage, breach of confidentiality requirements, whether from within or from outside of the Union. Recent developments, such as globalisation, increased outsourcing, longer supply chains, increased use of information and communication technology contribute to increasing the risk of those practices. The unlawful acquisition, use or disclosure of a trade secret compromises the legitimate trade secret holder's ability to obtain first mover returns using the outputs of its innovative efforts. Without effective and comparable legal means for defending trade secrets across the Union, incentives to engage in innovative cross-border activity within the internal market are undermined and trade secrets are unable to fulfil their potential as drivers of economic growth and jobs. Thus, innovation and creativity are discouraged and investment diminishes, affecting the smooth functioning of the internal market and undermining its growth enhancing potential.
- (4) ■ The Agreement on trade-related aspects of intellectual property (the TRIPS Agreement) ■ contains, *inter alia*, provisions on the protection of trade secrets against their unlawful acquisition, use or disclosure by third parties, which are common

international standards. All Member States, as well as the Union itself, are bound by this Agreement which was approved by Council Decision 94/800/EC¹. *In order to protect trade secrets against misappropriation, some Member States have legislation in place; however some Member States have not defined trade secrets and do not have binding legislation to protect against the misappropriation of trade secrets. Such a situation creates gaps and barriers to the effective functioning of the internal market. It is also appropriate to define at Union level the situations where the acquisition, use and disclosure of a trade secret is lawful or unlawful, and to limit the period of application of redress procedures, so that this Directive can serve its purpose of consistent protection of trade secrets in the Union.*

- (5) ■ There are important differences in the Member States legislation as regards the protection of trade secrets against their unlawful acquisition, use or disclosure by other persons. Thus, for example, not all Member States have adopted national definitions of trade secrets and/or unlawful acquisition, use or disclosure of a trade secret, so that the scope of protection is not readily accessible and differs throughout Member States. Furthermore, there is no consistency as regards the civil law remedies available in case of unlawful acquisition, use or disclosure of trade secrets as cease and desist orders are not always available in all Member States against third parties who are not competitors of the legitimate trade secret holder. Divergences also exist across the Member States with respect to the treatment of third parties who acquired the trade secret in good faith but subsequently come to learn, at the time of use, that their acquisition derived from a previous unlawful acquisition by another party.
- (6) National rules also differ as to whether legitimate trade secret holders may seek the destruction of goods manufactured by third parties who use trade secrets unlawfully or the return or destruction of any documents, files or materials containing or implementing the unlawfully acquired or used trade secret. Also, applicable national rules on the calculation of damages do not always take account of the intangible nature of trade secrets, which makes it difficult to demonstrate the actual profits lost or the unjust enrichment of the infringer where no market value can be established for the

¹ Council Decision of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ L 336, 23.12.1994, p.1).

information in question. Only a few Member States allow for the application of abstract rules on the calculation of damages based on the reasonable royalty or fee which could have been due had a licence for the use of the trade secret existed. Additionally, many Member States rules do not guarantee the preservation of the confidentiality of a trade secret if the trade secret holder introduces a claim for alleged unlawful acquisition, use or disclosure of the trade secret by a third party, thus reducing the attractiveness of the existing measures and remedies and weakening the protection offered.

- (7) The differences in the legal protection of trade secrets provided for by the Member States imply that trade secrets do not enjoy an equivalent level of protection throughout the Union, thus leading to fragmentation of the internal market in this area and weakening the overall deterrent effect of the rules. The internal market is affected in so far as such differences lower businesses' incentives to undertake innovative-related cross-border economic activity, including research or manufacturing cooperation with partners, outsourcing or investment in other Member States, which would depend on the use of the information protected as trade secrets. Cross-border network research and development as well as innovation-related activities, including related manufacturing and subsequent cross-border trade, are rendered less attractive and more difficult within the Union, thus also resulting in innovation-related inefficiencies at Union scale. In addition, higher business risk appears in Member States with comparatively lower levels of protection, where trade secrets may be stolen or otherwise unlawfully acquired more easily. This leads to inefficient allocation of capital to growth-enhancing innovation within the internal market because of the higher expenditure on protective measures to compensate for the insufficient legal protection in some Member States. It also favours the activity of unfair competitors who following the unlawful acquisition of trade secrets could spread resulting goods across the internal market. Legislative regime differences also facilitate the importation of goods from third countries into the Union through entry points with weaker protection, when the design, manufacturing or marketing of those goods rely on stolen or otherwise unlawfully acquired trade secrets. On the whole, such differences create a prejudice to the proper functioning of the internal market.

- (8) It is appropriate to provide for rules at Union level to approximate the national legislative systems so as to ensure a sufficient and consistent level of redress across the internal market in case of unlawful acquisition, use or disclosure of a trade secret. For this purpose, it is important to establish a homogenous definition of a trade secret without restricting the subject matter to be protected against misappropriation. Such definition should therefore be constructed as to cover business information, technological information and know-how where there is both a legitimate interest in keeping confidential and a legitimate expectation in the preservation of such confidentiality. *Such information or know-how should furthermore have commercial value, whether actual or potential. Such information or know-how should be considered to have commercial value especially where its unauthorized acquisition, use or disclosure is likely to harm the interests of the person lawfully controlling it, or where it undermines his or her scientific and technical potential, business or financial interests, strategic positions or ability to compete.* By nature, such definition should exclude trivial information and should not extend to the knowledge and skills gained by employees in the normal course of their employment and which are *generally* known among or *readily* accessible to persons within the circles that normally deal with the kind of information in question.
- (9) It is also important to identify the circumstances under which legal protection is justified. For this reason, it is necessary to establish the conduct and practices which are to be regarded as unlawful acquisition, use or disclosure of a trade secret. ■

(9a) *It is important to clarify that the measures adopted to protect trade secrets against their unlawful acquisition, use and disclosure should not affect the application of Union or national rules that require the disclosure of information, including trade secrets, to the public or to public authorities, the rules that allow public authorities to collect information for the performance of their duties or rules that allow any further disclosure by those public authorities of relevant information to the public. This concerns in particular rules on the disclosure by the Union's institutions and bodies or national public authorities of business-related information they hold pursuant to Regulation (EC) No 1049/2001 of the European Parliament and of the Council¹, Regulation (EC) No 1367/2006 of the European Parliament and the Council² and Directive 2003/4/EC of the European Parliament and the Council³ or to other rules on public access to documents or on the transparency obligations of national public authorities.*

¹ *Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).*

² *Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ L 264, 25.9.2006, p. 13).*

³ *Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (OJ L 041, 14.02.2003, p. 26).*

(9b) *The acquisition, use or disclosure of trade secrets, whenever imposed or permitted by law, should be treated as lawful for the purpose of this Directive, without prejudice to any obligation of confidentiality as regards the trade secret or any limitation as to its use that Union or national law may impose on the recipient of the information. In particular, this Directive should not release the public authorities from the confidentiality obligations to which they are subject in respect of information passed on by holders of trade secrets, irrespective of whether those obligations are laid down in national or in Union law. This concerns inter alia, the confidentiality obligations in respect of information forwarded to awarding authorities in the context of procurement procedures, as laid down, for example, in Directive 2014/23/EU of the European Parliament and of the Council¹, Directive 2014/24/EU of the European Parliament and of the Council² and Directive 2014/25/EU of the European Parliament and of the Council³.*

¹ *Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1).*

² *Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).*

³ *Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).*

- (9c) *This Directive does not provide for criminal penalties to be imposed on persons who unlawfully acquire, use or disclose a trade secret. It is thus without prejudice to the right of the Member States to supplement its civil- and commercial-law provisions with measures under the criminal law. Where Member States draft such measures, however, they should take full account of the safeguards laid down in this Directive, in order to ensure that a proper balance is struck between the protection of trade secrets and business freedom, freedom of expression and freedom of information.*
- (10) In the interest of innovation and to foster competition, the provisions of this Directive should not create any exclusive right on the know-how or information protected as trade secrets. Thus, independent discovery of the same know-how and information remains possible and competitors of the trade secret holder are also free to reverse engineer any lawfully acquired product. *However, while healthy competition brought about by the lawful use of data, including data generated by reverse engineering, should be encouraged, it is essential to tackle dishonest commercial practices.*
- (10a) *In some industry sectors, where creators and innovators cannot benefit from exclusive rights and where innovation has traditionally relied upon trade secrets, products can nowadays be easily reverse-engineered once in the market. In those cases, those creators and innovators may be victims of practices such as parasitic copying or slavish imitations that free ride on their reputation and innovation efforts. Some national laws dealing with unfair competition address those practices. While this Directive does not aim to reform or harmonize unfair competition law in general, it would be appropriate that the Commission carefully examine the need for Union action in that area.*
- (11) In line with the principle of proportionality the measures and remedies intended to protect trade secrets should be tailored to meet the objective of a smooth functioning internal market for research and innovation, *in particular by having a deterrent effect against the unlawful acquisition, use and disclosure of a trade secret*, without jeopardising *or undermining fundamental rights and freedoms or the public interest, such as public safety, consumer protection, public health and environmental protection, and without any prejudice to the mobility of workers*. In this respect, the measures and remedies ensure that competent judicial authorities account for *factors*

such as the value of a trade secret, the seriousness of the conduct resulting in the unlawful acquisition, use or disclosure of the trade secret as well as the impact of such conduct. It should also be ensured that the competent judicial authorities are provided with the discretion to weigh up the interests of the parties to the litigation, as well as the interests of third parties including, where appropriate, consumers.

- (12) The smooth functioning of the internal market would be undermined if the measures and remedies provided for were used to pursue illegitimate intents, *such as creating unjustified barriers to the internal market or to labour mobility, that are* incompatible with the objectives of this Directive. Therefore, it is important to ensure that judicial authorities are empowered to sanction abusive behaviour by claimants who act in bad faith and submit manifestly unfounded applications. ■
- (12a) *Measures and remedies provided for under this Directive should not restrict whistleblowing activity. Therefore, the protection of trade secrets should not extend to cases in which disclosure of a trade secret serves the public interest, insofar as directly relevant misconduct or wrongdoing is revealed. The latter should not be seen as preventing the competent judicial authorities from allowing an exception to the application of measures, procedures and remedies where the respondent had all the reasons to believe in good faith that his conduct met the appropriate criteria set out in this Directive.*
- (12b) *It is essential that Member States respect the freedom of the press and the media, as enshrined in Article 11(2) of the Charter of Fundamental Rights of the European Union in order to ensure that the Directive does not restrict journalistic works, in particular with regard to investigation, protection of sources, and the right of the public to be informed.*
- (12c) *The increased use of online web services to conduct business and research, the storage of more confidential data in virtual storage places, and the increased use of e-commerce and digitalization as a whole, gives rise to a need for harmonized legislation across the Union, which would protect misappropriated use of trade secrets, and which in turn would ensure trust and protection among businesses and consumers and promote the formation of the Digital Single Market, which is one of*

the foundations of an effectively functioning internal market.

- (13) In the interest of *preserving the smooth functioning of the internal market for research and innovation and in the interest of* legal certainty and considering that legitimate trade secret holders are expected to exercise a duty of care as regards the preservation of the confidentiality of their valuable trade secrets and the monitoring of their use, it appears appropriate to restrict the possibility to initiate actions for the protection of trade secrets to a **■** period of *three years* following the date on which the trade secret holders became aware, or had reason to become aware, of the unlawful acquisition, use or disclosure of their trade secret by a third party.
- (14) The prospect of losing the confidentiality of a trade secret during litigation procedures often deters legitimate trade secret holders from instituting proceedings to defend their trade secrets, thus jeopardising the effectiveness of the measures and remedies provided for. For this reason, it is necessary to establish, subject to appropriate safeguards ensuring the right to a fair trial, specific requirements aimed at protecting the confidentiality of the litigated trade secret in the course of legal proceedings instituted for its defence. These should include the possibility to restrict access to evidence or hearings, or to publish only the non-confidential elements of judicial decisions. *As the main purpose of the proceedings is to assess the nature of the information which is the subject of the dispute, those restrictions should not be such as to prevent at least one person from each of the parties and their respective legal representatives from having full access to all the documents in the file. It should also be for the judge to satisfy himself, when imposing such restrictions, that each of the parties has adequate representation.* Such protection should remain in force after the legal proceedings have ended for as long as the information covered by the trade secret is not in the public domain.
- (15) Unlawful acquisition, *use or disclosure* of a trade secret by a third party could have devastating effects on its legitimate holder since once publicly disclosed it would be impossible for that holder to revert to the situation prior to the loss of the trade secret. As a result, it is essential to provide for fast and accessible interim measures for the immediate termination of the unlawful acquisition, use or disclosure of a trade secret. Such relief must be available without having to await a decision on the substance of

the case, with due respect for the rights of defence and the principle of proportionality having regard to the characteristics of the case in question. Guarantees of a level sufficient to cover the costs and the injury caused to the respondent by an unjustified request may also be required, particularly where any delay would cause irreparable harm to the legitimate holder of a trade secret.

- (16) For the same reason, it is also important to provide for measures to prevent further unlawful use or disclosure of a trade secret. For prohibitory measures to be effective **and proportionate**, their duration ■ should be sufficient to eliminate any commercial advantage which the third party could have derived from the unlawful acquisition, use or disclosure of the trade secret, **including when such a trade secret is used for the provision of services, and should be limited in time so as to avoid the creation of unjustified barriers to competition in the internal market**. In any event, no measure of this type should be enforceable if the information originally covered by the trade secret is in the public domain for reasons that cannot be attributed to the respondent.
- (17) A trade secret may be unlawfully used to design, manufacture, **develop** or market **services or** goods, or components thereof, which may spread across the internal market, thus affecting the commercial interests of the trade secret holder and the functioning of the internal market. In **the cases where unlawful acquisition has been demonstrated** and when the trade secret in question has a significant impact on the quality, value or price of the resulting good or on reducing the cost, facilitating or speeding up its manufacturing or marketing processes, it is important to empower judicial authorities to order appropriate measures with a view to ensure that those goods are not put on the market or are removed from it. Considering the global nature of trade, it is also necessary that these measures include the prohibition of importing those goods into the Union or storing them for the purposes of offering or placing them on the market. Having regard to the principle of proportionality, corrective measures should not necessarily entail the destruction of the goods when other viable options are present, such as depriving the good of its infringing quality or the disposal of the goods outside the market, for example, by means of donations to by charitable organisations.

- (18) A person may have originally acquired a trade secret in good faith but only become aware at a later stage, including upon notice served by the original trade secret holder, that his or her knowledge of the trade secret in question derived from sources using or disclosing the relevant trade secret in an unlawful manner. In order to avoid that under those circumstances the corrective measures or injunctions provided for could cause disproportionate harm to that person, Member States should provide for the possibility, in appropriate cases, of pecuniary compensation being awarded to the injured party as an alternative measure, provided that such compensation does not exceed the amount of royalties or fees which would have been due had that person obtained authorisation to use the trade secret in question, for the period of time for which use of the trade secret could have been prevented by the original trade secret holder. Nevertheless, where the unlawful use of the trade secret would constitute an infringement of law other than that foreseen in this Directive or would be likely to harm consumers, such unlawful use should not be allowed.
- (19) In order to avoid that a person who knowingly, or with reasonable grounds for knowing, unlawfully acquires, uses or discloses a trade secret benefit from such conduct and to ensure that the injured trade secret holder, to the extent possible, is placed in the position in which he or she would have been had that conduct not taken place, it is necessary to provide for adequate compensation of the prejudice suffered as a result of the unlawful conduct. The amount of damages awarded to the injured holder of the trade secret should take account of all appropriate factors, such as loss of earnings incurred by the trade secret holder or unfair profits made by the infringer and, where appropriate, any moral prejudice caused to the trade secret holder. As an alternative, for example where, considering the intangible nature of trade secrets, it would be difficult to determine the amount of the actual prejudice suffered, the amount of the damages might be derived from elements such as the royalties or fees which would have been due had the infringer requested authorisation to use the trade secret in question. The aim is not to introduce an obligation to provide for punitive damages, but to ensure compensation based on an objective criterion while taking account of the expenses incurred by the holder of the trade secret, such as the costs of identification and research.

- (20) To act as a supplementary deterrent to future infringers and to contribute to the awareness of the public at large, it is useful to publicise decisions, including where appropriate through prominent advertising, in cases concerning the unlawful acquisition, use or disclosure of trade secrets, as long as such publication does not result in the disclosure of the trade secret nor disproportionately affect the privacy and reputation of natural persons. ***There is also a necessity to raise awareness, especially for SMEs, of the availability of redress and remedies in cases of unlawful acquisition, use or disclosure of trade secrets.***
- (21) The effectiveness of the measures and remedies available to trade secret holders could be undermined in case of non-compliance with the relevant decisions adopted by the competent judicial authorities. For this reason, it is necessary to ensure that those authorities enjoy the appropriate powers of sanction.
- (22) In order to facilitate the uniform application of the measures for the protection of trade secrets, it is appropriate to provide for systems of cooperation and the exchange of information as between Member States, on the one hand, and between the Member States and the Commission on the other, in particular by creating a network of correspondents designated by Member States. In addition, in order to review whether these measures fulfil their intended objective, the Commission, assisted, as appropriate, by the European Observatory on the Infringements of Intellectual Property Rights, should examine the application of this Directive and the effectiveness of the national measures taken.
- (23) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, notably the right to respect private and family life, the right to the protection of personal data, the freedom of expression and information, ***including media freedom***, the freedom to choose an occupation and right to engage in work, the freedom to conduct a business, the right to property, the right to good administration, access to file and preservation of secrecy of business, the right to an effective remedy and to a fair trial and right of defence.

- (24) It is important that the rights to privacy and personal data protection of any person involved in litigation concerning the unlawful acquisition, use or disclosure of trade secrets and whose personal data are processed are respected. Directive 95/46/EC of the European Parliament and of the Council¹ governs the processing of personal data carried out in the Member States in the context of this Directive and under the supervision of the Member States competent authorities, in particular the public independent authorities designated by the Member States.
- (25) Since the objective of this Directive, namely to achieve a smooth functioning internal market through the establishment of a sufficient and comparable level of redress across the internal market in case of unlawful acquisition, use or disclosure of a trade secret, cannot be sufficiently achieved by Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that same Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (26) This Directive should not aim to establish harmonised rules for judicial cooperation, jurisdiction, the recognition and enforcement of judgments in civil and commercial matters, or deal with applicable law. Other Union instruments which govern such matters in general terms should, in principle, remain equally applicable to the field covered by this Directive.
- (27) This Directive should not affect the application of competition law rules, in particular Articles 101 and 102 of the Treaty on the Functioning of the European Union. The measures provided for in this Directive should not be used to restrict competition unduly in a manner contrary to that Treaty.
- (27a) This Directive should not affect the freedom of movement for workers and the freedom of establishment, in particular as laid down in Articles 48 and 49 of the Treaty on the Functioning of the European Union and Article 15 of the Charter of***

¹ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p.31).

Fundamental Rights of the European Union. This should be taken into account when applying the measures, procedures and remedies provided for in this Directive.

- (28) The measures adopted to protect trade secrets against their unlawful acquisition, disclosure and use should not affect the application of any other relevant law in other areas including *protection of the environment and environmental liability, consumer protection, health and safety requirements, health protection*, intellectual property rights, privacy, access to documents and *information, and* the law of contract. However, where the scope of application of Directive 2004/48/EC of the European Parliament and of the Council¹ and the scope of this Directive overlap, this Directive takes precedence as *lex specialis*,

HAVE ADOPTED THIS DIRECTIVE:

Chapter I

Subject matter and scope

Article 1

Subject matter and scope

1. This Directive lays down rules on the protection against the unlawful acquisition, **use and disclosure** of *undisclosed know-how and commercial business information* (trade secrets).
2. *This Directive shall not affect:*
 - (a) *the freedom and pluralism of the media as enshrined in Article 11(2) of the Charter of Fundamental Rights;*
 - (b) *the application of Union or national rules requiring trade secret holders to disclose, for reasons of public interest, information, including trade secrets,*

¹ Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ L 157, 30.4.2004, p. 45).

to the public or to administrative or judicial authorities for the performance of their duties;

- (c) the disclosure by the Union's institutions and bodies or national public authorities of business-related information they hold pursuant to, and in compliance with, the obligations and prerogatives set out in Union or national law;*
- (d) the use of information, knowledge, experience and skills honestly acquired by employees in the normal course of their previous employment, or in some other contractual relationship, which are not covered by the definition of a trade secret as provided for in point (1) of Article 2;*
- (e) the autonomy of social partners and their rights to enter into collective agreement, in accordance with the Union and national law and practices;*
- (f) Member States' obligations to ensure effective protection against unfair competition, in accordance with their international commitments;*
- (g) Member States' rules of criminal law. However, Member States may not restrict exemptions provided for in Article 4 by applying criminal law provisions which penalise unlawful acquisition, use or disclosure of a trade secret, as defined in point (1) of Article 2.*

This Directive does not provide a trade secret holder with any ground to refuse disclosing information whenever such disclosure is required by law or by administrative or judicial authorities for the performance of their duties. Such disclosure shall be without prejudice to any duty not to further disclose the information or limit its use that may be imposed by Union or national law on the recipient of the information in question.

3. *For the purposes of this Directive, the acquisition of a trade secret shall be considered lawful when obtained by any of the following means:*

- (a) independent discovery or creation;*

- (b) *observation, study, disassembly or testing of a product or object that has been made available to the public or that it is lawfully in the possession of the acquirer of the information who is free from any legally valid duty to limit the acquisition of the trade secret;*
- (c) *exercise of the right of workers or workers' representatives to information and consultation in accordance with Union and national law and/or practices;*
- (d) *any other practice which, under the circumstances, is in conformity with honest commercial practices.*

The acquisition, use and disclosure of trade secrets shall be considered lawful to the extent that such acquisition, use or disclosure is required or allowed by Union or national law, without prejudice to any other duty not to disclose the trade secret or to limit its use that may be imposed by Union or national law.

Article 2

Definitions

For the purposes of this Directive, the following definitions shall apply:

- (1) 'trade secret' means *know-how and business* information which meets all of the following requirements:
 - (a) 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) has commercial value because it is secret;
 - (c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

Experience and skills honestly acquired by employees in the normal course of their employment shall not be considered a trade secret.

- (2) 'trade secret holder' means any natural or legal person lawfully controlling a trade secret;
- (3) 'infringer' means any natural or legal person who has unlawfully acquired, used or disclosed trade secrets;
- (4) 'infringing goods' means goods whose *conception, characteristics, functioning*, manufacturing process or marketing significantly benefits from trade secrets unlawfully acquired, used or disclosed.

Chapter II

Unlawful acquisition, use and disclosure of trade secrets

Article 3

Unlawful acquisition, use and disclosure of trade secrets

1. Member States shall ensure that trade secret holders are entitled to apply for the measures, procedures and remedies provided for in this Directive in order to prevent, or obtain redress for, the unlawful acquisition, use or disclosure of a trade secret.
2. The acquisition of a trade secret without the consent of the trade secret holder shall be considered unlawful whenever carried out *in the following cases*:
 - (a) unauthorised access to or copy of any documents, objects, materials, substances or electronic files, lawfully under the control of the trade secret holder, containing the trade secret or from which the trade secret can be deduced;
 - (b) theft;
 - (c) bribery;
 - (d) deception;

- (e) breach or inducement to breach a confidentiality agreement or any other duty to maintain secrecy;
 - (f) 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:
- (a) has acquired the trade secret unlawfully;
 - (b) is in breach of a *legally valid* confidentiality agreement or any other duty to maintain secrecy of the trade secret;
 - (c) is in breach of a *legally valid* contractual or any other duty to limit the use of the trade secret.
- 3a. *Paragraph 3 does not provide any ground to trade secret holders to limit the use of experience and skills honestly acquired by employees in the normal course of their employment or add any restriction for employees to occupy a new position, to those provided for in their employment contract, in compliance with relevant Union and national law.***
4. The *acquisition*, use or disclosure of a trade secret shall also be considered unlawful whenever a person, at the time of *acquisition*, use or disclosure, knew or should, under the circumstances, have known that the trade secret was obtained *directly or indirectly* from another person who was using or disclosing the trade secret unlawfully within the meaning of paragraph 3.
5. The ■ production, offering or placing on the market of infringing goods, or import, export or storage of infringing goods for those purposes, shall also be considered an unlawful use of a trade secret, *in cases where the person engaging in such activity was, or depending on the circumstances, should have been, aware of the fact that unlawful use had been made of the trade secret within the meaning of paragraph 3.*

Article 4
Exceptions

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:

- (a) for making legitimate use *in accordance with the Charter of Fundamental Rights of the European Union* of the right to freedom of expression and information, *including media freedom*;
- (b) for revealing a misconduct, wrongdoing, *fraud* or illegal activity, provided that the respondent acted in the public interest;
- (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 such disclosure was necessary for that exercise*;
- (d) [REDACTED]
- (e) for the purpose of protecting a *general public interest or any other* legitimate interest, *recognised by Union or national law and through judicial practice*.

Chapter III

Measures, procedures and remedies

SECTION 1

GENERAL PROVISIONS

Article 5

General obligation

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.
2. Those measures, procedures and remedies shall:
 - (a) be fair and equitable;
 - (b) not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays;
 - (c) be effective and dissuasive.

Article 6

Proportionality and abuse of litigation

1. Member States shall ensure that the measures, procedures and remedies provided for in accordance with this Directive are to be applied by the competent judicial authorities in a manner that:
 - (a) is proportionate;
 - (b) avoids the creation of barriers to legitimate trade, ***competition and worker mobility***.

- (c) provides for safeguards against their abuse.
2. 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 **abusively or** in bad faith **■**, 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.

The measures referred to in the first subparagraph shall be without prejudice to the possibility for the respondent to claim damages **■**. ***Member States may provide for those measures to be determined in separate proceedings.***

Article 7

Limitation period

Member States shall ensure that actions for the application of the measures, procedures and remedies provided for in this Directive may be brought within **three 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.

Member States shall determine the rules applying to the suspension and interruption of the limitation period.

Article 8

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

1. Member States shall ensure that the parties, their legal representatives **or 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, **which the**

competent judicial authorities have, in response to a duly reasoned application by the interested party, identified as confidential and 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.*

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:

- (a) where, the alleged trade secret is found *by a final decision* not to fulfil the requirements set *out* in point (1) of Article 2;
- (b) where over time, the information in question becomes generally known among or readily accessible to persons within the circles that normally deal with that kind of information.

2. 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.*

The measures referred to in the first subparagraph shall at least include the possibility:

- (a) to restrict access to any document containing trade secrets *or alleged trade secrets* submitted by the parties or third parties *to a limited number of persons*, in whole or in part *provided that at least one person from each of the parties, and, where appropriate in view of the proceedings, their respective lawyers and/or legal representatives, are given access to the document in full;*
- (b) to restrict access to hearings, when trade secrets *or alleged trade secrets* may be disclosed, and their corresponding records or transcript *to a limited number of persons, provided that it includes at least one person from each of the*

parties, and, where appropriate in view of the proceedings, their lawyers and/or legal representatives;

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

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- 3. When deciding on the granting or the rejection of *measures for the preservation of a trade secret* and assessing *their* proportionality, the competent judicial authorities shall take into account *the need to guarantee 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, and where appropriate third parties, resulting from the granting or rejection of *those measures*.
- 4. Any processing of personal data pursuant to paragraphs 1, 2 and 3 shall be carried out in accordance with Directive 95/46/EC.

SECTION 2

PROVISIONAL AND PRECAUTIONARY MEASURES

Article 9

Provisional 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 *provisional* 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 *provisional* 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 *up* 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, *as an alternative to the measures referred to in paragraph 1*, make the continuation of the alleged unlawful acquisition, 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.***

Article 10

Conditions of application and safeguards

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.
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 shall, if appropriate, take into consideration*** 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 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.
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:

- (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.
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.
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, 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.

SECTION 3

MEASURES RESULTING FROM A DECISION OF THE MERITS OF THE CASE

Article 11

Injunctions and corrective measures

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 *one or more of the following measures* against the infringer:

- (a) the cessation of or, as the case may be, the prohibition of the use or disclosure of the trade secret;
- (b) the prohibition to produce, offer, place on the market or use infringing goods, or import, export or store infringing goods for those purposes;
- (c) the adoption of the appropriate corrective measures with regard to the infringing goods;
- (ca) *the destruction of all or part of any physical and/or electronic media containing or implementing the trade secret or, where appropriate, the delivery to the applicant of all or part of physical and/or electronic media.***

2. The corrective measures referred to in point (c) of paragraph 1 shall include

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- (b) recall of the infringing goods from the market;
- (c) depriving the infringing goods of their infringing quality;
- (d) destruction of the infringing goods or, where appropriate, their withdrawal from the market, provided that such action does not undermine the protection of the trade secret in question;
- (e) the destruction of all or part of any document, object, material, substance or electronic file containing or implementing the trade secret or, where appropriate, the delivery up to the trade secret holder of all or part of those documents, objects, materials, substances and electronic files.

3. Member States shall ensure that, when ordering the withdrawal of the infringing goods from the market, the judicial authorities may order, at the request of the trade secret holder, that the goods be delivered up to holder or to charitable organisations under conditions to be determined by the judicial authorities aimed at ensuring that the goods in question do not re-enter the market.

When considering a request for corrective measures, the seriousness of the infringement, the remedies to be imposed, and the interests of third parties shall be weighed up appropriately, in accordance with the principle of proportionality.

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.

Article 12

Conditions of application, safeguards and alternative measures

1. Member States shall ensure that, in considering a request for the adoption of the injunctions and corrective measures provided for in Article 11 and assessing their proportionality, the competent judicial authorities ***are required to*** take into account ***the specific circumstances of the case. That assessment shall include, where appropriate,*** the value of the trade secret, the measures taken to protect the trade secret, the conduct of the infringer 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.

Member states shall ensure that the competent authorities limit the ***length of*** duration of the measure referred to in point (a) of Article 11(1), ***accordingly, so as to ensure that it is*** sufficient to eliminate any commercial or economic advantage that the infringer could have derived from the unlawful acquisition, disclosure or use of the trade secret ***and that it avoids the creation of unjustified obstacles to fair competition, innovation and labour mobility.***

2. Member States shall ensure that the measures referred to in ***points (a) and (b)*** 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 *directly or indirectly* to the respondent.

3. 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:
 - (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*;
 - (b) execution of the measures in question would cause that person disproportionate harm;
 - (c) pecuniary compensation to the injured party appears reasonably satisfactory.

When the pecuniary compensation is ordered instead of the order referred to in *points (a) and (b)* of Article 11(1), such pecuniary compensation shall not exceed the amount of royalties or fees which would have been due, had that person requested authorisation to use the trade secret in question, for the period of time for which use of the trade secret could have been prohibited.

Article 13

Damages

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 unlawful acquisition, use or disclosure of the trade secret*.
 - 1a. 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.*

2. 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.

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.

Article 14

Publication of judicial decisions

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 printed and electronic media, including the official webpage of the infringer.***
2. Any measure referred to in paragraph 1 of this Article shall preserve the confidentiality of trade secrets as provided for in Article 8.
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 the information on the infringer would allow the identification of a natural person and, if so, whether publication of that information would be justified, in particular in the light of the following criteria:*** the possible harm that such measure may cause to the privacy and reputation of the infringer, ■ the conduct of the infringer in acquiring, disclosing or using the trade secret ■ and the likelihood of further unlawful use or disclosure of the trade secret by the infringer.

Chapter IV

Sanctions, reporting and final provisions

Article 15

Sanctions for non-compliance with the obligations set out in this Directive

Member States shall ensure that the competent judicial authorities may impose sanctions on the parties, their legal representatives and any other person who fails or refuses to comply with any measure adopted pursuant to Articles 8, 9, and 11.

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

The sanctions provided for shall be effective, proportionate and dissuasive.

Article 16

Exchange of information and correspondents

For the purpose of promoting cooperation, including the exchange of information, among Member States and between Member States and the Commission, each Member State shall designate one or more national correspondents for any question relating to the implementation of the measures provided for by this Directive. It shall communicate the details of the national correspondent(s) to the other Member States and the Commission.

Article 17

Reports

1. By XX XX 20XX [three years after the end of the transposition period], the ***European Union Intellectual Property Office***, 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.

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 regard to the potential effects thereof on fundamental rights, worker mobility, protection against unfair competition 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.
3. By XX XX 20XX [eight years after the end of the transposition period], the Commission shall carry out an evaluation of the effects of this Directive and submit a report to the European Parliament and the Council.

Article 18

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by XX XX 20XX [24 months after the date of adoption of this Directive] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 19

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 20

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament

The President

For the Council

The President