

APPENDIX 5

Hogan Lovells' summary of Member States' second trade secrets questionnaire responses

SUMMARY OF SELECTED COUNTRY ANALYSIS

| Member State | Interim relief available? | Protection of information during proceedings? | Specialist judges | No. of civil actions per year/duration of action | Innocent recipients liable? | Types of trade secret protectable | Action against former employees possible? |
|---------------------|---|--|---|--|---|--|---|
| Belgium | Yes if matter is urgent, rights are prima facie valid and relief does not affect the merits of the case (also possible to expedite proceedings on merits under A95 LMPPC if no contract claim). | No. P must describe trade secret in briefs and file relevant documents to prove claim. Hearing and judgment public and must describe secret. No knowledge of any case where hearing was not in public. | No, but Court experts can be appointed. | Not known. Statistics not available. | Not unless they help others to breach contract. | No definition of trade secret but 3 types distinguished: (a) manufacturing secrets (b) trade secrets belonging to employer (c) trade secrets in context of other civil proceedings, Art. 39(2) (TRIPS definition). | Yes. Under Art. 17, 3 of the law of 3 July 1978 on employment contracts. |
| Bulgaria | Yes, for proceedings before the Commission on Protection of Competition and for Court proceedings for | Hearings generally public but Court may restrict proceedings to those persons specifically admitted. But decision open to public. | No, but Court experts can be appointed. | <10 under Law of Protection of Competition and Access to Public information. 1 – 3 years (proceedings before Commission and | No. Fault essential to claim in tort or contract. | A manufacturing or trade secret is any circumstance, information decision or data related to a business activity if measures to protect the | Labour code and case law unclear. Restrictive covenants unenforceable but mere confidentiality clause may be enforceable. |

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| | compensation in tort or contract. No, for proceedings against the State. | | | Court). 8 months to 2 years for administrative court proceedings against state. | | secrecy of the information have been implemented (Law on Protection of Competition). | |
| Germany | Preliminary injunctions available. Not possible to seek information, destruction of goods or payment. | Yes. Parties can apply to exclude public from hearings. | Not technically qualified but usually IP/competition experts. | Not known but probably each District Court has 5 – 15 cases per year. 1 to 2 years to trial. | Yes, in certain circumstances. | Trade and business secrets – in general all valuable information protectable. | Yes. Ex-employees cannot use deliberately memorised information. But ex-employee can use knowledge he "happens to have memorised" so he can further his career. |
| Italy | Yes. Preliminary search orders, seizures and preliminary injunctions available. | Hearings before the investigating judge are private although the final hearing before the panel of judges issuing the decision is public. The Court can order that the public be excluded only for reasons relating to security, public order and to decency. Pleadings are | Most trade secrets cases are heard by IP specialised divisions. Criminal cases on trade secrets are not heard by | No official statistics available as to the number of trade secret cases heard. | No liability for innocent recipients. Art. 99 of IPC clarifies that infringement actions can be brought only against "abusive" appropriation of secret information. | All types of business information and technical/ industrial expertise protectable. | After termination, ex-employee can use general skill and knowledge but not trade secrets. |

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| | | confidential but the final decision is public. | specialist IP judges. | | | | |
| Sweden | Injunctive relief available. If Plaintiff can show probable cause that a trade secret has been subject to unauthorised use, access or disclosure and it can reasonably be assumed that such use or disclosure will continue and diminish the trade secret's value. | Generally all documents received by the Court are public documents but this right may be restricted if necessary to protect the economic circumstances of private subjects. However, the document can only be classified as secret for 20 years under Chapter 36, Article 2 of the Public Access to Information and Secrecy Act. All Court hearings are open to the public but there may be exceptions if information will be presented to which secrecy applies under the Public Access to Information and Secrecy Act. The Court may order the hearing to be held in camera insofar as it relates to the confidential information. | No. | Approximately 20 cases per year. 1.5 to 2 years to trial at first instance | No remedy if a person receives the trade secrets in good faith. | The definition of a trade secret is set out in the first section of the Act: (a) it must concern business or operating conditions of business; (b) it must be kept confidential; and (c) a disclosure must be likely to be detrimental for the competitiveness of the business in question. If these criteria are fulfilled the information is considered a trade secret. | General duty of loyalty of employees extends to breach of confidence after termination of employee's contract. |

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| UK | Interim injunctions and search orders available permitting the plaintiff to search and to take into custody materials containing the confidential information. | The Court can make a variety of orders ensuring that the secret information is not further disclosed including directions that documents are not placed on the open Court file, restricting persons who have access to such documents and having parts of the case heard in private. | Cases involving particularly complex technical subject matter will be heard in the Patents Courts which have technically qualified judges. | Ranging from 21 in 2007 to 95 in 2009 and 45 in 2010. Cases usually take approximately 2 years to trial. | An innocent recipient of trade secrets has a duty to respect confidentiality once they know that the information is confidential. An injunction may be granted in appropriate cases and the innocent recipient required to deliver up any relevant documents. However, no damages in respect of any use or disclosure whilst recipient is unaware of the confidentiality of material. | All secret information which is of commercial value is protectable. | After employment is ended the court will only usually offer protection to high grade confidential information (trade secrets) and not day-to-day information. It may be possible to protect lower grade information after employment by imposing a suitable post-employment contractual restriction (restrictive covenant). |