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Protection of Trade Secrets: State of Play in Bulgaria



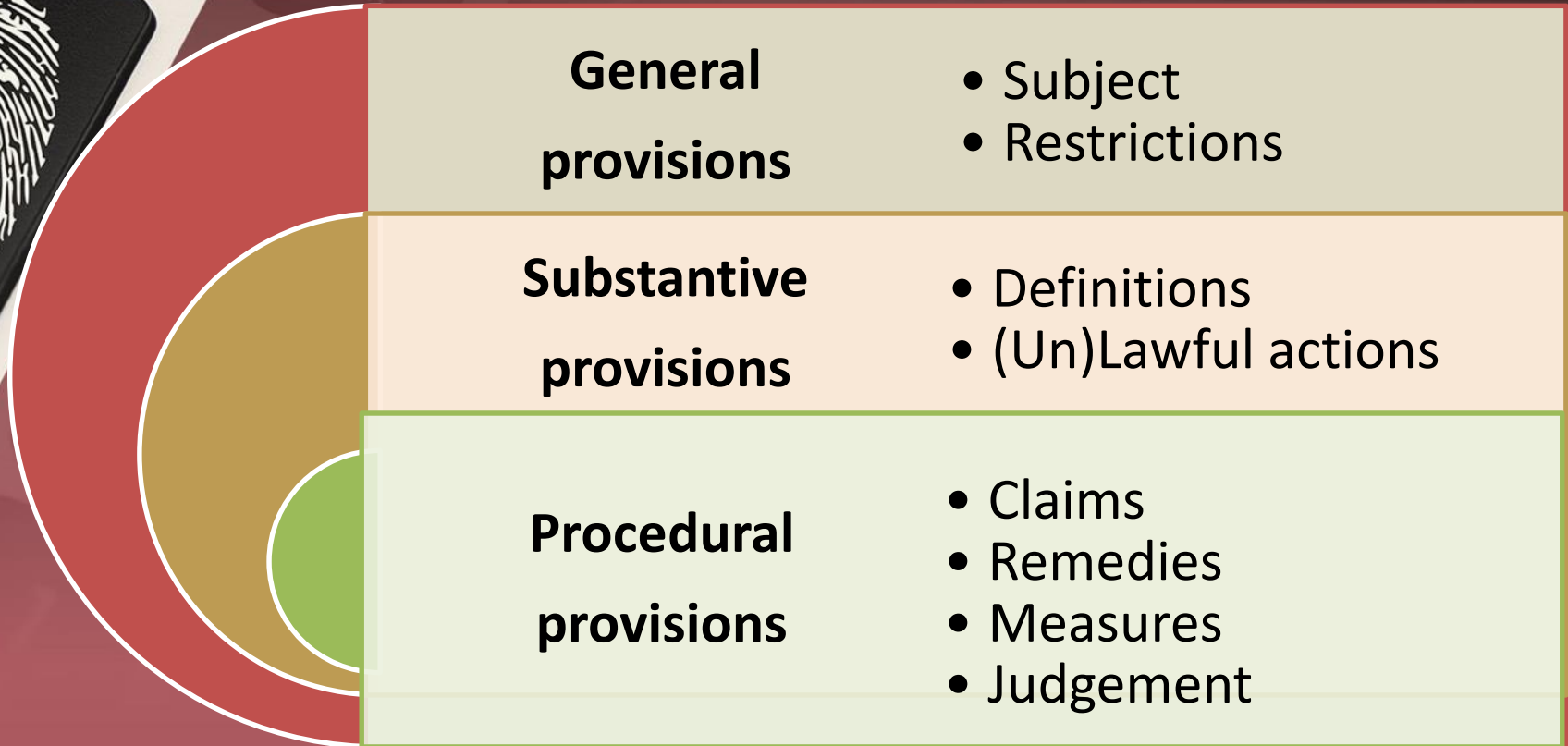
**REGIONAL SEMINAR ON TRADE SECRETS FOR
THE CENTRAL EUROPEAN AND BALTIC STATES**

Tuesday, April 5, 2022

Legislation

- Protection of Trade secrets Act (PTSA), 2019
- Protection of Competition Act (PCA), 2008
- Commerce Act (CA), 1991
- Trademarks and Geographical Indications Act, (TGIA), 2019

Protection of Trade secrets Act - Structure



Protection of Trade secrets Act – Mutual applicability

- establishment of violations
- imposition of sanctions
- compulsory administrative measures

- acquisition, use and disclosure of trade secrets
- in the conduct of business activities
- in violation of good commercial practice

- **Protection of Competition Act**

Art. 2 (3) PTSA

*The decisions of the Commission for Protection of Competition shall not prevent initiating actions and exercising rights under the **Protection of Trade secrets Act**.*

Protection of Trade secrets Act – Definitions

Art. 3, 4, 5 PTSA – Art. 2 (1)(2)(3) DIRECTIVE 2016/943/EU

- TRADE SECRET
- TS HOLDER
- INFRINGER





Protection of Trade secrets Act – Object of infringement

Art. 6 PTSA – Art. 2 (4) DIRECTIVE 2016/943/EU

INFRINGING GOODS

+ SERVICES

(included in the provisions for the claims and measures)

Protection of Trade secrets Act – Unlawful actions

Art. 6 PTSA – Art. 2 (4) DIRECTIVE 2016/943/EU

Unlawful acquisition

... contrary to the honest commercial practices *in the sense of PCA*

Unlawful use or disclosure

The infringer *knew or ought, under the circumstances, to have known* that the TS had been obtained from another person who did the unlawful actions above.

(Incl. production, offering or placing on the market of infringing goods, or the importation, export or storage of infringing goods for those purposes)

Protection of Trade secrets Act - Claims

Art. 10 PTSA – DIRECTIVE 2016/943/EU

Establishment of unlawful acquiring, use or disclosure of a TS, as well as:

- compensation for damages and lost profits
- prohibition of the use or disclosure of the TS
- prohibition of the production and marketing of infringing goods
- destruction/delivery up to the applicant of materials containing TS
- prohibition of offering or providing services

Protection of Trade secrets Act - Provisional measures

Art. 10 (3) PTSA

Order to provide necessary information:

- *producers, distributors, suppliers and other persons, for who the infringed goods were intended*
- *quantities and revenues received from the infringed goods*
- *any relevant documents or materials*
- *the person from whom they have received the TS*
- *persons before whom they have disclosed the TS*

Protection of Trade secrets Act - Provisional measures

Art. 14 (2)(3) PTSA – Art. 10 (2) DIRECTIVE 2016/943/EU

Provisional and precautionary measures

OR

Lodging of **guarantees** intended to ensure the compensation of the TS holder

Amount of the guarantees

= Damages

> Royalties and fees

Protection of Trade secrets Act - Injunctions

Art. 21(2)(3) PTSA – Art. 12 (4) DIRECTIVE 2016/943/EU

- Injunctions – at the expenses of the infringer
UNLESS
- **Particular reasons**

The costs go beyond the objective of the measures

Protection of Trade secrets Act - Reciprocal compensation

Art. 15 (4)(5) PTSA – Art. 11 (5) DIRECTIVE 2016/943/EU

Appropriate compensation for any injury caused by the measures to the respondent or an injured third party

➤ *the costs and damages*

Protection of Trade secrets Act - Damages

Art. 19 PTSA – Art. 14 DIRECTIVE 2016/943/EU

Specific circumstances to be taken into account

- actual prejudice including lost profits
- moral prejudice, *if applicable*
- any unfair profits → infringer

Where there is insufficient evidence of the amount of the damages, the court shall award a lump sum which is at least equal to the amount of royalties or fees which would have been due if the infringer requested authorisation to use the TS, *and the costs of the TS holder, including the costs of identification and researches made and resulted in TS.*

Protection of Trade secrets Act - Limitation period

Art. 11 PTSA – Art. 8 DIRECTIVE 2016/943/EU

Limitation periods

- **5 years** (TS Holder)
- **1 year** (respondent and other affected person)

For the suspension and interruption of the limitation period are applicable the relevant provisions in the Obligations and Contracts Act

Protection of Competition Act – TS Definition

Art. 37, 37b, § 1 (9) PCA

- Acquisition, use and disclosure of manufacturing or trade secrets
 - acquired on condition not to be used or disclosed.
- *unfair trading practices*

Manufacturing or trade secrets - are facts, information, solutions and data related to business activities, for which entitled persons have interest to keep in secret and have taken appropriate measures to ensure that.

Binding force of the decisions of the Courts and Commission

Commerce Act

- Common obligation to keep trade secrets and liability under TSPA
– procurators, commercial agents, commercial assistants, commercial representative, commercial broker and auditors
 - License contract on an invention, utility model, industrial design, mark, topology of integral circuits or know-how
- The licensee shall be bound to keep in secret the information about an unpatented invention, utility model or know-how, which he has been granted the right to use.

Trademarks and Geographical Indications Act

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

- Request by the party at the moment of filing the submissions and evidence
- Assessment by the authority
- Special procedure for receiving the documents
- Two versions of the decision
- Evidence containing blanked/hidden parts



THANK YOU