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COMMISSION STAFF WORKING DOCUMENT

Executive Summary of the Evaluation of Directive 96/9/EC on the legal protection of databases

{SWD(2018) 146 final}

Evaluation Report: Database Directive 96/9/EC

Executive Summary

The main objectives of the Database Directive adopted in 1996 were threefold: to harmonise protection of databases, stimulate investment in them and safeguard the balance between the rights and interests of database producers and users.

The Database Directive provides for two types of protection: **copyright** (Chapter II) and the ***sui generis*** right (Chapter III).

Copyright protects the **structure of databases** which, by reason of the selection or arrangements of their contents, constitute the author's own intellectual creation (standard of originality applies).

By contrast, the more controversial *sui generis* right protects databases regardless of their originality, as long as there has been **substantial investment** in obtaining, verifying or presenting the contents.

Effectiveness: Similar to the previous evaluation[1], the Commission Services' analysis of the Directive effectiveness in achieving its objectives comes to the following conclusions.

- The Database Directive has **effectively harmonised** the national protection regimes reducing national fragmentation. Several decisions by the Court of Justice of the European Union (CJEU) have helped to eliminate any implementation issues.
- Despite providing some benefits at the stakeholder level, the *sui generis* right continues to have **no proven impact** on the overall production of databases in Europe, nor on the competitiveness of the EU database industry.
- The limited scope of protection ensures an **appropriate balance** between rights and interests of database makers and users.

Efficiency: Both the costs and the benefits of the *sui generis* right are moderate, but the benefits seem to be higher. Database makers benefit from an extra layer of protection, especially against third parties, while users benefit mainly from improved legal clarity and lawful users' access rights. No significant regulatory burdens were detected.

[1] EU Commission Services – DG Internal Market, *First Evaluation of the Directive 96/9/EC on the Legal Protection of Databases* (2005)

Given the current narrow scope and characteristics of the *sui generis* right, the economic and legal case for merely simplifying of concepts and processes is limited.

Relevance: The Database Directive is still very relevant as it restricts regulatory fragmentation that could be detrimental to the Digital Single Market. The narrow scope of the right prevents problems in the data economy context.

Coherence: There are no major inconsistencies between the Database Directive and other EU legislation. However, a clarification of how it interacts with the Public Sector Information Directive is needed.

EU-added value: The harmonisation of key legal rules about databases across the EU continues to be the central benefit of the Database Directive. In the context of the online, cross-border Digital Single Market, the importance of the EU intervening in the field has substantially increased.

It needs to be pointed out that due to the 2004 CJEU decisions[2], which clarified the scope of the *sui generis* right, it is assumed that the *sui generis* right does not apply to databases that are the by-products of the main activity of an organisation. This means that the *sui generis* right **does not apply broadly to the data economy** (machine-generated data, IoT devices, big data, AI, etc.); it only covers databases that contain data obtained from external sources (for example industries like publishers, who seek out data in order to commercialise databases). This limited scope makes the situation relatively efficient.

The Commission Services consider that engaging in a process of **reforming** the *sui generis* right would at this stage be **largely disproportionate** to its overall policy potential or the limited range of problems it currently generates for stakeholders. Moreover, the *sui generis* right remains valued by many of the stakeholders affected.

While keeping the **status quo** seems to be a good option, any meaningful move towards a policy intervention on the *sui generis* right would need to be substantial. It would need to build a stronger case that takes into account the policy debates around the data economy. The application of the *sui generis* right in the data economy context needs to be closely tracked.

[2] *Fixtures Marketing Ltd v. Oy Veikkaus Ab* (C-46/02, 9/11/2004), *Fixtures Marketing Ltd v. Svenska Spel Ab* (C-338/02, 9/11/2004) *British Horseracing Board Ltd v. William Hill* (C-203/02, 9/11/2004) *Fixtures Marketing Ltd v. OPAP* (C-444/02, 9/11/2004)

To prepare such policy intervention, a broader range of stakeholders would need to engage in strategic reflection on the concrete design and potential benefits that a considerably reformulated *sui generis* right might have for the competitiveness of the **overall European data industry.**