Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

3 June 2021 *

(Reference for a preliminary ruling – Legal protection of databases – Directive 96/9/EC – Article 7 – *Sui generis* right of makers of databases – Prohibition on any third party to 'extract' or 're-utilise', without the maker's permission, the whole or a substantial part of the contents of the database – Database freely accessible on the Internet – Meta search engine specialising in job advertisement searches – Extraction and/or re-utilisation of the contents of a database – Risk to the substantial investment in the obtaining, verification or presentation of the content of a database)

In Case C-762/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Rīgas apgabaltiesas Civillietu tiesas kolēģija (Regional Court, Riga (Civil Law Division), Latvia), made by decision of 14 October 2019, received at the Court on 17 October 2019, in the proceedings

'CV-Online Latvia' SIA

v

'Melons' SIA,

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, M. Ilešič (Rapporteur), E. Juhász, C. Lycourgos and I. Jarukaitis, Judges,

Advocate General: M. Szpunar,

Registrar: M. Aleksejev, Head of Unit,

having regard to the written procedure and further to the hearing on 22 October 2020,

after considering the observations submitted on behalf of:

– 'CV-Online Latvia' SIA, by L. Fjodorova and U. Zeltiņš, advokāti,

– 'Melons' SIA, by A. Upenieks,

* Language of the case: Latvian.

– the Latvian Government, initially by V. Soņeca, K. Pommere and L. Juškeviča, and subsequently by K. Pommere, acting as Agents,

– the European Commission, by J. Samnadda and E. Kalniņš, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 January 2021,

gives the following

Judgment

1 This reference for a preliminary ruling relates to the interpretation of Article 7(2) of Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ 1996 L 77, p. 20).

2 The request has been made in proceedings between 'CV-Online Latvia' SIA ('CV-Online') and 'Melons' SIA concerning the display by the latter, in the list of results generated by its search engine, of a hyperlink to CV-Online's website and the meta tags inserted by CV-Online in the programming of that site.

Legal context

EU law

3 Recitals 7, 39 to 42 and 47 of Directive 96/9 state:

'(7) Whereas the making of databases requires the investment of considerable human, technical and financial resources while such databases can be copied or accessed at a fraction of the cost needed to design them independently;

…

(39) Whereas, in addition to aiming to protect the copyright in the original selection or arrangement of the contents of a database, this Directive seeks to safeguard the position of makers of databases against misappropriation of the results of the financial and professional investment made in obtaining and collection the contents by protecting the whole or substantial parts of a database against certain acts by a user or competitor;

(40) Whereas the object of this *sui generis* right is to ensure protection of any investment in obtaining, verifying or presenting the contents of a database for the limited duration of the right; whereas such investment may consist in the deployment of financial resources and/or the expending of time, effort and energy;

(41) Whereas the objective of the *sui generis* right is to give the maker of a database the option of preventing the unauthorised extraction and/or re-utilisation of all or a substantial part of the contents of that database; whereas the maker of a database is the person who takes the initiative and the risk of investing; whereas this excludes subcontractors in particular from the definition of maker;

(42) Whereas the special right to prevent unauthorised extraction and/or [re-utilisation] relates to acts by the user which go beyond his legitimate rights and thereby harm the investment; whereas the right to prohibit extraction and/or [re-utilisation] of all or a substantial part of the contents relates not only to the manufacture of a parasitical competing product but also to any user who, through his acts, causes significant detriment, evaluated qualitatively or quantitatively, to the investment;

…

(47) Whereas, in the interests of competition between suppliers of information products and services, protection by the *sui generis* right must not be afforded in such a way as to facilitate abuses of a dominant position, in particular as regards the creation and [distribution] of new products and services which have an intellectual, documentary, technical, economic or commercial added value; whereas, therefore, the provisions of this Directive are without prejudice to the application of [EU] or national competition rules;'

4 Under Chapter I of the Directive, entitled 'Scope', Article 1(1) and (2) provides:

'1. This Directive concerns the legal protection of databases in any form.

2. For the purposes of this Directive, "database" shall mean a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means.'

5 Under Chapter III of that directive, entitled '*Sui generis* right', Article 7(1), (2) and (5) provides:

'1. Member States shall provide for a right for the maker of a database which shows that there has been qualitatively and/or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents to prevent extraction and/or [re-utilisation] of the whole or of a substantial part, evaluated qualitatively and/or quantitatively, of the contents of that database.

2. For the purposes of this Chapter:

(a) "extraction" shall mean the permanent or temporary transfer of all or a substantial part of the contents of a database to another medium by any means or in any form;

(b) ["re-utilisation"] shall mean any form of making available to the public all or a substantial part of the contents of a database by the distribution of copies, by renting, by on-line or other forms of transmission. The first sale of a copy of a database within [the European Union] by the rightholder or with his consent shall exhaust the right to control resale of that copy within [the Union].

Public lending is not an act of extraction or [re-utilisation].

…

5. The repeated and systematic extraction and/or [re-utilisation] of insubstantial parts of the contents of the database implying acts which conflict with a normal exploitation of that database

or which unreasonably prejudice the legitimate interests of the maker of the database shall not be permitted.'

6 Lastly, according to Article 13 of that directive:

'This Directive shall be without prejudice to provisions concerning in particular … laws on restrictive practices and unfair competition …'

Latvian law

7 The provisions of Directive 96/9 relating to the *sui generis* right were transposed into Latvian law in Articles 57 to 62 of the Autortiesību likums (Law on copyright) of 6 April 2000 (*Latvijas Vēstnesis*, 2000, No 148/150), as amended by the Law of 22 April 2004 (*Latvijas Vēstnesis*, 2004, No 69).

8 Article 57(1) and (2) of that law provides that the maker of a database, in respect of which there has been qualitatively and/or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents (Article 5(2)) shall mean the natural or legal person who has taken the initiative of creating the database and assumed the risk of the investment. The maker of a database shall have the right to prevent the following activities in respect of the whole or of a substantial part (evaluated qualitatively and/or quantitatively), of the contents of that database:

– extraction: the permanent or temporary transfer of all or a substantial part of the contents of a database to another medium by any means or in any form;

– re-utilisation: any form of making available to the public all or a substantial part of the contents of a database, including by the distribution of copies, by renting, by online or other forms of transmission.

The dispute in the main proceedings and the questions referred for a preliminary ruling

9 CV-Online, a company incorporated under Latvian law, operates the website www.cv.lv. That website includes a database, developed and regularly updated by CV-Online, containing job advertisements published by employers.

10 The website www.cv.lv is also equipped with meta tags of the 'microdata' type. Those tags, which are not visible when the CV-Online web page is opened, allow Internet search engines to better identify the content of each page in order to index it correctly. In the case of CV-Online's website, those meta tags contain, for each job advertisement in the database, the following key words: 'job title', 'name of the undertaking', 'place of employment' and 'date of publication of the notice'.

11 Melons, also a company incorporated under Latvian law, operates the website www.kurdarbs.lv, which is a search engine specialising in job advertisements. That search engine makes it possible to carry out a search on several websites containing job advertisements, according to various criteria, including the type of job and the place of employment. By means of hyperlinks, the website www.kurdarbs.lv refers users to the websites on which the information sought was initially published, including CV-Online's website. By clicking on such a link, the user can, inter

alia, access the website www.cv.lv, in order to become acquainted with that site and the entirety of its contents. The information contained in the meta tags inserted by CV-Online in the programming of its website is also displayed in the list of results obtained when using the specialised search engine of Melons.

12 Taking the view that there is a breach of its *sui generis* right under Article 7 of Directive 96/9, CV-Online brought an action against Melons. It maintains that Melons 'extracts' and 're-utilises' a substantial part of the contents of the database on the website www.cv.lv.

13 The court of first instance found that there had been a breach of that right, on the ground that there was a 're-utilisation' of the database.

14 Melons brought an appeal against the judgment at first instance before the Rīgas apgabaltiesas Civillietu tiesas kolēģija (Regional Court, Riga (Civil Law Division), Latvia). It maintains that its website does not provide online transmission, namely, that it does not operate 'in real time'. Melons also claims that a distinction must be drawn between the website www.cv.lv and the database which it contains. It submits, in that regard, that it is the meta tags used by CV-Online that cause the information relating to the job advertisements to appear in the results obtained by means of the www.kurdarbs.lv search engine and that those meta tags are not part of the database. Melons claims that it was precisely because CV-Online wanted the search engines to show that information that CV-Online inserted those meta tags in the programming of its site.

15 In those circumstances, the Rīgas apgabaltiesas Civillietu tiesas kolēģija (Regional Court, Riga (Civil Law Division)) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Should the defendant's activities, which consist in using a hyperlink to redirect end users to the applicant's website, where they can consult a database of job advertisements, be interpreted as falling within the definition of "re-utilisation" in Article 7(2)(b) of [Directive 96/9], more specifically, as the re-utilisation of the database by another form of transmission?

(2) Should the information containing the meta tags that is shown in the defendant's search engine be interpreted as falling within the definition of "extraction" in Article 7(2)(a) of [Directive 96/9], more specifically, as the permanent or temporary transfer of all or a substantial part of the contents of a database to another medium by any means or in any form?'

Consideration of the questions referred

16 It should be noted as a preliminary point that, according to settled case-law, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to decide the case before it. To that end, the Court may have to reformulate the questions referred to it (judgment of 25 November 2020, *SABAM*, C-372/19, EU:C:2020:959, paragraph 20 and the case-law cited).

17 In the present case, it is apparent from the information in the documents before the Court that the issue raised in the main proceedings concerns the compatibility of the operation of a specialised search engine with the *sui generis* right set out in Article 7 of Directive 96/9. By its questions referred for a preliminary ruling, the referring court is asking, more specifically, whether, first, the display, by a specialised search engine, of a hyperlink redirecting the user of that search engine to a website, provided by a third party, where the contents of a database concerning job advertisements can be consulted, falls within the definition of 're-utilisation' in Article 7(2)(b) of Directive 96/9, and, second, whether the information from the meta tags of that website displayed by that search engine is to be interpreted as falling within the definition of 'extraction' in Article 7(2)(a) of that directive.

18 The referring court submits that the judgments handed down by the Court concerning Article 7 of Directive 96/9 (see, inter alia, the judgment of 19 December 2013, *Innoweb*, C-202/12, EU:C:2013:850) do not support the conclusion that there is 'extraction' or 're-utilisation', within the meaning of that article, where, as in the present case, the operator of a specialised search engine displays, in the list of results obtained by the use of that engine, first, a hyperlink to a website, provided by a third party and containing a database, and, second, the information from meta tags which the maker of that database has inserted in the programming of its own website.

19 In that regard, it should be noted that, in the present case, the selection of job advertisements to which the hyperlinks refer is made using the specialised search engine provided by Melons. That search engine indexes and copies on its own server the content of websites with job advertisements, such as the 'www.cv.lv' website, and then allows searches to be made of that indexed content according to criteria such as the nature of the job and the place of employment.

20 In those circumstances, it must be held that, by those two questions, which it is appropriate to examine together, the referring court is asking, in essence, whether Article 7(1) and (2) of Directive 96/9 must be interpreted as meaning that an Internet search engine specialising in searching the contents of databases, which copies and indexes the whole or a substantial part of a database freely accessible on the Internet and then allows its users to search that database on its own website according to criteria relevant to its content, is 'extracting' and 're-utilising' the content of that database within the meaning of that provision, and that the maker of such a database is entitled to prohibit such extraction or re-utilisation of that same database.

21 In order to answer those questions, it is necessary, first of all, to define the scope and purpose of the protection of the *sui generis* right under Directive 96/9.

22 In this respect, it is apparent, in particular, from recitals 40 and 41 of Directive 96/9, that the purpose of the *sui generis* right is to ensure the protection of a substantial investment in the obtaining, verification or presentation of the contents of a database for the limited duration of the right by granting the maker of a database the possibility of preventing the unauthorised extraction and/or re-utilisation of the whole or a substantial part of the contents of the database. The Court has stated that the purpose of the right provided for in Article 7 of Directive 96/9 is to ensure that the person who has taken the initiative and assumed the risk of making a substantial investment in terms of human, technical and/or financial resources in the setting up and operation of a database receives a return on his or her investment by protecting him or her against the unauthorised appropriation of the results of that investment (judgment of 19 December 2013, *Innoweb*, C-202/12, EU:C:2013:850, paragraph 36 and the case-law cited).

23 The Court has also held, relying in particular on recitals 39, 42 and 48 of Directive 96/9, that the objective pursued by the EU legislature through the introduction of a *sui generis* right is therefore to stimulate the establishment of data storage and processing systems which contribute to the development of an information market against a background of exponential growth in the amount of information generated and processed annually in all sectors of activity (judgment of 19 December 2013, *Innoweb*, C-202/12, EU:C:2013:850, paragraph 35 and the case-law cited).

24 As regards, in the first place, the conditions under which the database may be protected by the *sui generis* right under Article 7 of Directive 96/9, it should be noted that, in accordance with that article, the protection of a database by that right is justified only if there has been qualitatively and/or quantitatively a substantial investment in the obtaining, verification or presentation of the contents of that database (see, to that effect, judgment of 19 December 2013, *Innoweb*, C-202/12, EU:C:2013:850, paragraph 22).

25 In accordance with the Court's settled case-law, investment in the obtaining of the contents of a database concerns the resources used to seek out existing independent materials and collect them in the database, and not to the resources used for the creation as such of independent materials (judgments of 9 November 2004, *The British Horseracing Board and Others*, C-203/02, EU:C:2004:695, paragraph 31, and *Fixtures Marketing*, C-338/02, EU:C:2004:696, paragraph 24).

26 Next, the concept of an investment in the verification of the contents of a database must be understood to refer to the resources used, with a view to ensuring the reliability of the information contained in that database, to monitor the accuracy of the materials collected when the database was created and during its operation (judgment of 9 November 2004, *The British Horseracing Board and Others*, C-203/02, EU:C:2004:695, paragraph 34).

27 Lastly, investment in the presentation of the contents of the database includes the means of giving that database its function of processing information, that is to say those used for the systematic or methodical arrangement of the materials contained in that database and the organisation of their individual accessibility (judgments of 9 November 2004, *Fixtures Marketing*, C-338/02, EU:C:2004:696, paragraph 27; *Fixtures Marketing*, C-444/02, EU:C:2004:697, paragraph 43; and *Fixtures Marketing*, C-46/02, EU:C:2004:694, paragraph 37).

28 Since the questions referred for a preliminary ruling are based on the premiss that CV-Online's database satisfies the condition referred to in paragraph 24 of the present judgment, it is for the referring court to examine, where appropriate, whether the conditions laid down in Article 7 of Directive 96/9 are satisfied for the grant of protection by the *sui generis* right, including whether the meta tags provided by CV-Online could themselves be regarded as constituting a substantial part of the protected database.

29 As regards, in the second place, the criteria for concluding that an act of the user constitutes an 'extraction' and/or 're-utilisation' within the meaning of Directive 96/9, it must be borne in mind that Article 7(2)(a) thereof defines 'extraction' as 'the permanent or temporary transfer of all or a substantial part of the contents of a database to another medium by any means or in any form'. Under Article 7(2)(b) of that directive, 're-utilisation' covers 'any form of making available to the public all or a substantial part of the contents of a database by the distribution of copies, by renting, by on-line or other forms of transmission'.

30 On the basis of the objective pursued by the EU legislature through the establishment of a *sui generis* right, the Court has adopted a broad interpretation of the concept of 're-utilisation' (see, to that effect, judgment of 19 December 2013, *Innoweb*, C-202/12, EU:C:2013:850, paragraphs 33 and 34), and of the concept of 'extraction' (see, to that effect, judgment of 9 October 2008, *Directmedia Publishing*, C-304/07, EU:C:2008:552, paragraphs 31 and 32).

31 Thus, it is apparent from the Court's case-law that those concepts of 'extraction' and 're-utilisation' must be interpreted as referring to any act of appropriating and making available to the public, without the consent of the maker of the database, the results of his or her investment, thus depriving him or her of revenue which should have enabled him or her to redeem the cost of that investment (judgment of 9 November 2004, *The British Horseracing Board and Others*, C-203/02, EU:C:2004:695, paragraph 51).

32 More specifically, with regard to the operation of a specialised search engine, the Court has held that the operator of a specialised meta search engine was 're-utilising', within the meaning of Article 7(2)(b) of Directive 96/9, the whole or a substantial part of the contents of a database, contained in a website belonging to a third party, where it provided an indeterminate number of end users with a device enabling them to search the data contained in that database and thus offered access to the contents of the database by a means other than that provided for by the maker of that database. The Court pointed out that such an activity undermines the *sui generis* right of the maker of the database, since it deprives that maker of income which would enable him or her to redeem the cost of his or her investment. In such a case, the user no longer has any need to proceed via the homepage and the search form of the third party's database, since he or she can explore that database directly using the service of the operator of the meta search engine (see, to that effect, judgment of 19 December 2013, *Innoweb*, C-202/12, EU:C:2013:850, paragraphs 40 to 42).

33 In the present case, it is apparent from the order for reference and the observations of the parties to the main proceedings, and from information obtained at the hearing, and highlighted by the Advocate General in point 33 of his Opinion, that a specialised search engine such as that at issue in the main proceedings does not utilise the search forms of the websites on which it enables searches to be carried out, and does not translate in real time the queries of its users into the criteria used by those forms. However, it regularly indexes those sites and keeps a copy on its own servers. Next, by using its own search form, it enables its users to carry out searches according to the criteria which it offers, such searches being carried out among the data that have been indexed.

34 While it is true that the operation of the search engine such as that at issue in the main proceedings is different from that at issue in the case which gave rise to the judgment of 19 December 2013, *Innoweb* (C-202/12, EU:C:2013:850), the fact remains that that search engine makes it possible to explore simultaneously, by means other than that provided for by the maker of the database concerned, the entire content of several databases, including that of CV-Online, by making that content available to its own users. By providing the possibility of searching several databases simultaneously, according to criteria relevant from the point of view of jobseekers, that specialised search engine gives users access, on its own website, to job advertisements contained in those databases.

35 Thus, a search engine such as that at issue in the main proceedings makes it possible to explore all the data contained in the databases freely accessible on the Internet, including CV-Online's website, and provides its users with access to the entirety of the content of those databases by a

means other than that provided for by the maker of those databases. Furthermore, the making available of such data is directed at the public, within the meaning of Article 7(2)(b) of Directive 96/9, since anyone at all can use such a search engine (see, to that effect, judgment of 19 December 2013, *Innoweb*, C-202/12, EU:C:2013:850, paragraph 51).

36 Moreover, by indexing and copying the content of the websites on its own server, that search engine transfers the content of the databases that comprise those websites to another medium.

37 It follows that such a transfer of the substantial contents of the databases concerned and such a making available of those data to the public, without the consent of the person who created them, are, respectively, measures of extraction and re-utilisation of those databases, prohibited by Article 7(1) of Directive 96/9, provided that they have the effect of depriving that person of income intended to enable him or her to redeem the cost of that investment. As the Advocate General stated in point 36 of his Opinion, provision of hyperlinks to the advertisements on CV-Online's website and the reproduction of the information in the meta tags on that site are merely external manifestations, of secondary importance, of that extraction and that re-utilisation.

38 It is therefore still necessary to examine whether the acts referred to in paragraphs 35 and 36 above are such as to affect the investment of the maker of the database which has been transferred to another medium and has been made available to the public.

39 In that regard, the Court has already held that the *sui generis* right provided for by Article 7 of Directive 96/9 is intended to protect the maker of the database against acts by the user which go beyond the legitimate rights of that user and thereby harm the investment of the maker (see, to that effect, judgment of 9 November 2004, *The British Horseracing Board and Others*, C-203/02, EU:C:2004:695, paragraphs 45 and 46). In that context, Article 7(1) of Directive 96/9, read in conjunction with recital 42 thereof, is intended to prevent a situation in which a user, through his or her acts, causes significant detriment, evaluated qualitatively or quantitatively, to the investment (see, to that effect, judgment of 9 November 2004, *The British Horseracing Board and Others*, Case C-203/02, EU:C:2004:695, paragraph 69).

40 The Court has also held that the maker of a database enjoys protection against the activity of the operator of a specialised meta search engine which comes close to the manufacture of a parasitical competing product as referred to in recital 42 of Directive 96/9 (see, to that effect, judgment of 19 December 2013, *Innoweb*, C-202/12, EU:C:2013:850, paragraph 48). Such an activity would create a risk that database makers would lose income and thus be deprived of the revenue that should enable them to redeem their investment in setting up and operating the databases (see, to that effect, judgment of 19 December 2013, *Innoweb*, C-202/12, EU:C:2013:850, paragraphs 41 to 43).

41 In that regard, it is necessary to strike a fair balance between, on the one hand, the legitimate interest of the makers of databases in being able to redeem their substantial investment and, on the other hand, that of users and competitors of those makers in having access to the information contained in those databases and the possibility of creating innovative products based on that information.

42 It should be borne in mind that the activities of content aggregators on the Internet, such as the defendant in the main proceedings, also serve to achieve the objective, referred to in paragraph 23 of the present judgment, of stimulating the establishment of data storage and processing systems in order to contribute to the development of the information market. As the

Advocate General observed, in essence, in point 41 of his Opinion, those aggregators contribute to the creation and distribution of products and services with added value in the information sector. By offering their users a unified interface enabling them to search several databases according to criteria relevant to their content, they allow the information on the Internet to be better structured and to be searched more efficiently. They also contribute to the smooth functioning of competition and to the transparency of offers and prices.

43 As is apparent from paragraph 24 of the present judgment, Article 7(1) of Directive 96/9 reserves the protection conferred by the *sui generis* right to databases the creation or operation of which requires a qualitatively or quantitatively substantial investment.

44 It follows that, as the Advocate General observed, in essence, in points 43 and 46 of his Opinion, the main criterion for balancing the legitimate interests at stake must be the potential risk to the substantial investment of the maker of the database concerned, namely the risk that that investment may not be redeemed.

45 Finally, it should be added that, as stated in Article 13 of Directive 96/9, the provisions of that directive are without prejudice to the competition rules of EU law or that of the Member States.

46 In the main proceedings, it is therefore for the referring court, in order to rule on CV-Online's right to prohibit the extraction or re-utilisation of the whole or a substantial part of the contents of that database, to ascertain, in the light of all the relevant circumstances, first, whether the obtaining, verification or presentation of the contents of the database concerned attests to a substantial investment, and, second, whether the extraction or re-utilisation in question constitutes a risk to the possibility of redeeming that investment.

47 In the light of all the foregoing considerations, the answer to the questions referred is that Article 7(1) and (2) of Directive 96/9 must be interpreted as meaning that an Internet search engine specialising in searching the contents of databases, which copies and indexes the whole or a substantial part of a database freely accessible on the Internet and then allows its users to search that database on its own website according to criteria relevant to its content, is 'extracting' and 're-utilising' the content of that database within the meaning of that provision, which may be prohibited by the maker of such a database where those acts adversely affect its investment in the obtaining, verification or presentation of that content, namely that they constitute a risk to the possibility of redeeming that investment through the normal operation of the database in question, which it is for the referring court to verify.

Costs

48 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fifth Chamber) hereby rules:

Article 7(1) and (2) of Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases must be interpreted as meaning that an Internet search engine specialising in searching the contents of databases, which copies and indexes the whole or a substantial part of a database freely accessible on the Internet and

then allows its users to search that database on its own website according to criteria relevant to its content, is 'extracting' and 're-utilising' that content within the meaning of that provision, which may be prohibited by the maker of such a database where those acts adversely affect its investment in the obtaining, verification or presentation of that content, namely that they constitute a risk to the possibility of redeeming that investment through the normal operation of the database in question, which it is for the referring court to verify.

[Signatures]