

Proposal for a Council Decision on the conclusion of an agreement in the form of an Exchange of Letters with the United Kingdom of Great Britain and Northern Ireland on behalf of the Isle of Man extending the legal protection of databases as provided for in Chapter III of Directive 96/9/EC

(2002/C 331 E/49)

COM(2002) 506 final

(Submitted by the Commission on 17 September 2002)

EXPLANATORY MEMORANDUM

Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases ⁽¹⁾ harmonises certain aspects of the copyright protection provided for databases and creates an exclusive *sui generis* right for the makers of databases. The object of this *sui generis* right is to ensure protection of substantial investment in obtaining, verifying or presenting the contents of a database for the limited duration of the right. The Directive provides that the *sui generis* right applies to databases whose makers or rightholders are nationals of a Member State or who have their habitual residence in the territory of the Community. Protection is also to be available to companies and firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community. Agreements extending the *sui generis* right to databases not covered by the Directive shall be concluded by the Council acting on a proposal from the Commission on the basis of reciprocity. This would be the first reciprocity agreement on database protection.

The Isle of Man is a dependent territory of the UK, with a special relationship with the UK which protects its internal self-government. In return, the Manx government undertakes to act consistently with UK interests. Generally speaking, Community legislation does not apply to the Isle of Man. However, since 1968 the Isle of Man has been part of the Union's customs territory, so that the Union's rules on the free movement of goods are applied to the Isle ⁽²⁾.

The UK on behalf of the Isle of Man has asked that steps be taken to extend the *sui generis* protection to the Isle of Man. The Isle of Man has adopted its Copyright (Amendment) Act 1999, which amends the Isle of Man's existing copyright law in line with the provisions in the Directive 96/9/EEC, and creates a new *sui generis* right against the unauthorised extraction and re-utilisation of the contents of a database for the period of 15 years. The database provisions of this Act were brought into force on 1 April 2000 by the Copyright (Amendment) Act 1999 (Appointed Day) Order 2000, (S.D. 103/00). According to Article 11(1) of the Act, the new database right is granted to British citizens, residents within the Island and certain legal persons established under the law of the Isle only. However, Article 11(4) of the Manx Copyright Act provides for the possibility to extend the protection to third country nationals and enterprises by order of the Governor in Council. The Council adopted the negotiating directives and the negotiating mandate on 22 July 2002.

⁽¹⁾ OJ L 77, 27.3.1996, p. 20.

⁽²⁾ Council Regulation (EEC) No 802/68 of 27 June 1968 (OJ L 148, 28.6.1968, p. 1).

THE COUNCIL OF THE EUROPEAN UNION,

Whereas:

Having regard to the Treaty establishing the European Community,

(1) The right provided for in Article 7 of Directive 96/9/EC applies to databases whose makers or rightholders qualify for protection under Article 11(1) and (2) of that Directive.

Having regard to Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases ⁽¹⁾, and in particular Article 11(3) thereof,

(2) The Isle of Man legislation on the protection of databases is in conformity with the provisions of Directive 96/9/EC and offers protection equivalent to that provided for in Chapter III thereof. The Isle of Man intends to extend the application of that legislation to nationals of the Member States of the European Community and the Member Countries of the European Economic Area.

Having regard to the proposal from the Commission,

⁽¹⁾ OJ L 77, 27.3.1996, p. 20.

(3) The Isle of Man legislation therefore qualifies for an extension of the protection provided for in Chapter III of Directive 96/9/EC. The term of any protection thus extended should, however, not exceed that available pursuant to Article 10 of Directive 96/9/EC.

(4) The Agreement, in the form of an Exchange of Letters, extending to the Isle of Man the protection provided for in Chapter III of Directive 96/9/EC should be approved accordingly,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement in the form of an Exchange of Letters between the European Community and the United Kingdom of Great

Britain and Northern Ireland on behalf of the Isle of Man extending the legal protection of databases as provided for in Chapter III of Directive 96/9/EC is hereby approved on behalf of the Community.

The text of the Agreement in the form of an Exchange of Letters is set out in the Annex.

Article 2

The President of the Council is hereby authorised to designate the person empowered to sign the agreement and the letter to the Isle of Man in order to express the consent of the Community to be bound.

Exchange of Letters between the United Kingdom of Great Britain and Northern Ireland, on behalf of the Isle of Man and the European Community on the reciprocal extension of the protection of sui generis rights in databases

A. Letter from the United Kingdom of Great Britain and Northern Ireland, on behalf of the Isle of Man

London, ⁽¹⁾

Sir,

I have the honour to propose that the following Agreement be concluded with a view to extending the sui generis protection of databases to the Isle of Man.

Agreement in the form of an Exchange of Letters with the United Kingdom of Great Britain and Northern Ireland on behalf of the Isle of Man extending the legal protection of databases as provided for in Chapter III of Directive 96/9/EC

THE EUROPEAN COMMUNITY AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND ON BEHALF OF THE ISLE OF MAN

Desiring to enhance and stimulate trade in databases and their production and distribution,

Recognising that both the European Community and the Isle of Man provide for the sui generis protection of databases where it is shown that the obtaining, verification or presentation thereof has entailed substantial investment,

Recognising that the protection under Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the Legal Protection of Databases to databases is limited to database makers and rightholders who are nationals of a Member State of the European Community or who have their habitual residence in the territory of the Community and to companies and firms formed in accordance with the law of a Member State and complying with the conditions of Article 11(2) of the said Directive, but that such protection may be extended to third country rightholders,

HAVE AGREED AS FOLLOWS:

Article 1

Each Contracting Party shall provide for a sui generis protection of databases as provided for in Chapter III of Directive 96/9/EC and shall extend that sui generis protection to databases whose makers or rightholders are

- (a) natural persons who have their habitual residence in the territory of the other Contracting Party;
- (b) companies or firms formed in accordance with the law of the Isle of Man or the law of one of the Member States of the European Community and having their registered office, central administration or principal place of business within the territory of a Contracting Party.

Where a company or firm as referred to in point (b) of the first paragraph has only its registered office in the territory of a Contracting Party, its operations must be genuinely linked on an ongoing basis with the economy of a Contracting Party.

⁽¹⁾ [This date should be the day of the Council Decision.]

Article 2

The duration of protection for databases shall be in accordance with Article 10 of Directive 96/9/EC.

Article 3

This Agreement shall take effect on ⁽¹⁾

I would be grateful if you would confirm the agreement of the European Community to the Agreement set out above and I propose that this letter and your letter in reply constitute an Agreement between our two authorities.

Please accept, Sir, the assurance of my highest consideration.

For the United Kingdom of Great Britain and Northern Ireland, on behalf of the Isle of Man

⁽¹⁾ [This date should be the first day of the third month following the date of publication in the Official Journal.]

*B. Letter from the European Community*Brussels, ⁽¹⁾

Sir,

I have the honour to acknowledge receipt of your letter of today's date which reads as follows:

I have the honour to propose that the following Agreement be concluded with a view to extending the *sui generis* protection of databases to the Isle of Man.

Agreement in the form of an Exchange of Letters with the United Kingdom of Great Britain and Northern Ireland on behalf of the Isle of Man extending the legal protection of databases as provided for in Chapter III of Directive 96/9/EC

THE EUROPEAN COMMUNITY AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND ON BEHALF OF THE ISLE OF MAN

Desiring to enhance and stimulate trade in databases and their production and distribution,

Recognising that both the European Community and the Isle of Man provide for the *sui generis* protection of databases where it is shown that the obtaining, verification or presentation thereof has entailed substantial investment,

Recognising that the protection under Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the Legal Protection of Databases to databases is limited to database makers and rightholders who are nationals of a Member State of the European Community or who have their habitual residence in the territory of the Community and to companies and firms formed in accordance with the law of a Member State and complying with the conditions of Article 11(2) of the said Directive, but that such protection may be extended to third country rightholders,

HAVE AGREED AS FOLLOWS:

Article 1

Each Contracting Party shall provide for a *sui generis* protection of databases as provided for in Chapter III of Directive 96/9/EC and shall extend that *sui generis* protection to databases whose makers or rightholders are

- (a) natural persons who have their habitual residence in the territory of the other Contracting Party;
- (b) companies or firms formed in accordance with the law of the Isle of Man or the law of one of the Member States of the European Community and having their registered office, central administration or principal place of business within the territory of a Contracting Party.

Where a company or firm as referred to in point (b) of the first paragraph has only its registered office in the territory of a Contracting Party, its operations must be genuinely linked on an ongoing basis with the economy of a Contracting Party.

⁽¹⁾ [This date should be the day of the Council Decision.]

Article 2

The duration of protection for databases shall be in accordance with Article 10 of Directive 96/9/EC.

Article 3

This Agreement shall take effect on ⁽¹⁾

I would be grateful if you would confirm the agreement of the European Community to the Agreement set out above and I propose that this letter and your letter in reply constitute an Agreement between our two authorities.

Please accept, Sir, the assurance of my highest consideration.

For the United Kingdom of Great Britain and Northern Ireland, on behalf of the Isle of Man'

I have the honour to confirm that the above is acceptable to the Council of the European Community and that your letter and this letter constitute an Agreement in accordance with your proposal.

Please accept, Sir, the assurance of my highest consideration.

On behalf of the Council of the European Community

⁽¹⁾ [This date should be the first day of the third month following the date of publication in the Official Journal.]