The Court of Justice interprets the database *sui generis* right for the first time

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* Database right, EC law, Sporting organisations

In November last year, the Court of Justice gave its ruling in four related cases involving interpretation of the scope of the *sui generis* right introduced by Database Directive 96/9 to protect investment in making databases. The Court has in some respects construed the scope of the right broadly (definition of subject-matter and rights) and in others restrictively (protection requirement and infringement test). The most important aspect of the Court's ruling is that investment in creation of data does not trigger the *sui generis* right. Thus many databases consisting of created data (for example television listings, event data including sports fixtures, timetables, stock exchange data etc.) will generally remain unprotected. The decision is to be welcomed: it attempts to achieve a better balance between database producers' rights and public access to information by restricting the scope of the *sui generis* right, which had been criticised as being one of the most protective intellectual property rights on one of the least deserving subject-matters.

Introduction

In November 2004, the European Court of Justice ("the Court") handed down decisions in four cases dealing with the database *sui generis* right (*Fixtures Marketing v Veikkaus*, *Fixtures Marketing v OPAP*, *Fixtures Marketing v Svenska Spel* and *The British Horseracing Board v William Hill*). This is the first time that the Court of Justice construes the Database Directive. The decisions, which were eagerly awaited, attempt to clarify a lot of the crucial terms used in the Directive which lacked definition and determine the scope of the right. The Court provides a purposive construction of the Directive, taking into account the aim of the *sui generis* right: protecting investment. It construes the definition of a database, the criterion of protection (substantial investment in the obtaining, verifying or presenting the database contents) and the exclusive rights of the database maker (extraction and re-utilisation). While the definition of a database and the

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1 Case C-460/02, further referred to as "Veikkaus".
2 Case C-444/02, further referred to as "OPAP".
3 Case C-338/02, further referred to as "Svenska Spel".
4 Case C-203/02, further referred to as "BHB".
5 The four decisions, all dating from November 9, 2004, are not yet published but are available on www.curia.eu.int. The three cases involving *Fixtures Marketing* will be collectively referred to as the "Fixtures" cases.
rights are given a broad meaning, as the Directive framers intended, the Court interprets the term "obtaining" restrictively. The implications of the decision are far-reaching: by deciding that investment in the creation of data does not count, the claimants' databases are not protected and the defendants therefore do not infringe. By rejecting investment in the creation of data, the ruling also reduces the risk of abuses of dominant position by sole source database makers.

Legal background

The Database Directive was adopted to create a new intellectual property right for producers of databases against extraction and re-utilisation of substantial parts of the contents of their databases. The Community legislator called the right "sui generis", as it is a new type of right destined to protect investment rather than originality as in copyright law or novelty as in patent law. The sui generis right protects the contents of the database as opposed to copyright which protects the structure or classification of the database. The main reason for this protection was the threat to the producers' investment provoked by the emergence of digitisation. The Directive also harmonised the copyright provisions relating to databases throughout the European Union. The courts which referred questions to the Court of Justice only sought answers regarding the interpretation of the sui generis right. This overview of the Directive will therefore focus only on the features of the sui generis right.

The Directive is divided into four chapters; the first one deals with the scope of the Directive (Arts 1–2), the second is on copyright (Arts 3–6), the third is on the sui generis right (Arts 7–11) and the last one deals with common provisions (mainly remedies, continued application of other legal provisions, application over time) (Arts 12–16). The central provisions of the Directive which the Court construes are the definition of a database and the scope of the right (Arts 1 and 7). The Directive protects databases in any form (Art.1(1)) and defines a database as "a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means" (Art.1(2)). Thus a collection can be in electronic or non-electronic format and must comply with the requirements of independence, arrangement and individual accessibility of the elements in order to qualify as a database. There is only one condition for the database producer to fulfil in order for his database to attract sui generis right protection. He must have made a substantial investment in either the obtaining, verification and/or presentation of the contents of a database (Art.7). This investment is evaluated qualitatively or quantitatively. None of these terms (substantial, obtaining, verification, presentation, qualitatively and quantitatively) is defined in the Directive. If the database has required substantial investment in one or more of these three actions (obtaining, verification or presentation of the materials), it is protected and the database producer has the exclusive right to prevent extraction and/or re-utilisation of the whole or of a substantial part, evaluated qualitatively and/or quantitatively, of the contents of his database (Art.7). These rights of extraction and re-utilisation closely resemble the rights of reproduction and communication to the public in copyright law. The right of extraction is defined 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 and the right of re-utilisation as 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. However, the term “substantial part” is not defined.

In addition to these central provisions, the Directive also provides for protection against the repeated and systematic extraction or re-utilisation of insubstantial parts of a database at certain conditions (Art.7(5)). The scope of the Directive is limited by one mandatory exception (extraction and reutilisation of insubstantial parts of the database for any purpose) and three optional exceptions to the rights: extraction for private purposes from a non-electronic database, extraction for the purposes of teaching and research and extraction and re-utilisation for the purposes of public security or a judicial or administrative procedure (Art.9). The term of protection is 15 years and is extended to a further 15 years if the database maker has made a new substantial investment in the database (Art.10).

Factual background

The facts of the three Fixtures cases and the British Horseracing Board case can be summarised as follows. The Football Association Premier League Ltd and the Football League in England as well as the Scottish Football League in Scotland organise professional football games and draw fixture lists for the matches to be played during the season. The data is stored electronically and published in booklets both by chronological order and by team. Fixtures Marketing (“Fixtures”) is a company which has been chosen by the English and Scottish football leagues to handle the exploitation of fixtures lists outside the UK. Fixtures has the right to represent the holders of intellectual property rights in the lists. The defendants, OPAP in the Greek reference, Veikkaus in the Finnish reference and Svenska Spel in the Swedish reference are companies whose purpose is to organise betting games. They all took information from Fixtures’ fixtures lists, namely the dates, times and names of teams relating to the various fixtures. Fixtures brought actions in the Greek, Swedish and Finnish courts alleging that the defendants had infringed the sui generis right in its lists under Art.7 of the Database Directive. The questions asked by the courts to the Court of Justice revolve around the interpretation of the definition of a database and the scope of the sui generis right.

The British Horseracing Board (“BHB”) manages the horse racing industry in the UK and maintains for this purpose a database containing a large amount of information supplied by horse owners, trainers and horse race organisers. The information includes, inter alia, the date, name and place of the race together with the names of horses running (the runners). Weatherby's is the company which compiles and maintains the BHB database. It registers information concerning owners, trainers, jockeys and horses and compiles the list of horses running in the races. This activity is carried out by its own call centre which employs 30 persons. They answer the phone and record the identity of the horse in each race. The identity of the person entering the horse and whether the characteristics of the horse meet the criteria for entry to the race are checked. The final list of runners is published the day before the race. Running the BHB database costs about £4 million per year. One way in which data is sent for a fee is through a data feed to various subscribers the day before the race. William Hill (“WH”), a bookmaker company, is one of the subscribers to this data feed. However the licence fee does not cover use of the
information online. WH launched a betting web site service reproducing the names of the horses, the date, time and/or name of the race and the name of the racecourse where the race will be held. The information displayed on WH’s web site comes from newspapers published the day before the race and from the data feed supplied on the morning of the race. In March 2000, BHB brought proceedings against WH in the High Court of Justice of England and Wales for infringement of its *sui generis* right in the database. BHB won and WH appealed; the Court of Appeal referred questions to the Court of Justice on the interpretation of the scope of the *sui generis* right.

It has not been possible in this short note to discuss all points addressed in the decisions. The accent has been put on the most important ones. Before looking at those, it is important to note that the Court refers to the function of the *sui generis* right to interpret it.

**Ruling**

*The function of the *sui generis* right*

Several times in its decision, the Court refers, to justify its ruling, to the function or aim of the *sui generis* right, which is the promotion and protection of investment. The reader gets the impression that the Court wants to convey the message that it has decided to stick to the text of the Directive, refraining from extrapolating *in abstracto* and always keeping in mind why the *sui generis* right was enacted in the first place. For example, when discussing the meaning of the term “obtaining”, the Court states that the purpose of the Directive is to promote and protect investment in data “storage” and “processing” systems which contribute to the development of an information market. The Court draws the consequence that the expression “investment in the obtaining, verification or presentation of the contents” of a database must be understood to refer to investment in the creation of that database as such. In the same vein, Recital 39 states that the aim of the *sui generis* right is to safeguard the results of the financial investment made in obtaining the contents of a database. The Court relies on this to exclude protection of created data. Further, while discussing rights and infringement, the Court restates that the *sui generis* right’s objective is to protect the database maker against acts by the user which go beyond the legitimate rights and thereby harm the maker’s investment. Similarly, the terms “extraction” and “re-utilisation” must be interpreted in the light of the objective of the Directive namely 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 investment, thus depriving him of revenue which should have enabled him to redeem the cost of the investment. In short, in referring to the aim of the *sui generis* right (promoting and protecting investment) to construe the terms used to define the scope of the right, the Court gives a purposive and consistent construction of the Directive.

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7 At [30] (BHB).
8 At [32] (BHB).
9 At [45] (BHB).
10 At [51] (BHB).
The subject-matter: the definition of a database

Since Art.1(1) of the Directive provides for the legal protection of databases in any form, the term ‘database’ is meant to be wide in scope. Accordingly, databases in electronic as well as non-electronic format are protectable. Additionally, the Directive provides that a database can be comprised of any material such as texts, sounds, images, numbers, facts and data. The Court draws the consequence that the nature of the data is irrelevant. Therefore a database comprising data relating to a sporting activity can be protected.

According to the Directive, the term ‘database’ is defined in terms of its function. The function of a database is to store and process information. This is why a database must fulfil a number of criteria. One of these criteria is the independence of the elements comprised in the database. The Court rules that a database’s materials are independent when the materials are separable from each other without their informative, literary, artistic, musical or other value being affected. A second criterion is that the database must be arranged in a systematic or methodical way. The Court holds that while it is not necessary for the systematic and methodical arrangement of a database to be physically apparent, that condition implies that the collection should be contained in a fixed base and include means, electronic or not, such as an index, table of content or a plan or method of classification which allows the independent materials to be retrieved. Finally, the Court adds that a database must not meet the criterion of originality of its maker’s own intellectual creation in order to qualify as such. The criterion of originality is only relevant to assess whether the database is protected by copyright and not whether something is a database.

For the Court a fixture list for a football league is a database because the date and time of the football matches as well as the identity of the two teams are independent from each other because they have autonomous informative value. Further, the arrangement of those independent elements in the form of a fixture list meets the conditions of systematic or methodical arrangement and individual accessibility.

The scope of the sui generis right: the criterion of protection

A crucial point which puzzled the national courts is whether investment by the maker of a database in the creation such as data can be taken into account in assessing whether there is substantial investment in the obtaining of the contents of a database. In this connection, the national courts sought to know whether the Directive is intended to protect a database derived from a principal activity which entails the creation of data.

For the Court, the expression ‘investment in obtaining of the contents of a database’ refers exclusively to the investment made in collecting existing materials to make the database and not to investment made in creating materials. The aim of the protection by the sui generis right is to promote the establishment of storage and processing systems for existing information and not the creation of materials capable of being collected subsequently in a database. The Court relies on points 51–56 of the Advocate General’s Opinion which had analysed the several language versions of the 39th Recital. This

12 See [21] et seq. (Svenska Spel); [29] et seq. (Venkhaus); [37] et seq. (OPAP); and [28] et seq. (BHB).

Recital, despite a few variations in wording, supports an interpretation which excludes the creation of the materials contained in a database from the definition of obtaining.

However, the Court adds that if a database is the result of a principal activity and thus contains data created by the database producer, this does not preclude the database producer from claiming protection under the *sui generis* right as long as s/he proves that the obtaining of the materials, their verification or their presentation required substantial investment in quantitative or qualitative terms, which is independent of the resources used to create those materials. In other words, even if the search for the data and the verification of the accuracy of the data at the moment the database is created will not trigger the protection because these data are those that the database maker creates and are available to him in the sense he did not collect them, the collection of the data, their systematic or methodical arrangement in the database, the organisation of their individual accessibility and the verification of their accuracy throughout the operation of the database may require substantial investment in quantitative or qualitative terms.

In the Court’s opinion, neither Fixtures’ lists nor BHB’s database are protected because the data is created and there is no separate substantial investment in obtaining, verifying or presenting the data. The investments in determining the dates, times and teams playing football as well as in selecting the horses which run the races are investments in the creation of the data. The process of entering a horse requires verification but this verification is made at the moment of the creation of the data and cannot be taken into account. It is an investment in creating the data and not in verification of the contents of the database. The effort in collecting, verifying and presenting the data thereafter does not require any particular effort. As far as BHB’s database is concerned, the Court made clear that it is not protected through the criteria of obtaining or verifying the contents, but it did not address the question whether the database required a substantial investment in the presentation of the data since the national court did not ask the question. Nevertheless, it can reasonably be assumed that on the basis of the Fixtures decisions, the presentation of the list is also too closely linked to the creation of the data so that there is no substantial investment in presenting the data. This can also be seen from the Court’s subsequent reasoning which seems to assume, when discussing whether the database right is infringed, that BHB’s database is not protected at all.\textsuperscript{13}

Since the Court concluded that Fixtures’ database is not protected, it did not address the subsequent questions asked by the national courts relating to rights and infringement. But as the Court did not completely rule out protection of BHB’s database (through the criterion of presentation of the contents), this is probably why it went on to address the questions referred by the Court of Appeal of England and Wales relating to terms used to define the rights and used in the test of infringement.

\textit{The scope of the sui generis right: the rights}

The Court of Appeal of England and Wales also sought to know whether the use made by WH fell within the meaning of the terms extraction and re-utilisation.\textsuperscript{14} The terms “extraction” and “re-utilisation” must be understood as having a wide meaning. This is

\textsuperscript{13} See [80] (BHB).

\textsuperscript{14} At [43] et seq. (BHB).
because the Directive uses the terms "by any means" and "in any form." Thus those terms refer to "any act of appropriating and making available to the public, without the consent of the maker of the database, the results of his investment, thus depriving him of revenue which should have enabled him to redeem the cost of the investment". It is irrelevant that the act of extraction or re-utilisation is not made in order to create a competing database. The terms catch all acts of a user which cause significant detriment to the investment. Thus the extraction or re-utilisation does not have to be made for a commercial purpose. The two concepts of extraction and re-utilisation therefore also include any indirect taking. However extraction and re-utilisation do not cover mere consultation of the database. This means that if the database maker makes his database available to the public, anyone can freely consult it. Yet the maker's consent to the consultation of the database does not entail exhaustion of the sui generis right.

The Court then defines the terms "substantial part" and "insubstantial part". It holds that the assessment in qualitative and quantitative terms of whether a part is substantial must refer to the investment in the creation of the database and the prejudice caused to that investment by the act of extraction or re-utilisation. The substantial part evaluated quantitatively refers to the volume of the data extracted or re-utilised from the database and it must be assessed in relation to the volume of the contents of the whole of the database. The expression "a qualitatively substantial part" refers to the scale of investment in the obtaining, verification or presentation of the contents of the act of extraction and/or re-utilisation, regardless of whether that subject (or part) represents a qualitatively substantial part of the contents. This is because a qualitatively negligible part may represent in terms of obtaining, verifying or presenting the contents, a significant human, technical or financial investment. The intrinsic value of the materials affected by the acts of extraction or re-utilisation does not constitute a relevant criterion for the assessment of whether a part is substantial. The Court also rules that a part which does not fulfil the requirement of a substantial part is automatically an insubstantial part.

The Court then applies this reasoning to the facts of the case. This extraction and re-utilisation made by WH was not authorised by BHB. The data displayed on WH's web site (date, time and/or name of race, name of racecourse and names of horses) represent a very small proportion of the BHB's database. Thus they do not constitute a substantial part evaluated quantitatively of the contents of BHB's database. BHB's argument that the data was qualitatively substantial because without it, the races could not take place and that the data represented a substantial investment demonstrated by the human investment was dismissed since the intrinsic value of the data is not a relevant criterion to determine whether a substantial part is qualitatively substantial. For the Court, the resources used to create the data, i.e. those resources deployed by BHB to establish the date, time and place of races as well as the runners, cannot be taken into account. Since the materials extracted and re-utilised did not represent a substantial investment by BHB, those materials do not represent a substantial part in qualitative terms of the database. Thus WH does not infringe under Art.7(1) of the Directive.

15 At [68] et seq. (BHB).
Comment

The Court's interpretation of the term "database", which follows the Advocate General's Opinion, comes as no surprise. The majority of commentators were also of the opinion that the definition of a database in the Directive is wide and thus includes electronic as well as non-electronic databases. Commentators had also given a definition of the criteria of independence and of arrangement close if not identical to the definition given by the Court. For them, independent materials cannot only be materials which convey information on their own, because of the information they carry; information which is considered in some sense to be "complete". In other words, "independent" means that an element makes sense by itself; its meaning does not depend on another element, another piece of information. On the other hand, they argued that the criterion of "systematic or methodical arrangement" excludes haphazard collections or collections created in a "free form", following in this the Explanatory Memorandum which expressly excludes from the scope of protection the mere storage of works or materials in electronic form.

For the Court, a database must not meet the threshold of originality in order to qualify as a database. Since the aim of the sui generis right is to protect databases which do not meet the requirement of originality, this seemed to go without saying but the Court deemed it necessary to eliminate any eventual doubt about this point.

Two aspects of the definition of a database remain without interpretation. First, the Court does not proceed to explain what the criterion of individual accessibility means. This is hardly surprising. The Court was probably reluctant to delve into the meaning of this notion as this is arguably the most obscure criterion and many have wondered how it differs from the criterion of independence. Secondly, the Court's ruling is silent as to whether the protection is limited to databases comprising intangible materials as opposed to databases containing tangible materials such as stones, butterflies, etc. The only clear aspect of the decision is that the nature of the data (by definition always intangible) included in a database is irrelevant. Future decisions will be needed to determine whether

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18 V. Bensinger, Sui generis Schutz für Datenbanken. Die E.G.-Datenbankrichtlinie vor dem Hintergrund des niederländischen Rechts (München, 1999), p. 128; M. Leistner, "Der neue Rechtsschutz des Datenbankherrn. Überlegungen zu Anwandelungsbereich, Schutzvoraussetzungen, Schutzumfang sowie zur zeitlichen Dauer des Datenbankherrnrechts gemäß § 67 a UrhG" (1999) GRUR Int., p. 821; M. Grützmacher, Urheber-, Leistungs- und Sui-generisschutz von Datenbanken. Eine Untersuchung des europäischen, deutschen und britischen Rechts (Baden-Baden, 1999), p. 170 (the elements are independent when they do not have a context (relation/meaning, a meaning which depends on the context ("Kontextbezug").)


20 Explanatory Memorandum, p. 41, para. 1.1.

21 For a discussion, see E. Derclaye, cited above at n. 16.
the definition is so wide as to encompass collections of tangible materials and to determine the meaning of "individual accessibility".

By far the most important aspect of the ruling is the fact that investment in creation of data alone does not confer sui generis right protection. Some commentators as well as the High Court of England and Wales in the British Horseracing Board case²⁵ had also expressed this opinion.²⁶ On the other hand, the Court rules that as long as the database maker can prove a substantial investment in obtaining, verifying or presenting the data, which is independent from the substantial investment in creating the data, s/he can benefit from sui generis right protection. This was the position this author had argued the Court should adopt.²⁷ In so doing, the Court rejects the Advocate General’s position. The latter had said that when the creation of the data takes place at the same time as its processing and is inseparable from it then the database can qualify for the sui generis right under "obtaining".²⁸ Simultaneously, the Court also implicitly rejects the spin-off theory. This theory originates from the Netherlands where a number of courts rejected sui generis protection of databases which are by-products of a main activity simply on that basis alone (i.e. without checking further whether there is nevertheless a substantial investment in obtaining, verification or presentation of the data).²⁹ The effect of the application of the spin-off theory to such databases was to totally exclude protection even if such substantial investment could be proved. The spin-off doctrine is thus dead.

The implications of the Court’s ruling on this point are far-reaching. Since Fixtures’ and BHB’s databases are unprotected, the betting companies will not have to pay licences to use the information anymore. Many other databases composed of data created by their maker, such as television programmes, event schedules and telephone directories, will often be deprived of protection. As in the cases referred to the Court, it will often be difficult for them to prove a substantial investment independent from the investment in creating the data. It means that everyone will be free to reproduce the data without permission. Since sole source databases will rarely attract sui generis right, their makers will rarely be in a dominant position. Consequently, the risk of the sui generis right creating abuses of monopoly power is much lower. The decision, by limiting the protection to substantial investment in collected data, thus avoids having recourse to the tool of competition law to curb abuses and deals with them internally, within the sui generis right law. This has advantages: resorting to competition law is always more time-consuming, costly for the parties (since they have to litigate) and uncertain as to the outcome. Incidentally, this will reduce the amount of cases the Court might have to decide on the basis of Art.82 based on a potential abuse of a dominant position by the holder of a sui generis right.

²⁵ [2001] R.P.C. 31 at [33] and [34].
²⁷ See E. Dercelaye, cited above at n.23.
²⁸ See [69] (Opinion in Volkvaks).
²⁹ On this theory, see B. Hugenholitz, p.190 and E. Dercelaye, cited above at n.23.
The ruling also entails that, retrospectively, the television programmes of the several
collectors involved in the Magill case would most probably not have been protected
if the Directive had been in force then. Therefore there would not have been a possibility
for the collectors to abuse their dominant positions, since they would not have been
able to benefit from the sui generis right protection in the first place. Magill could have
reproduced the information without asking for permission to the broadcasters and there
would not have been a Magill case at all.

It must be noted that the Court does not give its interpretation of what the level of the
substantial investment should be. The Court cannot be criticised for this since none of the
national courts asked this question. The level of investment necessary to attract protection
is however of crucial importance. If the level is low, more databases will be protected and
vice versa. The Advocate General had advocated a low level of substantial investment in
view of the aim of the Directive (create incentives for investment). Generally, the
national courts have adopted a rather low level of substantial investment. The limit at
which a database will not reflect a substantial investment seems to be the effort in making
an alphabetical list of elements or the effort in creating a small private collection of
addresses or a small collection of "bons mots".

As far as the rights are concerned, the Court’s broad interpretation of the concepts of
extraction and re-utilisation also comes as no surprise. Such an interpretation was dictated
by their definitions in the Directive. However the Court does not construe them as widely
as to create an access right since it rules that the rights do not include consultation. In
addition, the Court follows the High Court of England and Wales’ interpretation that
infringement occurs even if extraction or re-utilisation is indirect.

The Directive gives no definition of the terms “substantial part” and “insubstantial part”.
This lack of guidance had been criticised. In this connection, the Court clearly makes a
link between the substantial investment and the infringement test. There will only be
infringement if the substantial investment is harmed by the act of the user. Thus if the user
takes a substantial part which does not represent the substantial investment of the database
maker, the investment is not harmed and there cannot be infringement, even if there has
been an act of extraction or re-utilisation. This link had been suggested by a number of
commentators and transpires from Recital 42 of the Directive to which the Court refers.

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27 Joined Cases C-241/91 P & C-242/91 P. Radio Telefis Eireann (RTE) & Independent Television Publications

28 See [49] (opinion in Veltkans).

29 Com. Court of Paris, February 16, 2001, cited by C. Caron, Communication Commerce Electronique,

30 Administrative Tribunal of Rostock, February 20, 2001, Datenbankkonzession von Hyperlinksumchannelgen, available on
   www.jurpc.de/rechtspr/2002/0002/008.html. For a discussion of the appropriate level of
   investment, see E. Derclaye, “Databases sui generis right: what is a substantial investment? A tentative

31 See, e.g., P. Gaudrat, “Loi de transposition de la directive 96/9 du 11 mars 1996 sur les bases de données: les

32 M. Leisner, “Legal Protection for the Database Maker—Initial Experience from a German Point of
   View” (2000) IIC 452; see also P. Gaudrat, cited above at n.31, pp. 98 et seq.; G. Westkamp, “Protecting
   databases under US and European law—methodological approaches to the protection of investments between
   unfair competition and intellectual property concepts” (2003) 34 IIC 7, p. 802; G. Kaneli, “The European sui
   generis protection of data bases: Nordic and UK law approaching the court of the European communities—some
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Finally, by stating that the concepts of substantial part and insubstantial part are mutually exclusive, *i.e.* if a part is not a substantial part it will automatically be an insubstantial part and vice versa, the Court clarifies those concepts whose meaning was vague.

**Conclusion**

The Court’s decision was much needed since in many countries the interpretation of several aspects of the *sui generis* right diverged. The Court provided definitions to many crucial terms used in the Directive and attempted to do so purposively, by referring to the objective of the Directive, namely the promotion and protection of investment. Some terms, such as obtaining, substantial part and insubstantial part, evaluated quantitatively or qualitatively, are given a narrow meaning. Such interpretation avoids problems of over-protection which a lot of commentators feared the *sui generis* right would create due to the vagueness and breadth of the terms used. It insures that few sole source databases will ever attract the *sui generis* right protection and thus avoids resorting to Art.82 ECT. On the other hand, the Court confirmed that other terms, such as database, extraction and re-utilisation have a broad meaning, thereby retaining some of the teeth of the *sui generis* right. The right is thus not devoid of power but its scope is curtailed to avoid abuses as any lawmaker creating an intellectual property right should ideally aim at when crafting legislation. The betting industry and other users of created information, especially downstream users wishing to use the information to make different databases, will rejoice at the decision.

The decisions have interpreted a substantial number of terms used in the Directive and do clarify to some extent a great number of vague points. However, the Court did not rule on the exact level of the substantial investment required, the scope of the exceptions nor on the question whether the old elements of a database regain protection when a new substantial investment is made and consequently a new term is granted to the database maker. Future decisions by the Court of Justice will be needed to uniformly interpret those important aspects.