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THE COUNCIL

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REPORT

from: Presidency

to: Permanent Representatives Committee

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- Scope of the proposed Directive

A. Introduction

1. Under cover of a letter dated 15 April 1992, the Commission submitted to the Council a proposal for a Council Directive on the legal protection of databases\(^{(1)}\). The proposal is based on Articles 57(2), 66 and 100a of the Treaty.

2. The Economic and Social Committee gave its opinion on the proposal on 24 November 1992\(^{(2)}\). The European Parliament gave its opinion on 23 June 1993\(^{(3)}\). The Commission submitted an amended proposal on

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3. The Working Party on Intellectual Property (Copyright) has conducted a first reading of the Commission's amended proposal and begun a second reading. At this stage in the proceedings, the Presidency considers that political guidance is necessary on the question whether the scope of the proposed Directive should be limited to electronic databases, or should be extended to cover non-electronic databases. It considers that other questions arising in connection with this proposal are not yet ripe for discussion at the political level.

B. Scope proposed and reactions expressed

4. The Commission's original proposal is limited to electronic databases, on the grounds that there is a need for harmonization within the Community of the legal protection of electronic databases, while a corresponding need in respect of databases in paper form is much less evident.

5. The Economic and Social Committee expressed concern that this limitation to electronic databases "will mean that different legal regimes will apply to the same database if it is stored both electronically and otherwise" (point 3.2. of its opinion).

6. The European Parliament, proposed no amendment in this respect.

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7. While the Commission's amended proposal does not differ from its original proposal in this respect, the Commission services have indicated to the Council Working Party that if the Member States wish to extend the scope of the Directive to non-electronic databases, the Commission is prepared to consider such an extension with an open mind, as it had already indicated in the explanatory memorandum to its original proposal.

8. The German, Greek, Italian, Netherlands and United Kingdom delegations are in favour of extending the scope of the Directive to cover non-electronic databases.

The Belgian, French and Portuguese delegations are opposed to such an extension.

The Spanish, Irish and Luxembourg delegations while not expressing firm positions, have indicated a willingness to consider such an extension.

The Danish delegation has doubts in respect of such an extension.

9. The following arguments have been put forward in favour of extending the scope of the Directive to cover non-electronic databases:

(a) such a solution would be simpler, avoiding the need to draw a clear distinction between electronic databases and non-electronic databases;

(b) a database which was distributed in both electronic and non-electronic forms would enjoy the same protection for both forms;
(c) no distinction between electronic databases and non-electronic databases is made either by the corresponding provision of the GATT Agreement on trade-related aspects of intellectual property rights, including trade in counterfeit goods (Agreement on TRIPS)\(^{(5)}\), or in the ongoing work in the World Intellectual Property Organization (WIPO) on a possible protocol to the Berne Convention for the Protection of Literary and Artistic Works\(^{(6)}\).

10. The following arguments have been put forward in favour of limiting the scope of the Directive to electronic databases:

(a) the national laws of the Member States already provide adequate protection for non-electronic databases and there is therefore no need for Community harmonization in this respect, whereas the national laws of Member States do not explicitly extend to electronic databases and it is therefore uncertain whether electronic databases are covered by the laws of some Member States;

(b) the specific problems which arise in relation to electronic databases, as a result of the ease with which the materials stored in them can be

\(^{(5)}\) Article 10(2) of the Agreement on TRIPS (11339/93 GATT 243) reads:

"Compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations shall be protected as such. Such protection, which shall not extend to the data or material itself, shall be without prejudice to any copyright subsisting in the data or material itself."

\(^{(6)}\) WIPO documents BCP/CE/I/2, points 40-44 and BCP/CE/I/4, points 89-95.
manipulated and accessed, do not arise in respect of non-electronic databases;

(c) a number of the provisions of the proposed Directive, while applicable to electronic databases, would not be applicable to non-electronic databases;

(d) such an extension would require reconsideration of the proposed definition of "databases".

11. A further suggestion, which might provide a compromise solution, but has not yet been discussed in depth by the Working Party, has been put forward in contacts between the Commission services and the Community's partners in the European Economic Area. Since the proposal for a Directive provides for protection of databases not only by a copyright right, but also by a sui generis right, the suggestion is that the provisions on copyright protection could be extended to databases in all forms, while the provisions concerning the sui generis right would be limited to electronic databases.

C. Action requested

12. The Permanent Representatives Committee is invited to examine, with a view to possible consideration by the Council (Internal Market) on 10 March, the question whether the scope of the Directive should be limited to electronic databases, or should be extended to cover non-electronic databases, either fully (i.e. by both the copyright right and the sui generis right) or partially (i.e. by the copyright right only).