

Public consultation on the evaluation of the Database Directive 96/9/EC

Fields marked with * are mandatory.

General information about you

The views expressed in this public consultation document may not be interpreted as stating an official position of the European Commission. All definitions provided in this document are strictly for the purposes of this public consultation and are without prejudice to differing definitions the Commission may use under current or future EU law, including any revision of the definitions by the Commission concerning the same subject matters.

Fields marked with * are mandatory.

* I'm responding as:

- An individual in my personal capacity
- A representative of an organisation/company/institution

* Please provide your first name:

Diego

* Please provide your last name:

Naranjo

* Please indicate your preference for the publication of your response on the Commission's website:

- Under the name given: I consent to publication of all information in my contribution and I declare that none of it is subject to copyright restrictions that prevent publication.
- Anonymously: I consent to publication of all information in my contribution and I declare that none of it is subject to copyright restrictions that prevent publication.
- Please keep my contribution confidential. (it will not be published, but will be used internally within the Commission)

(Please note that regardless the option chosen, your contribution may be subject to a request for access to documents under [Regulation 1049/2001 on public access to European Parliament, Council and Commission documents](#). In this case the request will be assessed against the conditions set out in the Regulation and in accordance with applicable [data protection rules](#).)

* Please enter the name of your institution/organisation/business.

European Digital Rights (EDRi)

What is your institution/organisation/business website, etc.?

www.edri.org

* What is the primary place of establishment of the entity you represent?

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Italy
- Ireland
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain
- Sweden
- United Kingdom
- Other

* My institution/organisation/business operates in: *(Multiple selections possible)*

- Austria

- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Italy
- Ireland
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain
- Sweden
- United Kingdom
- Other

* Is your organisation registered in the [Transparency Register](#) of the European Commission and the European Parliament?

- Yes
- No

* Please indicate your organisation's registration number in the Transparency Register.

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Category of respondents

* Please indicate the type of organisation you represent (one answer).

- National administration
- National regulator
- Regional authority
- Civil society/ non-governmental organisation
- Trade association

- Consumer association
- Business
- Research body/ academia
- Other

* Please indicate the sector in which your business/ organisation/ institution mainly operates (one answer).

- Manufacturing
- IT services
- Agriculture and food
- Health and care
- Energy
- Automotive and transport
- Financial services/ banking/ insurance
- Retail/ electronic commerce
- Electronic communications
- Publishing
- Public sector
- Research, scientific, education
- Consumer protection group
- Other

If other, please specify

Human Rights organisation

* The turnover of your company/organisation in 2016 was:

- < 2 million EUR
- 2-10 million EUR
- 11-50 million EUR
- > 50 million EUR
- Non-profit

* The size of your company/organisation in 2016 was:

- less than 10 employees
- between 10 and 50 employees
- between 51 and 250 employees
- more than 250 employees

* Your company/ organisation was created:

- within the past year
- between 1 and 5 years ago
- between 5 and 10 years ago
- more than 10 years ago

* Which of these statements apply to your organisation/ you (one answer):

-

- my organisation's/ my main activity is to produce, sell and/or license databases
- my organisation's/ my main activity is the production and/ or market commercialisation of products or services which generate data through their usage (e.g. internet platforms, search engines, social networks, sensor-equipped machines, tools, devices, etc.)
- my organisation's/ my main activity is to provide services for which I make data available upfront for the service to take place (e.g. e-commerce websites such as airlines, car rentals, etc.)
- none of the above

Questions

I Overview of the database market

* 1. Would you describe yourself, your company/organisation/body as a (several options possible):

- owner (as a rightholder) of database(s) - private sector
- owner (as a rightholder) of databases - public sector
- user of database(s) - private sector
- user of a database(s) - public sector
- other (please specify)

If other, please specify

NGO

II Impact on rightholders and users

It was expected that the Directive would improve the global competitiveness of the European database industry and increase the European production of databases. This section seeks to explore the extent to which the objectives of the Directive have been achieved. For more information please refer to the [background document](#)

1. To what extent have the provisions of the Database Directive achieved their objective to protect a wide variety of databases?

- To a limited extent
- To a large extent
- No opinion

Where expectations have not been met, what obstacles hindered their achievement?

The Database Directive protects a wide variety of databases, and in fact it even protects non-original databases which do not qualify for protection under copyright law. Thus this objective has been achieved. However, there is neither academic, statistical or economic evidence that this protection is wanted and used by database producers, nor that there is any public interest served by such protection. Therefore, while technically protected, the protection appears to be unwanted and not applied.

In fact there seems to be so little interest and need for additional database protection beyond copyright, that WIPO's Standing Committee on Copyright and Related Rights (SCCR) has decided not to actively engage in that matter any longer in June 2003, after commissioning six studies on that matter.

2. Based on your own experience (as a database producer/owner or user) please indicate your views on the statements below:

	strongly agree	agree	disagree	strongly disagree	no opinion
By creating the sui generis right, the Directive sufficiently protects the investments (whether human, technical or financial) made for the creation, updating or maintenance of a database	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
By securing protection to investments, the Directive encourages investments in advanced information processing systems related to databases and stimulates the production of databases.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
The Directive has strengthened the position of the market leader in my sector.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
The Directive achieves a good balance between the rights and interests of the rightholders and users.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
The Directive has achieved harmonisation in its field and eliminated differences between Member States which has encouraged database owners to operate in other Member States.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
National contract law gives more legal certainty than sui generis protection when it comes to prevention of extracting or re-using database content.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
The protection offered by the Database Directive still fit for purpose in an increasingly data-driven economy.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Please indicate the reasons behind your answers.

No evidence has been produced to prove that the production of databases has increased after or due to the Database Directive. Additionally, more than two decades after the introduction of this sui generis right, no other jurisdiction worldwide has decided to introduce such an additional protection for databases. This makes the legal framework covering the European data economy more complex

and an outlier in a global comparison.

A data-driven economy needs clear rules about which information can be freely re-used and what information is clearly protected (e.g. personal data). The Database Directive achieves neither. The sui generis right makes it extremely hard to differentiate between data piles and databases. Moreover, it has failed to foresee that the acts it protects, namely selection and structuring of data, are becoming increasingly automated and do happen on the fly. This means it is not necessarily an investment to do so anymore. It provides additional, seemingly unwanted protection that hinders re-use of data. This makes it unfit for purpose.

The one positive result of the Database Directive is that it took one step in harmonising several vastly different national legislation in the field of database protection. However, it failed to provide harmonised exceptions, which again means it failed to achieve its purpose.

3. Based on your own experience (as a database producer/owner or user) please indicate your views on the impact of the sui generis right on the following:

	positive effect	no effect	negative effect	not relevant
legal certainty for database producers /owners	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
legal certainty for lawful users	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
costs of database protection	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
marketing of databases	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
access to data	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
re-use of data	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
investment in databases	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
innovation	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
development of the data market	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Please indicate the reasons behind your answers.

The sui generis right is defined in such a vague and self-contradictory way, that it is regularly unclear which facts (data points) can be re-used. This makes it hard for both database owners and database users to know what is allowed and what not, which in reality means paying for additional legal advice or factoring in potential legal costs.

Again, there is no economic evidence that this additional protection has led to increased investment in the European database industry. There are, however, clear examples, of how it hinders the re-use of data.

4. Do you think the costs of application of the Directive are balanced compared to the benefits stemming from the protection the Directive offers?

- Costs are higher than benefits
- Costs and benefits are balanced
- Benefits are higher than costs
- No opinion

Please explain your answer and list the costs and/ or benefits you refer to.

While even the European Commission fails to observe additional investment in the field of database after the introduction of the Database Directive, this additional right makes the re-use of data and the application of the PSI Directive harder. Two obvious reasons for this result are the incompatibility of the sui generis right with the most commonly used free licenses and the legal uncertainty of what is actually protected.

III Application of the Database Directive and possible needs of adjustment

The original objective of the Directive was to harmonise the protection of a wide variety of databases in the information age. In doing so, the Directive aimed at protecting the investment of database makers while at the same time ensuring protection of users' interests. In the context of the Commission's vision related to building a European data, these objectives translate into increasing legal certainty for database producers/ owners and users and enhancing the re-use of data.

This section seeks to assess the relevance of the objectives of the Directive and of each of its articles, taking into account technological, social and legal developments. For more information please refer to the [background document](#).

1. In your opinion, are the original objectives of the Database Directive still in line with the needs of the EU?

- Yes
- No
- No opinion

Please explain.

The European Union needs to be innovative. The sui generis right in the Database Directive is effectively limiting access to and re-use of non-personal data, which in turn hinders innovation.

On the scope of the Directive

The scope of the Directive is defined by its articles 1 and 2. Article 1(1) provides for that the Directive concerns the legal protection of databases. Article 1(2) of the Directive defines a database as a collection of independent works, data or other materials arranged in a systematic or methodological way and individually accessible by electronic or other means. Article 1(3) specifies that the Directive shall, to some

extent, not apply to computer programs. Finally, Article 2 provides for the limitations of the scope. The aim of this section is to gather information on the scope of the Directive.

2. Do you consider that the scope of the Directive is:

- too narrow
- satisfactory
- too broad
- unclear
- outdated
- I don't know

On the copyright protection

Articles 3 to 6 of the Directive concern the copyright protection of databases. Articles 3 and 4 specify the object of protection and authorship. Article 5 provides for the list of restricted acts. Article 6 provides for the exceptions to these restricted acts. The aim of this section is to gather information on the use and adequacy of the copyright protection of databases, in particular as regards exceptions to the restricted acts.

3. As regards exceptions provided for by Article 6 of the Directive, have you already relied on/been confronted to, one or several of the following exceptions?

	yes, often	yes, sometimes	no	no opinion (no transposition in my country)
Acts necessary for access and normal use (Art. 6.1)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Private purpose (Art. 6(2)(a))	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Teaching and scientific research (Art. 6(2)(b))	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Public security, administrative or judicial procedure (Art. 6(2)(c))	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
National traditional exceptions (Art. 6(2)(d))	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Please describe your experience and explain specific problems you may have faced and the means you relied on to deal with them.

The exceptions are not harmonised across the EU member states. This makes their use online and internationally very difficult.

4. Is in your opinion the Database Directive coherent with the EU legislation and priorities in the following fields:

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	strongly agree	agree	disagree	strongly disagree	don't know
EU copyright acquis	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
PSI Directive	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
EU open access policies regarding research activities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Data Economy Package objectives [e.g. making data easily accessible and usable to facilitate development of new products and services]	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Please describe your relevant experience and explain specific problems you may have faced with regard to compliance with other laws that interact with the Database Directive.

The EU's copyright acquis aims to promote innovation. For innovation in the field of data projects, open data and open access have shown to be primordial. The Database Directive does nothing to promote open data, it actually makes it harder to open up data.

The PSI Directive has the exact opposite objective of the Database Directive (freely re-usable databases for any purpose vs. limiting the rights to use). The two Directives are in tension to each other and it is legally unclear whether one of them could cancel elements of the other out.

Similarly, the Database Directive has opposing objective with open access policies across the EU. At best, it makes their implementation more difficult. On the data economy package objectives it needs to be reminded that non-personal data can only be useful for the European economy if it can be accessed and re-used. The additional protections, the unclear definitions and the lack of harmonisation provided for by the Database Directive thus contradict the data economy package.

On the sui generis right

Articles 7 to 11 of the Directive provide for the sui generis protection of databases. Article 7 provides for the object of protection (including the restricted acts). Article 8 specifies the rights and obligations of lawful users while Article 9 provides for the list of exceptions to restricted acts. Article 10 provides for the term of protection. Finally, Article 11 indicates the beneficiaries of the protection. The aim of this section is to gather information on these different provisions, how they have been applied and used in practice and whether they are relevant and adapted to the current environment.

5. According to Article 7 of the Directive, the sui generis protection will apply to databases which show that there has been qualitatively and/ or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents. Do you consider that the scope of the sui generis right is:

- too narrow
- satisfactory
- too broad
- unclear

no opinion

6. Under the sui generis right, the maker of a database can prevent extraction and/ or re-utilization of the whole or substantial part, evaluated qualitatively and/ or quantitatively, of the contents of that database. Do you consider that such rights are:

- too narrow
- satisfactory
- too broad
- unclear
- no opinion

7. Sui generis protection only benefits those producers who made a substantial investment in either the obtaining, verification or presentation of the database. Such substantial investment must be proved by the claiming rightholder. Do you consider that the notion of substantial investment is:

- unclear and difficult to use in practice
- clear and easy to apply in practice
- no opinion

8. Have you experienced difficulties proving such substantial investment in the framework of enforcement of your rights, including judicial proceedings?

- yes
- no

Please explain.

EDRi is not interested in enforcing database rights and thus has never experienced difficulties in doing so.

9. According to the case law of the Court of Justice of the European Union (CJEU), investment in creating the data (i.e. the resources used for the creation of content) should not be taken into account when determining whether a database can be protected under the sui generis right. On the contrary, the resources used to seek out content and collect it in a database are taken into account when determining sui generis protection. Based on your experience, how would you describe the effect of this case law on the following issues:

	strongly positive	positive	negative	strongly negative	don't know
Scope of the protection of databases	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Balance between rights and interests of database producers/owners and users	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Production of databases	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Use of databases	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Other (please specify below)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain.

Data points in a database are facts. The CJEU, by confirming that the protection is sought in the form rather than in the content, holds on to a very fundamental principle of our society, that facts cannot be protected.

The CJEU, however, does not, and perhaps cannot, solve the inherent contradictions in the Database Directive. What is a data pile and what is a database? It is legal to extract one data point but not to repeatedly extract meaningful parts of a database. This lack of clarity makes re-using non-personal data harder and makes the protection of databases incoherent.

10. Do you think that the current application of the sui generis right is appropriate when it comes to the following databases:

	appropriate	not appropriate	no opinion
databases produced by public sector bodies or financed with public money	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
databases which contain automatically collected and/ or machine-generated data	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Please explain your answer by providing concrete examples and possible alternatives to the current application you are referring to.

The sui generis right is dangerously close to protecting facts rather than form. This is dangerous and not at all appropriate. As an additional note we would like to emphasise, that publicly financed content, including non-personal data, must be free.

11. Extraction and re-utilisation rights are defined by referring to the notion of "substantial parts of the content of a database". Have you experienced difficulties when applying, interpreting and/ or enforcing these rights?

- yes
- no

Please explain.

As mentioned several times above. It is completely unclear at what point a set of data becomes a database. It also completely unclear what a substantial part of a database is. If I have a database with the population of the capital cities of the EU, I would be allowed to extract the population number for Paris. But will I be allowed to also extract the population numbers of 5, 15 or 25 additional capitals before I infringe the sui generis right? And in what circumstances would I be allowed to automatically update the numbers once new census data is available and added to the database?

12. Database makers may prohibit the repeated and systematic use of insubstantial parts of the database (Art.7.5). In your opinion, this:

- insufficiently protects the rightholder
- sufficiently protects the rightholder
- excessively protects the rightholder

13. As regards the right provided in Art. 8 and the exceptions provided for by Article 9 of the Directive, have you already relied on/been confronted to, one or several of the following provisions?

	yes, often	yes, sometimes	no	no opinion (no transposition in my country)
Extraction and re-use of insubstantial parts (Art. 8.1)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Private purpose (Art. 9(a))	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Teaching and scientific research (Art. 9 (b))	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Public security, administrative or judicial procedure (Art. 9(c))	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

14. Sui generis protection lasts for 15 years as from completion (or making available within this term) of the database (see Article 10.1-2). In your opinion, this term is:

- too long
- satisfactory
- too short

15. Which provisions of the Directive as transposed in your national law have had the strongest impact on your business and why?

As a non-profit organisation we do not have a business model that can be impacted, but as an European and international organisation we believe that harmonisation is a pre-requisite for a functioning Digital Single Market.

16. Have you experienced difficulties due to the national implementation of the Directive in the Member States (e.g. divergent national implementation, implementation going further than what is required under the Directive, etc.)? If so, could you please explain?

We don't know which law applies in which online use.

17. What is the added value of the EU intervention vis-a-vis national or regional interventions in the fields covered by the Database Directive?

The added value would be to harmonise the threshold for protection of databases and the harmonisation of exceptions. Neither has been achieved so far.

18. Which provisions of the Directive may need further adjustment to usefully apply to digital/ online/ on demand databases and why?

The least that the EU Legislator could do would be to remove the sui generis right across the EU.
Additionally, harmonised exceptions for the copyright protection of databases would be welcome.

19. Which of the following approaches would, in your opinion, be most appropriate to achieve an adequate balance between database owners' rights and users' needs?

- no policy change
- guidance to Member States on the sui generis protection
- amend the sui generis protection
- other (please specify)

Please explain your choice and the impact it would have on you/ your clients/ the market (free text).

Amend the sui generis protection by removing it EU-wide.

Any other comments

When removing the sui generis right we must ensure not to revert to a situation where individual Member States could re-introduce it.
An alternative to complete removal of the sui generis right could be envisaged.
A sui generis protection only for the cases where the database rightsholder specifically requires such protection (i.e. by a "sui generis notice").

Submission of questionnaire

End of survey. Please submit your contribution below.

Useful links

[Web page consultation \(https://ec.europa.eu/info/content/public-consultation-database-directive-application-and-impact-0_en\)](https://ec.europa.eu/info/content/public-consultation-database-directive-application-and-impact-0_en)

[Roadmap \(https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-2543859_en\)](https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-2543859_en)

Background Documents

[Dclaration de confidentialit \(/eusurvey/files/24a13bef-f6b8-42d1-b8e2-2de6ac5a0b5c\)](/eusurvey/files/24a13bef-f6b8-42d1-b8e2-2de6ac5a0b5c)

Contact

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