

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:

Glyn

* Please provide your last name:

Moody

* 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 (it will not be published, but will be used internally within the Commission)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 indicate your country of residence

- 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

Category of respondents

* 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)

2. The database you own (as a rightholder) or use (as a user) exists (one answer):

- off-line only
- on-line only
- both off-line and on-line

3. The database(s) you own are used as / you use these types of databases (several options possible):

- personal data filing system
- telephone directories
- catalogues
- television programs
- classified ads (jobs, real estate, etc.)
- news and journal data
- financial data
- educational, scientific and research data
- mapping data
- sport data
- medical or pharmaceutical data
- collections of legal materials
- traffic data
- environmental/ climate data
- other

If other, please specify

4. As a user, what types of databases do you use?

	never	rarely	in half of the cases	in most of the cases	exclusively
Subscription	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Pricing per item	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Free / open access database	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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?

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 type="radio"/>	<input checked="" 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

database owners to operate in other Member States.					
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.

Intellectual monopolies concentrate power in the hands of the market leaders.

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 type="radio"/>	<input checked="" type="radio"/>
marketing of databases	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 type="radio"/>	<input checked="" 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.

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.

The benefits are nugatory.

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 Database Directive serves no useful purpose.

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 type="radio"/>	<input checked="" type="radio"/>
Private purpose (Art. 6(2)(a))	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Teaching and scientific research (Art. 6(2)(b))	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Public security, administrative or judicial procedure (Art. 6(2)(c))	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
National traditional exceptions (Art. 6(2)(d))	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

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

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

	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 Database Directive is an idea whose time never came.

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.

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 type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 checked="" type="radio"/>

Please explain.

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.

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.

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 type="radio"/>
Private purpose (Art. 9(a))	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Teaching and scientific research (Art. 9 (b))	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Public security, administrative or judicial procedure (Art. 9(c))	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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?

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?

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?

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

The sui generis right should be repealed completely. Even though only one EU report was produced – despite a legal requirement for one every three years – it is clear that the sui generis right is unnecessary, and is simply another intellectual monopoly that has been imposed on the public for no benefit.

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).

The sui generis right should be repealed completely. Even though only one EU report was produced – despite a legal requirement for one every three years – it is clear that the sui generis right is unnecessary, and is simply another intellectual monopoly that has been imposed on the public for no benefit.

Any other comments

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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