

# 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:

Timothy

\* Please provide your last name:

Vollmer

\* 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 (it will not be published, but will be used internally within the Commission)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.

Creative Commons

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

<https://creativecommons.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

\* If other please specify:

United States

\* 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

Legal

\* 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

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### 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

nonprofit/civil society organisation and provider of copyright licenses and legal tools

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

We disagree that the Directive has achieved a good balance between the rights and interests of the rightholders and users. The 2005 First evaluation of Directive 96/9/EC on the legal protection of databases (hereafter "evaluation report") claims that the Directive "does not impose significant administrative or other regulatory burdens on the database industry or any other industries that depend on having access to data and information" (p. 6). But the addition of the sui generis right has created confusion for database providers that wish to make databases available on an open access basis, and has produced a chilling effect for potential users of those databases because they're unclear about if (or how) they may use data that is covered by the sui generis right. The evaluation report admits that the sui generis right is "difficult to

understand” (p. 23).

Also, we disagree that the adoption of the sui generis right has stimulated the production of databases. This fact is widely discussed in the evaluation report, noting that, “its economic impact on database production is unproven [...] the new instrument has had no proven impact on the production of databases” (p. 24).

Finally, we agree that if database rights are to be managed, they are best managed through private legal relationships that are governed by principles of contract law, rather than a sui generis right that automatically attaches to all makers of databases in the European Union. If database creators want to restrict use of their databases under specific terms, then they should be entitled to do so as a matter of private contract law. However, establishing an EU-wide default right that owners of database makers must manage even when they don't want to complicates the IP ecosystem unnecessarily.

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

As we mentioned above the sui generis right has created confusion for database providers that wish to make databases available on an open access basis. This has led some projects (such as Wikidata and Europeana) to simply sidestep the right altogether by releasing their data into the public domain using the CC0 Public Domain Dedication.

From the user perspective, the sui generis right has created legal uncertainty about if (or how) they may use data that is covered by the sui generis right. This produces a chilling effect in that users simply do not attempt to utilize

databases out of confusion, or that they may be infringing on a right that is difficult to understand.

The exceptions to the sui generis right also puts some users at a disadvantage. For example, the exception for the purposes of illustration for teaching or scientific research is limited to the extraction of data for non-commercial purposes. The limitation to only extraction could prevent researchers from utilizing the data in ways necessary for their research, such as text and data mining. The limitation for only non-commercial purposes ignores the fact that research and innovation takes place beyond the walls of the traditional not-for-profit research university, and oftentimes includes projects that involve the private sector too.

More generally, the exceptions are optional—not mandatory—so Member States can choose to ignore their implementation.

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 evaluation report admits that “the economic impact of the ‘sui generis’ right on database production is unproven ... [the] new instrument has had no proven impact on the production of databases” (p. 5). However, the adoption of the sui generis right has incurred serious costs to providers and users. The sui generis right has created confusion amongst database providers that wish to make databases available on an open access basis. This has led to some projects (such as Wikidata and Europeana) to simply sidestep the right altogether by releasing their data into the public domain using the CC0 Public Domain Dedication.

From the user perspective, the sui generis right has created legal uncertainty about if (or how) they may use data that is covered by the sui generis right. This produces a chilling effect in that users simply do not attempt to utilize databases out of confusion, or that they may be infringing on a right that is difficult to understand.

### **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.

According to the Evaluation and Fitness Check of the Directive on the legal protection of databases (Ares(2017)2543859):

“The main objective of the Database Directive was to create a harmonised legal framework to establish the ground rules for the protection of a wide variety of databases in the information age. The Directive aimed in particular at eliminating the differences in the legal protection of databases (e.g. protection among MS as regards the protection of copyright-protected databases) and protecting those not reaching the 'originality' threshold giving rise to copyright protection. In doing so, the objective of the Directive was also to protect the investment of database makers. Another important objective of the Database Directive was to ensure the legitimate interests of users to access information compiled in databases. Ultimately, it was expected that the Database Directive would improve the global competitiveness of the European database industry and increase the European production of databases as compared to the US.”

While the Directive may have harmonised the legal protection of databases with regard to copyright, the sui generis right has produced negative effects for database producers and users. It has not ensured the legitimate interests of users to access information compiled in databases because it has produced a confusing legal environment in which users do not know if (or how) their uses are subject to the sui generis right. It has created a situation where open source projects prefer to sidestep the right by relying on legal tools such as the CC0 Public Domain Dedication for the publishing and sharing of databases, because the sui generis right is at best cumbersome, and at worst directly opposed to the principles of sharing information without additional strings attached. Finally, there is no evidence that the sui generis right has improved EU competitiveness by increasing the production of databases. The evaluation report states, “the new instrument has had no proven impact on the production of databases” (p. 24).

Furthermore, other legal systems—such as the United States—do not offer sui generis database protection, and they have much more competitive economy with regard to the database industry. The sui generis database protection could be interpreted as having an anticompetitive effect for the European Union.

## 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.

The exceptions are optional—not mandatory—so Member States can choose to ignore their implementation. This has also produced an unharmonised situation across

the EU. Also, the Directive creates two sets of limitations and exceptions, one for copyright and one for sui generis database rights. This could be confusing to reusers because a Database can be protected by both copyright and sui generis database rights at the same time if the corresponding requirements are met. The problem is that the limitations and exceptions are not coordinated between copyright and sui generis rights, leading to a situation that what is allowed by a copyright exception could potentially infringe the sui generis right, and vice versa. At a minimum, this differentiated approach adds further legal uncertainty for reusers.

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
<a href="#">EU copyright acquis</a>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
<a href="#">PSI Directive</a>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
<a href="#">EU open access policies regarding research activities</a>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
<a href="#">Data Economy Package objectives</a> [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 does not exclude public databases that fall under Directive 2013/37/EU on the re-use of public sector information (PSI Directive) from qualifying for the sui generis protection. This is contradictory to the goals of the PSI Directive.

The purpose of open access policies is to provide for unencumbered access to and reuse of scholarly and scientific information, especially that resulting from public investments. The additional sui generis protection for databases is contradictory to the goals of open access publishing and policy.

### 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 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 type="radio"/>
Production of databases	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Use of databases	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other (please specify below)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain.

CJEU rulings can be interpreted as positive with regard to the production of databases because the rulings have clarified that the sui generis rights do not apply to investment in creating the data, which help to exclude from protection many cases of so called "single source" databases. This is positive as single source databases pose a serious risk of information monopolies with known anticompetitive effects. These decisions are not very positive as they do not exclude with clarity all cases of single source databases.

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

	apropriate	not apropriate	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 not appropriate for any databases. Moreover, the right is entirely inappropriate for application with respect to databases that public has already paid for through taxes. The public should not have to "pay twice" to access and reuse databases funded with public monies.

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.

It is extremely difficult for users to know what is substantial and what is insubstantial. As stated above, this has a chilling effect on reuse, and effectively precludes reuse for those with a low risk-tolerance for uncertainty.

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

Please describe your experience and explain specific problems (e.g. determination of 'insubstantial parts', contractual clauses restricting use of the exceptions) you may have faced and the means you relied on to deal with them.

For database reusers, it is impossible to know with any degree of reasonable certainty what is an insubstantial part of the database. In addition, the exceptions are very narrow and constrained to a closed list. Finally, they are optional, not mandatory.

Also, as noted above, the Directive creates two sets of limitations and exceptions, one for copyright and one for sui generis database rights. This could be confusing to reusers because a Database can be protected by both copyright and sui generis database rights at the same time if the corresponding requirements are met. The problem is that the limitations and exceptions are not coordinated between copyright and sui generis rights, leading to a situation that what is allowed by a copyright exception could potentially infringe the sui generis right, and vice versa. At a minimum, this differentiated approach adds further legal uncertainty for reusers.

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?

In the Directive there is not a clear definition of what constitutes a substantial part of a database, or what constitutes a substantial investment. The limitations and exceptions are optional—not mandatory—so Member States can choose to ignore their implementation. This has also produced an unharmonised situation across the EU.

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 Commission should repeal the sui generis database right and harmonize the limitations and exceptions for the copyright section of the Database Directive with the Infosoc Directive.

If it is not possible to fully revoke the sui generis right, the Commission should amend the Database Directive to introduce a system whereby producers of databases must register to receive protection under the sui generis right. The registration process should be substantial. The Commission should also expand the sui generis exceptions and make them mandatory. Finally, it should set a maximum term so that there cannot be perpetual extensions.

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).

Delete the sui generis protection.

The Commission should repeal the sui generis database right and harmonize the limitations and exceptions for the copyright section of the Database Directive with the Infosoc Directive.

If it is not possible to fully revoke the sui generis right, the Commission should amend the Database Directive to introduce a system whereby producers of databases must register to receive protection under the sui generis right. The registration process should be substantial. The Commission should also expand the sui generis exceptions and make them mandatory. Finally, it should set a maximum term so that there cannot be perpetual extensions.

### Any other comments

As discussed above, the addition of the sui generis right has created confusion for database providers that wish to make databases available on an open access basis, and has produced a chilling effect for potential users of those databases because they're unclear about if (or how) they may use data that is covered by the sui generis right. The evaluation report admits that the sui generis right is "difficult to understand" (p. 23), and that the "new instrument has had no proven impact on the production of databases" (p. 24).

The evaluation report also notes that "repealing the Directive altogether or repealing the 'sui generis' right in isolation would probably lead to considerable resistance by the EU database industry which wishes to retain "sui generis" protection for factual compilations" (p. 5). So essentially, the sui generis right has been retained because a few industry players said, with no evidence provided, that the protection is "crucial to the continued success of their activities" (p. 20). Such unsupported, self-serving industry assertions do not constitute evidence-based policymaking, and should be immediately disregarded.

We also observe that the European Parliament has commented on this matter, noting that "the Commission's evaluation of the Directive on Databases considers this directive an impediment to the development of a European data-driven economy; calls on the Commission to follow-up on policy options to abolish Directive 96/9/EC" (2015/2147(INI)).

## Submission of questionnaire

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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)

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### Background Documents

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



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## Contact

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