

# 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:

Dimitar

\* Please provide your last name:

Dimitrov

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 (it will not be published, but will be used internally within the Commission)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

Wikimedia (Free Knowledge Advocacy Group EU)

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

wikimedia.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

\* If other, please specify

Norway, Switzerland

\* 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

\* 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

We own the Wikidata database, but the rightholders (in the sense of the sui generis right) are the users that generate the content.

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

If other, please specify what type of the database you refer to

We sometimes link to non-free databases like IMDB.

5. For what purpose do you produce and/ or own databases?

- internal use
- as a product/ service that could be stored or licensed
- as a product/ service that is made freely available to the public
- other

6. Does your revenue model of the exploitation of the database rely on (please chose one option in each row)?

	not at all	rarely	in half of the cases	in most of the cases	exclusively
Advertising	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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 type="radio"/>	<input checked="" type="radio"/>
Other	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

7. How do you obtain the content of your databases?

	never	rarely	in half of the cases	in most of the cases	exclusively
We create/ generate it ourselves ("own content")	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

We purchase/ licence it from other sources ("aquired content")	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
We collect it for free from other sources	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

8. How do you finance the aquired content of your databases?

	not at all	rarely	in half of the cases	in most of the cases	exclusively
Public funding	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Own funds	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

9. How do you finance the production\* of your own database(s)?

\* Database production excludes the cost of aquiring the content but includes costs of: personnel, IT hardware and software, data formatting, data encoding, etc.

	not at all	rarely	in half of the cases	in most of the cases	exclusively
Public funding	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Own funds	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

10. Where do you collect/ purchase the content you do not generate?

	not at all	rarely	in half of the cases	in most of the cases	exclusively
Public domain or freely available	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Paid-for content	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

11. What is the cost structure of the database(s) you own? (As share of the overall cost of the functioning of your database(s))

\* Database production excludes the cost of aquiring the content but includes costs of: personnel, IT hardware and software, data formatting, data encoding, etc.

	no cost	less than half of the cost	half of the cost	more than half of the cost	totality of the cost
Creation of data (resources for the creation of content)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Collection of data (resources for seeking out and gathering content)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Database production* (excluding the cost of acquiring the content)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

12. Has the amount of content in your databases increased in the last 10 years?

- yes
- no

13. Has the number of databases you produce increased in the last 10 years?

- yes
- no

14. Have you invested in content of databases (e.g. creating/ generating/ collecting the data) as opposed to the production of databases over the last 10 years:

- substantially more than in the production of databases
- slightly more than in the production of databases
- substantially less than in the production of databases
- slightly less than in the production of databases
- about the same

## 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 protection remains mostly an unwanted right. The vast majority of database producers are not aware, especially of the sui generis right and when told about it see it unnecessary next to copyright. The sui generis right is practically non-existent outside of the European Union and thus inapplicable in a global economy.

1a. Which of the following do you rely on to control extraction or re-use of the content of your database (s)?

--	--	--	--	--



	always	in most cases	rarely	never
<b>Copyright</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
<b>Sui generis right</b> [ <i>Sui generis protection as provided for by Articles 7 to 11 of the Database Directive</i> ]	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
<b>Contractual clauses (including terms and conditions)</b> [ <i>The database producer/ owner can rely on contractual clauses (e.g. in terms and conditions, in a subscription contract, etc.) to prohibit specific acts (e.g. extraction, scrapping activities) to be carried out on the database</i> ]	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
<b>Technical measures</b> [ <i>The database producer/ owner can rely on technical measures to prevent specific acts from being carried out on the database and its content (e.g. extraction, control of downloading speed) or to restrict access (e.g. captcha)</i> ]	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
<b>No protection needed</b>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Other (please specify below)</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Please indicate the reasons behind your answers and explain why and how these types of protection are used in practice (e.g. what type of technical measures, contractual terms, etc.).

We gather all data under a Creative Commons Zero license. This is because of the sui generis right in the Database Directive. If it didn't exist, we would be able to accept a wider array of licenses and thus to gather and offer for re-use significantly larger amounts of data.

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

There has been no increase in the production of databases in Europe after the sui generis right has been introduced (comp. Gael Directory of Databases). Changes in database production cannot be attributed to the Database Directive.

Data can only be valuable for research, education and economy if it is open and shared. The sui generis right makes it harder to open up and share data.

As a consequence, the sui generis right directly contradicts the goal of growing GDP through data-driven applications and businesses.

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 has caused a lot of legal uncertainties over what is protected and what not. The "where does protection begin, what is a data pile and what a database" debate and jurisprudence has not lead to conclusive and straightforward rules (see CJEU rulings: Scottish Football League; PA Sport UK Limited v Yahoo! UK Ltd; Ryanair Ltd v PR Aviation BV; Freistaat Bayern v Verlag Esterbauer GmbH,). This means that instead of less uncertainty over the re-use of data(bases) there is now more because of the sui generis right. This has all had negative effects on the access and re-use of data and thus on innovation and the the establishment of an economic that is driven by data.

On the flipside, there is no economic evidence whatsoever that the additional sui generis protection has increased the production or sales of databases. Europe must decide whether it wants a market for data or a data driven market.

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.

No extra investment in or production of databases can be observed. At the same time the Directive, and especially the sui generis right, hinder open access, re-use of PSI and the re-use of data in general. All of these are directly relevant to innovation.

### **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, which means that it needs data to be open and re-usable. The sui generis right was tailored to limit re-use of data in order to generate extra investment in databases. This did not occur.

One objective that could still be in line with the needs of the EU is the harmonisation of exceptions.

### 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, which makes them almost impossible to use for any international project.

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.

**EU copyright acquis:** The idea behind protection of intellectual property is to incentivise creation. The Database Directive has failed in this regard. One basic principle of copyright and related rights is that ideas and facts are never protected. The Database Directive's sui generis right in some cases is too close to protecting the content (i.e. the facts) and not the form.

**PSI Directive:** The sui generis protection specified in the Database Directive casts a doubt on the re-use of public sector data.

**EU Open Access policies for research:** The very idea of open access is to overcome the barriers imposed by exclusive rights. Therefore, specific extra protection for databases runs counter to the open access paradigm and makes the implementation of OA in the field of data harder than in other areas that are only covered by copyright.

Data Economy Package objectives: Data becomes less accessible and usable, especially for the development of new services, when it is protected by an additional layer of exclusive rights.

## 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.

This question does not apply to us as we are not interested in the sui generis protection. For us this is an undesirable protection in both our roles, as database producers and re-users.

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.

The CJEU obviously and rightfully comes to the conclusion that data is facts and that facts cannot be protected. This requires us to differentiate between data piles and databases, since only the latter are protected by the sui generis right. The only certain thing is that the entire additional protection created by the sui generis right comes with great legal uncertainties for the re-use of data, while failing to incentivise the production of databases.

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.

Publicly financed content (including data) should be free and re-usable.

We do not believe that the sui generis right is appropriate at all due to its failure to achieve its objective and the fact that it comes too close to protecting actual facts.

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.

We still don't know where a data pile ends and a database begins.

While we are allowed to extract, for instance, a single temperature for a given city and day, it is completely unclear whether we are allowed to do the same on a daily or hourly basis over a period of time.

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

We are an international project and can really just rely on the harmonised parts of the Directive.

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?

Yes, since we are an international project and we don't know which law applies.

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?

That the Digital Single Market and international projects would benefit from a single set of rules, not 27 parallel sets of rules.

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 revoked EU-wide and harmonised exceptions should be established.

Alternatively a "protection upon registration" system could be a solution. This way the producers wishing to protect their databases could continue to do so, while the vast majority of cases where the sui generis right is unwanted would be resolved. The registration could be handled by the EU IPO in Alicante.

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).

Any other comments

Open your hearts and open the data <3

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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