

*EuroGeographics' feedback on the EU Data Act  
(Including the review of the Directive 96/9/EC on the legal  
protection of databases) Inception Impact Assessment Roadmap*

Ref no. 2021-0036.LT

TR 51080067776-74

Brussels, 24<sup>th</sup> June 2021

Key points:

- We very much appreciate any initiative that increase access to and further use of data, so that more public and private actors can benefit from our members' data while utilising new techniques such as Big Data and machine learning.
- We see many opportunities for our Members in the Data Act Roadmap but also some changes around legal protection of databases may prove difficult for some of our members.
- Geospatial databases exemplify the need for protection under the sui generis right, which alone protects investment in acquiring, managing and presenting data to meet users' needs.
- The CJEU judgment in Case C-490/14 (Verlag Esterbauer) affirmed that the sui generis right allows our members to prevent third parties from extracting or re- utilising individual elements.

EuroGeographics is an independent international not-for-profit organisation representing Europe's National Mapping, Cadastral and Land Registration Authorities. We are a passionate advocate for European geospatial data from official sources, in particular when it is harmonised to standard specifications. EuroGeographics members are responsible for a large set of public sector datasets including high value geospatial datasets that are defined in the Open data and PSI directive and that play an important part in the overall European Strategy for data. Making authoritative data as accessible as possible for further use by business and governments is at the core of our members' public task.

Since the early days of the COVID -19 pandemic, governments and researchers have been making use of highly visual geospatial tools and applications to record and report the virus' spread – from local to global levels. Our members' have been greatly involved, and the use of privately-held data was indispensable to support them in the development of different applications for the public interest varying from a geospatial recording and monitoring system for COVID-19 cases, establishing publicly available Health Surveillance Monitor Dashboard for the Department of Health, or creating Corona Spatial Risk Analysis maps.

Proven experience had further raised our awareness of the importance of business to government data sharing to make use of its full potential. We fully support this initiative to provide rules governing reliable data sharing functions and transparent production of information from privately held data. This opens many possibilities to many of our members, especially those dedicated to research and innovations programmes.

However, our view is that the application of the Database directive does not pose an obstacle to the access and use of machine generated data. It might need slight modernisation or additional clarification on its relation to Open data and PSI Directive, but it has provided welcome certainty for EuroGeographics members and their users about the rights associated with geospatial information held in databases. It achieves a good balance between the rights and interests of the rightsholders and users.

The Database Directive addresses directly the forms of intellectual property protection that applies to maps, geospatial databases and their content. It provides protection for the authors of databases in two distinct ways:

1. It grants copyright protection to the structure and design of databases which, 'by reason of the selection or arrangement of their contents, constitute the author's own intellectual creation'.
2. In recognition of the limitations of copyright in relation to the contents of databases, the Directive introduces the sui generis right which ***prevents extraction and re-use of substantial parts of the contents of a database***, provided that there has been a substantial investment of time or money in obtaining, verifying or presenting the contents.

The geospatial data industry has moved rapidly from paper maps to the use of geospatial data in database form to support an increasing variety of software applications, striving towards artificial intelligence and machine learning nowadays. While in some cases maps themselves may be considered within the scope of copyright protection as artistic works, digitisation and advances in technology have increased the use of standardised database structures and interoperability tools to such an extent that the scope to demonstrate creativity is markedly reduced. Geospatial databases thus exemplify the need for protection under the sui generis right, which alone protects the investment in acquiring, managing and presenting data to meet users' needs.

The question has arisen as to whether the detailed content of a published map qualifies for protection under the sui generis right. The CJEU judgment in Case C-490/14 (Verlag Esterbauer) affirmed that it does, stating (para 29) that: Article 1(2) of Directive 96/9 must be interpreted as meaning that geographical data extracted from a topographic map in order that a third party may produce and market another map retain, after extraction, sufficient informative value to be held to be 'independent materials' of a 'database' within the meaning of that provision. Thus, the sui generis right allows our members to prevent third parties from extracting or re– utilising individual elements.

The protection offered by the Database Directive remains fit for purpose and relevant for the machine readable data. Application of the sui generis right is appropriate when it comes to databases produced by public sector bodies or financed with public funds.

Sui generis protection is also important to all governmental bodies who are using CC4.0 BY licenses. They need to inform open data users what is the source of open data since originality/authority is a significant requirement in building trust in the single market for data. Without sui generis right it might be questionable whether they have the right to license open data with CC4.0 BY license.

In conclusion, EuroGeographics' opinion is that public sector bodies should not be excluded from the scope of the sui generis right of the Database Directive.

**Léa Bodossian**

Secretary General & Executive Director

w. [www.eurogeographics.org](http://www.eurogeographics.org)

e. [lea.bodossian@eurogeographics.org](mailto:lea.bodossian@eurogeographics.org)

m. + 32 485 68 79 05