

DA.153 Exceptional need: Lawprovided task

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Art. 15 Data Act - Trialogue Agreement

1. An exceptional need to use data within the meaning of this Chapter shall be limited in time and scope and shall be deemed to exist only in any of the following circumstances:

[...]

(b) in circumstances not covered by point (a) and only in so far as non-personal data is concerned, where:

- a public sector body, the Commission, the European Central Bank or a Union body is acting on the basis of **Union or national law** and have identified **specific data**, the lack of which prevents it from fulfilling a **specific task in the public interest**, that has been **explicitly provided by law**, such as official statistics or the mitigation or recovery from a public emergency; and

- the public sector body, the Commission, the European Central Bank or Union body has **exhausted all other means** at its disposal to obtain such data, including, but not limited to, **purchase** of the data on the market by offering market rates or **relying on existing obligations** to make data available, or the **adoption of new legislative measures** which could guarantee the timely availability of the data.

2. Point (b) of paragraph 1 shall **not apply to small and micro enterprises** as defined in Article 2 of the Annex to Recommendation 2003/361/EC.

3. The obligation to demonstrate that the public sector body was unable to obtain data by purchasing of the data on the market shall not apply in case the specific task in the public interest is the production of **official statistics** and where the **purchase of data is not allowed by national law**.

Conclusio:

The following conditions have to be fulfilled if a public sector body wants to demand data:

(1) public sector body, the Commission, the European Central Bank or a Union body

(2) in carrying out its statutory duties in the public interest

(3) has to demonstrate exceptional need, i.e.

(4) it has identified specific data:

- non-personal data

- including metadata necessary to interpret and use those data,

(5) the lack of which prevents it from fulfilling a specific task in the public interest

(6) the specific task has been explicitly provided by law (e.g. official statistics or the mitigation or recovery from a public emergency)

(7) public sector body has exhausted all other means at its disposal to obtain such data, e.g.

- purchase of the data on the market by offering market rates or

- relying on existing obligations to make data available,

- or the adoption of new legislative measures which could guarantee the timely availability of the data

(but not in case of official statistics or if purchase of data is forbidden by law)

(8) data holders that are legal persons, other than public sectors bodies, which hold those data (but not small and micro enterprises)