



# Data Act – Chapter V

Making data available to public sector bodies and union institutions, agencies or bodies based on exceptional need.

Telecom Council Working Party

31 March 2022

# Chapter V – principle and definitions

- The principle: If exceptional need (for data) and request → obligation to make data available – Art 14(1) and recital 56
- Limiting burden on companies: exclusion of micro+small enterprises – Art 14(2)
- Key definitions:
  - data – Art 2(1) – going beyond the data targeted by Chapter II
  - data holder – Art 2(6) and recital 56 (reference to enterprise)
  - public sector body – Art 2(9), based on public procurement directive (same as ODD)
  - public emergency - Art 2(10) and recital 57 (role of national and international rules)

# Chapter V – ‘exceptional need’ (Art 15, Rec 57/58)

- The existence of an exceptional need justified by public emergency
  - 15(a): Necessity to respond to a public emergency
  - 15(b): Necessity to prevent or assist recovery from a public emergency (additional obligation for the request to be limited in time and scope)
- The existence of an exceptional need in other circumstances:
  - 15(c): Lack of data makes it impossible to fulfill a specific task in the public interest, explicitly provided by law **AND**
  - the data cannot be obtained by alternative means (purchase, reporting, legislating) **OR**
  - obtaining the data under chapter V would substantively reduce holders’ adm. burden

# Chapter V – relationship with other obligations

- Chapter V does not affect EU or national rules (existing and future) on:
  - Reporting obligations (e.g. in environmental field)
  - Information requests (e.g. under competition rules)
  - Requests to check compliance with legal obligation (e.g. under mobility legislation)
- Chapter V cannot be used for the purpose of obtaining data and does not affect UE and national law, in the areas of:
  - Criminal/administrative offences or penalties
  - Customs or taxation administration

Art 16(1) and  
Recital 59

Art 16(2) and  
Recital 60

# Chapter V – validity of requests (Art. 17, Rec 61)

- Responsibilities of the requesting public entity: para 1(a) – (e)
  - Demonstrate the exceptional need, specify data that are necessary, the purpose of use and its duration
  - State legal basis, inform of deadlines
- The request needs to fulfill the conditions in para 2(a) – (f)
  - Clarity, proportionality, respect for legitimate interests of the data holder,
  - Personal data as exception, information on non-compliance, public online availability of requests
- Data obtained do not become re-usable as open data - Art. 17(3), Rec. 62
- Data can be shared with other public sector bodies (to complete the public task) and with third parties (when some tasks outsourced) – Art 17(4)

# Chapter V – compliance with requests (Art. 18)

- Data to be made available without undue delay but:
  - Possibility to seek modification/decline the request within 5 or 15 working days
  - The grounds for modification/refusal: a) data unavailable, b) request not in line with Art. 17
- Once-only principle applies in relation to requests based on art 15(a) to protect companies from repetitive requests (data provision free of charge)
- If the request requires the making available of personal data – obligation to undertake reasonable efforts to pseudonymise (para 5)
- In case of dispute both parties can bring the matter to the competent authority (established under Art. 31)

# Chapter V – obligations of public sector bodies (Art. 19)

- After obtaining the data, the public sector body needs to:
  - Ensure it is not used in a manner incompatible with the purpose stated in the request - Rec. 65
  - Implement measures to safeguard the rights of data subjects
  - Destroy the data once the purpose fulfilled (and inform the data holder)
- If the data in scope of the request includes trade secrets:
  - They shall be made available to the extent this is strictly necessary in view of the purpose of the request
  - The public sector body needs to take appropriate measures to safeguard confidentiality – Rec. 66

## Chapter V – compensation (Art. 20, Rec. 67)

- Data necessary to respond to public emergency (Art 15(a)) is made available free of charge – this scenario is expected to be rare
- In all other cases, the data holder is entitled to compensation limited to the costs incurred to comply with the request + reasonable margin
- The costs can include anonymisation and technical adaptation
- Basis for calculation (of costs/margin) to be made available upon request
- Compensation is NOT compulsory and is not a payment for data as such



## Chapter V – contribution of research (Art. 21, Rec. 68)

- Data can be shared with researchers and research organisations (without strong links to commercial undertakings) as long as the research is compatible with the purpose of the initial request
- Data can also be shared with statistical institutes and Eurostat
- The use of such shared data must be non-profit
- Duty to inform the data holder about the sharing of data

## Chapter V – mutual assistance (Art. 22)

- Duty to collaborate and assist to ensure consistent practice (para 1)
- Compatibility with the purpose of initial request if collaboration/assistance requires the sharing of data (para 2)
- Cross-border requests: duty to notify (para 3)
- Cross-border requests: duty to advise so as to reduce administrative burden (para 4)