



Real Estate Data Centre Consenting Guide

January 2024



Introduction

The consequence of so many of us working, shopping and seeking entertainment online has led to a huge increase in the amount of data that we consume. Restrictive measures that were adopted during the COVID-19 pandemic further exacerbated the need for digital communication and access to information online. The data pressures created by emerging AI technology mean that the need for data and storage solutions is greater than ever.

Data centre procurement can be a difficult process. Getting it right the first time is important to ensure that the venture is sustainable and cost-effective. There are a range of consenting considerations that need to be considered before development can commence. These considerations vary across European jurisdictions and CMS is uniquely placed to offer market leading advice by virtue of its expert lawyers and pan-European presence.

This guide has considered some of the important legal consenting topics across key European jurisdictions. This initial iteration of the tool should be considered as a test case for further analysis which we consider could take into account a broader range of European jurisdictions and provide more in-depth analysis.

This initial test case analyses responses to a range of legal real estate consenting questions which have been put to a group of cross-jurisdictional leading CMS lawyers. Each question has been posed to consider a material issue pertaining to data centre development. An analysis of the answers provided has been undertaken and a traffic light system rating of red, amber and green has been applied to each jurisdiction's responses to give a feel for the level of risk, time intensity or cost that might be expected in each of these material areas and a league table has been created to showcase this analysis.

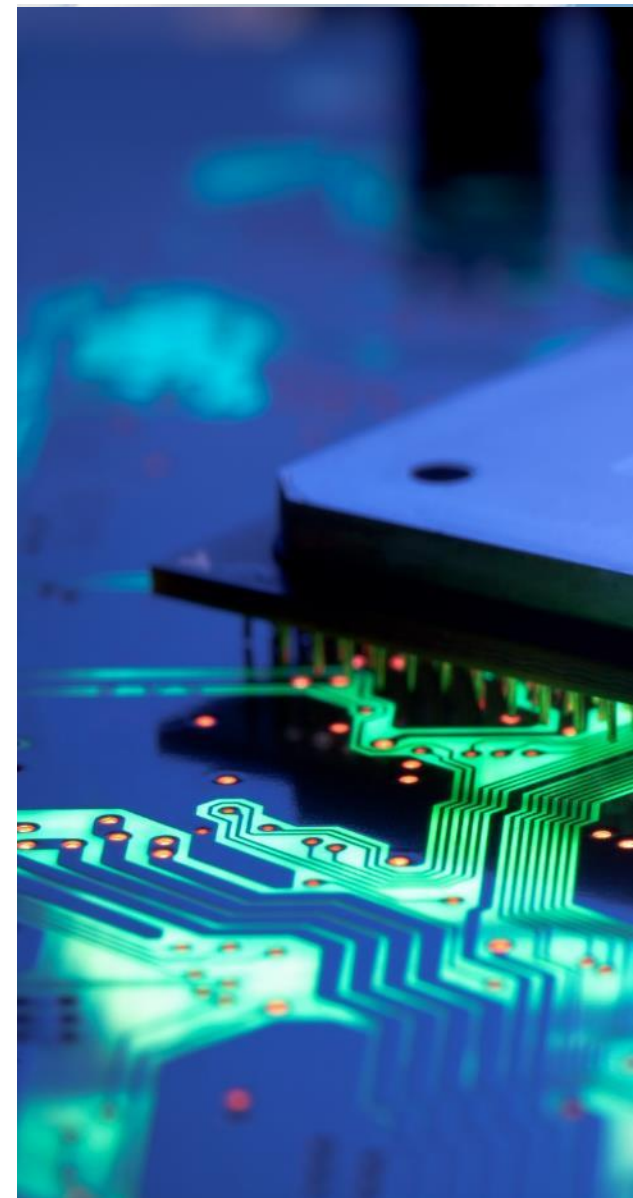




Data Centre Consenting League Table

- » Based on a ranking system assessing the responses from each country, this league table ranks each of the countries taking into account risk rating, cost, and time considerations.
- » A Green Risk Level equates to 3 points, an Amber Risk Level equates to 2 points and a Red Risk Level is 1 point.

Ranking	Country	Points
1.	Slovenia	24
2.	Austria / Latvia	23
3.	Lithuania	22
4.	Hungary / Germany	20
5.	Greece	21
6.	Netherlands / Norway	19
7.	Italy / Scotland	17
9.	England and Wales / Poland	16
10.	Czech Republic / France / Spain / Estonia	15





Executive Summary

Key Take Aways

From an initial level of analysis of the responses, Slovenia comes in with 7 green and 1 amber and 0 red responses and is the clear winner of the league table. The Czech Republic with 2 green, 3 amber and 3 red and therefore comes in at the bottom of the table. Of course, there are many other material considerations to be taken account when analysing which countries may be more or less attractive from a data centre consenting perspective.

European Union

Unsurprisingly, those countries that are European Union (“EU”) Members will present more red tape than their non-EU neighbours. The EU Directives, which Member States are required to adopt into domestic legislation, create protections for EU citizens which can, in some cases, pose barriers to development. An example of this is EU legislation surrounding environment impact assessments (“EIA”). Each of the EU Member States, within this guide, require a form of EIA to be undertaken for certain development. As is apparent from the responses, the nature of EIA required and the level of scrutiny varies between jurisdictions, depending on how the Member State has implemented the directive. However, any jurisdiction that requires, or could require, an EIA to be undertaken will inevitably incur additional time and expense to a data centre consenting process. Even in the case of England and Wales, which is no longer a member state, has adopted these environmental directives into its domestic legislation – and this domestic legislation remains even following Brexit. We expect that the distinction between EU and non-EU countries will become more pronounced as further countries are added to the guide.

Other Considerations

Although not covered specifically by this test case version of the guide, there are other key material considerations that should be taken into account in future analysis. For example, Slovenia (which tops the charts of our initial analysis) may be considered to lack the necessary infrastructure (power, highways, expertise, etc.) for the building of a data centre, whereas its Western European neighbours (who are burdened by greater legislative red tape) are comparatively more ‘data centre ready’ from an infrastructure perspective. Additionally, there are national and local policy and jurisdictional political considerations that should be taken into account when optioneering sites for data centres. This, and more, we expect could form the basis of further analysis in future iterations of this guide.



Tracker

1. Do you have to enter into a form of agreement with the local authority/municipality when applying for consent for a data centre in your jurisdiction?

- | | | |
|-------------------|-----------|-------------|
| Austria | Germany | Netherlands |
| Bulgaria | Greece | Norway |
| Czech Republic | Hungary | Poland |
| England and Wales | Italy | Scotland |
| Estonia | Latvia | Spain |
| France | Lithuania | Slovenia |

2. What is the planning/consenting designation or use class which data centres fit into in your jurisdiction?

- | | | |
|-------------------|-----------|-------------|
| Austria | Germany | Netherlands |
| Bulgaria | Greece | Norway |
| Czech Republic | Hungary | Poland |
| England and Wales | Italy | Scotland |
| Estonia | Latvia | Spain |
| France | Lithuania | Slovenia |

3. Does the applicant have to own all of the land for the data centre to apply for the consent?

 Austria	 Germany	 Netherlands
 Bulgaria	 Greece	 Norway
 Czech Republic	 Hungary	 Poland
 England and Wales	 Italy	 Scotland
 Estonia	 Latvia	 Spain
 France	 Lithuania	 Slovenia

4. What are the steps that need to be taken to secure data centre consent in your jurisdiction? How long does each steps in the process typically take?

 Austria	 Germany	 Netherlands
 Bulgaria	 Greece	 Norway
 Czech Republic	 Hungary	 Poland
 Estonia	 Italy	 Scotland
 England and Wales	 Latvia	 Spain
 France	 Lithuania	 Slovenia

5. Do arrangements for access to utilities, energy and/or power need to be made to as part of the consenting process?

 Austria	 Germany	 Netherlands
 Bulgaria	 Greece	 Norway
 Czech Republic	 Hungary	 Poland
 England and Wales	 Italy	 Scotland
 Estonia	 Latvia	 Spain
 France	 Lithuania	 Slovenia

6. Are there clear land plans or zones in place which automatically authorise data centres or is the application process more complicated in your jurisdiction?

 Austria	 Germany	 Netherlands
 Bulgaria	 Greece	 Norway
 Czech Republic	 Hungary	 Poland
 England and Wales	 Italy	 Scotland
 Estonia	 Latvia	 Spain
 France	 Lithuania	 Slovenia

7. What are the environmental considerations that need to be taken when obtaining data centre consent?

 Austria	 Germany	 Netherlands
 Bulgaria	 Greece	 Norway
 Czech Republic	 Hungary	 Poland
 England and Wales	 Italy	 Scotland
 Estonia	 Latvia	 Spain
 France	 Lithuania	 Slovenia

8. Is biodiversity an important consideration when it comes to data centre consenting in your jurisdiction?

 Austria	 Germany	 Netherlands
 Bulgaria	 Greece	 Norway
 Czech Republic	 Hungary	 Poland
 England and Wales	 Italy	 Scotland
 Estonia	 Latvia	 Spain
 France	 Lithuania	 Slovenia

Greece

Agreement with the local authority / municipality when applying for consent for a data centre

The Law no. 4442/2016 (as amended by Law no. 5069/2023) provides that prior to their operation, a notification should be made to the competent regional development authority ("Notification of Operation") by the data centre operator. Notably, a Notification of Operation is required:

- for data centres which provide services to third parties (whether on an exclusive basis or not) and are classified, for tax purposes under Activity Code Number (63.11.1); and
- for data centres, which do not provide services to third parties but serve the purposes of a business' own use, if they have electrical power of their IT equipment equal or higher than 1,000 kW. (art. 321, Law no. 4442/2016, as added by art. 3 of Law no. 5069/2023).

Data centres not covering the foregoing categories are not subject to the aforementioned notification requirements. (art. 322, Law no. 4442/2016, as added by art. 3 of Law no. 5069/2023).

Briefly, the notification procedure involves the submission of the notification by the data centre operator to the Development Department of the Regional Unit where the data centres are located, i.e., via the notifybusiness.gov.gr platform and the issuance of the relevant receipt. The required supporting documents are not submitted jointly with the notification but shall be kept, together with the submission receipt, at the data centres' premises for audit purposes. The competent authority shall then forward such notification to the competent auditing authorities that a Notification of Operation was submitted (including but not limited to the change of the project owner and the relocation of the data centre) shall be subject to the same notification process. (art. 324, Law no. 4446/2016, as added by art. 3 of Law no. 5069/2023).

Existing data centres shall also follow the notification procedure within one (1) year as of the entry into force of the Law. (art. 333 par. 1, Law no. 4442/2016, as added by art. 3 of Law no. 5069/2023).

Planning / consenting designation or use class

The Law classifies data centres into two categories on the basis of the electrical power of their IT equipment as follows:

- if equal to or higher than 200 kW they are classified as "Industrial buildings "
- if less than 200 kW they are classified as "Offices"

The same applies to the fire safety category, which is also determined on the basis of the data centres' classification. (art. 330 par. 1, Law no. 4442/2016, as added by art. 3 of Law no. 5069/2023). It is noted that operating data centres need to comply with the building construction requirements within three (3) years as of the effective date of the Law. (art. 333 par.2, Law no.4442/2016, as added by art. 3 of Law no. 5069/2023).



Greece

(continued)



Ownership of Land	No such restriction is provided for in the Greek legislation. However, it may be impractical that anyone would make the abovementioned notification in order to operate a data centre, if they were not the owner or at least had a right to use the land.
Process of obtaining consent for a data centre	1. Compliance with the legal, urban planning and environmental regulations, 2. The data centre operator must have collected the necessary supporting documents and made them available for inspection, 3. Submit a notification of operation to the competent development department of the region in whose territorial jurisdiction the data centre is located, in paper or electronic form.
Access to utilities, energy and power arrangements	As part of the consenting process, according to law N. 5069/2023 access to utilities is not provided. For other projects, it is necessary to be submit an Environmental Impact Assessment, that takes place in the utilities. An obligation to create one (1) parking space per one hundred and seventy square meters (170 square meters) of office space only, is also imposed by art. 37, Law no. 4933/2022, as amended by art. 8 of Law no. 5069/2023.
Clear land plans or zones	Data centres may be established in areas where such land use is already permitted, as well as in areas with no designated land uses if such use is not prohibited by other, more specific provisions. (art. 44, Law no. 4759/2020). Presidential Decree no. 59/2018 provides a special category of land use, according to which data centres are allowed in the regions mentioned in art. 3 to 6, 8 to 12, 14, 14b to 14c and 16, along with Presidential Decree from 23.2.1987/1987, art. 3 to 11, in addition to the land uses provided for by existing General Urban Plans and Plans for Spatial and Housing Organization of Open Cities, even in cases where the area has been urbanized (according to par. 3, art. 44, Law no. 4759/2020, as amended by art. 36 of Law no. 4933/2022).
Environmental Considerations	Depending on the size, location anticipated environmental impact, the construction of a data centre may be subject to Environmental Impact Assessment (EIA). The EIA must be filled together with the relevant application and supporting documents for the authorization required to carry out the project.
Biodiversity	Greece is one of the richest countries in the world in terms of biodiversity, hosting an incredible variety of ecosystems and species. However, there are no specific requirements for data centres in the Greek jurisdiction with regard to biodiversity.