Dear Member of the European Parliament,

Ahead of the vote in the LIBE Committee, the undersigned associations representing various sectors of the business community would like to raise serious concerns about certain provisions and proposed amendments to the Data Act and its interplay with the GDPR[1].

As a horizontal piece of legislation, the Data Act should be mindful of competition dynamics and uphold the principle of technology neutrality, and thus refrain from excluding specific sectors or prohibiting data processing purposes as explained in more details below. Instead, its core focus should be to incentivize the growth of data-driven businesses in all economic sectors in full compliance with the GDPR.

The exclusion of further processing by third parties in compliance with the GDPR

We are greatly concerned about the Data Act's undermining of the GDPR's rules on further processing (Article 6(4) GDPR). For example, the Data Act imposes several restrictions on third parties for certain data processing activities, including the removal of all legal bases to process data involving profiling (Article 6(2)b) and restrictions on data sharing (Article 6(2)c). This would mean severely curtailing the use of the data by third parties, including legitimate partnerships between entities, which would have a chilling effect on innovation. These limitations contained in the Data Act are at odds with the GDPR which provides for six legal bases (under Article 6) to process personal data. It therefore appears that Article 6(2)b and Article 6(2)c of the Data Act would no longer be compatible with Article 6(4) of the GDPR which provides conditions for when processing is for a purpose other than for which the personal data has been collected and is not based on the data subject's consent.

In addition, Article 6(2)b and Article 6(2)c of the Data Act:

- are insufficiently forward looking as they do not consider processing of data via Privacy Enhancing Technologies (PETs) which can maintain high levels of privacy and enable the safe reuse of personal data.

[1] This letter is without prejudice to comments on other Chapters of the Data Act

- contradicts Article 20 and Article 22 of the GDPR on data processing, the right of users to portability and the legal bases under which users may object to automated decision-making, including profiling. Preventing third parties from further processing personal data in a risk-based and GDPR-compliant way will significantly curb the potential benefits of this proposal for a broad range of sectors such as the secondary use of electronic health data for research purposes, data sharing by insurance companies to combat fraud, or data sharing to inform consumer credit rating.

We strongly recommend that the Data Act defer to the GDPR legal bases and established norms to provide a coherence legal framework.

Further restrictive Amendments on processing purposes as part of the LIBE Committee's draft opinion

Though we support some tabled amendments at LIBE[2], we also regret that the draft LIBE report and some other tabled amendments[3] impose further restrictions on certain data processing purposes without due consideration to unintended consequences. Some of the proposed changes would indeed prevent users from consenting to share their data with legitimate third-party service providers, including for the purposes of direct marketing, advertising, credit scoring and profiling.

These amendments would further restrict data subjects' right of data portability, removing the freedom of choice regarding the services they may wish to access. This will lead to a detrimental outcome for individuals and it would run contrary to the objective of the Data Act to empower users and facilitate the development of new technology and services enabled by data sharing. Instead, users should be free to decide the purposes for sharing their data insofar as any data sharing and processing has a valid GDPR legal basis and the third party complies with the necessary GDPR requirements.

The proposed purpose limitation also represents a risk for innovation and the development of new products and services. It potentially sets back technological progress in the field of artificial intelligence and puts Europe at a disadvantage to other global competitors.

The proposed exclusion also risks undermining the objective of the Data Act to stimulate competition as data holders will still be allowed to carry out processing activities for those purposes which will instead be prohibited for third parties. In other words, data holders will maintain their competitive advantage vis-à-vis other economic operators over processing activities which are key elements of the data economy.

With the GDPR, the EU has set up a modern futureproof data protection framework. Yet, the Data Act could undermine these achievements and the credibility of the GDPR. Such an unstable and unpredictable legal environment will not incentivise new commercial partnerships or investment in data-driven ventures in the EU. We therefore urge policymakers to ensure that the Data Act fully aligns with the GDPR. It is important to recall that the Data Act's key objective is to foster data sharing in the field of connected objects and ancillary services – not to impose new obstacles to innovation. We stand ready to assist in any way that is helpful.

[2] Tabled AMs 323, 324 to LIBE draft opinion and tabled AM 654 to ITRE draft report by leader rapporteur, MEP Pilar del Castillo among other MEPs.

[3] AM 64, 72 draft opinion, tabled AMs 246, 320, 321 to the draft opinion