

## MBB comments on the European Commission's proposal for an EU Data Act

### **Introduction:**

Data is central to the digital economy, and an essential resource to secure the green and digital transitions. The EU envisions making this data possible by removing barriers in line with European laws and values so that everyone can tap into the benefits that this data can provide. The Data Act is a key pillar and the second major initiative announced in the data strategy providing for horizontal data sharing across sectors.

The Data Act – first of its kind, has the potential to have the large-scale effect that the GDPR law had in recent past. It is also being introduced at an opportune time when the potential to be harnessed from the Internet of Things (IoT). In order to ensure that businesses do take up the opportunity to increase their data-driven growth and innovation, it must be ensured that the regulatory framework is proportionate, and the costs of compliance are kept to a minimum to ensure that the uptake of data-driven solutions is well embraced.

Overall, the opportunities being created by the Data Act are numerous. Having companies including SMEs access and make use of data without excessive burden, opens up a pathway for innovation and increased opportunities. Tapping into and harnessing the use of such data which potential has so far remained unharnessed, has the potential to make our industry more resilient to global shifts and developments.

### **Defining Data**

A new framework that addresses the use of data, gives rise to a number of questions for businesses that need to be answered before this Act is agreed upon and enforced. At the basis of this argument, is the definition of data. This must be clearly defined and understood and the new proposed framework must be aligned with existing data-related legislation in making sure that it does not create any legal grey areas nor any added burdens to businesses in attempting to understand the legalities of this or in trying to comply with the new set of rules.

As discussed, the data act is created in such a way as to facilitate a greater flow of data in all sectors, from business-to-business, business-to-government, government-to-business and government-to-government. The data access and use will not include that generated from laptops and smartphones. This type of multilateral data sharing needs to be properly accounted for within the Act in ensuring that trade secrets and other sensitive information is properly protected especially in the case of a business-to-business data-sharing. Adequate safeguards need to be in place to ensure that these trade secrets are well protected. Moreover, it must also be ensured that there is a clearly defined and narrow definition of the exceptional needs situations wherein businesses would need to share data with Governments. This will ensure that

there is not any additional burden nor costs on businesses, as well as that this aligns with their democratic rights and accountability.

### **Switching Cloud Services**

Another element within the Data Act will enable users to have to right to switch cloud services at no extra cost three years after the entry into force of the new rules. The aim of this measure is primarily to increase competition in the cloud market. In facilitating these switches, it is important that the appropriate contracts and rules are adopted in enabling as much as possible, a seamless transition when it comes to the switching of cloud services. The Data Act needs to be negotiated in such a way that ensures that the mandatory transition periods are adequate and realistic in allowing smooth transitions within a reasonable timeframes that account for the technical complexities involved in such transitions.

### **The Effects to SMEs**

Clarity within the Data Act on the definition and scope of the data to be collected is also a crucial element to be included within this proposed framework. SMEs do need this clarity in engaging their already limited resources in benefitting from the scope of this Act. It would also be of added value to include within the scope of this Act how these SMEs can be helped in understanding how their businesses can benefit from these data sharing agreements.

Sharing of data with third parties does not come without risk. While the framework does need to ensure that there is legal consistency and compliance with EU legislation, it remains crucial that the Act also makes it clear how the obligations under GDPR are respected and reconciled within this new proposed Act.

### **Conclusions**

In fully harnessing the benefits that the Data Act offers, businesses must not be put off by its limited scope. In fact, for maximum business engagement and uptake, contractual freedom needs to be respected and businesses should have the flexibility and autonomy to decide how data sharing should take place and with whom.

Currently, the Data Act proposal includes wording that would put this framework into force in just twelve months from its agreement. Given that the Act includes a significant number of new obligations for businesses as highlighted above, a period of twelve months is deemed insufficient, and this period should be at least doubled to ensure a smooth transition and implementation.

*The Malta Business Bureau is the EU advisory organization for the Malta Chamber of Commerce, Enterprise and Industry, and the Malta Hotels and Restaurants Association. The MBB is also a partner of the Enterprise Europe Network.*

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