I. Executive Summary

1. The Data Act is a push into the right direction. Its focus on non-personal and personal data use and data usability deserves applause. Its actual design is, however, not in every way convincing.
2. The Data Act is first and foremost seeking to enhance compulsory data sharing with regard to different actors and in commercial and non-commercial data ecosystems.
3. The Act is introducing statutory data access rights in the favour of users of IoT-products (Art. 4 et seq.) as well as public authorities in specific cases (Art. 14 et seq.). In the context of IoT-products, the access rights are linked to the data 'generated by the use' and are dependent on a user's request to grant direct access to himself and / or to a third-party recipient. There are no access rights to the benefit of the public and / or the market participants / the economy in general.
4. The data access is combined with underlying contracts / agreements enabling data use. The Data Act is fostering contractual agreements between (nearly) all relevant parties (data use agreement, data access contract (on FRAND terms), non-disclosure-agreements (NDAs)). The Data Act is supporting a process of "contractualisation" of data law. It is against this background rightly criticized that the Data Act does not stipulate any conflicts of law-rules.
5. Despite this process of "contractualisation", the Data Act does not provide (beside Art. 13) any specific rules in detail for the central data use agreement according to Art. 4(13). Generally, the rules on standard terms control are rather limited in substance. The Data Act does not contain rules for data contracts vis-à-vis consumers (and leaves this to the member states). On the basis of Art. 41, however, model contract clauses will be developed.
6. The data access is restricted by various rules – especially with respect to a data use with regard to competing products / competing markets (Art. 4(10), 5(6), 6(2)(e)) as well as with regard to gatekeepers according to the DMA (which are considered to be illegitimate as third-party recipients, Art. 5(3), 6(2)(d)).
7. It is highly debated whether and to what extent the data access regime sets – from a Law & Economics perspective – functionally calib-

rated, sensible, and thought-through parameters and incentives. It is discussed whether the user activation (the Data Act relies on) will work in practice. It is considered whether sectoral approaches should be favoured in opposition of the one size fits all-framework of the Data Act. Furthermore, it is questioned whether the exclusion of gatekeepers as third-party recipients is serving innovation and the common wealth. Finally, the (setting of) FRAND conditions (Art. 8(1)) is confronted with doubts with regard to practicability.

8. From a mostly, but not only, doctrinal point of view it is heavily debated whether and to what extend the data access regime introduces and / or paves the way for some type of 'IP-like' right regarding non-personal data. This debate has to be seen against the background that – on the basis of the current law – non-personal data (if one has access and notwithstanding any trade secret law regime) can be used freely and without some form of consent and / or agreement by the 'producer'. The final version of the Data Act heavily underlines the central role of the user. The need for a data use agreement with the user according to Art. 4(13) points to some form of 'attribution' (without constituting an absolute right) of the respective data to the user. It is another question whether and in which settings users will actually negotiate and / or value this agreement in practice. It is therefore an open question whether the Act will manifest the current factual setting in favour of the data holder.
9. The Act also introduces new access rights for public sector bodies. In contrast to Chapter II, these access rights are independent from a user – meaning that the public sector body can request data directly from the data holder. The public sector body has to demonstrate an exceptional need to access data. Furthermore, the access rights do differentiate between non-personal and personal data. However, the scope of the access rights is limited.
10. The Data Act seeks to regulate providers of data processing services (i.e. cloud and edge computing businesses). Commentators have called into question the technical feasibility of, in particular, the withdrawal of switching charges (Art. 29) and the mandate for functional equivalence of service at the destination (Art. 23(1)(d), read jointly with Art. 30(1)). Likewise, the fact that differently sized (IaaS) cloud providers have to meet these requirements has drawn criticism.

11. With smart contracts being regarded as a viable avenue for data sharing, Art. 36 aims for standardisation of these self-executing protocols through key requirements.
12. The rule on international transfer of non-personal data (Art. 32) comes along with similar uncertainties as the parallel norm in Art. 31 Data Governance Act.
13. From a legal point of view, it is highly unsatisfying that the Data Act for all parts does not really "solve" and / or complicates the relationship to and its interplay with data protection law / the General Data Protection Regulation (GDPR).
14. Additionally, and even more surprising, it is hard to comprehend that the Data Act does not substantially tackle the relationship to and its interplay with the Data Governance Act. Specific rules are limited and no incentives are set (for example to the benefit of data intermediaries). As data intermediaries do potentially fulfil a central function in order to enable data exchanges / data contracts (*inter alia* between users and third-party recipients), the gap opposes the general aim of the Data Act to enhance and foster data sharing and data use.
15. The Data Act increases the regulatory complexity for the data economy significantly. With regard to the aim of boosting data access and fairness in data markets, it is to be welcomed that the Data Act does introduce specific rules to the benefit of and some exceptions regarding micro, small, or medium-sized enterprises.
16. The Data Act – and especially its access rights – will be complemented by sector-specific EU legislation (in particular by European Data Spaces legislation). It is, however, not entirely clear whether and to what extent the Data Act leaves room for member state legislation in specific sectors.
17. Finally, the Data Act is rather vague on the central question whether and to what extent a monetarisation of personal and – especially – non-personal data shall be possible. Different follow-on rules of the access right (e.g., Art. 4(10), 5(6), 6(2)(c) and (e)) limit – next to data protection law – a full monetarisation. At least slightly, Art. 4(13) and (14) as well as Art. 6(2)(h) might be interpreted to point to the user as being the prime actor to monetarise.
18. With the Data Act and the Data Governance Act, the EU has again been a first mover in the 'market of regulatory ideas.' With regard to the criticism from an Economics angle as well as with regard to the missing interplay between the two Acts and between the Acts and

the GDPR, it is at least doubtful that the Data Act (and the Data Governance Act) will be able to unleash its full potential. It is, for example, rather foreseeable that unchanged data protection restrictions will serve as a barrier for data holders to grant access.