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Annex to the European Banking Federation response to the European Commission's targeted questionnaire on Open Finance

I. General remarks

Approaching the question of an Open Finance Framework, there are several considerations for European banks, including:

- A **European data economy** which unlocks **new opportunities for customers** – individuals and firms – through increased sharing of data is a priority for the European banking sector in **the process of its own continuing digital transformation**. It is the **combination of data from different sectors** which holds the greatest potential for delivering new services and experiences for customers. The Data Act, while taking a step forward in some respects, did not unlock data sharing in more sectors beyond IoT.
- European banks' experience with the implementation of the revised Payment Services Directive (PSD2) gave way to many lessons learned such as the importance of clarifying the interplay with GDPR for any data sharing, setting out clear rules on liability, the need for a level playing field, and the importance of providing incentives to all market participants to move beyond compliance towards developing innovative value propositions for customers and serve the market needs.
- The persistence of technical obstacles, such as the lack of standards (e.g. on data formats) and interoperability in data sharing.

Taking these together, what should an Open Finance Framework achieve? As for any data sharing framework, the customer – users and firms – must always be at the centre. This is the case for the open data economy as a whole.

In our view, this would be best achieved by a framework or a scheme with provisions on how data should be shared, to address issues such as consumer protection, liability, compensation, and the lack of a level playing field. However, this would not introduce new data access rights. **Data sharing would be voluntary, based on market needs.** Market-driven initiatives could help to develop the necessary standards, while also taking into account the work already done under other fora (SPAA Scheme and Berlin Group).

Voluntary data sharing would help to see **for which use cases there is customer demand** and would support innovation. **This is crucial for, if the customer is at the centre, it is important to understand which use cases will bring the most added value for them and for this we need to look at what data is needed – taking a cross sectoral view.**

This flexible approach would also allow for better **interaction with data spaces being developed in other sectors** to enable the **development of cross-sectoral use cases.**

This would keep the financial sector moving towards an open data economy, without creating further asymmetries with other sectors, and would also be consistent with the recent EU proposals on data sharing, which, except for very specific actors or datasets, aim to facilitate voluntary data sharing between firms. The Open Finance Framework should follow a similar approach, thus being a voluntary and facilitator framework, allowing and stimulating innovation to emerge from the market itself while delivering new services and opportunities for customers.

Finally, we encourage the European Commission to involve relevant stakeholders from different sectors in the ongoing reflection on an Open Finance Framework. As always, the European Banking Federation (EBF) is open to working with authorities constructively towards developing a framework for data sharing that is secure, transparent, user-centric, and consistent across sectors, thereby contributing to the creation of a true Single Market for Data in Europe.

II. Gaps that need to be addressed by an Open Finance Framework

Regardless of the approach finally taken by the Commission, an Open Finance Framework should take into consideration that there are currently important gaps in data sharing that need to be addressed:

- **No cross-sectoral data sharing framework:** Failing to introduce data sharing in more sectors (such as energy, telecoms or e-commerce) means existing asymmetries faced in the financial sector remain and reduce the ability of financial companies to substantially enhance new services and products or improve existing ones.
- **Consumer protection:** the customer must always be at the centre of data sharing frameworks. This means, in the case of personal data, ensuring compliance with the GDPR and allowing all stakeholders to provide the consent management tools of their choice. Clarifying the interplay between any data sharing frameworks and the GDPR from the start is essential. Banks experience with the interplay between PSD2 and GDPR and the uncertainties that persist even after the adoption of European Data Protection Board Guidelines on the issues, are an example of that.
- **A fair distribution of value:** the premise of PSD2, whereby access by some market participants to data held by other market participants, free of charge, is not a sustainable approach and cannot produce sound market outcomes and, ultimately, the best outcomes for end users. There must be a balanced framework which includes incentives for all market participants. The recent Commission proposal for a Data Act includes the principle of compensation, introducing the possibility for data holders to receive reasonable compensation for making the data available to a data recipient. Including this in all data sharing frameworks is key. Furthermore, it is important to keep in mind that reasonable compensation includes going beyond compensation for providing the infrastructure. It should also reflect the investment into providing high quality data.
- Lack of **a level playing field** among all market participants that are not subject to similar requirements and supervision.
- Lack of **reciprocity** on data accessibility with some firms offering services based on access to user data held by third parties, but, at the same time, not allowing users sharing with other data held by them.
- **Technical obstacles** including lack of standards (e.g. on data formats, exchange protocols, security) result in complexities, additional costs and uncertainty.

Ongoing initiatives such as those under the SPAA Scheme and Berlin Group are welcome; any initiatives on standardisation should be market led.

III. Further comments on specific questions in the targeted questionnaire

➤ Question 29

Question 29 asks whether, in your opinion, should an open finance framework need a dispute settlement mechanism to mediate and resolve liability disputes and other customer complaints? We do think a dispute settlement mechanism is needed but **it must be coherent with existing mechanisms to avoid duplication.**

➤ Question 48

While full standards do not exist yet, there are technical standards such as json, ISO, OAuth which are widely used for API development. Payments is an area of many common standards and there are also standards for securities settlement and corporate actions. It is important that standardisation is left to the market, to reflect existing demand.

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About the EBF

The European Banking Federation is the voice of the European banking sector, bringing together 32 national banking associations in Europe that together represent a significant majority of all banking assets in Europe, with 3,500 banks - large and small, wholesale and retail, local and international - while employing approximately two million people. EBF members represent banks that make available loans to the European economy in excess of €20 trillion and that reliably handle more than 400 million payment transactions per day. Launched in 1960, the EBF is committed to a single market for financial services in the European Union and to supporting policies that foster economic growth.