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Date: 18/07/2022 16:42:36

Targeted consultation on open finance framework and data sharing in the financial sector

Fields marked with * are mandatory.

Introduction

In finance and beyond, there is a broad technology-driven trend towards greater use of data and data sharing. The Commission highlighted the need for better access to public and private data and its reuse in the data strategy for Europe, which includes several cross-cutting policy initiatives

i. common European data spaces in various sectors of the economy

ii. data sharing between businesses and governments

iii. sharing of industrial data across sectors

In order to promote the ambitious data strategy across the economy, in 2020 the Commission proposed a Data Governance Act (DGA), a Digital Services Act (DSA) and a Digital Markets Act (DMA). These initiatives, among other things, provide a coherent governance framework for the common European data spaces, establish rules for data intermediaries and other online intermediaries, as well as establish obligations for online gatekeeper platforms. Furthermore, in 2022 the Commission proposed a Data Act, containing further policy measures as regards access to the "Internet of things" (IoT) data as well as general modalities for data access and reuse across the economy.

In 2020, the Commission also identified promotion of data-driven finance as one of the priorities in its digital finance strategy. In 2021, the Commission established an expert group on European financial data space to continue its engagement with stakeholders in this priority area, which created a dedicated subgroup on open finance in 2022. Open finance should form an integral part of the European financial data space, along with data contained in public disclosures of firms as well as supervisory data. On 25 November 2021, the Commission adopted legislative proposals on the European Single Access Point (ESAP) to public disclosures as part of the capital markets union (CMU) package. The objective is to consolidate online access to the financial and sustainability-related data of companies and financial institutions in a single interface. The legislation also provides for a machine-readable format. On 15 December 2021, the Commission adopted its strategy on supervisory data in EU financial services. Next, subject to an impact assessment, a new open finance framework has been announced in the capital markets union communication of 25 November 2021, building on and in full alignment with broader policy initiatives on data access and governance. The communication pointed out that an open finance framework should be based on the principle of a level playing field for existing and new entrants, and subject to data protection rules and clear security safeguards.

Open finance refers to third-party service providers' access to (business and consumer) customer data held by financial sector intermediaries and other data holders for the purposes of providing a wide range of financial and information services. Currently, third party service providers have to rely on limited sources of customer data access rights in the financial sector: the revised Payment Services Directive (PSD2) with respect to payment accounts data of both retail and business customers, as well as the General Data Protection Regulation (GDPR) with respect to personal data held by any financial service provider. However, GDPR enables third party service providers to have direct access only when it is technically feasible, which therefore does not guarantee such access. The recent Data Act proposal does not introduce any new data access rights in the financial sector either.

Based on the Commission´s mandate and as announced in the Retail payments strategy of 24 September 2020, a PSD2 review has been launched to report on the application and impact of EU rules on payment services. The lessons learned from PSD2 as regards third-party service providers' access rights to payment accounts upon customer request will be taken into account when designing the open finance framework. Since the entry into force of PSD2, a number of stakeholder initiatives in this area have also developed, including application programming interface (API) standardisation and access schemes.

The present targeted consultation on open finance complements the "Have your say" consultation on open finance (included in the "Have your say" consultation on the PSD2 review). The objective of this targeted consultation is to gather evidence and stakeholder views on various aspects related to the state of play and further development of open finance in the EU and effective customer protection. It also takes into account and complements the ongoing work of the Expert group on the European financial data space (parts I and II). In addition, the targeted consultation seeks stakeholder views on the use of aggregated supervisory data for research and innovation and on broader questions of data sharing among financial firms for risk monitoring or compliance purposes (part III).

This targeted consultation is targeted at different stakeholder groups: customers of financial services firms (consumers and corporate customers), financial institutions and other firms which are either holding data or intending to use it.

Sections I and II of this targeted consultation covers the following data types

- the use of confidential customer data collected for the purpose of providing financial services (for example, this excludes the data contained in public disclosures and the use of data for supervisory and law enforcement or similar purposes)
- data held by both financial institutions and other firms, provided that it is used for the purposes of providing financial services
- access to and reuse of raw data only, as opposed to enriched data

By way of illustration, the consultation covers: data on accounts held by corporate and retail customers with financial service providers (e.g. payments, savings, securities), as well as on their insurance and pension products, and data relevant to the risk and sustainability profile of such products.

As the nature and scope of practical use cases for open finance is constantly under development, this targeted consultation does not attempt to establish a full taxonomy of such cases. However, every respondent is expected to provide responses in particular for their area of activity. In addition, the consultation seeks feedback on two specific areas of use cases to illustrate which are of particular relevance to the Commission objectives of promoting safe retail investment, and SME access to finance.

Section III of this targeted consultation covers certain additional data sharing issues, beyond open finance. They seek views on the need to enhance legal certainty about the possibility to make supervisory data available more extensively for research and innovation, and the possibility for financial institutions to exchange among themselves information and data to improve risk monitoring or compliance, while protecting data confidentiality.

Please note: In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-psd2-review@ec.europa.eu.

More information on

- this consultation
- the consultation document
- the use cases annex to the consultation document
- the related call for evidence on the open finance framework
- the related public consultation on the review of PSD2 and on open finance
- the related targeted consultation on the review of PSD2
- the related call for evidence on the review of PSD2
- digital finance
- payments services
- the protection of personal data regime for this consultation

About you

* Language of my contribution

- ○ Bulgarian
- ○ Croatian
- ○ Czech
- ○ Danish
- ○ Dutch
- ● English
- ○ Estonian
- ○ Finnish
- ○ French
- ○ German
- ○ Greek
- ○ Hungarian
- ○ Irish

- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

* I am giving my contribution as
- Academic/research institution
- Business association
- Company/business organisation
- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

* First name

Liga

* Surname

Semane

* Email (this won't be published)

l.semane@ebf.eu

* Organisation name

255 character(s) maximum

European Banking Federation

* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

Transparency register number

255 character(s) maximum

Check if your organisation is on the [transparency register](). It's a voluntary database for organisations seeking to influence EU decision-making.

4722660838-23

* Country of origin

Please add your country of origin, or that of your organisation.

- Afghanistan
- Åland Islands
- Albania
- Algeria
- American Samoa
- Andorra
- Angola
- Anguilla
- Antarctica
- Antigua and Barbuda
- Argentina
- Armenia
- Aruba
- Australia
- Djibouti
- Dominica
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Eswatini
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Libya
- Liechtenstein
- Lithuania
- Luxembourg
- Macau
- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Saint Martin
- Saint Pierre and Miquelon
- Saint Vincent and the Grenadines
- Samoa
- San Marino
- São Tomé and Príncipe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia

Austria	Finland	Mauritius	Slovenia
Azerbaijan	France	Mayotte	Solomon Islands
Bahamas	French Guiana	Mexico	Somalia
Bahrain	French Polynesia	Micronesia	South Africa
Bangladesh	French Southern and Antarctic Lands	Moldova	South Georgia and the South Sandwich Islands
Barbados	Gabon	Monaco	South Korea
Belarus	Georgia	Mongolia	South Sudan
Belgium	Germany	Montenegro	Spain
Belize	Ghana	Montserrat	Sri Lanka
Benin	Gibraltar	Morocco	Sudan
Bermuda	Greece	Mozambique	Suriname
Bhutan	Greenland	Myanmar/Burma	Svalbard and Jan Mayen
Bolivia	Grenada	Namibia	Sweden
Bonaire Saint Eustatius and Saba	Guadeloupe	Nauru	Switzerland
Bosnia and Herzegovina	Guam	Nepal	Syria
Botswana	Guatemala	Netherlands	Taiwan
Bouvet Island	Guernsey	New Caledonia	Tajikistan
Brazil	Guinea	New Zealand	Tanzania
British Indian Ocean Territory	Guinea-Bissau	Nicaragua	Thailand
British Virgin Islands	Guyana	Niger	The Gambia
Brunei	Haiti	Nigeria	Timor-Leste
Bulgaria	Heard Island and McDonald Islands	Niue	Togo
Burkina Faso	Honduras	Norfolk Island	Tokelau
Burundi	Hong Kong	Northern Mariana Islands	Tonga

Cambodia
Cameroon
Canada
Cape Verde
Cayman Islands
Central African Republic
Chad
Chile
China
Christmas Island
Clipperton
Cocos (Keeling) Islands
Colombia
Comoros
Congo
Cook Islands
Costa Rica
Côte d’Ivoire
Croatia
Cuba
Curaçao
Cyprus
Czechia
Democratic Republic of the Congo
Hungary
Iceland
India
Indonesia
Iran
Iraq
Ireland
Isle of Man
Israel
Italy
Jamaica
Japan
Jersey
Jordan
Kazakhstan
Kenya
Kiribati
Kosovo
Kuwait
Kyrgyzstan
Laos
Latvia
Lebanon
Lesotho
North Korea
North Macedonia
Norway
Oman
Pakistan
Palau
Palestine
Panama
Papua New Guinea
Paraguay
Peru
Philippines
Pitcairn Islands
Poland
Portugal
Puerto Rico
Qatar
Réunion
Romania
Russia
Rwanda
Saint Barthélemy
Saint Helena Ascension and Tristan da Cunha
Saint Kitts and Nevis
Trinidad and Tobago
Tunisia
Turkey
Turkmenistan
Turks and Caicos Islands
Tuvalu
Uganda
Ukraine
United Arab Emirates
United Kingdom
United States
United States Minor Outlying Islands
Uruguay
US Virgin Islands
Uzbekistan
Vanuatu
Vatican City
Venezuela
Vietnam
Wallis and Futuna
Western Sahara
Yemen
Zambia
Zimbabwe

- Denmark
- Liberia
- Saint Lucia

* Field of activity or sector (if applicable)

- [ ] Accounting
- [ ] Auditing
- [x] Banking
- [ ] Credit rating agencies
- [ ] Insurance
- [ ] Pension provision
- [ ] Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)
- [ ] Market infrastructure operation (e.g. CCPs, CSDs, Stock exchanges)
- [ ] Social entrepreneurship
- [ ] Other
- [ ] Not applicable

The Commission will publish all contributions to this targeted consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **For the purpose of transparency, the type of respondent (for example, 'business association, 'consumer association', 'EU citizen') is always published. Your e-mail address will never be published.** Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

* Contribution publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

- **Anonymous**
  Only the organisation type is published: The type of respondent that you responded to this consultation as, your field of activity and your contribution will be published as received. The name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.

- [x] **Public**
  Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

- [x] I agree with the personal data protection provisions

PART I

Part I of the consultation contains the following sections

I. The relevance of data sharing in the financial sector
II. Customer protection
III. Modalities of data access and reuse in the financial sector
IV. Technical infrastructure

I. The relevance of data sharing in the financial sector

Question 1. What type of actor in the data value chain are you?

Please select as many answers as you like

- [ ] Individual customer of a financial service provider
- [ ] Business customer of a financial service provider
- [x] Holder of customer data
- [x] User of customer data
- [ ] Data intermediary between data holders and users
- [ ] Other

Question 2. In what part of the financial sector are you active?

Please select as many answers as you like

- [x] Banking
- [x] Payments

- [x] Insurance
- [x] Asset management
- [x] Securities trading
- [x] Brokerage
- [x] Pensions
- [ ] Data and information services
- [ ] Not active in the financial sector
- [x] Other

Please specify to what other part of the financial sector you refer in your answer to question 2:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Leasing, real estate

Question 3. In your opinion, is there an adequate framework for data access rights in place in the financial sector beyond payment accounts?

- (●) Yes
- ( ) No
- ( ) Don’t know / no opinion / not applicable

Question 4. As a customer of a financial service provider, would you be willing to grant other businesses (“third parties”) access to the data you generate with this provider for one of the following purposes?

Please select as many answers as you like

- [ ] Receive a comprehensive overview of your financial situation based on data from all your existing financial service providers (e.g. consolidation of data from several investment portfolios)
- [ ] Receive additional financial services from another financial services provider
- [ ] Switch to another financial services provider in an easy and simple way
- [ ] Other

- [ ] None of the above

Question 5. What open finance-based products would stand to benefit retail customers the most?

Please select as many answers as you like

- [ ] Comparison tools that facilitate provider switching
- [ ] Online brokerages that provide financial products with the best value
- [ ] Personalised advice and tailored financial products
- [ ] Personal finance management tools (e.g. overdraft alerts and recommendations for choosing lower interest rates products, lower overdraft charges)
- [ ] Personal wealth management tools to monitor and manage assets and liabilities (e.g. financial goal management, analytics of investments and their returns, monitoring of wealth factors such as savings, spending and budgets)
- [ ] Alternative credit scoring methods for financial inclusion (e.g. gig economy workers)
- [ ] Quicker customer onboarding with financial service providers
- [ ] Pension tracking tools that provide a comprehensive overview of entitlements
- [ ] Digital tools to assess the ESG profile of financial products (e.g. the environmental impact of investment portfolios or carbon footprint estimation of specific products)
- [ ] All of the above
- [x] Other

Please specify to what other product(s) you refer in your answer to question 5:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

It is important to consider what types of data would be needed to deliver these use cases (such as digital tools to assess the ESG profile of financial products) and hold the biggest potential benefits for customers. Specifically, it is the combination of non-financial data with financial data which will enable new, innovative use cases as well as the possibility to improve existing offers/products. It provides opportunities to personalise advice and product offerings even more to the individual client.

Examples of potential use cases are:
•	Data from transport-related purchases (e.g., vehicles, fuel, public transport tickets) could allow for recommendations on money-saving or greener options or help anticipate maintenance needs.
•	Data from households on their energy use and property could facilitate the provision of advice on greener energy choices or green financing for renewable energy installation.
•	Data from telecoms can help in the fight against fraud.

When discussing the type of data, it should be provided and observed data not inferred or derived data. This is the case under the horizontal proposal for the Data Act, which recognizes the value creation behind inferred and derived data and excludes them from the scope.

What would be the approach that would help to realize these use cases? This would be setting out a legal framework or a scheme on how data could be shared, covering issues such as compensation, technical obstacles to data sharing, liability, and dispute settlement, consumer protection, including consent management, and a level playing field among all market participants, with reciprocity in data access.

Data sharing should then be on a voluntary, based on market need, and contractual arrangements as necessary. For example, the Data Governance Act provides tools and sets out rules for data sharing, but the data sharing remains voluntary.

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 – 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.
Market driven initiatives can help to develop any required standards (e.g. on data formats, exchange protocols and security).

As long as there is no data sharing framework that includes all sectors of the economy, no new mandatory data access rights in the financial sector should be introduced.

Question 6. What would be your quantitative and/or qualitative estimate of such retail customer benefits for these products?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Data has the potential to deliver new and improved products and services to customers, as can be seen from the cross-sectoral use cases mentioned in our response to question 5. Yet, there need to be incentives for all market participants. If there is a lack of commercialization there will be a gap in investment due to lack of incentives.

Question 7. What open finance-based products would stand to benefit corporate customers (notably SMEs) the most?

Please select as many answers as you like

- [ ] Comparison tools that facilitate provider switching
- [ ] Online brokerages that provide financial products with the best value
- [ ] Personalised advice and tailored financial products
- [ ] Personal finance management tools (e.g. overdraft alerts and recommendations for choosing lower interest rates products, lower overdraft charges)
- [ ] Personal wealth management tools to monitor and manage assets and liabilities (e.g. financial goal management, analytics of investments and their returns, monitoring of wealth factors such as savings, spending and budgets)
- [ ] Alternative credit scoring methods for financial inclusion (e.g. gig economy workers)
- [ ] Quicker customer onboarding with financial service providers
- [ ] Pension tracking tools that provide a comprehensive overview of entitlements
- [ ] Digital tools to assess the ESG profile of financial products (e.g. the environmental impact of investment portfolios or carbon footprint estimation of specific products)
- [ ] All of the above
- [x] Other

Please specify to what other product(s) you refer in your answer to question 7:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As for question 5, it is important to consider what types of data would be needed to deliver these different use cases. In our view, it is the combination of data from different sectors that will deliver new and improved services for corporate customers in these areas and beyond.

For example, data from e-commerce can enable banks to do more accurate and faster credit risk assessments for SMEs and expand access to finance for underserved segments. The green loan use case shared under Question 6 is also applicable for SMEs.

There needs to be a careful consideration of what policy option can realise this. In our view, it would be a legal framework or scheme that sets out how data could be shared. This would cover issues such as compensation, technical obstacles to data sharing, liability and dispute settlement, consumer protection, including consent management, and a level playing field among all market participants, with reciprocity in data access. Data would then be shared on a voluntary basis, based on market need and incentives – but supported by the principles in the overarching framework. This would help to determine use cases would be most of value/in demand for corporate customers (notable SMEs). Specific use cases should not be mandated.

Question 8. What would be your quantitative and/or qualitative estimate of such corporate customer benefits for these products?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

• Increased access to data has the potential of data to deliver improved and innovative products to corporate customers.
• Fragmentation between different data sharing initiatives, such as the Data Act, should be avoided. There should also be alignment with the European Single Access Point platform.

Question 9. In your opinion, should financial firms holding customer data be allowed to share their customer data with customer's permission?

- ○ With regulated financial institutions only
- ○ With any financial and information service providers active in the financial sector
- ● With any third-party firm, including in other sectors of the economy
- ○ Firms should not be allowed to share customer data
- ○ Don't know / no opinion / not applicable

Please explain your answer to question 9:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Under a voluntary data sharing framework, a data holder should be able to share the customer's data (with their permission) with any third party firm, including in other sectors of the economy. This is also important in terms of an open data economy.

Question 10. Should financial firms holding customer data be entitled to compensation by third parties for making the data available in appropriate quality, frequency and format?

- (x) Yes
- ( ) No
- ( ) Don't know / no opinion / not applicable

Question 10.1 If yes, should its level:

- ( ) be limited to the cost of putting in place the required technical infrastructure
- ( ) allow for a reasonable return on investment for collecting and structuring the data
- (x) be set in another way
- ( ) don't know / no opinion / not applicable

Please specify to what other way(s) you refer in your answer to question 10.1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

From the PSD2 experience, it can be concluded that the no remuneration approach does not necessarily create a significant new market development or the best experiences for the end user. Future data sharing initiatives should be based on a more balanced framework, with a fair distribution of value and risk as well as the ability to monetize services for all market participants.

All parties involved in collecting, structuring, storing and sharing data need to have the financial incentives in place to make data accessible through advanced sharing technologies, so to ensure that the customer, no matter corporates or individuals, can feel safe with sharing their data and that new and innovative services can be more easily delivered.

We welcome the principle set in the Data Act which gives the data holder the possibility to receive reasonable compensation from the data recipient for making data available. As with any free secondary market, the compensation should be set by the market and not on the basis of any kind of established fee or standard.

Furthermore, compensation should go beyond the cost of putting in place the required technical infrastructure. It must include the return on investment for collecting and structuring the data but must also reflect the quality of data – higher quality data brings a higher cost. For delivering new and improved services in the data economy, high quality data is key and incentives are needed to realise that.

Finally, we would like to draw attention to the European Banking Authority' (EBA) reply on the European Commission's Call for Evidence on the review of PSD2, which recommends setting the right incentives for all parties to invest and participate in the Open Finance ecosystem.

Question 11. What other conditions are required to ensure the potential of open finance is maximised while minimising its risks?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

- Consumer trust through a strong consent management framework. It is important to ensure that the customer understands what they are consenting to and to whom and receives all the necessary information on how to manage this consent. This must be done in line with the GDPR. Any provider should adhere to the same rules and there should be a clear delineation of the roles and responsibilities of each participant. Trust must be the foundation of any data sharing framework.
- Create a level playing field among all market participants, and a clear regulatory framework or scheme for all participants in the Open Finance Framework. We therefore welcome the Commission's commitment to this in the November 2021 Capital Markets Union Communication.
- Include measures to address risks such as fraud, ID theft, privacy and data breaches, cyber and information security risks, also in line with relevant legislation such as the GDPR.
- Address technical aspects to data sharing through market driven standardisation which takes into account work that has already been accomplished and existing initiatives.
- Reciprocity on data accessibility should also be ensured. Only firms participating in the framework providing access to their own relevant data should be able to access data held by third parties.
- Place the Open Finance Framework in a general horizontal data sharing framework. The Data Act is the Commission's horizontal data sharing proposal which Open Finance will build on. Getting the interplay right on these proposals is essential.
- Addressing issues related to liability. The PSD2 experience created difficulties on this aspect. Therefore, the responsibilities of each actor need to be clearly specified to avoid uncertainties.

In the absence of a horizontal data sharing framework, the best option is a voluntary approach to open finance. A framework or a scheme could set out how data could be shared, addressing issues such as consumer protection, liability and compensation. Market driven initiatives on standardisation can address technical obstacles to data sharing. Data would be shared on a voluntary basis, based on market need. The customer should always be at the centre of the framework.

This would keep the financial sector moving towards an open data economy, without creating further asymmetries with other sectors, where data sharing may not be present. It would also be consistent with the voluntary approach of sectoral EU data spaces.

Question 12. What policy measures would be important to ensure a level playing field in terms of access to customer data?

- ○ Ensuring access by financial institutions to the non-financial data of customers
- ○ Subjecting all third-party service providers that access customer data held by financial service providers to financial supervision and regulation
- ● Other
- ○ A level playing field already exists, so no measures necessary
- ○ Don't know / no opinion / not applicable

Please specify to what other policy measure(s) you refer in your answer to question 12:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The principle of same risks, same rules, same supervision should be part of the legal framework outlining how data would be shared. This also applies for large technology companies active in the field of financial services.
Expanding on ensuring access by financial institutions to the non-financial data of customers, it is the combination of data from different sectors which holds the greatest potential for delivering new services and experiences for customers, as shown by the use cases under Question 5.
Access to non-financial customer data also allows to improve the ability to determine the risk profile of customers, which from a prudential point of view is important in order to improve the predictive power of our internal models.
It is also important to ensure a strong Data Act, notably the principles under Chapter III. The possibility for the data holder to receive reasonable compensation for making the data available to a data recipient is a prime example; the possibility to lower or exclude it by other legislation (included in Art. 9(3)) must only be done in exceptional circumstances to avoid creating asymmetries between and within sectors.

Question 13. Does open finance framework bear any possible risk of accumulation of data, leading to the creation of monopolies?

- (x) Yes
- ( ) No
- ( ) Don't know / no opinion / not applicable

Please explain why you do think open finance framework does bear possible risk(s) of accumulation of data, leading to the creation of monopolies:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The banking sector is already sharing core transactional data under PSD2, with the customers' consent. This is not the case for all sectors nor non-bank actors within the financial sector. Moving beyond the PSD2 framework towards Open Finance without also introducing data sharing in other sectors could deepen this asymmetry faced by banks and heighten the risks associated with it.

In addition, large technology companies (Big Techs) can already access payment accounts data through PSD2. Should they be able to access further financial sector data (from different products and financial institutions), this could lead to the creation of monopolies, especially considering their nature as mixed activity groups which can use the data to expand to adjacent markets. BigTechs already have the technology and customer base to become accumulators of large quantities of data. The business models depend on extracting maximum economic value from user data. This could also result in them gaining the dominant position in the intermediation between the customer and the data holder.

Finally, BigTechs are also largely unencumbered by financial regulation which gives additional layers of protection to customers. This highlights the importance of ensuring a level playing field also when it comes to supervision. These risks can be limited if the design of the framework includes incentives for all market participants, follows the 'same risk, same rules, same supervision' principle and is aligned with the Data Act.

Questions for financial firms holding customer data

Question 14. As a financial firm holding customer data, do you make any data available to third parties beyond the data that you are required to share under PSD2, GDPR or other laws?

- (x) Yes
- ( ) No
- ( ) Don't know / no opinion / not applicable

Question 14.1 Please specify the main obstacles to make such data available:

Please select as many answers as you like

- [ ] Legal
- [ ] Technical
- [ ] Operational
- [ ] Business considerations
- [x] Other

Please specify to what other obstacle(s) you refer in your answer to question 14.1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Sharing of data beyond what is required by PSD2, GDPR or any other regulation is usually based on bilateral or multilateral contracts between the data holder(s) and those willing to access customer data. In such situations, the legal, technical and other conditions governing the data sharing are covered in the contract or service documents supplementing the contract. Those conditions usually tackle any potential obstacle that could hinder the provision or use of those services. Given that both the contract and the accompanying documentation are freely signed by all parties involved in the service, all of them are aware of its rights and obligations when using/providing the service(s).

As mentioned above, for open finance, an accompanying legal framework to a voluntary market driven approach for data sharing could help to resolve outstanding obstacles , for example in terms of liability when it comes to legal obstacles or compensation when it comes to business considerations.

It is important to underline that users remain at the centre and would decide what they want to share and with which parties they would like to do so.

Finally, it is important to note that while banks are mainly holders of data, they are also increasingly active as third parties using data.

Questions for firms using customer data held by financial firms

Question 15. As a firm using customer data held by financial firms, what is the purpose of accessing these data?

Please select as many answers as you like

- [ ] Provision of services competing with the services offered by the data holder
- [ ] Provision of additional services
- [ ] Provision of analytical insights based on aggregated, including anonymised, data
- [x] Other

Please specify to what other purpose(s) you refer in your answer to question 15:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As mentioned under Question 14, that while banks are mainly holders of data, they are also increasingly active as third parties using data. In addition to the purposes of provision of additional services and provision of analytical insights based on aggregated, including anonymised data, risk management and improving the services that are already provided by banks are other purposes for which bank would like to access these data.

Question 16. As a firm using customer data held by financial firms, have you experienced any difficulties in accessing these data?

- ( ) Yes
- ( ) No
- (•) Don’t know / no opinion / not applicable

Question 17. As a firm using customer data held by financial firms, with how many data holders in the EU would you have to interact on average to develop and offer a financial product or service to customers?

- ( ) Less than 10
- ( ) 10 to 99
- ( ) 100 to 999
- ( ) 1000 to 9999
- ( ) More than 10000
- (•) Don’t know / no opinion / not applicable

Question 17.1 In how many Member States would these be located?

- 1 Member State
- 2 to 5 Member States
- More than 5 Member States
- Don’t know / no opinion / not applicable

Questions for financial data intermediaries

Question 18. As a financial data intermediary, have you experienced difficulties in organising data sharing between data holders and data users?

- Yes
- No
- Don’t know / no opinion / not applicable

Regulation and supervision of open finance information services

Under PSD2, a dedicated licensing framework for account information service providers is in place to ensure proper regulation and supervision of these activities.

Question 19. In your opinion, should the scope of account information service provider licenses put in place under PSD2[1] be extended to cover all financial services where new data access rights for third-party service providers would be introduced?

1 Limited scope licenses which allow account information services provides to provide consolidated information on one or more payment accounts held by the payment service user with either another payment service provider or with more than one payment service provider

- Yes
- No
- Don’t know / no opinion / not applicable

Questions for firms using customer data held by financial firms

Question 20. Do you hold any financial services license (authorisation)?

- Yes
- No

Don’t know / no opinion / not applicable

Question 20.1 Please specify which financial services license (authorisation) you hold:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Banking licence.

II. Customer protection

Control over the use of personal data is a key pillar in protecting the digital self-determination of a user and building a trust framework. Ensuring that customers have meaningful control over the use of their personal data is essential to guarantee the lawfulness of data processing. Open finance framework should aim to establish trust by ensuring that customers are informed about the processing of their personal data, and that the information provided is accurate.

Question 21. In your opinion, what digital tools can strengthen a customer’s ability to grant, track and withdraw consent?

Please select as many answers as you like

- [x] Consent management dashboards to enable customers to track which third parties have been granted consent
- [x] Digital identity solutions, such as European digital identity wallets[2], which could help identify a customer online and authenticate consent
- [x] Other

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[2] The European digital identity wallet is a product and service that will allow natural and legal persons in the Union to store credentials linked to their identity, and provide them to relying parties upon request, for the purpose of authentication and access to public and private services. It was proposed in June 2021 as part of the European digital identity framework (eIDAS review). See proposal for a Regulation of the European Parliament and the Council amending Regulation (EU) No 910/2014 as regards establishing a framework for a European digital identity, COM/2021/281 final

Please specify to what other tool(s) you refer in your answer to question 21:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The availability of consent mechanisms that enable customers to decide what to share with whom in a secure and trusted way is an essential part of data sharing. It can be envisaged that multiple tools and technologies could be applied for such a purpose. However, it is important that such solutions are supported by a clear framework – also aligning with GDPR- in order to become trusted by users.

This includes:
- Clearly defining rules on providing consent. Consumers need to understand what it means if and when consent is required for sharing of their data.
- Assigning clear roles and responsibilities for all actors participating in the data sharing.

It is of upmost importance to maintain the discretion and flexibility for operators (both data holders and third parties) to define and develop consent management services with different technologies in order to better reflect specific needs. Indeed, having the opportunity to implement tailored services/solutions could meet both the needs of the final users and the possibility for the market to innovate in that area. At the same time, a common ground for consent management has to be guaranteed among providers, relying on basic rules and clearly defining accountability, between data holders and third parties especially with respect to final users.

Above all, as mentioned above, it is important to define who is responsible for the management of consent and is consequently liable towards clients as well as which rules/conditions (e.g., revocation/modification, liabilities, etc.) apply, in order to safeguard the final users and avoid misleading and diverse interpretations among operators. Clear provisions on liability are a key takeaway from the PSD2 experience

Question 22. In your opinion, who should provide such tools?

Please select as many answers as you like

- [ ] Data holders
- [ ] Third parties
- [x] Other

Please specify who else should provide such tools:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Such tools can potentially be developed and provided by multiple parties, including data holders, third parties and technology providers, but (in line with above) they need to rest on a clear, common legal framework.
Data holders should be entitled to offer the tools to their customers on a voluntary basis.
Financial institutions can also provide digital identity wallets, preferably based on a government issued digital identity ("root identity").

Question 23. Do you believe that licensed firms in open finance should be required to provide operational tools to enable customers to manage their right of consent with respect to the various financial services they are using?

- Yes
- No
- (x) Don’t know / no opinion / not applicable

Question 24. Should “strong customer authentication” (i.e. authentication based on the use of at least two security elements) under open finance framework be only used when customers first decide to connect/disconnect their account to a third party service provider or periodically?

- Connect/disconnect
- (x) Periodically
- Never
- Don’t know / no opinion / not applicable

Question 25. Should the authorisation to access customer data under open finance automatically expire after a certain period of time?

- Yes
- No
- (x) Don’t know / no opinion / not applicable

Data sharing can potentially result in market segmentation where consumers with a high-risk profile could be excluded from the market because of certain characteristics or where those who choose not to agree to share additional data, which extends beyond data deemed strictly necessary for the provision of the relevant product, may end up paying higher prices for services (‘price for not sharing data’). At the same time, more granular risk pricing may lead to lower prices. The use of alternative data may even open access to financial services to hitherto excluded individuals and businesses. The risk of data misuse, financial crime and fraud need to be appropriately managed in a data sharing framework.

Question 26. What are the key risks related to customer data sharing?

- Financial exclusion
- Privacy breaches
- Misuse of data (incl. fraud and financial crime)
- (x) Other
- Don’t know / no opinion / not applicable

Please specify to what other key risk(s) you refer in your answer to question 26:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Open Finance can create some risks from the perspective of consumer protection, competition, and data holders (banks).

In addition to financial exclusion, privacy breaches, misuse of data including for fraud and financial crime, which are key risks to consider, others include:

Customers:
- Data misuse: the risk of data misuse, financial crime, fraud, ID theft, or scams could be increased by the greater value and quantity of shared financial and non-financial data. For corporate customers, there may be a risk to business sensitive data which could result in negative impacts to competition.
- Cybersecurity breach.

Competition:
- Competition risk: a competition risk could arise in how Open Finance is implemented, particularly if firms do not offer equal access, thereby perpetuating the existing asymmetry brought about by PSD2.
- Taking the sharing of the investment and appropriateness assessment in section two, this could risk in other firms "free riding" on the assessment of one firm, which poses competition issues.
- Market and data concentration, particularly regarding BigTech in financial services.

Data holder:
- Operational cost: the costs of developing, implementing and maintaining an operating model to deliver the data would be significant (e.g. new API costs for Open Finance), particularly without adequate incentives.

Financial market:
- Innovation: Mandatory sharing of certain type of data, such as inferred data (i.e. credit scoring) could put at risk innovation, as no incentives would arise in the open sharing of intellectual property data. Like the Data Act, only provided and observed data should be in the scope of any data sharing.

The impact of data sharing requirements in user experience is an important issue that should be taken into account and it is important to avoid data abuse and misuse. The approach to authentication (the level of prescriptiveness) should be considered in relation to its impact on user experience.
Also linked to question 24 where we responded "periodically", data subjects should be (strongly) authenticated by the party directly interacting with them at least when:
- requesting a service for the first time,
- asking for service changes, and
- certain pre-established criteria are met.

Question 27. What should be done to mitigate the risks of financial exclusion and data abuse?

Please select as many answers as you like

- [ ] Establish best practice guidelines on customer profiling
- [ ] Define in legislation specific data fields that may be used for customer profiling in the provision of various financial services

- [ ] Introduce a mandatory requirement for the provision of basic services as part of the licensing regime (akin to the basic bank account concept) and cap prices
- [x] Other

Please specify what else should should be done to mitigate the risks of financial exclusion and data abuse:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

- Clear rules on liability are important to ensure appropriate redress between actors in the data value chain in cases where data shared is misused.
- Financial exclusion is less a risk in the EU due to requirements in the Payment Account Directive (PAD).
- A strong consent management framework to enable consumers to understand for what and to whom they are giving their consent to and to manage this consent. Therefore, alongside any framework, initiatives /actions to raise consumer awareness (in collaboration with the various actors involved, including public bodies) are important.
- In terms of customer profiling, this could offer benefits in terms of better tailored services to the customer's specific needs. Best practices guidelines for voluntary adoption could be welcome, however, this is a fundamental issue that relates to the data economy and is not unique to financial services. Therefore, any best practices should be established at horizontal level and not be addressed by a sectoral approach.

Overall, it is important to avoid duplication, and existing frameworks such as the GDPR or existing financial (product) regulation must be taken into account.

Clear rules on liability are important to ensure appropriate redress between actors in the data value chain in cases where data shared is misused, incorrect, or out-of-date.

Question 28. Is there a need for additional rules in the financial sector to clarify the attribution of liability for the quality of customer data that is shared?

- ( ) Yes, horizontal liability principles across the financial sector are required
- ( ) Yes, but liability principles must be tailored sector-by-sector
- (•) No
- ( ) Don't know / no opinion / not applicable

Question 29. In your opinion, should an open finance framework need a dispute settlement mechanism to mediate and resolve liability disputes and other customer complaints?

- (•) Yes
- ( ) No

- Don’t know / no opinion / not applicable

III. Modalities of data access and reuse in the financial sector

Data-driven finance necessitates the use of varied datasets, including public and private data, as well as personal and non-personal data. This not only calls for a combination of differentiated policy approaches when building the European financial data space, but also requires consistency with cross-sectoral legislative frameworks. Relevant personal data includes financial data, e.g. as regards savings, mortgages, consumer credit, investments, pensions and insurance. Non-financial data may also be useful, including data from online platforms (e.g. social media, e-commerce and streaming), public entities (e.g. tax and social security), utilities (e.g. water and energy), telecommunications, retail purchases, mobility (e.g. ticket purchases), environmental data, and Internet of things (IoT) data. Relevant non-personal data includes business registry data and high value datasets to be shared under the Open Data Directive. ‘Read’ access allows for simple access to data, e.g. to populate aggregators and comparative tools. ‘Write’ access includes ‘read’ access and enables third parties to perform actions on customer’s behalf, e.g. to open/close accounts in case of switching financial service providers or initiate other types of transactions. This sections covers questions on the type of data and type of access required for the development of specific products and services in the financial sector.

Question 30. Are you aware of any financial services or products based on data sharing that already exist or are under development beyond those enabled under PSD2?

- (x) Yes
- No
- Don’t know / no opinion / not applicable

Question 30.1 If you are aware of such products, please specify what type of data and what type of access are needed for their development?

	Name of the financial service or product	Sector (banking, investments, pensions, insurance, other)	Service/product (consumer mortgages, commercial mortgages, consumer credit, corporate credit, investments, savings, pensions, insurance)	Data type (financial/ non-financial, personal/non-personal, public/private, raw/enriched)	Access type (read-only or write)
Financial service or product No. 1	NL: SRB Nexus	Banking	Commercial	Financial	Read Only
Financial service or product No. 2	DK: PensionsInfo	Pension	Pensions	Consumer, commercial, financial	Read Only
Financial service or product No. 3	DE: Financial Transaction Services (FinTS)	Banking	Electronic banking	Financial, private	Write
Financial service or product No. 4	FR: ESAP, ESG Data, www. impact.gouv.fr	Investment and market	Financial market transaction	Pre-trade financial market data	Write

Question 31. Please explain briefly the potential that these services or products involving financial data sharing hold for consumers and/or businesses:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

These products or services enable the sharing of data between different service providers of the consumer or firm. This reduces transactions on multiple front ends and provides the customer with a comprehensive financial overview in real time. Sharing data will increase banks' knowledge of their customers so that they can develop better value added products and services and customize for their needs. This can improve customer relationship management: the right product for the right customer at the right time.
In addition, data sharing will enable companies to develop and train AI systems that can be used to automate and improve existing processes.

More specifically on the products mentioned in the table:
- SBR (Standard Business Reporting) Nexus develops and maintains standards for the exchange of business data between companies, (governmental) organizations and financial institutions. SBR Nexus facilitates the use of Standard Business Reporting and has developed taxonomies for data exchange (also beyond banking). It allows for efficient reporting of financial statements e.g. to banks, which can be fully digitized by means of accounting software. Another important feature facilitates the transfer of the standard bank confirmation to the accountant. (Netherlands)
- PensionsInfo gives you a comprehensive overview of your pension plans. You can calculate your pension based on a number of assumptions that you have the opportunity to change yourself. PensionsInfo is a collaboration between public authorities, pension companies, life insurance companies, banks and savings banks. Virtually all suppliers are now included in PensionsInfo. (Denmark)
- The Financial Transaction Standard (FinTS) is currently supported by around 2,000 credit institutions in Germany and is continually being updated. The FinTS standardises the interface between bank customers – represented by, for example, their finance management software or an internet portal – and one or more credit institutions by making them identical. Its aim is to ensure multibank capability. In addition to its underlying transmission protocol, FinTS also contains the technical specifications of more than 130 business transactions and has sophisticated security technology.

Some additional examples of products (in addition to those in the table) include:
- Hypotheken Data Netwerk, HDN:
o Sector: Banking
o Service/Product: Mortgages
o Data type: Financial
o Access type: Read only
- Description: HDN (Hypotheken Data Network) is a cooperative not-for-profit association. Together with 54 members (including all major mortgage (product) providers, many financial advisors, (franchise) mortgage brokers, service organisations and IT providers) HDN provides efficiency and innovation in financial services through standardised, fast and efficient processes, resulting in cost reductions in the entire value chain and optimized data sharing.

- Infogreffe - Greffe du Tribunal de Commerce
o Sector: all
o Service/product: Any product requiring corporate financial data;
o Data type: ESG data sharing
o Access type: Read or write

- Livret d'Epargne Populaire : Banque de France database indicating whether the individual complies with the conditions (revenues below thresholds)
o Sector: All
o Service/product: Any product requiring corporate financial data
o Data type: Corporate Financial data
o Access type: Read only

- DiFin ("Digitale Finanzbericht")
o Sector: Accounting
o Service/product: Accounting/financial information
o Data Type: financial, public
o Access type: Read

- e-bolighandel: bolighandel automates processes and minimizes administrative work, so you get less paperwork and more time for customer advice. The platform is a digital meeting place for financial institutions, real estate agents and lawyers, where all parties get safe and efficient exchange of information, contact information and documents.
o Sector: Mortgages
o Service/product type: Mortgages commercial
o Data type: Financial
o Access type: Read only

Questions for firms using customer data held by financial firms

Users of customer data held by financial service providers may access them based on an ad hoc contract concluded with the data holder.

Question 32. Have you had any practical experience with ad hoc contracts to ensure data access?

- ○ Yes
- ○ No
- ◉ Don't know / no opinion / not applicable

Question 33. In your experience, are data holders willing to conclude such contracts in practice?

- ○ Yes
- ○ No
- ◉ Don't know / no opinion / not applicable

Question 34. At how much would you estimate the average cost of concluding an ad hoc contract for data access?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Questions for all respondents

Contractual schemes

Contractual schemes are voluntary data-sharing mechanisms that are based on a contract. The Euro Retail Payments Board (ERPB) is currently developing a contractual scheme between data holders and data users for access to data, with participation from business and consumer organisations. The Commission would like to better understand the potential of such contractual schemes for open finance.

Question 35. Are you a member of any contractual scheme or expecting to become one in the next few years?

- (selected) Yes
- No
- Not sure
- Don't know / no opinion / not applicable

Question 36. Do you think that contractual schemes offer more benefits than just data & API standardisation?

- (selected) Yes
- No
- Don't know / no opinion / not applicable

Question 36.1 If you do think that contractual schemes offer more benefits than just data & API standardisation, please specify how you would describe these benefits or drawbacks:

Please select as many answers as you like

- [x] A contractual scheme can save costs and time for negotiating and concluding multiple contracts
- [x] A contractual scheme can ensure effective dispute settlement
- [ ] A contractual scheme is unlikely to gain broad acceptance and support absent clear incentives for stakeholders to agree
- [ ] A contractual scheme is unlikely to solve the issue of determining the appropriate compensation for the data holder, if any is deemed necessary
- [x] Other

Please specify how else you would describe these benefits or drawbacks:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

A scheme covers a set of rules, practices and standards that will allow and facilitate the exchange of data in a context of 'value-added' ('Premium') services provided by the market.
Europe is moving towards an 'open data society' which if implemented the right way can create a wealth of innovation opportunities, a whole set of completely new client experiences accompanied by new additional revenue streams for market actors. Please refer to the SEPA Payment Account Access Scheme of the European Payments Council (SPAA) as a good example that aims to drive 'open payments' in the EU in a way that unlocks and creates value whilst allowing for a fair distribution of value and risk between Scheme Participants. Key benefits behind the SPAA Scheme include:

- It builds on investments done in the context of PSD2 and is in line with EU legislation.
- Managed as a scheme and supported by the relevant EU institutions and developed collaboratively by the retail payment industry (supply and demand) as represented in the ERPB.
- It enables premium payment services beyond PSD2 in a way ensuring harmonisation, interoperability and reachability across Europe.
- Asset Holders (typically ASPSPs) expose information and transactions through the scheme to 'Asset Brokers' (typically TPPs) for a fee, with prior consent from the Asset Owner.
- It takes into account the input from major European standardisation initiatives active in the field of 'PSD2 APIs'.
- It could be a stepping-stone towards 'open finance' beyond payments and 'open data' beyond finance.

Please explain your answer to question 36.1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In a voluntary data sharing framework for Open Finance, a contractual scheme can help to resolve the risks flagged in the response so far.

Question 37. At how much would you estimate the cost of membership in such a scheme (including costs of joining the scheme, compliance /adjustment costs to meet scheme's requirements, costs of providing the required data access under the scheme)?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

It will depend on the scope and complexity of the scheme. The higher costs are likely to arise in the design and development of the scheme rather than the cost of membership.

Question 38. Would you agree with the following statement: without any regulatory intervention, I would expect that any contractual challenges linked to open finance would be resolved within the next 3-5 years by stakeholders themselves?

- (x) Agree
- ( ) Disagree
- ( ) Don't know / no opinion / not applicable

Question 39. What further measures to promote market adoption of contractual schemes should the EU take?

- ( ) non-binding calls on stakeholders
- ( ) make adherence to specific contractual schemes mandatory
- (x) other measures
- ( ) none of the above
- ( ) Don't know / no opinion / not applicable

Please specify to what other measure(s) you refer in your answer to question 39:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Non-binding call to stakeholders. Behind this would be a framework that sets out clear rules on elements such as liability allocation. These rules shall be applicable to any scheme that industry decides to develop but the framework itself must not impose any particular scheme.

Legislative access rights

The Data Act proposal establishes a new data access right for the so-called Internet of things (IoT) data. However, it does not introduce any new data access rights in the financial sector, which would have to be set out in sectoral legislation in line with the general rules for business-to-business data sharing in all economic sectors, including finance, as set out in Chapter III.

Question 40. In your opinion, should the Commission consider to propose new data access rights in the area of open finance?

- ( ) Yes, without compensation
- ( ) Yes but only if the data holder receives compensation for making data available
- (x) No
- ( ) Don’t know / no opinion / not applicable

Question 41. Should any such new data access rights cover the following categories of data related to?

	Yes	No	Don't know - No opinion - Not applicable
Savings accounts	( )	(x)	( )
Mortgage products	( )	(x)	( )
Lending products	( )	(x)	( )
Securities accounts and financial instruments holdings	( )	(x)	( )
Insurance and pension products	( )	(x)	( )
Risk assessment (eg credit and insurance risk)	( )	(x)	( )
Sustainability profile of financial services	( )	(x)	( )

Question 42. In your opinion if such new data access rights are introduced, should financial institutions that are SMEs[3] holding customer data be excluded from any such obligation (see e.g. Art 7 of the Data Act)

[3] Small and medium-sized enterprises include enterprises with staff number between 10 and 250 and turnover between 2 and 50 million euros or a balance sheet total between 2 and 43 million euros

- ◯ Yes
- ◉ No
- ◯ Don’t know / no opinion / not applicable

Question 43. In your opinion should large gatekeeper platforms[4] requesting data access be excluded from being able to benefit from such data access rights (see Art 6(d) of the Data Act)

[4] Gatekeepers are understood as providers of core platform services (such as online intermediation services, online search engines, online social networking services, video-sharing platform services, number-independent interpersonal communication services, operating systems, cloud computing services) which have a significant impact on the internal market, serves as an important gateway for business users to reach end users and have an entrenched and durable position in its operations or will have such a position in the near future

- ◯ Yes
- ◯ No
- ◉ Don’t know / no opinion / not applicable

It is important to ensure full compliance with GDPR and e-Privacy Directive requirements, including when data is shared in real-time (e.g. standardised APIs). The GDPR provides several lawful grounds for the processing of personal data. If personal data is processed, the controller(s) must ensure that processing is based on lawful grounds in line with GDPR. Article 20 of Regulation (EU) 2016/679 provides for a right of data subjects to receive personal data concerning them, in a structured, commonly used and machine-readable format, and to port those data to other controllers, where those data are processed on the basis of Article 6(1)(a) or Article 9(2)(a) or on a contract pursuant to Article 6(1)(b). Data subjects also have the right to have the personal data transmitted directly from one controller to another, but only where technically feasible.

Question 44. Have you made use of Article 20 GDPR to access financial data or been requested such data access under Article 20 GDPR in the financial sector, and if so how frequently?

- ◯ Never

- [x] Rarely
- [ ] Regularly
- [ ] Every week
- [ ] Don’t know / no opinion / not applicable

Question 45. Are there any specific challenges related to the data processing principles of GDPR as regards

Please select as many answers as you like

- [x] data lawfulness, fairness and transparency
- [x] purpose limitation
- [x] data minimisation (limiting data collection to what is directly relevant and necessary for a specified purpose)
- [ ] data accuracy
- [x] data storage limitation
- [x] data integrity and confidentiality
- [x] Other

Please specify to what other challenge(s) you refer in your answer to question 45:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Other GPDR challenges in data sharing include:
- challenges related to the definition of responsibilities and legal roles under GDPR (typically controller /processor/joint controller roles). It must therefore be clearly defined in the framework.
- Challenges related to third country transfers.
- Incident handling and liability.
- Risk of losing trust if a third party misuses data.
- Interplay with other regulations, for example, sectoral ones. This has been members experience with the interplay between GDPR and PSD2 and the subsequent guidelines.

Question 46. In your opinion, what lawful grounds for the processing of personal data would be most useful for the purpose of open finance?

	1 (least useful)	2 (not so useful)	3 (neutral)	4 (quite useful)	5 (most useful)	Don't know - No opinion - Not applicable

Processing based on consent				X		
Processing based on a contract					X	
Processing necessary for compliance with a legal obligation			X			
Processing necessary to protect vital interests of the data subject			X			
Processing necessary for the public interest		X				
Processing necessary for legitimate interests pursued by the controller or a third party			X			

Question 47. Of the ones listed, which are the most important reasons preventing the portability right under Article 20 GDPR to be fully effective in the financial sector?

Please select as many answers as you like

- [x] The absence of an obligation to provide the data on a continuous/real time basis
- [ ] The absence of standardised APIs
- [x] The absence of standards ensuring data interoperability
- [x] The absence of clear rules on liability in case of data misuse

- [ ] The absence of clarity as to which types of data are within scope
- [x] The absence of incentives for data holders to provide high quality data, as there is no remuneration for making data available
- [x] Other

Please specify to what other reason(s) you refer in your answer to question 47:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The selected reasons are indeed preventing the portability right to be fully effective but they are not specific to the financial sector. Other reasons could include lack of interest for data portability on behalf of the data subjects or the lack of knowledge by the user.

IV. Technical infrastructure

Data sharing in the digital economy would require a dedicated infrastructure that enables machine-readable access and machine-to-machine communication, so that the various firms in the data value chain can interact and cooperate efficiently. The task of putting in place such an infrastructure might be costly and involve many steps, including the standardisation of data and the access technology itself. Prior to engaging in such activities though, it is indispensable to determine what type of data format would be required. This section covers questions on the standardisation of data and application programming interfaces (APIs).

Question 48. Do commonly agreed standards on data formats exist in your area of activity in the financial sector?

- (●) Yes
- ( ) No
- ( ) They are currently being developed
- ( ) Don't know / no opinion / not applicable

Question 48.1 If commonly agreed standards on data formats do exist in your area of activity, please specify what is the proportion of holders of customer data in the financial sector that make use of these standards?

- ( ) Less than 10%
- ( ) 10-50%
- (●) The majority
- ( ) Don't know / no opinion / not applicable

Question 49. Should the EU take further measures to promote market adoption of standardised data formats?

- ○ Non-binding calls on stakeholders
- ○ Make use mandatory
- ● Other measures
- ○ None of this
- ○ Don't know / no opinion / not applicable

Please specify to what other measure(s) you refer in your answer to question 49:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

To promote market adoption of standardised data formats, there should be a non-binding call on stakeholders.

Taking the experience of PSD2 as an example, members found that, as regards to the need to rely on standard and common criteria, a precise set of transactions status codes should have been defined in order to manage and associate clear information to the customer. To this extent, standardised data formats could be useful. Therefore, we support the promotion of standardized data formats. However, any eventual framework has to avoid the introduction of overly stringent requirements that could hinder competitive balances and evolving business dynamics and it should be up to the industry to develop such standards.

In addition, any development of common standards should avoid regulatory overlap with existing regulations (especially given that banking is already heavily regulated) and ensuring a level playing field and interoperability with other sectors.

Bodies such as the European Data Innovation Board, created under the Data Governance Act, can help to facilitate the latter, but its role, also in terms of Open Finance, needs to be clarified.

Question 50. Should the EU take further measures to promote market adoption of standardised APIs?

- ○ Non-binding calls on stakeholders
- ○ Make use mandatory
- ● Other measures
- ○ None of this
- ○ Don't know / no opinion / not applicable

Please specify to what other measure(s) you refer in your answer to question 50:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We support non-binding calls on stakeholders and the promotion of standardized APIs, as long as they build on what has been achieved under PSD2 and the investments already made. A single API standard should therefore be avoided.
It is important to achieve the right balance between the need for a sufficiently adequate level of standardization, e.g. through the definition of common criteria/rules at national/European level (aimed at delivering well-functioning APIs by considering the full value chain), and flexibility in the development of market-based solutions that allow players to effectively leverage the PSD2 account access mechanism and thus exploit the innovative infrastructures developed in recent years also opening the door to further opportunities and collaborations.
It is also important to provide legal certainty to the different business models, allowing participants to get a fair compensation for the use of their APIs and facilitating FIs the access to data from outside of the financial sector.

Question 51. Who is best placed to develop common standards for APIs?

- ( ) Industry stakeholders
- ( ) European supervisory authorities
- ( ) International or European standardisation organisations (e.g. CEN)
- (x) Other
- ( ) Don’t know / no opinion / not applicable

Please specify who else is best placed to develop common standards for APIs:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Standards to be developed in a coordinated way with industry and other stakeholders and with regulators and authorities’ support. Alignment with International or European Standardisation organisations to ensure maximum interoperability is also important.

Question 52. Would you agree with the following statement: even without any regulatory intervention, within the next 3-5 years I would expect most if not all larger financial institutions in the EU to provide consent-based access to key customer data via standardised APIs.

- (x) Agree
- ( ) Disagree
- ( ) Don’t know / no opinion / not applicable

Questions for firms using customer data held by financial firms

Question 53. Absent standardisation of data, would you be able to offer your services?

- Yes
- To customers of a limited number of financial firms only
- In a limited number of Member States only
- No
- Don't know / no opinion / not applicable

Question 54. What is your estimate of cost savings from using data based on commonly agreed standards?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

It depends on the financial services in scope, the complexity of bank IT supporting those services and the compliance strategy chosen (development by a single firm or through an industrial hub).

Question 55. Would you expect new products to be developed if more data were available based on commonly agreed standards?

- Yes
- No
- Don't know / no opinion / not applicable

Question 56. To the best of your knowledge, what is the proportion of holders of customer data in your sector of activity that make these data available based on APIs?

- Less than 10%
- 10-50%
- The majority
- Don't know / no opinion / not applicable

Question 57. Do you expect this proportion to increase significantly in the next 3-5 years?

- ( ) Yes
- ( ) No
- (x) Don’t know / no opinion / not applicable

Question 58. Are currently available APIs based on generally accepted standards?

- (x) Yes
- ( ) No
- ( ) Don’t know / no opinion / not applicable

Question 59. Are you making use of APIs or are you planning to do so in the future?

- (x) Yes
- ( ) No
- ( ) Don’t know / no opinion / not applicable

Question 60. Would you expect new products to be developed if more data were available through APIs?

- (x) Yes
- ( ) No
- ( ) Don’t know / no opinion / not applicable

Question 61. What is your estimate of cost savings from accessing data through an API as opposed to specific case-by-case requests?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

> We do not see API access and specific case-by-case requests as opposite. In fact, most APIs are tailor-made to a specific use case. In any case, cost savings or increases will depend on the specific service and the acceptance of each service in the market.

Questions for financial firms holding customer data

Question 62. Have you already developed an API for data access by customers and third parties on behalf of customers?

- ○ Yes, under PSD2
- ◉ Yes, outside the scope of PSD2
- ○ No
- ○ Don't know / no opinion / not applicable

Question 62.1 If you have already developed an API for data access by customers under PSD2, to what extent do you (plan to) leverage it for other open finance use cases?

- ○ not used for other cases and no such use planned
- ○ other use cases planned
- ○ already used for other use cases
- ◉ Don't know / no opinion / not applicable

Question 63. Would you see any cost savings in your operations associated with the use of such APIs?

- ○ Yes
- ○ No
- ◉ Don't know / no opinion / not applicable

Question 64. What is your estimate of the cost of setting up an API for access to your customer data and the ongoing costs for running it?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

First , we would like to comment on Question 63 on if we see any cost savings in the operations associated with the use of such APIs. On the one hand, APIs reduce computing power needs and our dependence on technical information aggregators. On the other hand, if APIs are developed for accessing data that is not frequently used, the cost of developing and using those APIs could be higher than accessing that data through other means.

In a rapidly evolving scenario, it's hard to evaluate all drivers that would allow estimating any cost savings. It will also be important to consider any economic returns from an increasingly mature and pervasive use of APIs. The client services also need to be taken into account. For example, internal data availability (e.g. a certain database that is not connected to other data sources which would require a new interface) could be a significant hurdle and cost to make certain data available via the API.

Turning to the current question, it depends on the financial services in scope, the size and structure of each banking entity and the complexity of bank IT supporting those services and the sharing model chosen (development by a single firm or through an industrial hub).
It is not just the cost of API development and operation that needs to be considered, but rather the whole framework (standardization and preparation of data so that it can actually be accessed via APIs).

Question 65. Would you agree with the following statements?

	Yes	No	Don't know - No opinion - Not applicable
The cost of developing an API is subject to economies of scope – i.e. once an API is developed using it for additional types of data increases the development costs only marginally	○	○	◉
The cost of developing and running an API is lower if it is based on generally accepted and widely used data standards	○	○	◉

Question 66. Do you apply or intend to apply any generally recognised standards for your APIs beyond PSD2?

- ○ Yes, currently applied
- ○ Yes, envisaged
- ○ No, because no standards are available
- ○ No, because not interested
- ◉ Don't know / no opinion / not applicable

Question 66.1 Please specify for which generally recognised standards you apply or intend to apply:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

PART II

Part II of the consultation contains the following section

V. Specific questions on selected use cases involving data sharing in the financial sector

V. Specific questions on selected use cases involving data sharing in the financial sector

One potential use case would involve enabling access to customer information gathered in the context of the suitability and appropriateness assessment, as well as access to customer's investment data (e.g. securities accounts, pensions, etc.). In the context of its work on a retail investment strategy as envisaged by the capital markets union action plan, the Commission is considering ways to improve the suitability and appropriateness assessment in order to help retail investors better achieve their investment goals. The present consultation includes questions on the access to and re-use of customer-profile data, as well as access to data on customer's current investments. In addition, this consultation contains questions on a use case relating to access to SME data to enhance SME financing options. Annex I provides an overview of other use cases that were discussed by the open finance subgroup.

Transferability of customer-profile data (Personal Investment Plan (PIP), suitability assessment) and access to customer data on current investments

The Commission is currently exploring different ways to improve the suitability and appropriateness regimes under the retail investor protection framework. One of the approaches being assessed is the above-mentioned PIP. The PIP would be a possible portfolio-centric approach to investing that the Commission is consulting on in a separate consultation (Targeted consultation on options to enhance the suitability and appropriateness assessments). In short, the PIP onboarding process would entail gathering customer-specific data akin to the information currently collected by investment intermediaries under the suitability and appropriateness regimes. The 'output' of that assessment would be an asset allocation strategy that lays out the appropriate risk-return for the customer having regard to his or her investment objectives and constraints.

This targeted consultation explores how open finance might enable access to and reuse of customer-profile data and customer's current investment data in order to improve the suitability and appropriateness regimes under the retail investor protection frameworkand/or -should the Commission propose it - the possible development of a PIP. Customer profile data should be understood as comprising data that form the basis of the suitability and appropriateness assessments performed by financial intermediaries.

It should also be understood as covering both data which is required as input to the suitability and appropriateness assessments (or a possible future PIP) and the 'output' data. The former would comprise all the information that the financial intermediary is asked to collect in the process of suitability assessment. The latter is to be understood as the asset allocation strategy drawn up by the financial intermediary.

Enabling data to be shared between financial intermediaries with the customer's permission could prove to be an important element of the customer-centric and portfolio-focused approach to investing. This would have two aspects:

- First, the rules around portability of customer-profile would ensure that information can be seamlessly transferred by the customer to another financial intermediary. Such an approach might facilitate the uptake of new tailored and customer-centric approaches to help customers better manage their investments or to facilitate customer switching between intermediaries, or using multiple financial intermediaries. This might be achieved either by enabling the customer to receive the data in a standardised and structured form and transfer it onwards (portability) or by ensuring that brokers set up IT infrastructures such as APIs for the secure sharing of information.

- Secondly, enabling further innovation and supporting adequate product offer for the benefit of retail investors would require that financial intermediaries could access data on investment products already held by their customers (including securities accounts as well as life insurance and pension products). If financial intermediaries or other service providers gain or maintain an up-to-date overview of the customer's investments, they could develop new tools and services to offer more tailored products to retail investors, analogous to analytics services offered to retail customers based on PSD2 data. Such an approach could bring about additional data-driven portfolio analytics services, ultimately giving more tools to the investor to make informed investment decisions. Specifically related to the PIP, access to such data would allow financial intermediaries to assess whether customers' investments are in line with their respective asset allocation strategy or whether they may need to make adjustments.

Transferability of customer-profile data

Customer-profile data could, for example, include information on the customer's risk and sustainability preferences, knowledge and experience, transaction track record, ability to bear losses, wealth, income and the customer's investment horizon. It could also include relevant documents and information required under anti-money laundering and terrorist financing legislation.

Question 67. Do you think that customer-profile data should be accessible to other financial intermediaries or third-party service providers through an API-based infrastructure (subject to customer permission)?

- ○ Yes
- ● No
- ○ Don't know / no opinion / not applicable

Please explain your answer to question 67:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We believe a customer-profile can only be shared if sharing personal information benefits the customer. In order for customer-profiles to be efficient, it should at least be possible to standardise the input to a high degree. Looking for example at the recent update the AFM in the Netherlands of its guidance on the assessment of suitability for investment services (AFM Leidraad advies- en vermogensbeheer), the AFM sees the suitability assessment as a highly tailor made process that may never be standardized. It could also be questioned whether with a view to all different possible life events and complex client situations that can be conceived of, a full standardization is practicable and should be strived for. As a result, it should be realized that investment services are (contrary to e.g. payments services) not capable to be treated as fungible commodities.

The inefficiencies of MiFID II Suitability and Appropriateness lie exactly in standardized requirements being interpreted differently across member states. For example, how investment firms assess client's knowledge and experience, the client's financial position, their ability to bear losses, the clients risk preferences and many others, are all assessed and interpreted differently between firms, and between countries in the EU.

Sharing of a customer-profile in the current situation between firm A (that has assessed the client) and firm B will therefore not be very helpful to B as both the assessment and analysis will differ from practice at firm A. So as long as these practices and requirements are not standardized, sharing a customer profile will not offer a solution.

Yet, it is also important to keep in mind that, although standardizing MiFID II Suitability requirements might be beneficial to setting up a customer-profile that can be shared through an API, the downside is that it will probably stifle innovation: a local firm knows best what questions to ask his/her client in order to assess and analyse the client. The risk profile of a customer depends on the timing (new source of revenues, adverse events requesting funding…), the products (some products can be used to finance retirement, others studies... or a mix and will have a different risk appetite), the assessment performed by each financial intermediary (some financial institution will consider 5 levels of risks whereas others 3, some institutions will consider 20% of equity max whereas for a similar level of client's apatite other will consider 25%...).

The assessment by each financial institution of customer profiles can incorporate business relationship or competitive strategy criteria. They may also incorporate risk analyses specific to the financial institution that carried out the profile in a specific context that cannot be transferred to a third party. Sharing of inferred information that is the result of an internal treatment and embed internal know-how could promote free-riding and lead to a race to the bottom in investments and innovation in this area.

Other points to consider include:
- From a civil law perspective, it is highly doubtful whether an investment firm may rely on the suitability assessment performed by another investment firm, also taking into account that possible investment solutions may substantially differ.
- The portability of customer profiles could call into question the responsibility of the institution vis-à-vis third parties.
- Operational problem of transferability of customer consent on the purposes of use of profiles. The risk profile of a customer is established on the basis of information provided in compliance with the regulatory framework but also from the ongoing and relationship of trust established with the advisor, provided voluntarily by the customer each time it is necessary.

Question 68. The portability of which specific customer-profile data would be essential in order to enable creation of new products and services as well as bring broader benefits for retail investors as described above?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

To obtain sufficient information from the client in order to create a customer-profile and subsequently share this information with third parties, practically all information stemming from MiFID II Suitability and Appropriateness requirements could be deemed necessary. However, as described in our answer to Q67, most of these data are assessed and analysed subjectively and do not lend themselves very well for the use outside of the proprietary company. In addition, the ESMA Suitability guidelines, for example, clearly state what information should be obtained from clients: this is always dependent on the specific client needs and objectives and is by definition not standardized as every client is unique.

Theoretically, essential information that is deemed non-subjective, could be used for portability, like their income, pension, and assets. Yet, this information by itself is not sufficient to set-up a client-profile that is all-encompassing and could be used to advise on investments.

Financial entities should not be required to provide a personalised asset allocation strategy to the client if they are not providing the service of portfolio management or investment advice. Such asset allocation strategy should be issued by each financial intermediary (in consideration of the service and the scope of the service provided) and not be transferable between entities.

Firms may have different ranges of products available to offer, different risk and commercial policies, different prices, etc. so the personalised asset allocation may be different from one financial intermediary to another and standardization in this regard seems unrealistic and complicated (giving rise to significant difficulties and challenges in practice).

Other considerations to note include:

• The fact that the client can take its asset allocation strategy to another financial institution may create inconsistencies and/or implementation problems at the new entity if this entity does not support certain products to give the necessary exposure to the client or if it has an asset allocation team that is indicating a target different to the one the client has in its portfolio.

• The approach seems to be based on the understanding that all entities have high standards, but if the originating entity makes an error in its assessment, this error is transferred to the other entities, which it is understood would have to accept the assessment of the originating entity, without their own validation (because otherwise, it is as much as not accepting this "portability"). Purely factual information can be exchanged within the framework of Article 20 of GDPR, but it is de facto rarely the case as already mentioned. Going beyond would require exchange more subjective data with all the strong limitations we highlighted in above Question 67.

Question 69. In your opinion, are there any risks and constraints associated with sharing the customer-profile data between financial intermediaries?

- (x) Yes
- ( ) No
- ( ) Don’t know / no opinion / not applicable

Question 69.1 If you think there are such risks and constraints, please describe them and explain what measures could be taken to reduce such risks:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We have already highlighted some risks in the response to questions 67 and 68. Building on these:

• A big risk and constraint is that firms and or/NCAs interpret the concepts (and provisions) arising from the MiFID Directive differently. As MiFID is a directive and not a regulation, member states retain the freedom to shape national law with respect to certain issues. There is a different understanding of themes such as risk appetite, risk acceptance, and the ability to bear losses. Concepts are interpreted differently and thus implemented differently in processes.

For example, some banks regard the 'ability to bear losses' as the emotional risk awareness of a client, where other banks perceive this as a maximum drawdown of the portfolio and whether the client is (financially) able to bear this loss. Some banks determine the ability to bear losses at the portfolio level, and others take other assets into account and prefer a more holistic approach. As a result of this pluralism, various information is requested from the client in multiple manners. This can lead to different conclusions being drawn by private banks about the same client.

• Drawing from the above, we assume that it will be impossible to establish meaningful uniform

requirements for the exploration and the client profile for the broad range of financial instruments. Furthermore, the way in which clients are surveyed also represents a quality feature in the investment advice of the individual institutions. A standardization of these processes would possibly mean a loss of quality in the customer survey and hinder or even completely prevent the efforts of the institutions to continuously improve the quality of these processes.
Against this background, we fear that new, uniform requirements for client exploration and personal asset allocation strategy will lead to a considerable deterioration of the existing processes for appropriateness and suitability assessment as well as to additional risks for clients. This should be avoided - especially regarding effective consumer protection.

• A significant impact on the ability to provide individual advisory processes and, as a consequence, the possible product solutions will be reduced. Competition in terms of a specialized service offer (e.g. in-depth survey of sustainability preference), which requires a detailed customer survey, would be made very difficult by an approach where data is shared.

• IP, security, and data protection issues.

• Negative impact on competition dynamics.

• Herding effects.

• Another potential risk lies with the liability attached to the risk assessment and the risk of over-representation of adverse -risk profiles (limitation of liability of the financial intermediary who establishes it).

Finally, ESMA has also flagged several risks in their final report on the European Commission mandate on certain aspects relating to retail investor protection (ESMA35-42-1227 https://www.esma.europa.eu/sites/default/files/library/esma35-42-1227_final_report_on_technical_advice_on_ec_retail_investments_strategy.pdf), which include inter alia:
• The misuse of client data, including the use of client data without the consent, which could lead to an increased risk of fraud and incorrect advice to clients (where incomplete or outdated data is shared and used) and generally lead to poor consumer outcomes. Furthermore, the use of personal data can also lead to more discrimination, for example increased prices for certain consumers.
• An increased risk connected to data breaches, privacy, and security risks associated with the sharing of consumers' financial data.
• Possible damage to consumer confidence due to a lack of information or non-compliance with data protection requirements. The over-simplification of products for comparison purposes could also lead to poor consumer outcomes.
• Risk of an un-level playing field for companies in the financial sector:
o Regulatory unequal treatment / regulatory arbitrage vis-à-vis nonregulated companies.
o No (or insufficient) compensation for data preparation and storage by companies that access and use data.
o Disclosure of trade secrets.
o Unequal treatment of data exchange compared to other industries ("lack of reciprocity"). In fact, asymmetrical information access requirements could disadvantage incumbent firms in favour of 'big tech' companies as, by requiring certain entities to share data with third parties without reciprocation, these initiatives could limit the ability for incumbent firms to invest in innovative technologies and may have negative implications on their ability to maintain and continuously improve their technical infrastructure and business model.
o Data exchange can strengthen the market position of data-driven platforms / technology providers and thus advance oligopolisation through to monopoly ("winner takes it all").

Question 70. Please explain if these risks and constraints apply to the sharing of all or only specific data fields and how this could potentially be addressed:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See answer to question 69. In addition, the above risks and constraints around different interpretation apply especially when no clear guidance is given by the European Supervisory Authorities or the National Competent Authorities (or can be given) regarding legal requirements. Since it has been observed that many elements of MiFID II have been implemented very differently throughout member states, ESMA-guidelines – that are designed as a tool of supervisory convergence – have not proven to be very effective. Especially regarding elements that are to a higher degree 'subjective', the risks become more apparent. For example, there is a multitude of uncertainties and different interpretations around the topic of 'sustainability preferences'. Yet also in more 'traditional' areas of the Suitability Assessment (financial position, risk appetite etc.) there is a degree of subjectivity/expert judgement that makes it difficult to use this data for an API.

Question 71. Please provide us with an estimate of costs that would be incurred by an investment firm in setting up data access points, e.g. in the form of APIs, to allow the customer to share his or her customer-profile data:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

It is not possible to give an estimate of costs, because much is dependent on how the open finance framework will look like. As ESMA observed in the final report mentioned under question 69.1 on the European Commission mandate on certain aspects relating to retail investor protection, implementation costs are likely going to be high and may probably even limit the access of retail investors to investment services and therefore may have an effect that is contrary to the intended purpose. Incumbents will incur costs for the development of the technology necessary to share the data with third parties. Implementation costs could have a particular impact on small firms, and the sharing of information with third parties might be practically unfeasible for small firms (i.e., without a sophisticated portfolio management system).
It is worth mentioning that in the case of the implementation of the PSD2 open regime, the costs borne by the payments sector to develop the adaptation to make data sharing possible have been very high and disproportionate to the benefits expected from market, mainly for account servicing PSPs (ASPSPs).

Access to customer data on current investments

Question 72. Subject to customer's agreement, should financial intermediaries or other third party service providers be able to access data on customer's current investments with other financial service providers:

a) to develop new tools for the benefit of customer?

- ○ Yes
- ●

No

Don’t know / no opinion / not applicable

Please explain your answer to question 72 a):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We think data holders should not be obliged to develop mechanisms for third parties accessing customer information, but also believe that accessing to information that is already available online by third parties should not be banned, provided that it does not create security risks and the collaboration of the data holder is not required.

We believe that the market will provide optimal solutions for accessing investment data when there is actual demand in the market and it is possible to develop business models attractive for all parties participating in this ecosystem.

In addition, if a client has decided to invest with a certain firm, we wonder what the added value of sharing these investments with third party financial providers should be. We therefore ask the Commission to clarify what the benefits are for a firm and his clients to share investments with third party financial service providers. If an investment firm has insight into all the assets of a client held at third parties, the investment firm must act whenever the firms see irregularities at the third party (duty of care). This might incentivize firms to refrain from using the open finance framework.

Other points to consider are that tools can already be developed on the basis of data voluntarily shared by the customer himself/herself and not intermediated by large technology firms. There is a risk of an opened door to predictive trading benefiting to big digital players but not for end-consumers. This bias already exists in the crypto-asset trading world.

b) to ensure smooth implementation of the suitability and appropriateness assessments (or a possible compilation of a personal investment plan and to make implementation of the associated asset allocation strategy more efficient)?

- Yes
- No (selected)
- Don’t know / no opinion / not applicable

Please explain your answer to question 72 b):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No, because of the abovementioned reasons. Please see our answer to question 68.
Furthermore, there is no standardised methodology for translating a client’s assessment into an asset allocation – a personal investment plan. Currently, these recommendations are based on the firm’s unique know-how, expertise and locality. Different recommendations and investment approaches can be explained, among others, by differences in the firm’s size, location, client base and the range and type of financial instruments on offer. This heterogeneity is crucial and we see it fundamental that investment firms can

continue to provide their own, specialised and personalised recommendation to clients.

In addition, the translation of client assessments into asset allocations (if even possible) will hinder competition and reduce choice for retail clients, as the goal of such standardisation is that a certain type of retail investor will receive the same asset allocation. This could lead to a dangerous precedent of “group think” leading to a situation where one type of investor is automatically being channelled into the same asset allocation. Such a situation could even raise serious financial stability concerns.
In conclusion, we are of the opinion that each investment firm needs to conduct their own suitability and appropriateness test as part of their KYC.

Question 73. Should the access be granted to:

- All data on all investments
- All data on some investments
- Some data on all investments
- (x) Don’t know / no opinion / not applicable

Please explain your answer to question 73, notably which data and which investments in the case of partial access:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Access should not be granted to any investment data.

Question 74. Subject to customer’s agreement, should financial intermediaries and other third-party service providers be able to access data on customers’ current investments with other financial service providers to provide investment analytics services, such as a consolidated overview of the client’s investments and an assessment of the risk-return metrics of the client’s portfolio?

- Yes
- No
- (x) Don’t know / no opinion / not applicable

Please explain your answer to question 74:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

This question presents a complex picture. It could be an optional service provided to customers if certain conditions are met: compensation for access to the data, that all types of players that offer investment services are in scope, and that this is implemented when there is data sharing in other sectors.

There could also be a decision to cooperate with companies that provide additional insight in customer portfolios, but this would be voluntary. It is therefore important to consider the specific context and conditions.

Question 75. Subject to customer's agreement and if third party access to customers' current investment data were to be enabled, should it also be made possible to access data on their past investments? In the affirmative, what would be the main use cases for sharing such data?

- ◯ Yes
- ◉ No
- ◯ Don't know / no opinion / not applicable

Please explain your answer to question 75:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

If open finance is aimed at developing new services and products, we do not see merit in sharing information on past performances. Moreover, this kind of information could be misused by competitors in order to carry on very aggressive and unfair practices.
Similar to PRIIPS KID or PEPP KID, past investments do not guarantee future returns.

Question 76. Do you think that enabling customers to share their data on their current investments across financial intermediaries could encourage greater competition and innovation in the provision of investment services?

- ◯ Yes
- ◯ No
- ◉ Don't know / no opinion / not applicable

Please explain your answer to question 76:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

It is hard to assess. If we compare with the PSD2 experience, payment services are different from investment services, the latter needing a more cautious approach (see our responses to the questions above). Furthermore, if access to customer data is limited to those data that financial intermediaries already

hold, we believe that such a proposal will not result in fair competition and innovation for all the players in the market.
It is already quite easy for clients to explain their investments and investment situation to a competitor if they want alternative suggestions. Besides, as mentioned, explaining an investment situation and investments preferences is a qualitative process.

Question 77. Please provide us with an estimate of costs that would be incurred by an investment firm in setting up data access points, e.g. in the form of APIs, to allow the customer to share data on his or her current investments:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Depends on the data in scope, the complexity of bank IT supporting those services and the sharing model chosen (development by a single firm or through an industrial hub). However, it is worth mentioning that in the case of the implementation of the PSD2 open regime, the costs borne by the payments sector to develop the adaptation to make data sharing possible have been very high and disproportionate to the benefits expected from market, mainly for banks.
Please see our answer to question 71.

SME financing

Similarly to the investment use case, the SME financing one consists of two aspects. First, SMEs frequently face challenges accessing credit and are exposed to higher transaction costs and risk premiums than larger enterprises. Lenders often lack sufficient information to assess adequately SME creditworthiness, price credit risk and tailor financial products. Primary data collection from SMEs during a loan application process is costly and may not deliver all the relevant data. To make sure that the funding provided is appropriate to the economic and financial circumstances of SMEs, credit institutions and other lenders might benefit from the additional access to data, including ecommerce data. Online commercial activity and other cross-sectoral data generally improves the quality of SME creditworthiness assessment and may lead to enhanced financing, with a positive impact on the overall financial health of SMEs.

Second, open finance principles could also be applied to the sharing of data relevant to SME funding applications among funding providers, which is one of the actions under the capital markets union action plan. Credit institutions and alternative providers could allow authorised funding providers to access the relevant SME data via APIs in a standardised and machine-readable format, subject to the SME's consent. Another possibility would be to ensure portability of data in a structured and machine-readable format that SMEs could transfer to other financial intermediaries themselves. In both cases, the data shared would be retrieved from the SME's funding application. By facilitating the sharing of standardised data on SMEs with funding providers, such a scheme would have the potential to help SMEs secure funding while helping funding providers source new clients / investments.

Assessing SME creditworthiness

Question 78. Is SME data accessible today via regulatory requirements or are there practical examples of contractual access to data required for SME creditworthiness assessment?

- [ ] Yes, SME data is accessible today via regulatory requirements
- [x] No, there are practical examples of contractual access to data required for SME creditworthiness assessment
- [ ] Don’t know / no opinion / not applicable

Question 78.1 If there are practical examples of contractual access to data required for SME creditworthiness assessment, please specify between whom arrangements would be needed:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Accounting companies & systems that hold the financial management data for the SME. There are emerging propositions where the data is automatically used for creditworthiness assessment and as a new distribution channel.

At the same time, we would like to note that in some countries, SME data is accessible today via regulatory requirements.

Question 79. Is the required data already standardised (e.g. either by market operators or via regulation)?

- [ ] Yes
- [ ] No
- [x] Don’t know / no opinion / not applicable

Question 80. Is the data required for SME creditworthiness assessment readily accessible from a technical perspective (e.g. via standardised APIs)?

- [ ] Yes
- [ ] No
- [x] Don’t know / no opinion / not applicable

Sharing of SME data across financial institutions

Question 81. Do you think that a referral scheme for SMEs through an API-based infrastructure based on standardised data, giving a financial intermediary access to data held by another financial intermediary, could be effective in helping them secure alternative funding?

- [ ] Yes
- [x] No

Don’t know / no opinion / not applicable

Question 82. Please provide us with quantitative estimates of costs that would be incurred by a funding provider due to setting up data access points, e.g. in the form of APIs, to allow the SME to share its funding application data with alternative funding providers:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

It is important to note that a bank cannot just rely on the analysis of another institution to make a decision but defines its own set of criteria and relevant input data. Each bank must rediscover the customer's file with its own criteria and based on the data considered relevant that may be different from the other banks, for example regarding the risk aspect.

Question 83. Are you aware of existing practical examples of contractual access to SME funding application data?

- Yes
- No (selected)
- Don’t know / no opinion / not applicable

Question 84. Are there any significant legal obstacles for accessing SME funding application data held by another funding provider?

- Yes
- No
- Don’t know / no opinion / not applicable (selected)

Question 85. What steps would be necessary to harmonise data formats and access conditions to ensure adequate quality of SME data (accurate, reliable, complete, etc.)?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

- Common EU wide taxonomy.
- Common standards on registering/processing and interoperability of data.
- Public authorities supporting the dialogue between stakeholders and letting industry develop a scheme if a real demand exists. ESAP is an example of a positive initiative.

PART III

Part III of the consultation contains the following section

VI. Other aspects of data sharing in the financial sector and related obstacles

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Use of aggregated supervisory data for research and innovation

The supervisory data strategy of December 2021 states that the Commission will look into ways to make data available more extensively for research and innovation, while protecting data confidentiality. In its 2023 progress report, the Commission will assess whether any regulatory adjustments can be made to enable the sharing and reuse of reported data for innovation purposes.

Question 86. Are there any legal obstacles today to obtain and use fully anonymised and aggregated supervisory data for research and innovation purposes?

- ○ Yes
- ● No
- ○ Don't know / no opinion / not applicable

Please explain your answer to question 86:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The obstacles identified are more technical than legal, such as aggregating data for research or modelling. It should however be noted that it is sometimes difficult to produce fully anonymized data and that pseudonymization is often easier. It is then necessary that the research and innovation is performed under circumstances that do not unduly leverage on the uncompletedness of the anonymization process, i.e. that handle the data under some form of secrecy.

Question 87. In your opinion, what areas hold research and innovation potential based on the use of anonymised and aggregated supervisory data?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

- Artificial intelligence is an important enabling technology for businesses and the European economy as a whole. To fully exploit the potential of AI, access to data, including anonymised and aggregated supervisory data, is essential.
- The use of anonymised and aggregated supervisory data could be of great usefulness to enrich economic analysis with highly granular data, the smart design of economic policies (monetary, fiscal and macro-prudential) and macroeconomic nowcast and forecast in real time.

Legal certainty for voluntary data sharing among financial institutions to improve risk monitoring or compliance and further develop related tools

The Commission proposals for a Digital Operational Resilience Act in the financial sector include explicit provisions clarifying that financial institutions may exchange amongst themselves cyber threat information and intelligence in order to enhance their digital operational resilience, in full respect of business confidentiality, protection of personal data and guidelines on competition policy (Article 40). These proposals were aimed to ensure legal certainty about the possibility of such exchange of information and data.

Question 88. Would you consider it useful to provide for similar "enabling clauses" for other types of information exchange among financial institutions?

- (x) Yes
- ( ) No
- ( ) Don't know / no opinion / not applicable

Question 88.1 If you consider it useful to provide for similar "enabling clauses" for other types of information exchange among financial institutions, please indicate in which areas and please explain:

5000 character(s) maximum
including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

A legal basis for financial institutions to share information on fraud and AML should be provided. This would increase the resilience of the whole financial system.
The sharing of ESG data which are not easily accessible.

Additional information

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) below. **Please make sure you do not include any personal data in the file you upload if you want to remain anonymous**.

The maximum file size is 1 MB.
You can upload several files.
Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

dfe50c93-f173-4ca0-8d82-3d9e75b8c8bc/EBF_045745-Annex_Document_to_targeted_open_finance_questionnaire_EBF_response.pdf

Useful links

More on this consultation (https://ec.europa.eu/info/publications/finance-consultations-2022-open-finance_en)

Consultation document (https://ec.europa.eu/info/files/2022-open-finance-consultation-document_en)

Use cases annex to the consultation document (https://ec.europa.eu/info/files/2022-open-finance-consultation-document-annex_en)

Related call for evidence on the open finance framework (https://ec.europa.eu/info/law/better-regulation/initiatives/plan-2021-11368_en)

Related public consultation on the review of PSD2 and on open finance (https://ec.europa.eu/info/publications/finance-consultations-2022-psd2-review_en)

Related targeted consultation on the review of PSD2 (https://ec.europa.eu/info/publications/finance-consultations-2022-psd2-review_en)

Related call for evidence on the review of PSD2 (https://ec.europa.eu/info/law/better-regulation/initiatives/plan-20 12798_en)

More on digital finance (https://ec.europa.eu/info/business-economy-euro/banking-and-finance/digital-finance_en

More on payments services (https://ec.europa.eu/info/business-economy-euro/banking-and-finance/consumer-finance-and-payments/payment-services/payment-services_en)

Specific privacy statement (https://ec.europa.eu/info/files/2022-open-finance-specific-privacy-statement_en)

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