

**Europäische Kommission**  
Generaldirektion Finanzstabilität,  
Finanzdienstleistungen und Kapitalmarktunion

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BEREICH Integrierte Aufsicht  
GZ FMA-LE0001.230/0005-INT/2022  
(bitte immer anführen!)

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WIEN, AM 30.06.2022

## **EK-Konsultation zum Rechtsrahmen für ‚Open Finance‘ und zur Datenteilung im Finanzmarktsektor**

Sehr geehrte Damen und Herren,

bezugnehmend auf die öffentliche Konsultation der Europäischen Kommission zum

*„Rechtsrahmen für ‚Open Finance‘ und zur Datenteilung im Finanzmarktsektor“*

erlauben wir uns Ihnen anbei die offizielle Stellungnahme der Österreichischen Finanzmarktaufsichtsbehörde (FMA) zukommen zu lassen.

Die Stellungnahme wurde zur leichteren Auswertung auch in das ECAS-EU-Survey-Tool unter Verwendung des Links auf der Seite <[https://ec.europa.eu/info/consultations/finance-2022-open-finance\\_en](https://ec.europa.eu/info/consultations/finance-2022-open-finance_en)> eingegeben.

Wir ersuchen höflich um Berücksichtigung unserer Anregungen und stehen für Rückfragen sehr gerne zur Verfügung.

Finanzmarktaufsichtsbehörde  
Bereich Integrierte Aufsicht

Für den Vorstand

Dr. Christoph Kapfer, LL.M. MBA  
Abteilungsleiter

Dr. Christoph Seggermann

elektronisch gefertigt

<b>Signaturwert</b>	ZPZrea/aP9h//6PEbKmHxF23Be3k8xnhToZ5p0j9OoJVR4x+dxPy64aVSnGeCfk8rlJ856Yy/nHV+w+g49KxMCA+4Nnhc07BX7mXrB6p+GFsXzpleRY6xonWVmtMfPwHxrFZtytIGrDh4zucvubBp56rmsPtmi7ZkUXR7mnE173PCPATWIq/qn02p190FJ4ZdyGj0yusEzW+oMQPJLW+mHZZ0sIT9k+oDuSgaaGTPxY1CRfCSI7rlfspa7T5783ch362KcWhyIubCePZgiyf3TX9EsploGAmNnsGKoeClID+AgivjNpiNkdnNS3DWhIUsfDHXujz3hp5btG4m/ZRdQ==	
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	<b>Serien-Nr.</b>	532114608
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<b>Prüfinformation</b>	Informationen zur Prüfung des elektronischen Siegels bzw. der elektronischen Signatur finden Sie unter: <a href="http://www.signaturpruefung.gv.at">http://www.signaturpruefung.gv.at</a>	
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**EUROPEAN COMMISSION**

DIRECTORATE-GENERAL FOR FINANCIAL STABILITY, FINANCIAL SERVICES AND CAPITAL  
MARKETS UNION

Horizontal policies  
Digital finance

## **CONSULTATION DOCUMENT**

### **TARGETED CONSULTATION ON OPEN FINANCE FRAMEWORK AND DATA SHARING IN THE FINANCIAL SECTOR**

#### **Disclaimer**

This document is a working document of the Commission services for consultation and does not prejudice the final decision that the Commission may take.

The views reflected on this consultation paper provide an indication on the approach the Commission services may take but do not constitute a final policy position or a formal proposal by the European Commission.

The responses to this consultation paper will provide important guidance to the Commission when preparing, if considered appropriate, a formal Commission proposal.

You are invited to reply **by 5 July 2022** at the latest to the **online questionnaire** available on the following webpage:

[https://ec.europa.eu/info/publications/finance-consultations-2022-open-finance\\_en](https://ec.europa.eu/info/publications/finance-consultations-2022-open-finance_en)

Please note that in order to ensure a fair and transparent consultation process **only responses received through the online questionnaire will be taken into account and included in the report summarising the responses.**

This consultation follows the normal rules of the European Commission for public consultations. Responses will be published in accordance with the privacy options respondents will have opted for in the online questionnaire.

Responses authorised for publication will be published on the following webpage:

[https://ec.europa.eu/info/publications/finance-consultations-2022-open-finance\\_en](https://ec.europa.eu/info/publications/finance-consultations-2022-open-finance_en)

Any question on this consultation or issue encountered with the online questionnaire can be raised via email at [fisma-psd2-review@ec.europa.eu](mailto:fisma-psd2-review@ec.europa.eu).

## 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; and
- (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<sup>1</sup>.
- 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.

## CONSULTATION QUESTIONS

### PART I

#### I. The relevance of data sharing in the financial sector

Open finance could result in innovative tools and more convenient services for consumers and firms. Easier access to big datasets by the industry is also expected, facilitating the development of new data-driven services. It would also bring new business opportunities. As a result, open

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<sup>1</sup> For example, this excludes the data contained in public disclosures and the use of data for supervisory and law enforcement or similar purposes.

finance policy could be expected to deliver better customer experience. Data-driven finance could be expected to facilitate financial industry transition to tailored customer solutions, improved user interfaces and enhanced user experience. This section includes questions on the general relevance and main principles of data sharing in the financial sector.

1. What type of actor in the data value chain are you (multiple answers possible)?
  - a) Individual customer of a financial service provider
  - b) Business customer of a financial service provider
  - c) Holder of customer data
  - d) User of customer data
  - e) Data intermediary between data holders and users
  - f) **Other (please specify)** Supervisory Authority
  
2. In what part of the financial sector are you active (multiple answers possible)?
  - a) Banking
  - b) Payments
  - c) Insurance
  - d) Asset management
  - e) Securities trading
  - f) Brokerage
  - g) Pensions
  - h) Data and information services
  - i) Not active in the financial sector
  - j) **Other (please specify)** Cross-sectoral supervision
  
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
  
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 (multiple answers possible)?
  - a) 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)
  - b) Receive additional financial services from another financial services provider
  - c) Switch to another financial services provider in an easy and simple way
  - d) Other (please specify) \_\_\_\_\_
  - e) None of the above
  
- 4.1 If answer e), is this due to (multiple answers possible):
  - a) concerns about the security of your data
  - b) lack of sufficient control over how and for how long your data would be used by third parties
  - c) lack of perceived benefits of such data sharing

- d) privacy and data protection considerations
- e) other (please specify)\_\_\_\_\_

5. What open finance-based products would stand to benefit retail customers the most (multiple answers possible)?

	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)
<input checked="" type="checkbox"/>	Alternative credit scoring methods for financial inclusion (e.g. gig economy workers)
	Quicker customer onboarding with financial service providers
<input checked="" type="checkbox"/>	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
	Other (please specify)
	I don't know / no opinion

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

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

	Comparison tools that facilitate provider switching
	Online brokerages that provide financial products with the best value
	Targeted advice and tailored financial products
	Corporate finance management tools
	Alternative credit scoring methods for financial inclusion
	Quicker customer onboarding with financial service providers
	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
	Other (please specify)
<b>x</b>	I don't know / no opinion

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

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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

Please explain:

<p>Yes, provided that customers in their capacity as data owners a) give consent, b) are granted full control over their data and c) are equal partners in terms of data sovereignty plans, it could be possible to share customer data.</p>
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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?

- Yes
- No
- Don't know

If yes, should its level:

- a) be limited to the cost of putting in place the required technical infrastructure
- b) allow for a reasonable return on investment for collecting and structuring the data
- c) be set in another way (please specify):

If no, please explain why not:

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

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 (please specify)\_\_\_\_\_
- A level playing field already exists, so no measures necessary

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

- Yes
- No
- Don't know

If yes, please explain:

In our opinion, the mentioned possibility of a risk stemming from the accumulation of data is obvious. Considering this possible risk of anyway undesirable monopolies a risk analysis would be welcomed.

**Questions for financial firms holding customer data:**

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?

- a) Yes
- b) No

If yes, please also specify the main obstacles to make such data available (multiple answers possible):

- a) Legal
- b) Technical
- c) Operational
- d) Business considerations
- e) Other (please specify)\_\_\_\_\_

If not, is it due to (multiple answers possible):

- a) lack of legal basis under GDPR and other legal prohibitions
- b) the associated costs
- c) lack of technical capabilities
- a) limiting potential competition from third parties
- b) uncertainty about how to price these data
- c) potential liability claims due to the sharing of outdated or incomplete data sets, data misuse (e.g. under the applicable data protection and privacy laws) and/or uncertainty about data ownership rights
- d) reputational risks
- e) lack of requests from third parties

### **Questions for firms using customer data held by financial firms**

15. As a firm using customer data held by financial firms, what is the purpose of accessing these data (multiple answers possible)?

- a) Provision of services competing with the services offered by the data holder
- b) Provision of additional services
  
- c) Provision of analytical insights based on aggregated, including anonymised, data
- d) Other (please specify)\_\_\_\_\_

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

- a) Yes
- b) No

If yes, has the data holder (multiple answers possible):

- a) refused to give access to data outright, with no valid reasons provided
- b) been prevented to give access to data due to legal obstacles
- c) set contractual or other restrictions on the use of these data
- d) set unreasonable fee levels for access to these data
- e) been unable to provide these data in the required format, frequency or quality
- f) other (please specify)\_\_\_\_\_

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

17.1 In how many MS would these be located?

- 1
- 2 to 5
- More than 5

### Questions for financial data intermediaries

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

If yes, please explain:

### 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.

19. In your opinion, should the scope of account information service provider licenses put in place under PSD2<sup>2</sup> be extended to cover all financial services where new data access rights for third-party service providers would be introduced?

- Yes
- No
- Don't know

### Questions for firms using customer data held by financial firms:

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

- Yes
- No

If yes, please specify which:

If not, at how much would you estimate the cost of obtaining a license (authorisation) that may be required to access customer data held by financial service providers?

<sup>2</sup> 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.

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**II. Customer protection**

Control over the use of personal data is a key pillar in protecting the digital selfdetermination 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.

21. In your opinion, what digital tools can strengthen a customer's ability to grant, track and withdraw consent (multiple answers possible)?

	Consent management dashboards to enable customers to track which third parties have been granted consent
	Digital identity solutions, such as European Digital Identity Wallets <sup>3</sup> , which could help identify a customer online and authenticate consent
	Other (please specify)

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

- Data holders
- Third parties
- Other (please specify)\_\_\_\_\_

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
- Don't know

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
- Periodically
- Never

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<sup>3</sup> 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](#).

- Don't know

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

- Yes
- No
- Don't know

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.

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

- Financial exclusion
- Privacy breaches
- Misuse of data (incl. fraud and financial crime)
- Other (please specify)\_\_\_\_\_

27. What should be done to mitigate the risks of financial exclusion and data abuse (multiple answers possible)?

	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
	Other (please specify)

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.

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

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

### 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.

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?

- Yes
- No

If yes, please specify what type of data and what type of access are needed for their development?

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 (readonly or write)

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

### 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.

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

- Yes
- No

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

- Yes
- No

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

### 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.

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

- Yes
- No
- Not sure

36. Do you think that contractual schemes offer more benefits than just data & API standardisation? If yes, how would you describe these benefits or drawbacks

(multiple answers possible)?

- a) A contractual scheme can save costs and time for negotiating and concluding multiple contracts
- b) A contractual scheme can ensure effective dispute settlement
- c) A contractual scheme is unlikely to gain broad acceptance and support absent

- clear incentives for stakeholders to agree
- d) A contractual scheme is unlikely to solve the issue of determining the appropriate compensation for the data holder, if any is deemed necessary
- e) Other (please specify)\_\_\_\_\_

Please explain:

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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)?

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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?

- Agree
- Disagree
- Don't know

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

- a) non-binding calls on stakeholders
- b) make adherence to specific contractual schemes mandatory
- c) other measures (please specify)\_\_\_\_\_
- d) none of the above

***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.

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

- a) Yes, without compensation
- b) Yes but only if the data holder receives compensation for making data available
- c) No

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

	Yes	No
Savings accounts		

Mortgage products		
Lending products		
Securities accounts and financial instruments holdings		
Insurance and pension products		
Risk assessment (eg credit and insurance risk)		
Sustainability profile of financial services		

42. In your opinion if such new data access rights are introduced, should financial institutions that are SMEs<sup>4</sup> holding customer data be excluded from any such obligation (see e.g. Art 7 of the Data Act)

- Yes
- No

43. In your opinion should large gatekeeper platforms<sup>5</sup> requesting data access be excluded from being able to benefit from such data access rights (see Art 6(d) of the Data Act)

- Yes
- No

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.<sup>6</sup> 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.

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
- Rarely
- Regularly
- Every week

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

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<sup>4</sup> 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.

<sup>5</sup> 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.

regards (multiple answers possible):

- a) data lawfulness, fairness and transparency
- b) purpose limitation
- c) data minimisation (limiting data collection to what is directly relevant and necessary for a specified purpose)
- d) data accuracy
- e) data storage limitation
- f) data integrity and confidentiality
- g) other, please specify

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 used, 5 most used)

	1	2	3	4	5
Processing based on consent					
Processing based on a contract					
Processing necessary for compliance with a legal obligation					
Processing necessary to protect vital interests of the data subject					
Processing necessary for the public interest					
Processing necessary for legitimate interests pursued by the controller or a third party					

<sup>6</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

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 (multiple answers possible)?

	The absence of an obligation to provide the data on a continuous/real time basis
	The absence of standardised APIs
	The absence of standards ensuring data interoperability
	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
	The absence of incentives for data holders to provide high quality data, as there is no remuneration for making data available
<b>x</b>	I don't know / no opinion

Other (please specify)
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#### 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).

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

If yes, what is the proportion of holders of customer data in the financial sector that make use of these standards?

- a) Less than 10%
- b) 10-50%
- c) The majority

If not, should such standards be developed to make open finance work and by whom?

- a) Industry stakeholders
- b) European supervisory authorities
- c) International or European standardisation organisations
- d) Other (please specify)\_\_\_\_\_
- e) No need for standards on data formats

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

- a) non-binding calls on stakeholders
- b) make use mandatory
- c) other measures (please specify)\_\_\_\_\_
- d) none of this

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

- a) non-binding calls on stakeholders
- b) make use mandatory
- c) other measures (please specify)\_\_\_\_\_
- d) none of this

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

- a) Industry stakeholders
- b) European supervisory authorities
- c) International or European standardisation organisations (e.g. CEN)
- d) Other (please specify)\_\_\_\_\_

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.

- Agree
- Disagree
- Don't know

### **Questions for firms using customer data held by financial firms**

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

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

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

- Yes
- No

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?

- a) Less than 10%
- b) 10-50%
- c) The majority

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

- Yes
- No
- Don't know

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

- Yes

- No
- Don't know

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

- Yes
- No

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

- Yes
- No

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

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**Questions for financial firms holding customer data**

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

- a) Yes, under PSD2
- b) Yes, outside the scope of PSD2
- c) No

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?

- a) not used for other cases and no such use planned
- b) other use cases planned
- c) already used for other use cases

If you have not developed APIs for customer data access, what prevented you from doing so (multiple answers possible)?

- a) lack of requests from third parties
- b) reuse of existing infrastructure for data access
- c) lack of legal basis (e.g. under the GDPR and other applicable laws and regulations)
- d) lack of common standards or interoperability
- e) lack of business case
- f) other (please specify)\_\_\_\_\_

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

- Yes
- No

If yes please provide an estimate:

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?

65. Would you agree with the following statements?

	Yes	No
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		

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

If yes, please specify which ones:

## PART II

### 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<sup>6</sup>. In short, the PIP onboarding process would entail gathering customerspecific 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’

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<sup>6</sup> Targeted consultation on options to enhance the suitability and appropriateness assessments, available at [https://ec.europa.eu/info/sites/default/files/business\\_economy\\_euro/banking\\_and\\_finance/documents/2\\_022-suitability-appropriateness-assessments-consultation-document\\_en.pdf](https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/2_022-suitability-appropriateness-assessments-consultation-document_en.pdf)

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.

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

Please explain your answer:

Provided that customers in their capacity as data owners a) give consent, b) are granted full control over their data and c) are equal partners in terms of data sovereignty plans, it is viewed as beneficial for customers as well as service providers to make customer-profile data more accessible. Obviously, the infrastructure needs to be compliant with relevant data privacy and security laws and is preferable established on a voluntary basis which does not lead to excluding (potential) customers who are not willing to make data accessible to other financial intermediaries or third-party service providers through an API-based infrastructure.

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?

With regard to MiFID II-services and services provided under ECSPR, the collection of (private) data from customers, investors and project owners that is gathered throughout KYC and due diligence processes forms the essential basis to assess customers' needs, interests and risks. The application of portability of this data, preferably made accessible on anonymised, granular grounds, would accelerate target market analysis and therefore improve (customised) product development activities and customer satisfaction.

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

- Yes
- No
- Don't know

If yes, please describe those risks/constraints and explain what measures could be taken to reduce such risks?

One potential risk is related to the misuse and unlawful revelation of customer data. In order to avoid this, IT security matters need to be prioritised as well as entitling customers to control the content being shared between intermediaries. The latter can be tackled via contractual agreements between customers, financial intermediaries and third party providers. Regarding IT security, the implementation of standards in light of policies and procedures should be mandatory. These measures contribute to facing data breaches, which could lead to destroying a company's reputation. If customer data is processed in a way that goes beyond the mere provision of customers' information and involves the use of proprietary analysing and assessment tools, legal matters in terms of property rights will need to be discussed.

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:

The risk increases with the degree of sensitivity of the data shared and deficiencies in the IT infrastructure.

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:

The answer to this issue raised is dependent on several parameters: For example answers are dependent on the platform in place or if offshore development services are used. If there are no public services in place, approx. 10 000 EUR can be estimated. An initial web service/API implementation is significantly higher since security matters also need to be considered. Subsequent API calls approx. result in 5 000 EUR per year. Additional costs for security reviews and penetration tests also need to be considered and potentially add another 5 000 - 25 000 EUR.

### Access to customer data on current investments

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

Please explain your answer:

Beneficial could be possible acceleration and improvement of services provided towards clients and merging of know-how deriving from individual company's data processing /assessment.

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

- Don't know

Please explain your answer:

Time/head count savings regarding KYC processes could be accomplished. Key is the frictionless and secure sharing of data. Liability issues regarding the quality and timeliness of data shared must be addressed.

73. Should the access be granted to:

- All data on all investments
- All data on some investments
- Some data on all investments
- Don't know

Please explain your answer (notably which data and which investments in the case of partial access):

The decision of the scope of data being shared should be solely made by the customer.

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
- Don't know

Please explain your answer:

The decision of which party has access to customer data being shared should be solely made by the customer.

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

Please explain your answer:

We do not see a benefit for the client, there is no use for such data in investment analytics services. However, this can become of use on company's site regarding interpreting and processing client's investment patterns. Again key is: customers's consent and data sovereignty.

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

Please explain your answer:

The data sharing initiative as well as integrated supply chains have the potential to contribute to better services for customers. If it becomes easier for the clients to change the provider of financial services, this could also enhance competition.

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:

In terms of implementing API, please refer to answers provided under 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**

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
- No
- No opinion

If not, arrangements between whom would be needed?

Data is accessible due to regulatory requirements and to contractual arrangements (eg credit agencies).

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

- Yes
- No
- No opinion

If not, what steps would be necessary to harmonise data formats to ensure that such data sets are of needed quality (accurate, reliable, complete, etc.)?

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

- Yes
- No
- No opinion

If not, which actor in the use case should bear the cost of making it available and why?

There are fully automated and partially automated APIs in place.

### Sharing of SME data across financial institutions

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
- No
- Don't know: The functions of a referral scheme plus the term “securing of alternative funding” need to be defined.

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?

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

- Yes

- No
- Don't know

If yes, please explain:

The Austrian credit agencies have been providing their customers with creditworthiness information for decades so that they can assess the default risks of their business partners. In this sense, credit reporting agencies have a duty, particularly to their customers, to provide an accurate picture of economic conditions.

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

- Yes
- **No**
- Don't know

If yes, please explain:

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

Implementation of a dedicated directive setting minimum standards.

### **PART III**

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

##### **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.

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

Please explain your answer:

There are ongoing discussions regarding the aim to increase transparency and, in particular, to foster comparability of financial institutions and, in particular, credit institutions by creating a central, publicly accessible transparency database that is fed with supervisory reporting data. The implementation of such a data base (or a publicly accessible API) would however require an amendment of the applicable the law. Regarding the meaningfulness of supervisory reporting data we understand that information is disclosed, which is reported to the respective

supervisory authority.

Moreover, a fully anonymised and aggregated data set could face other challenges: Even if aggregated data would be published in a fully anonymised way, some economic areas are only composed out of a handful of active firms or bigger players. Therefore, the audience might be able to derive the actual underlying firm when analysing the data even though it is aggregated. Thus, such anonymisation would be only superficial in practice. In such cases anonymity needs to be preserved (e.g. by ways of k-anonymity, l-diversity or t-closeness). If such query would deliver too little or too little diverse results, then the publication should not take place and only relevant information should be displayed.

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

Trade Repositories already publish aggregated data on e.g. EMIR derivative contracts and SFT's, NCA's publish net short positions above certain thresholds and future CTP's will consolidate and publish MiFIR transaction data. Those are already interesting areas for the public.

**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](#)<sup>7</sup> 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.

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

- Yes
- No

If yes, please indicate in which areas and please explain:

<sup>7</sup> [Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on digital operational resilience for the financial sector and amending Regulations \(EC\) No 1060/2009, \(EU\) No 648/2012, \(EU\) No 600/2014 and \(EU\) No 909/2014 COM/2020/595 final](#)