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EUROPEAN COMMISSION TARGETED CONSULTATION ON OPEN FINANCE FRAMEWORK AND DATA SHARING IN THE FINANCIAL SECTOR

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
- Holder of customer data
- User of customer data
- Data intermediary between data holders and users
- Other

Please specify to what other type of actor you refer in your answer to question 1:

Trade association representing the pan-European fund and asset management industry.

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

Please select as many answers as you like

- Banking
- Payments
- Insurance
- Asset management
- Securities trading
- Brokerage
- Pensions
- Data and information services
- Not active in the financial sector
- Other

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

Please specify to what other purpose(s) you refer in your answer to question 4:

N.A.

Question 4.1 Please specify what is the reason why you would not be willing to grant other businesses access to the data you generate with this provider:

Please select as many answers as you like

- Concerns about the security of your data
- Lack of sufficient control over how and for how long your data would be used by third parties
- Lack of perceived benefits of such data sharing
- Privacy and data protection considerations
- Other

Please specify to what other reason(s) you refer in your answer to question 4.1:

It shall be taken into account that, when sharing their data with third parties, customers may be exposed to risks linked to consumer protection and privacy, such as an increased risk of fraud, identity theft, cybersecurity breach, or data leaks, leading to tarnished public reputation and loss of consumers' trust.

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
- Other

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
- Other

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:

EFAMA members would be broadly in favour of allowing financial firms holding customer data to share such data with regulated financial firms and, additionally, any third party on a voluntary basis. However, due to the inherent risks associated with data sharing, there should be very tight limitations in place.

First of all, only “plain” customer data, which would include a well-defined list of data (e.g., on the client’s objectives and needs, knowledge and experience) could be transferred provided customer’s permission. Enhanced data (e.g., on customer’s risk, transaction track record, ability to bear losses, wealth, income, investment horizon) are created by the financial firm and therefore ought to remain outside of the scope of the open finance framework. Should the sharing of such data be deemed as mandatory, firms should be compensated for providing qualified data.

Secondly, there should be no legal obligation for data sharing. Indeed, it should be taken into account that a number of potential impediments (such as case-by-case concerns about data protection, or technical issues owing to a lack of an effective interface) could trigger risks related to retail investors protection, rendering the imposition of a legal obligation inappropriate. Should a legal duty to exchange data be considered, it should only apply to data sharing with regulated financial entities to ensure an adequate level of customer protection, including data and information security.

In addition, an open finance framework that allows for data sharing with third parties should account for reciprocity. Indeed, Open Finance goes beyond the scope of financial data available at institutions, and includes data from sources like insurance policies, utilities and telephone bills, taxes and other service providers such pension funds, covering the entire financial footprint of consumers. If the financial industry opens up, other big players, such as big techs (that are also at great risks of data accumulation), ought do the same under an appropriate set of rules.

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?

- 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
- 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:

If an open data-sharing framework is deployed, it will be key to develop market-based compensations that guarantee the equitable distribution of costs for (a) setting up a new, cross-sectoral data-sharing infrastructure; (b) the ongoing maintenance of the infrastructure; and (c) collecting and processing the data, as well as a reasonable return for these investments. A level playing field among all the different players is crucial for the fair allocation of operating costs.

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

At the very least, an open finance framework ought to take into account the lessons learned from PSD2 and ensure legal certainty, technology neutrality, and high standards of consumer protection, including regarding the use of personal data. Financial data are highly sensitive and should not be treated as a public good.

There is also a need to ensure fair and equal access to data based on a true level playing field between data sharing firms and new market players (e.g., Big Tech) under the principle of "same activities, same risks, same rules". Similarly, it is important to ensure that there is an overall consistency with other relevant legislative texts that financial entities have to comply with and any restrictions that may arise therefrom. In this regard, we see the value of having a harmonized rulebook that consolidates the 'best practice' of customer protection across all digital financial services markets, including regarding use of personal data, to ensure that consumers enjoy the same level of protection regardless of who they are served by.

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:

- 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

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

- 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

We are aware that data are optimal when industrialised at large scale. Against this background, we see a present risk of data accumulation, for instance by the major online platforms (gatekeepers) and big tech companies that already possess the technology and client base to gather large volumes of data and are largely unaffected by the added layers of consumer privacy provided by financial regulation. Furthermore, those companies already hold a wealth of non-financial personalised information about their client (e.g. search history, purchase history) which can always provide an insight into their future finance decisions. In analogy to the Digital Markets Act, access to financial data for such companies should also be restricted in the context of open finance.

In general, lessons from PSD2 should be learned and the competitive 'disadvantage' created to incumbents by PSD2 should be remedied through stringent limitations on aggregation of data across services.

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 PSD2¹ 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 / no opinion / not applicable

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

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

- Consent management dashboards to enable customers to track which third parties have been granted consent
- Digital identity solutions, such as European digital identity wallets², which could help identify a customer online and authenticate consent
- Other

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

In addition, this legal retail investor protection framework should include the appointment of a related authority, in charge of overseeing and enforcing this legal framework. The authority should be in charge of data protection and work in conjunction with other authorities, particularly financial sector authorities.

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

Please select as many answers as you like

- Data holders
- Third parties
- Other

Please specify who else should provide such tools:

5000 character(s) maximum

Data holders should be entitled to offer such tools on a voluntary basis.

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](#)

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
- 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
- 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
- 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)
- 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

Many risks are embedded in customer data sharing, including:

- Privacy breaches
- Misuse of data (incl. fraud and financial crime)
- hacking risks (exacerbated by the use of external data registration on Clouds)
- risks of market segmentation (e.g., consumers with high-risk profile being excluded from the market; or consumers who have not consented to the sharing of additional data being subject to higher prices for services).
- issues related to the withdrawal of consent.

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
- Other

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

5000 character(s) maximum

Given the increased use of digital tools, digitalisation is undoubtedly relevant nowadays. Focusing on complex digital wallets and technologies, however, runs the risk of alienating clients who may not be too accustomed to using them, such as elderly or fragile customers or those who are skeptical of digitalisation. A mitigant could be a standardised format that can be used by all parties.

Furthermore, the relevance of specific data fields for the provision of financial products and services should be assessed and determined by the respective provider.

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?

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

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?

- 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?

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

A contractual scheme can save costs and time for negotiating and concluding multiple contracts

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

Other

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

Note: Some of our members are members of a contractual scheme or expect to become one in the next few years.

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?

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

- other measures
- none of the above
- Don't know / no opinion / not applicable

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
- 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 account	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mortgage products	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lending products	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Securities accounts and financial instruments holdings	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Insurance and pension products	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Risk assessment (eg credit and insurance risk)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sustainability profile of financial services	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Question 42. In your opinion if such new data access rights are introduced, should financial institutions that are SMEs³ holding customer data be excluded from any such obligation (see e.g. Art 7 of the Data Act)

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

Question 43. In your opinion should large gatekeeper platforms⁴ 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
- 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
- Rarely
- Regularly
- Every week
- Don't know / no opinion / not applicable

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

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

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

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

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

Obstacles under GDPR include issues with defining responsibilities and legal roles, issues related to third country transfers and handling of incidents, as well as the risk of losing customer’s trust in case of data misuse by the third party.

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	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Processing based on a contract	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Processing necessary for compliance with a legal obligation	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Processing necessary to protect vital interests of the data subject	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Processing necessary for the public interest	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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

- 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
- Other

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

Compared to Article 20 GDPR, the PSD2 account access requirements for third-party services provide more extensive access and portability rights, including the provision of a real-time data interface.

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 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

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

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)
- Other
- Don't know / no opinion / not applicable

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.

Agree

Disagree

Don't know / no opinion / not applicable

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 ([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 framework and/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:

In general, we consider it highly risky for the customer when a service provider uses customer-profile data provided by a TPP as part of its own services. In the digital age, inaccurate consumer profile information could have a negative, multiplier impact on the retail client. Hence, we are against an automated data transfer between intermediaries as it would not provide essential benefits without posing at the same time very significant risks.

The viewpoint of the client must also be taken into account. We assume that many clients either refuse to share their personal information, do not comprehend the scope of their consent, or provide their consent as a "mechanics exercise" (like a cookie consent on a web page). Furthermore, sharing customer profile information would prevent any innovation that would benefit the investor because customer profile information is fixed.

Additionally, financial service provider must be free to include certain aspects of customer-profile data, that can serve as the basis to provide additional services that would benefit retail clients. Moreover, capital allocation of investments would become more uniform, with investments running the risk of automatically becoming even more canalised and less diversified. That would enhance rather than lessen the effects of volatile market movements in stressful market circumstances.

On the other hand, if a client decides to voluntarily share client-profile data with a third party service provider, he should be allowed to do so on his own initiative (for example, by email) or through the financial service provider if the latter offers such a service on a voluntary basis.

Altogether, financial service providers should neither be obliged to carry out data transmission of the client-data profile to third party service provider or financial intermediaries nor a fortiori to provide financial service providers assessments as these are not input data from the client.

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?

Customer profile data shall not be included in the open finance framework.

Question 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 / 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:

Risks include data breaches, infringements of the institution's intellectual property rights, as well as issues related to "one-size-fits-all" solutions (e.g., if a client wishes to invest a small portion of their portfolio in high risk products, another financial institution could unintentionally apply the same risk profile to a larger portfolio).

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:

These risks would apply to the sharing of all data.

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):

Access to data on the customer's current investments should be possible for third parties subject to the customer's consent only if the financial service provider offers this voluntarily, taking e.g. into account market conditions and customer needs. There should be no legal obligation. A fair distribution of benefits and added values must also exist alongside costs and expenses (which can be very considerable, e.g., technical effort, interfaces). Hence, it should be possible to demand appropriate compensation for making data accessible.

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 / no opinion / not applicable

Please explain your answer to question 72 b):

5000 character(s) maximum

Data ownership, data privacy, and data processing (i.e. GDPR) are crucial issues that must be addressed when taking into account client data sharing and, consequently, the portability of such a personal investment plan. Any strategy for Open Finance should, in theory, be founded on the clients' explicit consent to access and use their data. However, it must be taken into consideration that many retail clients are not aware of the far-reaching access to their confidential data once explicit approval is provided.

Moreover, many important liability questions would need to be considered, such as: what are the potential liability risks for the firm performing the initial assessment? Who is responsible for updating the assessment (e.g., in cases where the client has only performed a client's assessment but does not have any investments with the firm)? Can subsequent investment firms rely on the retail investor passport or would it need to repeat the suitability and appropriateness assessments to ensure its own due diligence thereby diminishing the portability benefits?

Finally, we understand that, for such data to be shared, the client's assessment is meant to be standardised (i.e. there is an underlying methodology that translates the client data into specific asset allocation proposals). In other words, we can expect the same outcome no matter which investment firm provides a personalised asset allocation strategy, thus diminishing the firm's key ability to provide investment recommendations based on their unique know-how, expertise and locality. In addition to that, there is a present risk that such standardisation would not provide tangible benefits for investors (e.g., the more personalised the asset allocation is, the harder it will be to replicate it by another investment firm, leading to a much more complex methodology to only achieve a high-level result), and even pose serious downside risks for investors (e.g., it might lead to a "group think" situation where one type of investor is automatically being channeled into the same asset allocation, hindering competition and reducing choice for retail clients).

Question 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 / 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

None of the above.

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
- Don't know / no opinion / not applicable

Please explain your answer to question 74:

5000 character(s) maximum

Please see our response to Q26.

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

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

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.

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

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

Artificial intelligence.

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?

Yes

No

Don't know / no opinion / not applicable



ABOUT EFAMA

EFAMA, the voice of the European investment management industry, represents 27 member associations, 59 corporate members and 25 associate members. At end Q4 2021, total net assets of European investment funds reached EUR 21.9 trillion. These assets were managed by more than 35,000 UCITS (Undertakings for Collective Investments in Transferable Securities) and more than 30,000 AIFs (Alternative Investment Funds). At the end of Q3 2021, assets managed by European asset managers as investment funds and discretionary mandates amounted to an estimated EUR 31.3 trillion.

More information is available at www.efama.org