

POSITION PAPER



ESBG response to the European Commission targeted consultation on open finance framework and data sharing in the financial sector

ESBG (European Savings and Retail Banking Group)

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ESBG response to the European Commission targeted consultation on open finance framework and data sharing in the financial sector

The European Savings and Retail Banking Group (ESBG) welcomes the opportunity to respond to this targeted consultation from the European Commission on open finance framework and data sharing in the financial sector.

ESBG and its Members share the objectives of the European Commission's data strategy and the commitment to create a single market for data that will constitute a potential source of growth and innovation. We believe a European approach to data is essential to ensure competitiveness, avoid fragmentation of national regulations, benefit from an effect of scale and guard against windfall effects from which certain non-European players could benefit. We also appreciate the recognition of the leading role of the financial sector in the overall digital transformation of the economy and the European Commission's ambition to promote data-driven innovation through a European financial data space.

For the proper functioning of a data economy able to support digital innovation that brings efficiencies for consumers, businesses, and authorities, we recommend following a voluntary data sharing approach that will result in a contractual agreement between data holders and data recipients. This approach would also be in line with the European principles of a market economy: freedom of contract to allow for sustainable business models to be developed and a level playing field for all economic actors that is fair for all participants.

Before choosing any policy option, we consider it crucial to wait for the conclusions of the ongoing PSD2 review. The PSD2 was the first piece of legislation that introduced the right of access to payment account data in the financial sector. The outcome of the review is therefore necessary to analyse the lessons learned before drafting a new regulatory framework and before deciding whether it should be based on the same principle. A flourishing data-driven market – be it in payments, financial services, or between different industries – should be based on principles of mutual benefits and right incentives for all market participants, and thus should take a different approach than that followed by the PSD2. Due to the current possibilities and the existing market practices, we do not see any benefits that could derive from further regulation. Moreover, we still notice a high degree of consumer distrust around making available account details to third parties. Considering windfall effects from which certain players could benefit, a right of access could only be decided in case there is the evidence of market failures. Moreover, considering the constraints with Article 7 GDPR (consent), we would welcome the further exploration of the use of all legal basis of GDPR for the processing of data in an open finance framework.



For the proper functioning of the data economy, it will be crucial to ensure proper incentives for data holders to continue investing in high-quality data. In this respect, at sectorial level we should take into account the introduction in the Data Act of two key principles: (i) the compensation for the costs of granting access; and (ii) the prevention of any negative impact on the data holder business opportunities. Cross-sectorial data sharing towards the financial sector should also be considered, as innovation in finance also increasingly relies on non-financial data.

All this considered, in an open finance framework, the principle “same activity/data, same risks, same rules” shall apply to all actors, including third party providers. To ensure customer’s trust, every third party accessing customer data shall ensure privacy rights and data protection in compliance with all applicable rules. As such, we suggest third party within the financial sector be subject to the same licensing requirements and to supervision by competent authorities. This, on the other hand, would also ensure a level playing field. However, it will also be key to inform customers and emphasise that personal financial data could end up outside of the supervised financial sector, hence losing the protection which is provided for instance by the bank secrecy requirements.

Finally, we would also like to highlight the fact that the reasoning behind several questions was not entirely clear and therefore we were unable to provide a clear answer.



PART I

I. The relevance of data sharing in the financial sector

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

Please select as many answers as you like

Individual customer of a financial service provider	
Business customer of a financial service provider	X
Holder of customer data	X
User of customer data	X
Data intermediary between data holders and users	X
Other	

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

Please select as many answers as you like

Banking	X
Payments	X
Insurance	X
Asset management	X
Securities trading	X
Brokerage	X
Pensions	X
Data and information services	X
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	X

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	X

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

5000 character(s) maximum

The Open Finance Framework (OFF) and open finance-based products could benefit retail customers, inter alia by easing processes (e.g., onboarding), generating tailored financial products and services. Although there are already tools in place that offer some of these functions (for instance, there are comparison tools that facilitate provider switching), an OFF could help the development of innovative tools and products that facilitate comparison among different personalized financial products and services. However, we believe a successful market driven data sharing should not rely on data ownership. Rather, it should create incentives for cross-sectorial, consensual, data sharing.

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

5000 characters maximum

It is not possible to provide an estimation. Moreover, it should be noted that service providers willing to share customer data with third parties will have to invest highly with no certain return, especially if there is a lack of commercialisation, as there are not enough incentives. In any future policy data management, commercialization, and reciprocity need to be the main focus. Consumer protection and data security must also be in focus, with any future framework considering customers that are defined as politically exposed persons. In addition, it must be ensured that regulated financial institutions can verify that the customer is able to approve what data to share in accordance with the principles of GDPR and bank secrecy requirements.

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	



Targeted advice and tailored financial products	
Corporate finance management tools (e.g., overdraft alerts and recommendations for choosing lower interest rates products, lower overdraft charges)	
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	X

Please specify to what other product(s) you refer in your answer to question 7:
 5000 character(s) maximum

Corporate customers already benefitted from PSD2 especially concerning simplified bookkeeping and better cash management. In the longer term, the switch to Industry 4.0 and the embedding of financial services in supply chains and production processes could also be beneficial. However, we believe a successful market driven data sharing should not rely on data ownership. Rather, it should create incentives for cross-sectorial, consensual, data sharing.

Question 8. What would be your quantitative and/or qualitative estimate of such corporate customer benefits for these products?
 5000 characters maximum

Many corporate customers are already benefitting from the introduction of PSD2 which enabled the sharing of data. There is however still a great potential to be reaped in this area. Indeed, whilst PSD2 was drafted solely focusing on the competition between ASPSP and TPP, the market has been realising the value of partnerships and using each other's advantages to develop new products and services for the benefit of the consumers and businesses. It is of utmost importance that this co-operation may evolve according to market-based mechanisms. For instance, a further development of the interfaces to "premium services" beyond PSD2 is currently taking place within the framework of both national and European initiatives with the participation of credit institutions, TPPs and other market participants. It is now clear that PSD2 could have had a greater impact in this area if commercial incentives and reciprocity had been introduced in the framework. This would have created a different ecosystem for data sharing with third parties and between each other, they need to have the incentives to invest in such solutions. In any future policy, data management, commercialization and reciprocity need to be the main focus. However, we believe the market should be free to innovate and to



develop initiatives based on the needs of the ecosystem, rather than based on mandatory regulatory frameworks.

It should also be clarified how an open finance framework would be aligned with the European Single Access Point platform, and how these in the future can complement each 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	X
Firms should not be allowed to share customer data	
Don't know / no opinion / not applicable	

Please explain your answer to question 9:

5000 characters maximum

It is imperative to put in place a principle-based approach to ensure high levels of consumer protection. There are reasons to believe that consumers are unaware of what data they have given their consent to share, how to keep track of all consent, and how this data will be processed or further distributed. The focus on security, integrity, and privacy must apply to all service providers, including third parties involved, in order not to damage established trust and confidence in digital financial services. There should be clear rules and aligned supervision by national competent authorities across member states to ensure European citizens maintain full control and access to their data. It is therefore essential any future framework ensures that regulated financial institutions can verify their customer is able to approve what data to share in accordance with the principles of GDPR and bank confidentiality rules.

In this respect, it should be noted that consumer consent is only one legal basis of data sharing and that the portability right under the GDPR is not the best data sharing model as there is no contract between the data holder and the data recipient. The sharing of data could be allowed with any third-party firm, including in other sectors of the economy, as long as liabilities and consumer protection rules are clearly allocated and stated by a contract.

We believe it is key that the principle “same activity/data, same risks, same rules” applies to all actors, including third party providers. To ensure customer’s trust, every third party accessing customer data shall ensure privacy rights and data protection in compliance with all applicable rules. As such, we suggest third party within the financial sector be subject to the same licensing requirements and to supervision by competent authorities. This, on the other hand, would also ensure a level playing field within the financial sector. However, it is also important to emphasise that personal financial data could



end up outside of the supervised financial sector, hence losing the protection which is provided for instance by the bank secrecy requirements.

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	X
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	X
Don't know / no opinion / not applicable	

Please specify to what other way(s) you refer in your answer to question 10.1:
 5000 characters maximum

A fair share of value and risk is a fundamental prerequisite for the success of data sharing. The PSD2 showed the principle of access to data by some market participants, held by other market participants – free of charge - did not foster the best outcome. The investments required for implementation have been disproportionate, with only marginal benefits and return on investment for ASPSPs. As market-driven initiatives demonstrate, sound open banking offerings are worthy of a price. The legislation should acknowledge this basic market principle and should at least not hinder a market driven corresponding compensation between the data holder and third parties. For instance, the Data Act introduced two key principles for the data holder: the compensation for the costs of granting access and the prevention of any negative impact on its business opportunities.

Financial firms holding customer data will face several costs for making data available in appropriate quality, frequency and format. Therefore, they should be entitled to set a compensation to be met by third parties for making the data available, in order to be able to compensate any cost incurred in putting in place the required technical infrastructure. The principle stated above is the one adopted by the Data Act proposal on its Recital (42): *“In order to incentivise the continued investment in generating valuable data, including investments in relevant technical tools, this Regulation contains the principle that the data holder may request reasonable compensation when legally obliged to make data available to the data recipient”*. We consider the same principle should be introduced in the Open Finance Framework when financial firms are legally obliged to make data available to third parties. In this respect, various costs



should be taken into account in a compensation scheme, including collecting cost, structuring data cost, cost of data sharing infrastructure (API). Moreover, for the proper functioning of a data economy, it will be crucial beyond access to data to maintain incentives for data holders to continue investing in high-quality data.

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

5000 characters maximum

First, a thorough assessment of the results of the review of PSD2 is needed to identify precisely what to replicate, what to avoid and what to do better. Then, trust and security must be the basis of any OFF. As a general rule, the control of access and processing of personal data should lie with the user. A data sharing model must be based on a contract defining sharing of liabilities, complaint handling system, right legal bases for data sharing and related exemptions (e.g., banking secrecy, non-disclosure agreements, etc). It is crucial that consumers understand that any transfer of data to providers outside the banking system removes the protection of customers' data through bank confidentiality legislation which has traditionally been a cornerstone of trust in the European banking system. If such trust should be lost due to misuse or unclarities in the processing or further sharing of data, it could create challenges for the future developments in this sector.

Moreover, ensuring level playing field and legal certainty that includes topics as a fair sharing of liability between all the stakeholders involved is crucial. To guarantee innovation, the market should have the freedom to develop of data-driven and data-related models and to agree on their remuneration, that should be based on a fair share of risk and value. For open banking to be a success very stringent technical specification need to be written around the APIs. These requirements must be written by engineers not lawyers. The specifications must be iterated intelligently.

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



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

5000 characters maximum

To ensure a level playing field in terms of access to customer data and to mitigate any security risks, it is key that third party service providers are subjected to financial supervision and regulation in proportion to the risk they generate pursuant to the principle “same activity/data, same risks, same rules”. Establishing financial regulation just for one side of the market, leaving the other side of the chain without safeguards and supervision would put the entire ecosystem at risk. To ensure customer’s trust, we strongly believe it is crucial every third party accessing customer data ensures privacy rights and data protection in compliance with all applicable rules. As such, we suggest third party within the financial sector be subject to the same licensing requirements and to supervision by competent authorities. This, on the other hand, would also ensure a level playing field within the financial sector.

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

Yes	X
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 characters maximum

Even if the goal of open finance is to encourage innovation and competition, it could also lead to monopoly if the same actor collects a huge amount of data from several financial institutions, as some large technology firms already do. As acknowledged in a recent report of the BIS “the use of consumer data is core to the business model of big techs”. The ease and speed with which these companies can scale up their activities and expand into finance may generate pronounced concentration dynamics. American corporations are also subject to C.L.O.U.D. Act regulation, thus undermining GDPR regulation and other secrecy provisions in Europe.

Questions for financial firms holding customer data

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

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



Questions for firms using customer data held by financial firms

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

Please select as many answers as you like

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

Regulation and supervision of open finance information services

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

Question 19. In your opinion, should the scope of account information service provider licenses put in place under PSD2 [*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*] 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	X

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

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

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

Credit Institution.



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	X
Digital identity solutions, such as European digital identity wallets, which could help identify a customer online and authenticate consent	X
Other	X

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

5000 character(s) maximum

The availability of consent mechanisms that can enable data owners to decide what to share with whom in a secure and trusted way will be a key success factor. A system of “consent forms” could be built to avoid collecting many time the same kind of consent from the same user for the same kind of finalities (taking in example the European data altruism consent form proposed in the Data Governance Act in the context of altruistic data sharing).

If any future initiative is taken in this area, it is important that such solution is supported by a clear legal framework and rules in order to become trusted by users and the data providers. This should be a prerequisite for future regulations.

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

Data holders	X
Third parties	X
Other	X

Please specify who else should provide such tools:

5000 characters maximum

Such tools could be developed and provided by multiple parties, including banks and technology providers, but it is crucial to have a clear and unambiguous common legal framework, and common standards and rules. Data holders should be entitled to offer those tools to their customers on voluntary basis.



On the other hand, TPPs accessing the customer data should provide an overview of the consent and the scope of consents given by the consumer.

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	X

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	X
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	X
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	X
Privacy breaches	X
Misuse of data (including fraud and financial crime)	X
other	X
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

ID theft; cybersecurity breach; data leak; misleading advice. Depending on national law, bank secrecy rules.

Specific risk for the bank: even if service and potential misuse is under responsibility of a third party, the bank will still be seen by customer as having at least partial responsibility.

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	X
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	X

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

5000 characters maximum

The availability of a clear and unambiguous common legal framework, common standards and rules will be key to mitigate such risks. It would also be vital to ensure that the customer understands which consents they approve and to whom is able to manage these.

Financial exclusion is less a risk in the EU due to the requirements laid down in the Payment Account Directive (PAD). To mitigate risks of data abuse it could be ensured that recipients of data are safeguarding the data they receive. When this happens within the financial sector (no cross-sectoral sharing) third parties must be regulated and supervised.

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	X



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	X
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	X
No	
Don't know/no opinion/not applicable	

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

	Name of the financial service or product	Sector (banking, investments, pensions, insurance, other)	Service/product (consumer mortgages, commercial mortgages, consumer credit, corporate credit, investments, savings, pensions, insurance)	Data type (financial/non-financial, personal/non-personal, public/private, raw/enriched)	Access type (read-only or write)
Financial service or product nr 1		Banking, Investment, insurance	Green financing, insurance cover, green bonds	Non-financial, public, private, raw, enriched	Read only



Financial service or product nr 2	FinTS (Financial Transaction Services)	Banking		Financial, private	Write
Financial service or product nr 3	Extended Payment Initiation Service (Berlin Group open Finance API Framework)	Banking		Financial, private	Write
Financial service or product nr 4	EBICS	Banking		Financial, private	Write

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

5000 characters maximum

If we take the Energy and climate footprint use case as an example, it has several benefits for consumers: (i) defends the value of their property; (ii) savings on energy consumption; and (iii) improve their carbon footprint. More broadly, a voluntary contractual data sharing across sectors should help European banks to foster a sound digital transformation, to improve certain automatable processes by pooling efforts (AML/KYC). Consumers would benefit greater personalization of services and better delivery on their expectations in a digital economy.

Questions for firms using customer data held by financial firms

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

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

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

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

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



Questions for all respondents

Contractual schemes

Contractual schemes are voluntary data-sharing mechanisms that are based on a contract. The Euro Retail Payments Board (ERP) 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	X
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	X
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	X
A contractual scheme can ensure effective dispute settlement	X
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	X

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

Liability issues can be clarified directly in contractual agreements. An organisational and contractual scheme regulates, among other things, the rights and obligations of the participants in the procedure and serves to define use cases. Market-led initiatives that develop contractual schemes can improve accountability among companies and can set the parameters of cooperation,



e.g., which security measures have to be applied when handling the data. Moreover, a voluntary scheme may offer benefits of making it easier to bring about scale, flexibility and higher level of future proofness. Many of the benefits that are envisioned in a potential scheme are already legally possible to implement, for instance under GDPR.

Please explain your answer to question 36.1:

5000 characters maximum

In absence of a contractual agreement, the data sharing is based on existing legislation. In that case it will be important to be sure that there is no gap.

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

5000 characters maximum

This will depend on the scheme, the number of participants, the scope envisaged.

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	X

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

Non-binding calls on stakeholders	X
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	X
Don't know/no opinion/not applicable	

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

	Yes	No	Don't know/no opinion/not applicable
Savings accounts		X	
Mortgage products		X	
Lending products		X	
Securities accounts and financial instruments holdings		X	
Insurance and pension products		X	
Risk assessment (e.g., credit and insurance risk)		X	
Sustainability profile or financial services		X	

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

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

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

Yes	X
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	X

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	X
Purpose limitation	X
Data minimisation (limiting data collection to what is directly relevant and necessary for a specific purpose)	X
Data accuracy	X
Data storage limitation	X
Data integrity and confidentiality	X
Other	X

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

5000 characters maximum

Inter alia, possible challenges connected to the processing, including the exchange, of personal data include the fact that information of data subjects, management of the right of opposition, and collection of consent should also be reflected in the conditions of sharing.

Examples of other GPDR challenges in data sharing: 1) challenges related to the definition of responsibilities and legal roles under GDPR; 2) challenges related to third country transfers; 3) incidents handling and liability; 4) risk of losing trust if third party misuse data and finally; 5) challenges related to Article 30 documentation; and 6) consistency with GDPR. In general, sharing data should be seen as a separate ecosystem, where all participants including big techs are subject to not only regulation but also supervision.



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

	1 (least useful)	2 (not so useful)	3 (neutral)	4 (quite useful)	5 (most useful)	Don't know/no opinion/not applicable
Processing based on consent				X		
Processing based on a contract				X		
Processing necessary for compliance with a legal obligation				X		
Processing necessary to protect vital interests of the data subject				X		
Processing necessary for the public interest				X		
Processing necessary for legitimate interests pursued by the controller or a third party				X		

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

Please select as many answers as you like

The absence of an obligation to provide the data on a continuous/real time basis	
The absence of standardised APIs	X
The absence of standards ensuring data interoperability	X
The absence of clear rules on liability in case of data misuse	X
The absence of clarity as to which types of data are within scope	X
The absence of incentives for data holders to provide high quality data, as there is no remuneration for making data available	X
Other	X

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

5000 characters maximum

The absence of contract between the data user and the data holder in the data portability model leads to several problems and in particular responsibility
--



issues and consumer protection issues. Moreover, in this data sharing model, the data subject must be at the initiative of the process which minimize the effectiveness.



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	X
No	
They are currently being developed	
Don't know/no opinion/not applicable	

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

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

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

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

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

5000 character(s) maximum

The establishment of European Data Innovation Board in the form of an Expert Group, consisting of the representatives of competent authorities of all the Member States, the European Data Protection Board, the Commission, relevant data spaces and other representatives of competent authorities in specific sectors (see Article 27 Data Act).

Any adoption of standardised data formats should be market driven, not



mandatory. Otherwise, there is a risk that new innovative solutions are held back while waiting for an agreement on a standard.

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

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

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

5000 character(s) maximum

Any adoption of standardised data formats should be market driven, not mandatory. Otherwise, there is a risk that new innovative solutions are held back while waiting for an agreement on a standard.

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

Industry stakeholders	X
European supervisory authorities	
International or European standardisation organisations	X
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	X
Disagree	
Don't know/no opinion/not applicable	

Questions for financial firms holding customer data

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

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



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

Not used for other cases and no such use is planned	
Other use cases planned	X
Already used for other use cases	
Don't know/no opinion/not applicable	

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

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

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

5000 character(s) maximum

Setting up the PSD2 APIs was a huge effort and caused extremely high costs for ASPSP.

Question 65. Would you agree with the following statements?

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

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

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

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

5000 characters maximum

BerlinGroup openFinance Framework, STET, EBICS, FinTS.



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	X
Don't know/no opinion/not applicable	



Please explain your answer to question 67:

5000 characters maximum

The customer is already free to share their data with any TPP. In this respect, several market practices have been developed (i.e., multi banking apps). But it should be clear that it is always the client who requests their personal data. With regard to the existing practice, we do not see the need for new legislation in this area. As a general remark, we do not see a demand from consumers for third party service providers to access their data in the area of securities accounts. If that were to happen, serious concerns with regard to data protection and data misuse would arise. These concerns have also been raised by ESMA who has pointed out in a letter to the Commission the following (letter from ESMA to the Commission dated April 13 2022, Ref: Consultation on options to enhance the suitability and appropriateness Assessments): *“The results of supervisory experience and the recent ESMA Call for evidence show however some resistance from clients to share personal information such as investment history/transaction data and suitability profiles due to different factors, including cultural ones, lack of trust and fear of cyber risks. ESMA believes that such concerns should be taken into account in order for any such initiative to be successful”*.

As to Q67, this very much depends on what customer-profile data means. For instance, there is certain information that would be positive to share, like that related to investment experience and/or knowledge, if these were measured on a standardized model. Moreover, differences exist. For instance, as to output data: the risk profile of a customer depends on the timing (new source of revenues, adverse events requesting funding, etc), the products (some products can be used to finance retirement, others studies, or a mix and will have a different risk appetite), the assessment performed by each financial intermediary (some financial institution will consider 5 levels of risks whereas others 3, some institutions will consider 20% of equity max whereas for a similar level of client’s appetite other will consider 25%...). As to input data, the risk profile of a customer is established on the basis of information provided in compliance with the regulatory framework but more importantly from the ongoing and trusty relationship established with the advisor, provided voluntarily by the customer each time it is necessary. Finally, the client’s preferences and their risk appetite can change from time to time. That is the reason why advisors are obliged to check the preferences and risk tolerance in each advice session. This clearly demonstrates that a TPP cannot easily take over customer-profile data for their own purposes. This could cause false investment decisions and run counter the interests of the client. It should also be highlighted that any data-sharing beyond credit institutions would remove the protection of bank confidentiality and increase risks of ID theft, fraud, privacy and data breaches as well as increase cyber- and information security risks.

Anyway, if the legislator intends to introduce the ability of TPP to access customer’s data, a monetary compensation for the access should be introduced.



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

5000 characters maximum

Regardless of what information is appropriate to share in order to enable creation of new products and services, there is other information that should not be the subject of any obligation to exchange; for example, the information obtained from Know Your Customer (KYC) processes and customer credit scoring. As already highlighted above, the client's preferences and their risk appetite change from time to time. That is the reason why advisors are obliged to check the preferences and risk tolerance in each advice session. This clearly demonstrates that a TPP cannot easily take over customer-profile data for their own purposes. This could cause false investment decisions and run counter the interests of the client. It should also be highlighted that any data-sharing beyond credit institutions would remove the protection of bank confidentiality and increase risks of ID theft, fraud, privacy and data breaches as well as increase cyber- and information security risks.

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

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

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

5000 characters maximum

The main risk related to customer data sharing is security. Moreover, sharing customer-profile data can go against the clients' interests: abusive standardisation of needs that constantly varies along the client's life. If standardisation is cheaper, it is also less diversified and represents a loss of opportunity for clients and companies to be financed. Another adverse effect lies with the liability attached to the risk assessment and the Risk of over-representation of adverse -risk profiles (limitation of liability of the financial intermediary who establishes it). Another risk associated with sharing the customer-profile data between financial intermediaries is the lack of traceability of the responsibility for the quality of the information on which the analysis is based. If a financial intermediary sells a product based on a wrong test carried out by another financial intermediary, who is responsible for it? Who does need to keep the information up to date? What happens if there is contradictory information?



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

5000 characters maximum

The risks and constraints apply both to the sharing of input and output data (see Q67).

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

5000 characters maximum

The estimation of this cost cannot be done without precise information on the perimeter of the shared data and the level of security that will be agreed between the parties. Nevertheless, the implementation would be very expensive. In this regard, the Commission should be aware of that many securities account providers do not provide payment accounts so that they cannot use the existing access points established under PSD2, meaning they would have to set up new access points. Moreover, it can be complex to assess when dealing with the loss of confidence of the customers if the investment turns out not to be adequate.

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	X
Don't know/no opinion/not applicable	

Please explain your answer to question 72 a):

5000 characters maximum

The transferability of the results of the client exploration and the personal asset allocation strategy and data on customer's current investments to other providers will not bring any added value. On the contrary, providers would risk giving false advice in case recommended an investment on the basis of an assessment carried out by a third party. Institutions should under no circumstances be obliged to enable automated retrieval of this data. This would cause enormous costs which would not be offset by any added value. In addition, the automated access of third parties to customer data raises considerable data protection concerns (the query of sustainability preferences



even allows conclusions to be drawn about certain political views of the customer) as well as the risk of fraudulent attacks.

We consider tools can already be developed on the basis of data voluntarily shared by the customer himself and not intermediated by digital players as it happens on the Internet. The client here should not be the product and benefit from cheaper service against the value of its personal data. This is the only way to prevent conflicts of interests and to preserve its long-term interest for investment. Otherwise, this is an opened door to predictive trading benefiting to big digital players but not for end-consumers. This bias already exists in the crypto-asset trading world. The transfer of row and basics data needs to remain voluntary and actively managed by the client himself. Any additional information should depend on the situation, the timing, the level of advice requested by the client at the time of the investment or of a possible investment.

Regardless, if the legislator intends to introduce the ability of TPPs to access customer's data, a monetary compensation for the access should be introduced.

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	X
Don't know/no opinion/not applicable	

Please explain your answer to question 72 b):

5000 characters maximum

Retail investors do not usually switch financial intermediaries on a regular basis. Therefore, we have doubts that the portability of information can benefit them directly. Furthermore, from the point of view of a bank who focuses on a holistic approach of advising clients on all financial matters, retail investors receive investment advice in consideration of not just one single transaction, but with a broader view on their overall financial needs. To be able to provide this kind of advice, great effort goes into getting to know the client's needs and to provide tailored investment advice for clients. The investment advice is based on the own bank's assessment and view on how the ideal asset allocation should be designed. Developing a bank's opinion on how the ideal asset allocation should be designed requires respective efforts within the bank, whereas this opinion leads to the result of having specific investment strategies according to the needs of clients. Until now, clients are not charged for this service separately, but the service is covered through provisions (in the securities as well as in the insurance area). If the client would not conduct his transactions within the bank and would not have his investment account within the bank, the bank would need to charge him for the provision of advice. Fee-based advice is



contradictory to the practice in some European financial markets, experience shows that clients are not willing to pay for investment advice in general. So the introduction of the opportunity to transfer the results of a client's assessment together with the client's personalized asset allocation strategy to other brokers/financial intermediaries might lead to excluding a broad mass of clients from access to qualified advice and, due to the lack of investment know-how, from participation in the capital markets.

The current suitability and appropriateness regime in MiFID II works well and we do not see any benefits in introducing a new regime which is applicable across investment firms. It will be both costly and complex to implement and it will not add any value for the investor. Indeed, client's preferences and risk profiles change over time. For this reason, advisors are obliged to explore the client's preferences and needs during all advice sessions. No advisor (neither the one who has done the exploration nor a third party that has not conducted the exploration) should rely on the results of a previous exploration and on an investment strategy that has been developed in the past. This could lead to false investment decisions that run counter the interests of the client.

Should the Commission nevertheless adhere to the idea of portability, it should at least provide for financial compensation by the recipient of the data, as it has recently done in Article 9 of the draft Data Act.

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	X

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

5000 character(s) maximum

As already stated in previous answers, we do not see a demand from consumers for third party service providers to access their data in the area of securities accounts. If third parties were able to access customer data, serious concerns with regard to data protection and data misuse would arise. These concerns have also been raised by ESMA who has pointed out in a letter to the Commission the following (letter from ESMA to the Commission dated April 13 2022, Ref: Consultation on options to enhance the suitability and appropriateness Assessments): *"The results of supervisory experience and the recent ESMA Call for evidence show however some resistance from clients to share personal information such as investment history/transaction data and suitability profiles due to different factors, including cultural ones, lack of trust and fear of cyber risks. ESMA believes that such concerns should be taken into account in order for any such initiative to be successful"*.



Nevertheless, the client is free to share his data with any TPP they wish. In this respect, several market practices have been developed (i.e., multi banking apps). However, it should always be the client who requests their personal data to limit the risks of fraud and data misuse.

Moreover, if the legislator intends to introduce the ability of TPPs to access customer's data, a monetary compensation for the access should be introduced.

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

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

Please explain your answer to question 74:

5000 character(s) maximum

See answer to Q73.

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	X
Don't know/no opinion/not applicable	

Please explain your answer to question 75:

5000 character(s) maximum

See answer to Q73.

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	X
Don't know/no opinion/not applicable	



Please explain your answer to question 76:

5000 character(s) maximum

We believe the PSD2 approach proved unsuccessful. Payment Service Providers heavily invested time and money on implementing PSD2 to ensure compliance rather than really developing innovative services or solutions. A flourishing data-driven market – be it in payments, financial services, or between different industries – should be based on principles of mutual benefits and right incentives for all market participants, and thus should take a different approach to PSD2. Due to the current possibilities and the existing market practices, we do not see any benefits that could derive from further regulation. Moreover, we still notice a high degree of consumer distrust around making available account details to third parties.

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

5000 character(s) maximum

The estimation of this cost cannot be done without precise information on the perimeter of the shared data and the level of security that will be agreed between the parties. Nevertheless, the implementation would be very expensive. In this regard, the Commission should be aware that many securities account providers do not provide payment accounts, meaning that they cannot use the existing access points developed pursuant to PSD2.

The current suitability and appropriateness regime in MiFID II works well and we do not see any benefits in introducing a new regime which is applicable across investment firms. It will be both costly and complex to implement and it will not add any value for the investor. Indeed, client's preferences and risk profiles change over time. For this reason, advisors are obliged to explore the client's preferences and needs during all advice sessions. No advisor (neither the one who has done the exploration nor a third party that has not conducted the exploration) should rely on the results of a previous exploration and on an investment strategy that has been developed in the past. This could lead to false investment decisions that run counter the interests of the client. Moreover, this could lead to a loss of confidence of the customers, especially if the investment is not adequate and results in a loss.

SME financing

Similarly, to the investment use case, the SME financing one consists of two aspects. First, SMEs frequently face challenges accessing credit and are exposed to higher transaction costs and risk premiums than larger enterprises. Lenders often lack sufficient information to assess adequately SME creditworthiness, price credit risk and tailor financial products. Primary data collection from SMEs during



a loan application process is costly and may not deliver all the relevant data. To make sure that the funding provided is appropriate to the economic and financial circumstances of SMEs, credit institutions and other lenders might benefit from the additional access to data, including ecommerce data. Online commercial activity and other cross-sectoral data generally improves the quality of SME creditworthiness assessment and may lead to enhanced financing, with a positive impact on the overall financial health of SMEs.

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

Assessing SME creditworthiness

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

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

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

5000 character(s) maximum

Arrangements with SMEs could be needed. Indeed, data sharing could be very useful especially for sharing balance sheet data that is not always published or available.

Accounting companies and systems that are holding the financial management data for the SME. There are emerging propositions where the data is automatically used for creditworthiness assessment and as a new distribution channel. Also, creditworthiness assessments are not a payment service, hence they are out scope of PSD2 but can easily be contracted.



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

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>
Don't know/no opinion/not applicable	<input type="checkbox"/>

Sharing of SME data across financial institutions

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

Yes	<input type="checkbox"/>
No	<input checked="" type="checkbox"/>
Don't know/no opinion/not applicable	<input type="checkbox"/>

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

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>
Don't know/no opinion/not applicable	<input checked="" type="checkbox"/>

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

Yes	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>
Don't know/no opinion/not applicable	<input type="checkbox"/>

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

5000 character(s) maximum

As these are mostly payments data, market driven initiatives like the SPAA and the Berlin Group already address these concerns.



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	X

Please explain your answer to question 86:

5000 characters maximum

Supervisory data hardly fit for open banking as it is produced confidentially for the use of the individual evaluation by the supervisor. Legal obstacles need to be specifically reviewed. In addition, should some supervisory data be made available beyond supervisory authorities, it would be crucial to resolve at least the following prerequisites:

- data protection: notably in terms of (i) anonymity for the providers, consumers, and clients, (ii) cyber-security during the data transfer, data consolidation, data interpretation, etc.
- data quality, both at the provider and at the aggregation level: indeed, by definition supervisory data reflect individual context and processes, like the interpretation or the internal rules to produce the data, as well as the bilateral work with the supervisor for its analysis, or the “correction” made by the supervisors to better align the data received from the banks.
- data use-case: the data shall be built for the use and not the use built on the data, to avoid inappropriate use of data.
- data propriety: some internal data is costly to produce for the banks, built over years of banking practice, and intended to improve the risk management and origination processes, this is obviously a competitiveness sensitivity matter, it cannot be simply shared with potential competitors, and certainly not at no cost.



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

5000 characters maximum

Industry and authorities show appetite for credit quality and ESG assessments to harmonize and extend the independent evaluation coverage, for financial stability (capital requirements of all actors including financial institutions) or for capital market growth (transparency to investors).

Consensus rating or ESG labels are potential use cases but under condition:

- The prerequisites listed in Q86 are considered.
- The process is framed under a single standard and a single authority: consensus rating or ESG labels should be supervisory proof the same way (external or internal) credit assessment is required to respect some criteria to be fit to capital requirement calculation.

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	<input checked="" type="checkbox"/>
No	<input type="checkbox"/>
Don't know/no opinion/not applicable	<input type="checkbox"/>

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

5000 characters maximum

Several areas would be of interest, inter alia:

- the detailed market shares among financial institutions could be provided for their internal use, at a national and regional level (credit, savings...).
- ESG data that are not easily accessible.



About ESBG (European Savings and Retail Banking Group)

ESBG is an association that represents the locally focused European banking sector, helping savings and retail banks in 17 European countries strengthen their unique approach that focuses on providing service to local communities and boosting SMEs. An advocate for a proportionate approach to banking rules, ESBG unites at EU level some 885 banks, which together employ 656,000 people driven to innovate at 48,900 outlets. ESBG members have total assets of €5.3 trillion, provide €1 trillion billion in corporate loans, including SMEs, and serve 163 million Europeans seeking retail banking services. ESBG members commit to further unleash the promise of sustainable, responsible 21st century banking. Learn more at www.wsbi-esbg.org.



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