

Comments

on the call for evidence on an open finance framework

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The **German Banking Industry Committee** is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent approximately 1,700 banks.

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Preliminary remarks

The German Banking Industry Committee (GBIC) welcomes the opportunity to respond to the call for evidence on the European Commission's open finance framework initiative. The following comments supplement our response to the Commission's targeted consultation on 5 July 2022.

We support the European Commission's aim of using its data strategy and open finance framework to seize the opportunities of the data economy for the good of European consumers and businesses and the economy as a whole. Users of financial services can benefit from greater availability and accessibility of data as this will make it easier to tailor products and services to a customer's individual needs and to speed up customer processes. This applies to consumers and corporate customers alike. Appropriate framework conditions that facilitate and promote the access to, and exchange of, data among the various parties involved both within the private sector and in dealings with the state will help to achieve this goal.

Better access to relevant data will enable innovation and value creation. But sector-specific approaches will not go far enough to effectively exploit the obvious potential. Service providers along the entire value chain need better access to data to better understand and satisfy customer needs, also with respect to financial products and services. This will usually include data from very different application areas and industry contexts. Financial data alone do not fully reflect the financial concerns of today's consumers: data from sources such as energy providers, mobility providers, commerce and industry are also required to generate added value for customers and keep pace with global platform providers.

Sectoral approaches, such as those that the open finance framework intends to pursue, risk fragmenting framework conditions with the result that competitive imbalances will be maintained or even exacerbated and an integrated data economy with equal opportunities for all will not be achieved. Sector-specific framework conditions should therefore be the exception and should only be considered where they are absolutely necessary. In the interests of equal opportunities and a coherent overall strategy, it is important to establish a consistent regime across the various economic sectors with the same data access rights and associated conditions applicable for all involved. Otherwise, a European regulatory jungle threatens that does not follow standardised principles and where differing sectoral rules and regulations perpetuate existing imbalances.

A data-based financial system must therefore go hand in hand with the opening up of data in other sectors as well so that a balance of costs and benefits can be achieved for all parties.

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No new data access rights in the financial sector

In the absence of a horizontal approach to establishing a general customer-initiated data access right, we are opposed to the idea of introducing new requirements for the financial sector.

The envisaged rules in the proposed European Data Act on sharing data between data holders and customers (B2C) and with third parties on behalf of the customer (B2B) do not go far enough, in our view, as they will only cover data on IoT devices or from directly connected services. These data represent just a small part of those that financial service providers could potentially use to generate additional added value for customers.

PSD2, by contrast, requires banks in their capacity as account servicing payment service providers to make highly relevant data available to third parties on behalf of their customers for numerous applications both within and outside the banking industry. Extending this unprecedented data access right to financial data over and above payment account information would further exacerbate, to the detriment of the banking industry, the existing imbalance between those obliged to share data and the beneficiaries of this practice. For given the prevalence of universal banks in Germany, new data access rights will doubtless mainly affect those who already, as account servicing payment service providers, make account data available to third parties on behalf of their customers and do so, moreover, free of charge.

On top of that, it is questionable PSD2's opening of access to customer data to new service providers via the bank-customer interface can be considered a success. The objective was to create new digital offerings for payment service users and enable the use of payment transaction data. GBIC takes an ambivalent view of the results. On the one hand, the unilateral obligation on account servicing institutions has given preferential treatment to certain business models and set undesirable incentives. At the same time, it has not been possible to share the associated costs fairly, so this preferential treatment has been to the detriment of account servicing banks and their customers. On the other hand, PSD2 has established technical infrastructures and roles that can be used for cooperation between account servicing institutions and other payment service providers. Various initiatives have been created at national and European level to this end. They offer huge potential for developing economically viable and customer-friendly offerings within and beyond the area of payment services in line with market needs.

Lawmakers should therefore give the market the necessary space to exploit these opportunities in a stable regulatory environment and refrain from stifling creativity by introducing new legal access rights. This will ensure that innovation can flourish where there is a corresponding need for customer-friendly functions, products and solutions.

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Framework conditions needed for data exchange on a voluntary basis

Apart from the question of legal data access rights, we see various areas where lawmakers could set suitable framework conditions to support market participants in their efforts to create more data-based processes and business models.

Compensation

Key to the success and acceptance of open finance is a fair distribution of costs, risks and added value among all involved in order to prevent imbalances and set incentives to share data. A party that shares high-value data from which all other market participants can benefit but receives no or only lower value data from other parties should still be able to derive a reasonable benefit from sharing the data.

The principle should be that compensation, not just for the data themselves but also for a related service, should be determined freely in the market. But this raises the question of how this compensation – an absolute prerequisite for a fair distribution of costs and benefits in data sharing – can be agreed efficiently and effectively among the large number of parties involved. It would be desirable to set framework conditions that take account of competition law and enable compensation to be agreed between data provider and data recipient as simply and straightforwardly as possible, both bilaterally and in the context of multi-party schemes.

The approach envisaged in the current proposal for a European Data Act should be followed, with the ability to obtain compensation the norm and deviations remaining the absolute exception in the interests of a coherent legal framework. Should lawmakers introduce a legal access right in spite of our concerns, this compensation should cover at least the following items: (1) the cost of setting up the necessary technical infrastructure, (2) a reasonable return on investment for collecting and structuring the data and (3) the additional cost of operating the infrastructure.

Licensing/supervision

When exchanging data voluntarily on a contractual basis, banks should be entitled though not obliged to share data with third parties even outside the financial sector at the request of the customer. It is true that customer financial data held by banks are usually highly sensitive and thus exposed to the risk of misuse. But if data are exchanged with third parties on a contractual basis, the parties can enter into agreements specifying aspects such as reliability requirements, mutual responsibilities including security measures to be observed, and liability claims in the event of violations.

The situation is different if there is a legal obligation to make data available. In this case, data providers have little ability to protect their clients from the misuse of their data by a fraudulent third party, for example. To ensure the necessary level of consumer protection, the third party receiving the data will therefore need to be licensed and monitored by financial supervisors. This will require rules and regulations along the lines of those to which regulated third-party services are already subject under PSD2. Another option would be to treat such third parties as regulated data intermediaries in accordance with the Data Governance Act.

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Even in the context of an open finance framework based solely on a voluntary exchange of data, however, it should be examined whether certain third parties should be subject to regulation and supervision by financial supervisors because the data received give rise to comparable risks for the individual or the financial system as a whole. This would also serve to establish a level playing field for data use between regulated and non-regulated financial market players.

GBIC nevertheless believes that it would not be a valid option to apply the existing requirements for account information services “as is” to other types of account (such as savings accounts, securities accounts, credit accounts, etc.) – not least because PSD2 does not provide for any possibility of compensation for costs incurred and data have to be made available by the data holder free of charge.

Customer sovereignty

Control over the use of personal data is an important basis for protecting a user’s digital self-determination and building a framework of trust. Customers should therefore be given tools such as data protection dashboards to enable them to actively manage their consents in an informed and responsible way.

Banks enjoy a high level of trust with respect to data protection and security and have well-established online and mobile banking infrastructures that are widely accepted by customers. They thus meet important prerequisites for supporting their customers in managing consent to the use of their data, including consent to access by external parties.

An additional service of this kind can only be of an optional nature, however, since the consent to data use must be given not just to the data holder but also, and above all, to the third party receiving the data. A binding requirement for the data holder to provide a data protection dashboard would therefore not be helpful because there would be no provision for an effective withdrawal of the consent given by customers to a third party. This would require the involvement of a data intermediary which has entered into a contractual agreement with both the customer and the data recipient, which renders mandatory provision of data unfeasible.

Digital identity solutions could also serve as an alternative option. They could help to reliably verify the identity of a customer online, especially if no bilateral authentication tools are available. The authenticity of the user can also be reliably verified in terms of data protection requirements, thus effectively preventing identity fraud and unauthorised access to data. Consideration could in principle be given to the use of the European digital ID wallet as soon as it becomes available throughout the EU and has gained broad customer acceptance. In the transitional phase at least, however, other solutions available on the market should also be considered.

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Standardisation

Open standards are a fundamental prerequisite for the exchange of data as they enable broad participation and have the potential to save significant costs compared to proprietary data exchange formats.

We take the view that market-driven approaches to standardisation are best suited to moving forward the establishment and expansion of open finance networks quickly and efficiently using existing data standards and transmission infrastructures.

This is demonstrated by the fact that, in Germany, there are already various services based on established standards in and beyond the banking industry which allow data to be transferred at the customer's request. One example is the Financial Transaction Services (FinTS) standard, which is supported by around 2,000 banks in Germany and is continuously being refined. FinTS is used to standardise the interface between the bank customer – represented, for example, by their financial management software or an internet portal – and one or more banks. The aim is to ensure multibank capability. In addition to the basic transmission protocol and modern security technology, the FinTS standard contains specifications for over 130 business transactions. Due to its XML specification (from version 4.0 onwards), it is also compatible with other international financial data standards. Products and services based on these standards enable data to be shared between different consumer or business service providers. This reduces numerous front-end transactions and offers customers a comprehensive financial overview in real time.

In addition, GBIC is actively involved in the BerlinGroup, which is developing open finance standards (BerlinGroup openFinance API Framework) addressing a wide range of use cases that go far beyond payment account services (see <https://www.berlin-group.org/>).

Experience implementing PSD2 has shown that substantial investment is needed to develop infrastructure for exchanging data. Unlike a green-field approach, the use of existing standardisation initiatives such as those of the BerlinGroup, whose payment standards are already widely used by market participants, promises synergies in implementation costs and dissemination in the market when extended to cover new use cases. All market participants would benefit from this. Key to success is a stable, long-term legal framework which is balanced and technology-neutral while remaining sufficiently open to create room for innovation.

Governance

But standards alone are often not enough to meet the prerequisites and set the necessary incentives for creating a data ecosystem. In many cases, an organisational and contractual framework is needed in the form of a scheme that specifies the rights and obligations of participants, defines use cases and sets the parameters of the cooperation by clarifying issues such as the security measures to be applied when handling data.

One example is the efforts of the Euro Retail Payments Board to promote the development of market-oriented business models with the involvement of all relevant players. GBIC supports

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these activities and is actively involved in the EPC's work and working groups on a SPAA (SEPA Payment Account Access) Scheme for payments. In addition, GBIC has launched its own parallel initiative for developing an API-based scheme (giroAPI). A scheme governance is in the process of being established with the involvement of all stakeholders.

Prioritised use cases of the European Commission are the wrong approach

Transferability of customer profile data

As already explained in our response to the "Targeted consultation on options to enhance the suitability and appropriateness assessments" of 21 March 2022, there are various reasons why we strongly oppose the standardisation of client analysis and a personalised asset allocation strategy.

The assumption that transmitted client profile data can simply be transferred between financial intermediaries fails to recognise that possible errors in assessing a client made by one provider would have an impact on the advice offered by another provider. There is a clear danger of clients being given the wrong advice.

On top of that, the collection and analysis of client data is also a distinguishing feature in the business of providing financial advice and a core competence of the bank or financial intermediary in question. Trade secrets may therefore also be affected. Methods of analysis, in particular, vary from one provider to another. Providers should therefore not be obliged to disclose these data to their competitors.

Should lawmakers reject our concerns and wish to enable access to client data in the area of securities as well, a voluntary exchange of data limited to those supplied by the customer should at most be considered. Data generated by an evaluation by the provider and thus involving their expertise and know-how must be excluded. Otherwise, reliability and liability issues will arise between the data holder and data recipient regarding the assessment made. It should be up to providers to decide, with the customer's wishes and market conditions in mind, whether to provide customers with an interface for the transmission of their input data. In the interests of a fair distribution of costs and benefits, providers should also be able to demand an appropriate consideration from the data recipient for transferring the data.

SME financing

We support the European Commission's efforts to improve financing opportunities for small and medium-sized enterprises in order to strengthen Europe's economic base and innovative capacity. In view of the differences in accounting rules, company registers and their content, etc. across the EU, we do not, however, believe that European harmonisation of data exchange is a suitable means of achieving this.

In addition, our above concerns about the reliability of data collection, the spreading of errors and the disclosure of trade secrets also apply to the transfer of credit application data.