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FINAL

EACB's Recommendations

For a Feasible Open Finance Ecosystem

The **European Association of Co-operative Banks** (EACB) represents, promotes and defends the common interests of its 27 member institutions and of cooperative banks, with regard to banking as well as to co-operative legislation. Founded in 1970, today the EACB is a leading professional lobbying association in the European banking industry. Co-operative banks play a major role in the financial and economic system. They contribute widely to stability thanks to their anti-cyclical behaviour, they are driver of local and social growth with 2.700 locally operating banks and 52,000 outlets, they serve 223 million customers, mainly consumers, SMEs and communities. Europe's co-operative banks represent 87 million members and 705,000 employees and have an average market share in Europe of about 20%.

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1. Introduction

Open finance is a sensitive topic for co-operative banks in Europe as they are very aware of their duty to protect not only their customers' funds but also their data.

At the time of the Commission's targeted consultation on open finance in July last year, the European Association of Co-operative Banks (EACB) delivered important advice to the Commission to be considered in its thinking of an open finance framework. We focused on four suggestions:

1. **Learn from the experience with the second Payment Services Directive (PSD2), which holds valuable lessons:** For a data sharing economy to be successful, all parties in the value chain should derive incentives and benefits, for both customers and businesses. At the same time, benefits must be measured against costs supported by the various actors in the ecosystem.
2. **Perform a careful risk assessment to estimate whether the benefits are greater than the risks**. Risks such as financial exclusion, data protection, misuse of data, fraud, insufficient security measures, ID theft and misleading advice should be factored in both from costumers' and companies' perspectives. The assessment for setting up an open finance framework for accessing and sharing of customer data should include a market analysis that proves the actual existence of a viable 'secondary market' benefitting from data sharing and that this would outweigh the risks – economic and otherwise – associated with sharing.
3. **Focus on cross-sectoral data sharing between all sectors of society**. The assumption seems to be that open finance should be about the financial sector again opening up its data to other parties. We believe that data usage, access and sharing should be considered in a broad context. There are several use cases in which the financial sector would benefit from data shared by, for example, public bodies and other types of companies.
4. **Rely on the European principles of a market economy**, with freedom of contract to allow for sustainable business models to be developed. The principle 'same activity, same risks, same supervision, same rules' should apply to all actors. This alone ensures a level playing field and a high level of consumer protection.

On top of our suggestions, it is worth mentioning the Open Finance Report drafted by members of the Commission's Expert Group on European financial data space (EFDS EG) published on 24 October. The collaborative approach among the various financial market participants in the Expert Group resulted in a balanced Report reflecting the diversity of views which nourishes the EU single market and brings benefits to European customers. The Report provides an overview on the modalities for data sharing and reuse based on a specific number of illustrative use cases and describes the key components of an open finance ecosystem in the EU.

The present paper provides further input to the debate on open finance. This on evaluating (see Chapter 3), some of the key building blocks listed in the Report (i.e., data accessibility and availability; data protection and consumer protection issues; data standardisation; liability; cost of data access; principle of same activity, same risks, same rules) and formulating some key

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recommendations, with a view to informing the Commission's impact assessment for a feasible open finance ecosystem.

2. Recommendations

The EACB has considered a number of building blocks mentioned in the Report of the Expert Group, data accessibility and data availability, data protection and consumer protection issues, data standardisation, liability issues, level playing field and cost of data access. We have also elaborated on some of the open finance use cases presented in the Report and the PSD2 review. These considerations have led us to formulate the below recommendations to the European Commission for developing its open finance framework:

1. Lists of customer data fields: **We recommend that the Commission carefully assess the potential benefits and drawbacks before implementing mandatory or voluntary lists of customer data fields in addition to the GDPR requirements**. This assessment should consider the following factors: The costs and risks associated with maintaining and managing another list of data fields in compliance with the GDPR; the feasibility of mapping all the details banks have about their clients and the potential burden on clients and financial institutions; the impact on the costs of bank services and the potential benefits for clients; the potential limitations on innovation and competition arising from the disclosure of these lists

2. Data perimeters: **We do not support introducing data perimeters spelling out categories of data expected to be used for a specific use case as this may stifle further use case development, be technically complex and challenging to implement. As an alternative** to the publication of lists of customer data fields and the introduction of data perimeters, **we recommend that the Commission consider the use of API interfaces**, which can leverage the technological foundation developed in previous years as a starting point.

3. Consent management tools: **We recommend that data holders be allowed to offer consent management tools to customers on a voluntary basis**. Though acknowledging consent management tools potential benefits and the crucial importance of exercising GDPR rights, it is important to consider certain aspects such as customer fatigue towards actions required to manage consent, the possible administrative burden, and costs of developing such tools.

4. Data standardisation and APIs: **We recommend a flexible and market-driven approach to the adoption of standardised APIs**. We support the self-regulation initiatives of the Euro Retail Payments Board and the related EPC SEPA Payment Account Access Scheme, as well as other industry standards such as the BerlinGroup and STET. We caution against replicating the complicated, time-consuming and costly implementation of PSD2 and believe that regulatory guidelines or a common taxonomy to

ensure alignment with national and industry standards and practices should only be considered if a market-driven approach fails.

5. Liability and dispute resolution procedures: **Liability arrangements for the use of data must be clearly specified in contracts, and liability allocation should be based on transparent principles that do not create extra risks for data holders**. In its consideration between contractual and non-contractual data exchange, we strongly recommend that the Commission encourage and support contractual data exchange, as the latter enables parties to assess and manage liabilities and risks through contracts. A contractual scheme can also ensure effective dispute settlements.

6. Cost of data sharing: **We are against the idea of free-of-charge, real-time user interface for data subjects to retrieve their data**. **We recommend that the costs for creating data access should be fairly distributed among different players in the data value chain in order to safeguard competition** and **that compensation between the data holder and third parties should be able to form freely in the market and not prescribed by legislation.** Cost elements to be taken into consideration in this context are at least the costs of setting up the technical infrastructure, additional costs for data maintenance and administration, and an appropriate return on investment for collecting and structuring the data for the data holder to continue stimulating innovation.

7. Level playing field: Market participants who engage in the same activity and pose the same risks should adhere to the same relevant regulations. **In situations where data access rights are imposed, to ensure a fair market for all parties and prevent regulatory discrepancies, non-bank third parties intending to provide or benefit from financial services data should be authorised.** To enhance transparency and ensure a higher level of consumer protection, **there should be an independent source to confirm whether a particular party has access to customer data. Banks should be allowed to rely on a public list of parties that are authorised to act as data recipients**.

8. Use cases to be pursued:

    - We consider the **energy and climate footprint use case** and the **pension use case** presented in the Report on Open Finance **two good examples of multi-sectoral data exchange**.
    - On the contrary, **we have concerns with the mortgage and investments use cases. For the former, we advise conducting a thorough impact assessment** to identify market failures and perform a cost-benefit analysis. **For the latter, we recommend to avoid standardising client exploration and personal asset allocation processes**, as it may lead to a loss of quality in customer assessment and hinder institutions' efforts to improve their processes. Institutions should focus on providing specialized and tailored service offerings rather than relying on standardised processes.

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9. Link with review of PSD2: Notwithstanding the possibility to introduce the concept of compensation in line with the Commission proposal for a Data Act, **EACB members are against the integration of the PSD2 payment account data provisions into the open finance framework at this point in time**. A shift of this nature would frustrate the many investments already put towards getting the implementation of PSD2 right and could severely disrupt the technical market equilibrium that has been established, without necessarily improving outcomes for Account Servicing Payment Service Providers (ASPSPs), Account Information Service Providers (AISPs), or Payment Service Users (PSUs).

3. Detailed considerations regarding different building blocks

3.1. Key building block – Data accessibility and availability: Lists of customer data fields and data perimeters

The Report on Open Finance shows consensus on developing a multilateral and cross-sectoral open data economy, which considers the value chain of the data as a whole and maintains incentives for data holders to continue investing in high-quality data collection and processing. Based on the Report, data accessibility and data availability should be carried out in a fair, transparent and proportionate manner. We fully support these remarks.

As tools to give the consumer control over data use and to promote and ensure transparent processing in line with the General Data Protection Regulation (GDPR), the Report mentions the publication of lists of mandatory/voluntary customer data fields and the establishment of data perimeters.

According to the Report, *'lists of customer data fields are to be understood as the publication of general data fields stored by data holders,'* whereas '*data perimeters are to be understood as a framework defining the categories of personal data normally used for specific open finance products or services.'*

Lists of customer data fields: general information stored by the data holders	Data perimeters: clearly delineating categories of personal data necessary for each open finance product and service
- Define data fields - Define type of data	- Define list of permissible data to be used for each open finance use case

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Publishing lists of mandatory/voluntary customer data fields

We would like to stress that having, and publishing, mandatory/voluntary lists of customer data fields, additionally to already implemented GDPR requirements, may generate only little added value compared to the costs and the risks that may arise.
We do not believe that these tools could be beneficial to clients for several reasons:

- Having mandatory/voluntary lists of customer data fields would require yet another list to be maintained additionally to those required by the GDPR and would have to be managed in compliance with the GDPR.
- A wide intervention would be required to map all the details banks have about their clients. Such mapping is not readily available.
- The financial burden that could arise from the introduction of mandatory/voluntary lists of customer data fields is likely to translate into higher costs for bank services for all clients while at the same time, it would only benefit those clients that would actually use the service and the data brokers that offer these clients their services. Unless the additional costs of making these lists of data fields available can be recovered from the companies that will use them so as to make this a zero sum investment for banks, there is a risk of creating an unlevel playing field.
- The disclosures of these lists could limit innovation and raise competition issues. They can limit innovation by creating a standard for all companies to follow, which may stifle new and innovative ways of collecting and using customer data. This can result in less competition as companies are required to adhere to the same standards, making it more difficult for new players to enter the market. Additionally, such lists may not be flexible enough to adapt to new technologies and changing market conditions, further limiting innovation and competition.

Data perimeters

We are not in favour of introducing data perimeters, spelling out categories of data expected to be used for a specific use case. We agree with the position expressed by the banking representatives in the Expert Group that the GDPR already delineates the categories of processed personal data, as such accessible to data subjects. The GDPR obliges data controllers to provide data subjects with extensive information on the personal data processed.

Moreover, defining a specific data perimeter for each product and service may be technically challenging and complex to implement, particularly with regard to data security issues. By contrast, Art. 25 GDPR allows for flexibility in determining what data is necessary for each specific processing purpose.

Additionally, introducing data perimeters may not be flexible enough to accommodate new innovative data opportunities that may arise through new data combinations in the future.

Finally, we share the concerns expressed by some EG members that data perimeters could limit financial inclusion and transparency.

API interfaces

As an alternative to the publication of lists of customer data fields and the introduction of data perimeters for use cases, we support the use of API interfaces whereby the technological basis established in the past years can serve as a starting point.

Regarding the adoption of standardised APIs, we have consistently supported a market-driven approach without introducing any new data access rights. We believe that the Commission should work on providing incentives to implement good APIs and promote standardisation, not impose them. It is crucial to have a flexible and market-driven approach.

On this specific aspect, please refer to the dedicated building block (see page 8 of this document).

3.2 Key building block – Data protection and consumer protection issues: consent management tools

The Report acknowledges that financial services are often contract based. Therefore, in most instances processing based on a performance of a contract may be the most appropriate lawful ground for processing as personal data is processed to provide a specific service for the data subject. The performance of a contract may also be preferred in open finance for a number of other reasons (i.e., processing is more stable as consent can be withdrawn at any point; less challenging as consent must be freely given and this is difficult to achieve in practice). We fully support these considerations.

However, there is a tendency in the debate to focus only on consent as a basis for data processing. From our perspective it is important to consider all GDPR legal bases for personal data processing, as financial services are more contract based. However, when consent is required, there is a need to provide tools to help consumers control the use of their data. The practical implementation of consent presents challenges.

EG members suggested the operationalisation of consent management tools. According to them these tools *'– if designed effectively – could help in relieving data subject's "consent fatigue." These tools should grant a holistic consumer view considering a cross-sectoral perspective.'*

We agree that consent management tools would be helpful instruments for customers, since they could keep control over what type of data is being shared as well as who they have granted consent to. We believe data holders should be entitled to offer those tools to their customers on a voluntary basis.

While acknowledging their potential benefits (e.g., providing subject rights, collecting data where there is a permission for doing so) and the crucial importance of exercising GDPR rights in open finance, it is worth considering the following aspects:

- Customer fatigue. In our experience and seeing complaints from regulatory authorities, customers are overloaded with too much consent-based requirements. Only a very small

number of people reads them all. Consent must remain the basis, but following the legal architecture, there must remain a certain degree of freedom to know one's own customers and to meet their requirements.

- The building up of these tools should not be imposed to data holders, on the contrary all relevant actors should be allowed to voluntarily offer them.
- The possible administrative burden as well as the potential costs of developing such tools due to their complexity.
- Last but not least, in case the Commission decides to legislate on the consent management tool, the liability aspects and the consequences in case a customer decides to withdraw her/his consent should be clear in the legal text.
  On the liability element, we would like to also stress that on the relationship between two or more economic actors (data holders and data recipients), data holders cannot be held responsible for how data quality is assessed in the context of purposes and services provided by data recipients. Data recipients should be responsible for obtaining the data in a way that is compliant with the GDPR.

3.3. Key building block – Data standardisation: APIs

The Report emphasises that despite PSD2 providing a framework including obligations for interfaces, it does not dictate a specific API standard. On the one hand, this approach ensures technology neutrality and allows market players to implement APIs in a way that is most suitable to their existing technical capabilities and resources. On the other hand, it leads to fragmentation across the EU. Based on this, the Expert Group identified a need for a higher level of standardisation for core data fields, while suggesting a more market driven and flexible approach for APIs and their technical specifications.

Higher level of standardisation for core data fields

We are not in favour of designing and implementing a higher level of standardisation of core data fields (see also our comments under the list of data field topic) as suggested by some experts of the EFDS EG.

APIs

As a general comment we believe that APIs would increase the transparency of data use and promote the protection of those affected. It is also technically possible to use APIs to check who viewed the data and when, or whether the data records were processed.

Past experience (such as the implementation of PSD2) was highly complicated and costly for credit institutions (ASPSPs) and the whole market, particularly considering 'PSD2 interfaces' due to unclear regulatory requirements from the beginning in relation to level 1 and 2 (EBA RTSs). We should avoid replicating the PSD2 experience and implementation.
We support a flexible and market-driven approach regarding the adoption of standardised APIs. A concrete example of self-regulation is given by the Euro Retail Payments Board (ERPB). EACB

members support the ERPB's efforts to promote the development of market-oriented business models, by involving all relevant stakeholders, such as the SEPA Payment Account Access Scheme. The latter, the BerlinGroup standard with the current elaborations on openFinance Framework, and STET in France represent good examples of self-regulation with relevant stakeholder involvement. The SEPA Payment Account Access Scheme and its institutional structures (chaired by the European Central Bank) might be a blueprint for open finance.

The Report took note of the above industry standards and in order to promote their harmonisation, the Expert Group suggests developing guidelines or a common taxonomy always in collaboration of market players to ensure alignment with national and industry standards and practices.

We would favourably look at regulatory guidelines, only if a market-driven approach would fail.

In case the Commission decides to establish an open finance framework, we believe that the regulatory framework should provide incentives to implement good APIs and promote standardisation, and not impose them. It is crucial to have a flexible and market-driven approach.

3.4 Key building block – Liability and dispute resolution procedures

Liability

Our response to the Commission's targeted consultation on open finance in July addressed very similar considerations to those of the Expert Group's Report concerning liability.

We believe the Commission should carefully consider the introduction of a liability model in an open finance regime, weighing the potential pros and cons. It is important to consider the differences between contractual and non-contractual data exchange and the impact of European and national rules on the issue.

We strongly support contractual data exchange as it gives parties the ability to make a better assessment of the risks and manage them via contracts. A contractual scheme can ensure that there are suitable liability arrangements on the purposes for which the data can be used.

Any allocation of liability should be based on a transparent set of principles and should avoid extra risks for data holders arising from mandatory data sharing. However, current existing legislative measures at European and national level should be factored in so as to prevent over-regulation, duplication and inefficient overlaps. Lastly, the EACB recommends that a liability framework shall remain flexible enough to overcome the new risks posed by digital innovation.

Dispute resolution procedures

The Report states that *'an open finance framework should also promote dispute resolution procedures for market participants to facilitate out-of-court settlements.'*

On this topic, we stress the following:

- We believe that a contractual scheme can ensure effective dispute settlements.
- A possible open finance framework promoting a Dispute Settlement Mechanism to mediate and resolve liability disputes and other customer complaints is welcome.
- However, existing legislative measures at the European and national level related to dispute settlement should be taken into account to prevent excessive regulation, duplication, and inefficient overlaps.

3.5 Key building block – Cost of data sharing: reasonable compensation

We agree with the banking representatives of the Expert Group that to safeguard competition, it is important to ensure the fair allocation of costs among different players of the data value chain.

Sharing data incurs costs, so we don't support the idea suggested by some EG members to offer at least one free-of-charge, real-time (user) interface for data subjects to retrieve their data.

With regard to the three principles listed in the Report, we would like to address two points on the third principle:

1) we think that the wording '*ensuring that any compensation exceeding the cost of the data sharing agreed by the data holder and the data recipient should be reasonable and not lead to anti-competitive effects'* might be too vague when it comes to the term '*reasonable compensation.'* We believe that the level of compensation agreed upon between the data holder and the data recipient – which includes not only the data itself, but also any related services – should be determined by the market.
   Compensation between the data holder and data broker (TPP) should be able to form freely in the market. The market generates market-oriented solutions. For example, the stakeholders involved in ERPB (Euro Retail Payments Board) and the European Payments Council's (EPC) work on the SEPA Payment Account Access scheme (SPAA) contribute to market-oriented solutions.

2) The second part of the third principle '*there may be specific cases where overriding public policy objectives would justify that data access should be provided for free'* raises the following two main concerns:
   - The generic identification of 'public policy objectives' is too broad without any clearly predetermined parameters. It is important to ensure that open finance does not equate to making private financial data a public good, and that the principle of a fair share of value and risk is upheld for the success of related offers. We believe it is important to clearly define the term *'overriding public policy objectives'* in order to minimise this risk.
   - The sentence only recognises monetary compensation whereas we believe that non-monetary compensation for making data available to public bodies should be considered, for example tax incentives.

Generally speaking, we suggest the compensation scheme should include at least the following items:

1. The costs of setting up the technical infrastructure;
2. Additional costs for data maintenance and administration; and
3. An appropriate return on investment for collecting and structuring the data for the data holder to continue stimulating innovation.

Cost levels should not be defined in legislation, not least in order not to undermine the free determination of costs within the framework of a free market economy.

It is important to take into consideration the various elements that constitute the cost for a data holder to make data available, such as costs related to data collection and structuring; data quality; data sharing infrastructure (APIs need to be developed and maintained, and this requires IT work); maintenance; cybersecurity; and overhead.

We read with interest the study for developing criteria for assessing 'reasonable compensation' in the case of statutory data access right.[1] We believe that the study elaborates with a very thorough analysis the cost elements that we also listed above (i.e., technical and administrative costs plus a profit margin to continue investing in data processing to innovate products and services). We particularly welcome all the described variable elements composing technical and administrative costs (from the type of data sharing request, to data format, and human costs, etc.) as well as the '*extra amount to incentivise data collection and curation*' which vary depending on the amount and type of data, the data holders' business model, the recipient's use of the data.

3.6 Key building block – principle of same activity, same risks, same rules: authorisation and public list of parties

The Report emphasises that market participants carrying out the same activity and creating the same risks should be held to the same rules in relation to competition, consumer protection and operational resilience. To tackle some shortcomings outlined in the ESAs' advice on digital finance concerning Mixed Activity Groups (MAGs), the Expert Group suggests as a couple of ways forward: creating either a licence and a public list of users that are allowed access to APIs or establishing a 'central registry' with certain adherence criteria. The latter, the Report states, would not go as far as requiring a licensing regime.

We believe it is important, in this context, to differentiate between situations where a contract is in place between the data holder and the third party intending to provide or benefit from financial services data, and situations where data access rights are imposed, without a contract between the data holder and the third party.

[1] Giorgio Monti, Thomas Tombal, Inge Graef, *Study for developing crietria for assessing 'reasonable compensation' in the case of statuatory data access right*, study for the European Commission Directorate-General Justice and Consumers, 2022, availabke at https://op.europa.eu/en/publication-detail/-/publication/599678d8-79d2-11ed-9887-01aa75ed71a1/language-en/format-PDF/source-277469567

In cases where a contract exists, we believe this would be sufficient for the parties to agree to the terms and conditions stipulated in the contract. The contract would in this case define the responsibilities and roles of each party, as well as their ability to suspend or end the contract with the third party if there are signs that they are not compliant with relevant legislation, including but not limited to the GDPR. Additionally, the purpose for which the data will be used, the timeframe during which the third party will have access to the data, and other relevant details would be specified in the contract. However, we believe that it is also important to subject third parties that receive data on the basis of a contract to targeted supervision, as this can help ensure their compliance with relevant laws, regulations, and standards by introducing a registration requirement.

When data access rights are imposed, allowing third parties to access data held by a bank (data holder) without a contract, we believe that it is essential that third parties need to obtain authorisation to have access to the financial data. Such third parties must demonstrate to a supervisory authority that they have the necessary expertise, technology, security measures and infrastructure to handle financial data, and must be subject to effective supervision.

The rules should be standardised across the EU to prevent regulatory discrepancies and ensure a fair market for all parties. Additionally, we recommend that the permission/authorisation granted to act under one licence should not be used to act under another licence the non-bank third parties do not have. For example, account information should not be used for initiating payments, as this requires a heavier supervision regime. This is also in line with the GDPR requirement to process personal data for specific purposes. Banks – as they are already subject to extensive regulatory oversight – should not be required to obtain additional authorisation or registration before being able to act as data recipient under the open finance regime.

Moreover, it is crucial that there is an independent source that can be used to confirm whether a particular party has access to customer data. In particular, banks should be allowed to rely on a public list of parties that are allowed to act as data recipient. For example, PSD2 mandated the EBA to set an electronic central register that can be publicly consulted and that includes all providers authorised and/or registered in the EEA. Having a public list/central register (the latter not intended as the one described in the Report and implying a non-licensed status) enhances transparency and ensures a higher level of consumer protection. It is also particularly important when dealing with companies from other EU countries, as it can be difficult to determine their status otherwise.

In conclusion, while contracts can provide adequate protection for financial data, data access rights must be handled with care to ensure that only authorised third parties have access to financial data. We strongly discourage the use of data access rights, without a contract between the data holder and the third party, and urge for incentivise contractual arrangements between the data holder and third-party service providers in the provision or benefit of financial services data.

3.7 Building block – focus on open finance use cases and PSD2

As said in the introduction, we believe data sharing from other parties towards the financial sector should be strongly considered. There are several use cases in which the financial sector would benefit from data shared by, for example, public bodies and other types of companies.

Climate and pension

In the potential use cases presented in the Report on Open Finance, we see good examples in the energy and climate footprint use case and the pension use case. The former has several benefits for consumers: defending the value of their property; saving on energy consumption; improving their carbon footprint and allowing lenders to improve on their lending propositions; the latter gives customers of pension providers an overview of their pensions and the possibility to initiate sharing of their data between the participating pension providers, with the goal to optimise pension planning, achieve better calculated general credit rating and get better targeted investment advice.

Mortgage and investments

We are not comfortable with the mortgage and investments use cases. On the former, we share the concerns expressed by the representatives from the banking industry in the Expert Group. We are concerned about the risks posed by the possible growing amount of personal data collected by credit intermediaries and the need to restructure existing processes to put the credit intermediary in a central role. We believe the focus should be on providing access to relevant public sector data that can enhance creditworthiness assessments and credit access, such as timely tax payments, tax debts, and land registry information, in an open financial environment. We advocate for conducting a thorough impact assessment of the intended use case. This assessment should consider identifying the market failures and performing a cost-benefit analysis. The purpose of this assessment is to determine the potential consequences and benefits of the use case, which will help to guide decision-making and ensure that any implementation is informed and strategic.

On the open investment data use case, we invite you to re-read the positions we already delivered at the time of our response (page 9) to Commission's targeted consultation on open finance in July and the one on options to enhance the suitability and appropriateness assessments in March last year. In a nutshell, we would like to re-affirm that the way in which clients are surveyed is a quality feature of the investment advice provided by individual institutions, and standardising these processes could lead to a loss of quality in customer assessment and hinder institutions' efforts to improve their processes. The introduction of new, uniform requirements for client exploration and personal asset allocation could also compromise existing processes for appropriateness and suitability assessments, as well as increase risks for clients.

Furthermore, transferring the results of client exploration and personal asset allocation to other providers is unlikely to bring added value. On the contrary, we consider it dangerous for a provider to make a recommendation in the context of investment advice on the basis of a client exploration

and a personal asset allocation strategy carried out by a third party. The risk of providing misleading or simply wrong advice is high and it could reduce the number of possible product solutions. Specialised and tailored service offerings, such as in-depth surveys of sustainability preferences, would also be made impossible by this approach.

The data that is subject to an individual assessment by the institution as data holder is not to be regarded as input data provided by the customer. Such data can only be transmitted to third parties with the customer's consent if the data holder offers this option. The data in question includes the know-how of the respective provider, which has a bearing on competition and does not fall solely within the sphere of the customer. This would raise questions as to the reliability and/or liability between the data holder and data recipient with respect to how up to date the data is, the individual assessment of the institution, etc.

PSD2 and access to information on payment accounts

On a final note, we would like to make it explicit that – notwithstanding the possibility to introduce the concept of compensation in line with the Commission proposal for a Data Act - EACB members would be opposed to any proposals that would suggest lifting the current requirements under PSD2 that govern the access to information on payment accounts out of PSD2 to bring them into the forthcoming open finance framework. While there is appreciation for the fact that there could be some logic in bringing all kinds of access to all kinds of financial information under the same framework, it is considered too early to consider incorporating the payment account information into the open finance framework. Indeed, the account information access provisions of PSD2 have been the subject of a lot of regulation, be it level 1 or level 2, opinions and guidelines and have required banks to re-do and adjust their implementations of PSD2 a couple of times in a row in a rather short period of time. In addition, discussions are under way in the context of the European Payments Council to further build on the implementation of PSD2 beyond what it is currently minimally required. A 'reshuffling' of the payment account information access from PSD2 to open finance at this point in time runs a too high risk of severely disrupting the market equilibrium that has been found without necessarily improving the outcomes for either Account Servicing Payment Service Providers (ASPSPs) nor Account Information Service Providers (AISPs) nor Payment Service Users (PSUs). This position does not do away with the wish however to introduce the possibility for compensation of the efforts undertaken by banks to enable access to information under a future open finance framework or even the PSD2 review.

Contact:

The EACB trusts that its comments will be taken into account.

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