Response to European Commission's Call for Evidence on an Open Finance Framework – enabling data sharing and third-party access in the financial sector

FINANCE DENMARK

Position paper

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Key position

Open Finance should be seen in a broader context as part of a general open data economy, where data sharing is strengthened across all sectors. There is a need to introduce a truly horizontal approach to cross-sectoral data sharing before we take any step further with financial data. The introduction of more mandatory data sharing now in the financial sector will reinforce the existing asymmetries of data access between the financial sector and other sectors. The Open Finance framework should focus solely on voluntary data sharing and market driven approach as we have already been doing in Denmark.

Building an open bank requires financing, and therefore there must be an opportunity to establish a business model in which open data provides new business opportunities for all participants.

It is essential to create common principles for data sharing for all sectors. There should be similar rules on consent and compensation to exhibit data for all sectors. There is also a need for very clear rules for the sharing of responsibilities.

Finally, Finance Denmark considers it important to carry out a thorough assessment of the effects of PSD2 and to give sufficient time to analyses the results before proceeding.

Response to European Commission's Call for Evidence on an Open Finance Framework

A European data economy will unlocks new opportunities for customers through increased access to and sharing of data. It is the combination of data from different sectors which holds the greatest potential for delivering new innovative services for customers. Open finance must therefore be seen as part of the data economy across all sectors and is a crucial role to ensure a level playing field too. The focus should not only be on finance and banking. The Data Act does not deliver an "across the board" horizontal data sharing requirement– data from telecom or energy sectors, for example, is missing –

We will suggest that we wait for the results of the review of the revised Payment Services Directive (PSD2 it is essential to assess and analyze the impact, costs, and benefits that it has brought. The Princip of "free of charge" must end - where access to data held by other market participants is free of charge.

This call outlines that one of the problems the initiative would tackle is the difficult access to and reuse of customer data for third-party providers, which hinders business innovation. We do not agree with this statement, as we consider there is already an important data-driven innovation and sharing in the financial sector, in PSD2. In Denmark, we also have other solutions in place fx Pensionsinfo, e-engagement and e-bolighandel.

1. Voluntary and contractual data sharing and marked-driven approach

The Open Finance framework should focus on voluntary and contractual data sharing before taking further regulatory steps with finance data in relation to data sharing. Voluntary data sharing would help to see for which use cases there is customer demand and would support innovation. Market-driven initiatives will help to develop necessary standards (e.g. on data formats and security). It would also be consistent with the EU proposals on data sharing, which, except for very specific actors or datasets, aim to facilitate voluntary data sharing between firms.

2. **A fair distribution of value and risks across all market participants**

Building an open bank requires financing, and therefore there must be an opportunity to establish a business model in which open data provides new earning opportunities. After the implementation of PSD2, it is considered that the "free" approach does not necessarily create a significant new market development or good experiences for the end-user. Future data sharing initiatives should be based on a more balanced framework and with a fair distribution of value and

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risk, as well as the possibility of monetizing services for all market participants. The introduction of the principle of compensation under the Commission's proposal for a Data Act is therefore very welcome and, due to its horizontal nature, should feature in an Open Finance framework. Allowing for a reasonable return on investment for collecting and structuring the data is therefore key.

3. Types of data

We suggest giving access to raw and observed data. The exchange of derived and inferred data should generally not be made mandatory or included in the future framework, as this type of data represents a crucial strategic and economic asset for businesses. Data constituting trade secrets or other business-sensitive information should not be subject to data sharing.

4. The customer at the center

The starting point for Open Finance should be that the customer is put at the center. Trust is the foundation of banks' relationships with customers. Customer data in the financial sector is personal, confidential, and sensitive matters. The driving force for the sharing of data must be in the interest of the customers and must be done with the customer's consent.

At the same time, in the case of banks, there is the risk of compromising their reputation and losing the trust of their customers. It is also important to consider banking confidentiality rules that go beyond GDPR – also applying to corporate customers – as well as trade secrets. We would like to underline once more that trust and security must be the foundation of any framework.

It must be ensured that the customer gets beneficial ownership of their data and clarity on how data can/may be used commercially.

Access to data must always be on behalf of and approved by the customer, and therefore the rules for sharing must follow the General Data Protection Regulation (GDPR). The rules should follow the GDPR rules, alternatively, consent access for the use of data for innovation of products aimed at the customer should be less rigid for the sake of smoother product development. New rules must not be an extra layer of regulation or a parallel set of rules as PSD2. This has subsequently made the implementation of PSD2 difficult due to ambiguity about the interplay between the two sets of rules. A concern for banks is risks arising from the potential administrative challenges if the GPDR legal basis for sharing is not 1) for GDPR Art 6 data : "compliance with a legal obligation" created by new regulation such as Open Finance and 2) for Art 9 and 10 data: "processing is necessary for reasons of substantial public interest on the basis of Union or Member

State law" , for example related to unclarity in the drafting of adequate consents. A voluntary and contractual approach would go some way in solving this.

In this context, it is particularly important that the customer must be provided with clear and transparent information about the data sharing and the recipients of data so that the customer can make informed decisions on this basis. The preferred scenario is that bank confidentiality rules are extended to the parties receiving the data. In the event that they are not extended, the customer needs to be made fully aware that their data is no longer protected by bank confidentiality rules. Contractual data sharing and marked-driven approach might solve some of the problems.

Rules on providing and withdrawing consent should also be clearly defined; From our members' experience with the PSD2, alignment with the GDPR is crucial from the start. For e.g., differences in essential points such as "explicit consent" under PSD2 versus that under GDPR caused legal uncertainty for all market participants.

5. **Market-driven development based on standardized APIs**

As a starting point, the regulation must be technology neutral. Finance Denmark suggests a market-based development. The development of APIs should, by default, be market-driven and supported by a common basic framework of minimum standards and rules.

Ongoing initiatives, such as the current PSD2 APIs and the proposed SEPA API's Access scheme, need to be considered. The market has already invested in the development of APIs. It is important to ensure that these efforts to become PSD2 compliant are not wasted. A retroactive application of new standards would be unacceptable to industry players who have invested in opening up APIs to support European innovation. A decision to introduce standards, and the expected timeline for development of such standards, will put all development of future APIs on hold while waiting for mature standards, and thus negatively impact innovation and time to market.

The focus should be on regulate the activity and not the technology in itself to foster future innovation and not risk of locking the industry into existing regulated technologies that can be outdated by rapid technology development.

It would be an obvious success criterion to standardize interfaces in relation to generic formats used in other contexts (e.g. ISO20022 in the field of payments). Today, there are parts of banks' developed PSD2 API products that are not used. It is therefore generally important to ensure a genuine demand for data. It is therefore essential in the forward-looking regulation that the same terminology and logic as other data sharing initiatives and interoperability on data standards are used to avoid fragmentation across sectors.

6. Risk

It is important to focus on the risk of fraud when developing an Open Finance framework. Sharing data may risk increasing the risk of ID theft, data breaches, privacy, cyber and information security risks, especially if customers' data is shared outside the banking sector, where financial regulation does not apply, e.g. rules on the protection of banks secrecy.