

Open Finance Framework in the EU: For a broad, competitive, attractive and fair approach to data sharing

The Swiss Finance Council (SFC) engages in dialogue around policy developments in finance at a European and international level. It represents the interests of internationally active Swiss financial institutions which also have substantial EU-based activities. The founding members of the SFC are UBS and Credit Suisse. The Swiss Finance Council advocates for an EU Single Market that remains attractive to foreign investors and service providers and allows them to contribute to Europe's competitiveness, economic recovery and the green and digital transitions.

The SFC takes due note of the European Commission's intention to propose a framework on Open Finance in the course of 2023 whose aim is to share more customer data to create a European data economy that should ultimately contribute to more growth and jobs. We strongly support this objective, and would like to make some general remarks as regards the development of an Open Finance framework in the EU, taking a third country perspective when it is needed as we believe that Europe's financial markets should remain open and data should flow freely across borders in full respect of data protection rules and equivalent measures.

When designing an Open Finance framework, we invite the European Commission to duly consider the following aspects:

A broad approach to data sharing that goes beyond finance

We agree that increased data sharing can bring new opportunities for both consumers and businesses, including through more competition. Ultimately, this can **contribute to generate more economic growth and jobs**. To gain from these benefits, it is however essential to not limit the further extension of data sharing to the broader financial sector but to **adopt a cross-sectoral approach that would help develop new, innovative services to customers by including other key sectors of the economy** such as energy, telecommunication and transport as well as essential sectors in citizens' life like health and public administration.

The new generation customer does not see the need for fragmented services but would favour a holistic approach when accessing a bank, an insurance, a mortgage institution or a telecommunication or energy company or even a social media network. A cross-sectoral approach to data sharing would therefore better reflect such customer behaviour.

Any new framework for sharing more data should not be limited to financial data sharing through open banking and open finance but go beyond to include open data and the sharing of non-financial data in full respect of data protection rules and equivalent measures. **The Australian Consumer Data Right Act is a good example in this regard as it aims to empower consumers by encouraging cross-sectoral data sharing use cases which combine financial and non-financial data to offer new, innovative solutions to users**. If this cannot be replicated as such in the EU, it shows that lessons can be learnt from other jurisdictions worldwide which are also experiencing, experimenting and implementing a data sharing economy.

Voluntary data sharing based on added value and true customer demand

We believe that data sharing can only offer new opportunities and add value for consumers and businesses if based on a real demand by customers. Any Open Finance framework that will mandate further data sharing in the financial sector without clearly identifying how further data brings additional value might not meet the intended goal because of an absence of customer demand for new services and products. **In conformity with the EU's Data Governance Act, data sharing should be voluntary, based on market needs and pre-identified use cases**, and the necessary modalities, infrastructures and standards should be developed by market participants in close cooperation with legislators, regulators, and supervisors. **Only a voluntary approach to financial data sharing can stimulate innovation and incentivise firms to invest in, design and propose new services and products that consumers will use.**

Reciprocity in data access and sharing

Any new framework for increased data sharing should ensure horizontal data sharing and **not replicate the asymmetry that exists in the revised Payment Services Directive (PSD2)** where the sharing of data goes in one direction only, from the financial institutions to the third-party providers (TPPs) with all the cost and burden of building and operating the necessary infrastructure for instance are supported by the financial institutions.

Data sharing can only work and create new, innovative solutions for consumers and businesses if it **goes two-ways, in and out, and give all parties access to users' data held by all other parties, on a reciprocal basis, but always with the full and explicit consent of the users who should remain in total control of their data.** In the context of cross-sector data sharing, this means that financial institutions should also have access to data from outside the financial sector.

A fair distribution of value

Data sharing cannot be for free at a time where everyone agrees that data is the new gold. The approach with PSD2, whereby TPPs have access to user data held by financial institutions free of charge, is not viable in the long term. **Market participants should have the possibility to monetize access to the data they hold.** In this regard, we **welcome the recent Commission's proposal for a Data Act which recognizes the value creation behind information derived from data and that contains a financial compensation principle** in this regard. Such a principle should be included in all data sharing frameworks. It should not only cover the quality and value of the data shared but also the cost of building the necessary modalities and infrastructures to make data sharing possible.

The need for a level-playing field

Any new framework for increased data sharing in the financial sector must guarantee that there is a level-playing field among all market participants which have access to and share user data. This includes new players such as big techs and existing players like regulated financial institutions. The **principle of 'same activity, same risks, same rules' must apply** when it comes to regulation and supervision in the context of prudential treatment, consumer protection, data protection, competition, the fight against money laundering, fraud, cybersecurity, etc.

Liability rules that provides legal certainty

It is of utmost importance that a future Open Finance framework has **clear liability rules with respect to the access, processing, sharing and storage of data. Only then we can guarantee legal certainty and incentivise data use, reuse and sharing.** Such rules should align on and be consistent with the EU's General Data Protection Regulation (GDPR). Finally, any liability rules should **remain flexible** so as to adapt to the rapidly evolving technology.

Global cooperation, international alignment and interoperability are essential

Current policy initiatives in the field of digital finance are understandably focused on the EU but we believe that a joint effort is needed to foster regulatory dialogue and cooperation, together with the private sector, with other global and innovative financial centres, like Switzerland, with a view to **seek alignment, compatibility, and interoperability in sharing data where possible with other sectors but also with other jurisdictions.** For that, data must flow freely across borders and not be subject to localisation requirements.

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