

Consultation Response

European Commission Public Consultation on 'OPEN FINANCE FRAMEWORK AND DATA SHARING IN THE FINANCIAL SECTOR'

5th July 2022

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on the **TARGETED CONSULTATION ON OPEN FINANCE FRAMEWORK AND DATA SHARING IN THE FINANCIAL SECTOR**. AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.¹

We are responding to the questions raised in the consultation document from the perspective of our bank members. AFME would note that while the consultation refers to 'customers' in the general sense, AFME members will primarily refer to corporate customers throughout this response document. For the purposes of this document, corporate customers are defined as business clientele which may range from small to medium enterprises (SMEs). These SMEs may range from those with a few million in revenue to large conglomerates with billions in sales and multiple office locations. Corporate customers may engage in the following activities or take part of products such as: loans and credit, treasury and cash management, equipment lending, commercial real estate, trade finance, employer services or investment banking services such as asset management and securities underwriting, and AFME has responded to questions focused on retail activity only to the extent that those are also relevant to wholesale markets.

Our high-level response to the consultation and answers to the individual questions on Open Finance are provided below.

Executive Summary

AFME welcomes the European Commission's (EC) public targeted consultation on '**OPEN FINANCE FRAMEWORK AND DATA SHARING IN THE FINANCIAL SECTOR**' (the "CP"). We welcome these initial efforts to develop an open finance framework. We support the aim to develop fairer access and use of data in the EU Digital Single Market, while complementing the EU data act and promoting data sharing practices not only in the EU, but also globally.

AFME recognises the increasing importance of open finance for financial services and the wider-economy, and the need to continue supporting common horizontal rules to promote data sharing practices across sectors. The EC, through a combination of policies (e.g. financial services specific and horizontal), has increasingly

¹ AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia. AFME is registered on the EU Transparency Register, registration number 65110063986-76.

embraced data driven innovation and data accessibility for all, promoting an open finance framework that is accessible for existing and new entrants subject to appropriate and proportionate data protection rules and security safeguards. In a fast-evolving and competitive environment, Europe must continue to set ambitious goals for the adoption and scaling-up of innovative data sharing practices and ensure consumers and firms remain at the forefront of global trends.

Overall, AFME welcomes this initial discussion towards the development of an open finance framework that could maximise the value of data, ensure capital markets participants gain control over their data and make data more readily available for innovative use while maintaining incentives for corporate customers and the financial services industry to invest in the broader data ecosystem.

We believe there are significant opportunities for further data sharing in European capital markets, to support common objectives such as greater security and resilience, sustainability, innovation and compliance and monitoring, which we have outlined in our recent paper on *Guiding Principles for Data Sharing*.² In particular, we believe these benefits and use cases will be enhanced when cross-border and cross-sectoral data flows are enabled. We would encourage the development of an open finance framework in support of the EC's broader data strategy, reducing fragmentation of the European Single Market and encouraging data driven finance.

To support this CP we have provided the following five key recommendations which ***encourages the development of an EU regulatory framework for open finance in wholesale financial services that supports fairer access and use of data; a competitive level playing field; and furthers the future competitiveness of the EU.***

- 1. A future open finance framework should be complementary and consistent with other cross-sectoral regulatory initiatives targeting data and digital service providers in the EU single market, such as the proposed Data Act (DA)³, the Digital Markets Act (DMA)⁴, the Digital Services Act (DSA)⁵, the General Data Protection Regulation (GDPR)⁶, international data transfer agreements and sectoral initiatives such as the Payment Services Directive 2 (PSD2) and the Digital Operational Resilience Act (DORA)⁷.** Whilst we are supportive of the overall objective and purpose of an open finance framework, we would encourage further proposals for provisions to complement existing cross-sectoral or sector specific regulatory initiatives targeting data and digital service providers.
- 2. We support an open finance framework that establishes the possibility of receiving reasonable compensation for making data available.** Furthermore, we believe that it is important to establish consistent compensation provisions for all data holders, regardless of size, and for compensation to be market-value-based in order not to disincentivize the pioneers. Additionally, it is important that a future framework is comprehensive and complementary across Europe, mitigating the risk of fragmented national legislation which could exclude compensation or provide for lower compensation for making data available, which in turn may lead to market asymmetries. This recommendation is further supported below in response to question 10.

² <https://www.afme.eu/publications/reports/details/Guiding-Principles-for-Data-Sharing---A-Perspective-for-European-Capital-Markets>

³ <https://digital-strategy.ec.europa.eu/en/library/data-act-factsheet>

⁴ https://ec.europa.eu/competition-policy/sectors/ict/dma_en

⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020PC0825&from=en>

⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=EN>

⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020PC0595&from=EN>

3. **We encourage the development of an open finance framework that applies the principle of a 'level playing field'.** In order to build an EU ecosystem of data sharing that is truly sustainable and competitive, a level playing field is crucial to both encourage innovation (e.g. data sharing from SMEs who may have important data for new use cases), but also to mitigate the risk of monopolies and the exploitation of data. In order for a level playing field to occur, it is critical for the open finance framework to be applicable regardless of the size of the entity, but also for clear taxonomies and market standards to be developed that are appropriately applicable to all market participants. Furthermore, in order to be allowed to share customer data (with consent) with any third-party firm, including in other sectors of the economy, the EU's data sharing should be voluntary and cross-sectoral. Should that not be the case, FS firms should not be allowed to share customer data.
4. While AFME members welcome the questions in section II on **Customer Protection** we believe it is important to share additional background to our response. For example, there may be existing solutions for customer protection that are already in place. These should be considered alongside new frameworks so as not to create inadvertent duplication of efforts and un-needed costs. Additionally, with regards to the liability for quality of customer data some of this data may be provided directly by the customer. It would be inappropriate for an entity to mandate quality control for customers. As digitisation increases, there may be many reasons for incomplete or inaccurate customer data such as human error or diverging data collection protocols in different jurisdictions. **AFME members would support a framework that also builds on and takes consideration of current liability provisions and is consistent with pre-existing legislation.**
5. While not specifically discussed in this CP, we believe that **it is critical that a future open finance framework supports interoperability** in order for a new framework to have a successful implementation with beneficial long-term impacts. Interoperability is crucial to foster fairness in the digital environment by enabling firms the ability to seamlessly switch between service providers. Furthermore any harmonisation would also need to occur across EU member states, while also being interoperable with global frameworks, to support cross-border data sharing and to avoid legal uncertainty from differences in in the implementation and interpretation of the EU legal framework. However, we acknowledge that interoperability standards would require time to be developed and implemented appropriately, also taking into account the international dimension of certain standards and providers/services. We are therefore supportive of industry efforts to develop interoperability standards which are globally recognised and can form the basis of European standards for an open finance framework.

AFME welcomes the opportunity to discuss the recommendations made in response to this CP and to continue to identify opportunities to support the Commission in this important initiative.

Consultation Questions

I. The relevance of data sharing in the financial sector

Q1. What type of actor in the data value chain are you (multiple answers possible)?

	<i>X if applicable</i>
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	
Other (please specify)	

Q2. In what part of the financial sector are you active (multiple answers possible)?

	<i>X if applicable</i>
Banking	X
Payments	X
Insurance	
Asset management	X
Securities trading	X
Brokerage	X
Pensions	
Data and information services	X
Not active in the financial sector	

Q3. In your opinion, is there an adequate framework for data access rights in place in the financial sector beyond payment accounts

<i>Yes</i>	<i>No</i>	<i>Don't know</i>
X		

Q4. As a customer of a financial service provider, would you be willing to grant other businesses ("third parties") access to the data you generate with this provider for one of the following purposes (multiple answers possible)?

	<i>X if applicable</i>
Receive a comprehensive overview of your financial situation based on data from all your existing financial service providers (e.g. consolidation of data from several investment portfolios)	
Receive additional financial services from another financial services provider	
Switch to another financial services provider in an easy and simple way	
Other (please specify)	
None of the above	X

Q4.1 If answer e), is this due to (multiple answers possible) :

	<i>X if applicable</i>
concerns about the security of your data	
lack of sufficient control over how and for how long your data would be used by third parties	
lack of perceived benefits of such data sharing	
privacy and data protection considerations	
other (please specify)	<i>X</i>

The above questions are directed to “customers of financial service providers”, thus they are out of scope for AFME members.

Q5. What open finance-based products would stand to benefit retail customers the most (multiple answers possible)?

	<i>X if applicable</i>
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 (please specify)	
I don't know / no opinion	<i>X</i>

Q6. What would be your quantitative and/or qualitative estimate of such retail customer benefits for these products?

N/A as AFME has responded to questions focused on retail activity only to the extent that those are also relevant to wholesale markets.

Q7. What open finance-based products would stand to benefit corporate customers (notably SMEs) the most (multiple answers possible)?

	<i>X if applicable</i>
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	
Alternative credit scoring methods for financial inclusion	
Quicker customer onboarding with financial service providers	
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 (please specify)	X

At this stage, it is difficult to comment on all the benefits or which use case would benefit corporate customers the most however AFME members would note that cross-sectoral use cases, such as those in the European Commission's annex⁸ to the CP (sustainable lending) could benefit both corporate customers. An additional example would be open finance products related to e-commerce data (non-financial services data).

Q8. What would be your quantitative and/or qualitative estimate of such corporate customer benefits for these products?

AFME is responding to this consultation with a capital markets view, and there may be further use cases in other sectors however members believe that access to the data, specifically the data highlighted in the use cases could enable banks to provide more tailored lending services to corporate customers. ESG data sharing could improve energy renovation loans proposal for housing classified, loan proposals for replacement of oil-fired boilers/ green loans, specialised lending (e.g. commodities finance), leasing, insurance cover, green bonds, comparison and recommendations.

While it is difficult at this stage to determine every potential use case, there are clear benefits for customers – both individual and corporate – which can be articulated across three pillars: **(1)** Onboarding: Solutions/ use cases at the onboarding stage will encourage innovation and more competition in the market which will increase customer choice and ease of onboarding; **(2)** Ongoing use of services: Providing visibility and access to data will provide multiple benefits to customers i.e. aggregated view of accounts (for example pensions), compare services between providers; **(3)** Offboarding: The process of offboarding could be enhanced through Open Finance solutions and could address some of the current challenges i.e. no easy way to delete data with account provider.

Q9. In your opinion, should financial firms holding customer data be allowed to share their customer data with customer's permission?

	<i>X if applicable</i>
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	
Firms should not be allowed to share customer data	
Don't know	X

AFME members have examined the legal construct and implications and we believe that data sharing should be underpinned by the customer's consent. It should be noted however, that in practice, obtaining customer consent can add friction to the customer journey. This is an important aspect which should be taken into consideration

⁸ https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/2022-open-finance-consultation-document-annex_en.pdf

and ensure policy or regulatory measures are conducive to a seamless customer experience. It is also key that the principle of “same risk, same regulation” is applied to third parties to ensure a more level playing field.

Building on this point, it is important that the access to customer data is regulated according to the activities conducted with that data, regardless of if the provider is within financial services or outside of the current regulatory perimeter. We believe that if third parties participate in the voluntary Open Finance framework, it would be necessary for them to adhere to some sort of "authorisation and supervision" scheme/framework. This is to our view, the best way to bring third parties into the Open Finance framework and therefore to also bring in data from other sectors. .

Furthermore, in order to be allowed to share customer data (with consent) with any third-party firm, including in other sectors of the economy, the EU's data sharing should be voluntary and cross-sectoral. Should that not be the case, FS firms should not be allowed to share customer data.

Q10. Should financial firms holding customer data be entitled to compensation by third parties for making the data available in appropriate quality, frequency and format?

<i>Yes</i>	<i>No</i>	<i>Don't know</i>
<i>X</i>		

If yes, should its level:

	<i>X if applicable</i>
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 (please specify):	<i>X</i>

It should also allow for a reasonable return on investment for collecting and structuring the data.

AFME members believe that the level of appropriate compensation should be set by the market, including return on investment for collecting and structuring data, infrastructure and maintenance. It is complex to determine the market price due to multiple data sources / different interpretations of value which may be applied. It is important to consider how essential the data is for the provision of services, and the business time, effort and knowledge required to provide this data. Ultimately, this will depend on the use-case / nature of the data required on a case-by-case basis.

AFME would support an open finance framework that establishes the possibility of receiving reasonable compensation for making data available. We encourage this to be underpinned by the principle that it is a right of users to share their data with third parties. Furthermore, we believe that it is important to establish consistent compensation provisions for all data holders and data recipients, regardless of size, and for compensation to be market-value-based in order not to disincentivize the pioneers. Additionally, it is important that a future framework is comprehensive and complementary across Europe, mitigating the risk of fragmented national legislation which could exclude compensation or provide for lower compensation for making data available, which in turn may lead to market asymmetries.

Furthermore, we believe that the provision and monetisation of data for the public interest will be dependent on the data being shared and the specific use case. For example, it may be appropriate to provide data free at the point of delivery where there is a universally agreed public interest within an industry sector. However, where data is requested by public sectors bodies and shared for a commercial benefit (e.g. profit) a fee may be appropriate for the investment required by the relevant organisations to supply the data. Additionally, we note that there are certain instances where monetisation would also be appropriate, for instance for

elaborated/inferred data, including validated data, where costs were incurred for the collection and processing of the data. The current PSD2 framework allows access to raw payments account based data free of charge. If any value-add service is provided then compensation is received. We believe the same principle should apply to Open Finance, whereby raw data should be provided free of charge with any additional services subject to cost.

However, as noted above it is complex to determine the market price or a preferential rate for data and this will depend on the specific use-case and the nature of the data required on a case-by-case basis. We would also note that non-monetary compensation could include public-private collaboration (e.g. initiatives to improve the efficiency of existing reporting obligations).

Q11. What other conditions are required to ensure the potential of open finance is maximised while minimising its risks?

An open finance framework has the potential to benefit capital markets through cheaper access to data, greater opportunities for innovation, and improved user and customer experience. Risks also exist such as regulatory uncertainty, the potential for innovation to be inhibited rather than promoted, as well as broader cyber and data privacy concerns. However, in order for the benefits to be recognised, but also to mitigate new and existing risks, it is important to consider the data sharing conditions that already exist and those that may be required in the future.

Capital markets are already subject to existing data requirements (DMA, DSA, GDPR) as well as international data transfer agreements and sectoral initiatives (PSD2 and DORA). These regulatory requirements promote a high quality of data within financial services, but it is important to take account of the significant resource required to maintain this quality across the high volumes of data that exist within wholesale markets. It is critical that an open finance framework continues to encourage this quality of data by enabling a level playing field as well as the opportunity for appropriate contractual agreements and compensation that would then support the resources required.

We believe it is also appropriate to take into consideration the central issue of regulatory harmonization. Therefore, even if multiple initiatives are adopted, it is necessary that their requirements are coherent and harmonized with what already exists, or replace the existing regulations, in order to avoid regulatory fragmentation. An additional operational obstacle could be the absence of specific reference standards, which can be solved through the provision of certification of the solutions.

Customers should also be informed about how their data are used and must be able, at any time, to see what data they are sharing and with whom, as well as have the possibility to revoke these permissions. AFME members would also suggest to evaluate the possibility of periodic renewal of these authorizations (e.g. after 6 months they must be reconfirmed). Consumer trust through a strong consent management framework. It is important to ensure that the customer understand what they are consenting to and to whom and receives all the necessary information on how to manage this consent. This must be done in line with GDPR. Any provider should adhere to the same rules and there should be a clear delineation of the roles of each participant.

We believe that it is also important to create a level playing field among all market participants. We therefore welcome the Commission's commitment to this in the November 2021 Capital Markets Union Communication. Further to this, reciprocity on data accessibility should also be ensured, as a necessary condition for a level playing field. Only firms providing access to their own relevant data should be able to access data held by third parties. Additionally, we would encourage sharing on a voluntary basis in the absence of a cross-sectoral data sharing framework. This could be complemented by market driven standardisation initiatives

In addition, specific cybersecurity measures should be apply in order to prevent cybercrime and frauds as well as measures to address other risks such as, ID theft, privacy and data breaches, and information security risks. Regulators should strive for an appropriate trade-off between Open Finance and security needs in order to avoid to accept an excessively high risk of fraud and data breaches. In any case, the goal should be not to unbalance the security burden only on the bank side, but share it also with third parties.

Q12. What policy measures would be important to ensure a level playing field in terms of access to customer data?

	<i>X if applicable</i>
Ensuring access by financial institutions to the non-financial data of customers	
Subjecting all third-party service providers that access customer data held by financial service providers to financial supervision and regulation	
Other (please specify)	<i>X</i>
A level playing field already exists, so no measures necessary	

AFME members believe that the policy measures should adhere to the “same risk-same regulation” principle to ensure a more level playing field for cross sectoral data sharing. While it is important for open finance to encourage cross-sector efforts, it is also important that the access to customer data is regulated according to the activities conducted with that data, regardless of whether the provider is within financial services or outside of the current regulatory perimeter (e.g. BigTech).

Q13. Does open finance framework bear any possible risk of accumulation of data, leading to the creation of monopolies?

<i>Yes</i>	<i>No</i>	<i>Don't know</i>
<i>X</i>		

AFME members believe that this is a risk given the significant quantities of data already held in some markets today (e.g. BigTech). While it is important to have access to cross-sectoral non-financial data as set out in the use cases (e.g. data from utilities, public sector, etc) is critical to consider what the impact may be of Big Techs and FinTechs gaining access to data within financial services. Any provider of such services, FS or non-FS provider, should be regulated according to their activities adhering to the principle of “same risk – same regulation”.

The banking sector is already sharing core transactional data under PSD2, with the customers consent. This is not the case for all sectors nor non-bank actors within the financial sector. Moving beyond the PSD2 framework towards Open Finance without also acting in other sectors could deepen this existing data asymmetry faced by banks and heighten the risks associated with it.

In addition, large technology companies can already access payment accounts data through PSD2. Should they be able to access further financial sector data (from different products and financial institutions), this could lead to further concentration of the significant qualities of data held in some markets, especially considering their nature as mixed activity groups which can use the data to expand to adjacent markets. BigTechs already have the technology and customer base to become accumulators of large quantities of data. This could in some instances also result in them gaining the dominant position in the intermediation between the customer and the data holder.

Finally, BigTechs are also largely unencumbered by financial regulation which gives additional layers of protection to customers. This highlights the importance of ensuring a level playing field also when it comes to supervision.

Questions for financial firms holding customer data

Q14. 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?

<i>Yes</i>	<i>No</i>
<i>X</i>	

If yes, please also specify the main obstacles to make such data available (multiple answers possible):

	<i>X if applicable</i>
Ensuring access by financial institutions to the non-financial data of customers	
Subjecting all third-party service providers that access customer data held by financial service providers to financial supervision and regulation	
Other (please specify)	<i>X</i>
A level playing field already exists, so no measures necessary	

Obstacles may include lack of incentives and compensation, risks related to cyber security and reputational risk.

Nevertheless, sharing of data beyond what is required by PSD2, GDPR or any other regulation is usually based on bilateral or multilateral contracts between the data holder(s) and those willing to access customer data.

In such situations, the legal, technical and other conditions governing the data sharing are covered in the contract or service documents supplementing the contract. Those conditions usually tackle any potential obstacle that could hinder the provision or use of those services, given that both the contract and the accompanying documentation are freely signed by all parties involved in the service, all of them are aware of its rights and obligations when using/providing the service(s).

If not, is it due to (multiple answers possible):

	<i>X if applicable</i>
lack of legal basis under GDPR and other legal prohibitions	
the associated costs	
lack of technical capabilities	
limiting potential competition from third parties	
uncertainty about how to price these data	
potential liability claims due to the sharing of outdated or incomplete datasets, data misuse (e.g. under the applicable data protection and privacy laws) and/or uncertainty about data ownership rights	
reputational risks	
lack of requests from third parties	

Questions for firms using customer data held by financial firms

Q15. As a firm using customer data held by financial firms, what is the purpose of accessing these data (multiple answers possible)?

	<i>X if applicable</i>
Provision of services competing with the services offered by the data holder	
Provision of additional services	<i>X</i>
Provision of analytical insights based on aggregated, including anonymised, data	<i>X</i>

Other (please specify	X
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Other purposes may include partnerships with firms to provide innovative services.

Q16 As a firm using customer data held by financial firms, have you experienced any difficulties in accessing these data?

Yes	No
X	

If yes, please also specify the main obstacles to make such data available (multiple answers possible):

	X if applicable
refused to give access to data outright, with no valid reasons provided	
been prevented to give access to data due to legal obstacles	X
set contractual or other restrictions on the use of these data	X
set unreasonable fee levels for access to these data	X
been unable to provide these data in the required format, frequency or quality	X
other (please specify)	X

Q17. As a firm using customer data held by financial firms, with how many data holders in the EU would you have to interact on average to develop and offer a financial product or service to customers?

	X if applicable
Less than 10	
10 to 99	
100 to 999	
1000 to 9999	
More than 10000	

Q17.1 In how many MS would these be located?

	X if applicable
1	
2 to 5	
More than 5	

Questions for financial data intermediaries

Q18. As a financial data intermediary, have you experienced difficulties in organising data sharing between data holders and data users?

<i>Yes</i>	<i>No</i>	<i>Don't know</i>
		<i>X</i>

N/A as most AFME members are not data intermediaries.

Regulation and supervision of open finance information services

Q19. In your opinion, should the scope of account information service provider licenses put in place under PSD2 be extended to cover all financial services where new data access rights for third-party service providers would be introduced?

<i>Yes</i>	<i>No</i>	<i>Don't know</i>
		<i>X</i>

Questions for firms using customer data held by financial firms:

Q20. Do you hold any financial services license (authorisation)?

<i>Yes</i>	<i>No</i>

N/A as most AFME members are not data intermediaries.

If not, at how much would you estimate the cost of obtaining a license (authorisation) that may be required to access customer data held by financial service providers?

N/A as most AFME members are not data intermediaries.

II. Customer protection

Q21. In your opinion, what digital tools can strengthen a customer's ability to grant, track and withdraw consent (multiple answers possible)?

	<i>X if applicable</i>
Consent management dashboards to enable customers to track which third parties have been granted consent	<i>X</i>
Digital identity solutions, such as European Digital Identity Wallets, which could help identify a customer online and authenticate consent	<i>X</i>
Other (please specify)	<i>X</i>

In addition to new mechanisms to help manage customer consent, it is important to look at existing tools already in existence today (i.e. mobile wallets, AppleID).

Q22. In your opinion, who should provide such tools?

	<i>X if applicable</i>

Data holders	
Third parties	
Other (please specify)	X

AFME members believe that market participants should be able to provide these tools as appropriate. There may be solutions where public entities may also be able to provide these tools, or may already have a framework in place. It is also important to clarify uncertainties around data ownership and to further clarify the role of data processing and its associated liabilities (e.g. liability of data misuse / sharing of incomplete data) Additionally, it is important that providers of these tools are brought within a regulatory/ licensing regime to ensure security of systems, data protection and mitigate risks of data abuse.

Q23. 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?

<i>Yes</i>	<i>No</i>	<i>Don't know</i>
	X	

Q24. 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?

	<i>X if applicable</i>
Connect/disconnect	
Periodically	X
Never	
Don't know	

Q25. Should the authorisation to access customer data under open finance automatically expire after a certain period of time?

<i>Yes</i>	<i>No</i>	<i>Don't know</i>
X		

Q26. What are the key risks related to customer data sharing?

	<i>X if applicable</i>
Financial exclusion	
Privacy breaches	
Misuse of data (incl. fraud and financial crime)	
Other (please specify)	X

All three risks mentioned above can be applicable but there may be additional considerations as well, such as data ethics, conduct risk, and risks related to liability of data misuse or sharing of incomplete data. Additionally,

it is important to keep in mind that GDPR applies across these journey in terms of regulatory framework for data protection. Furthermore, in looking at the risks related to the use cases in Open Finance, the level of risks needs to be measured proportionately i.e. in the UK, the HM Treasury recognised that AISPs should be exempted from AML regulations

Q27. What should be done to mitigate the risks of financial exclusion and data abuse (multiple answers possible)?

	<i>X if applicable</i>
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 (please specify)	X

AFME members would support both best practice guidelines as well as an enhanced cross-sectoral approach to data which would allow clients who are excluded to have better, more tailored financing. This should come in combination with educational and financial literacy efforts. In coordination, all three could help to mitigate this risk. Clear rules on liability are also important to ensure appropriate redress between actors in the data value chain in cases where data shared is misused, incorrect, or out-of-date.

Q28. 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?

<i>Yes, horizontal liability principles across the financial sector are required</i>	<i>Yes, but liability principles must be tailored sector-by-sector</i>	<i>No</i>	<i>Don't know</i>
		X	

Q29. In your opinion, should an open finance framework need a dispute settlement mechanism to mediate and resolve liability disputes and other customer complaints?

<i>Yes</i>	<i>No</i>	<i>Don't know</i>
X		

III. Modalities of data access and reuse in the financial sector

Q30. 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?

<i>Yes</i>	<i>No</i>

<i>X</i>	
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If yes, please specify what type of data and what type of access are needed for their development?

	<i>Specify Below</i>
Sector (banking, investments, pensions, insurance, other)	<i>Banking, investments,</i>
Service/product (consumer mortgages, commercial mortgages, consumer credit, corporate credit, investments, savings, pensions, insurance)	<i>Corporate credit, investment, savings</i>
Data type (financial/ non-financial, personal/non-personal, public/private, raw/enriched)	<i>EPCs data, utilities Data, airlines and railway data on mobility impact, supply chain data, financial data, personal and non-personal, raw and enriched depending on the specific use case</i>
Access type (read- only or write)	<i>both</i>

Q31. Please explain briefly the potential that these services or products involving financial data sharing hold for consumers and/or businesses:

AFME members believe that there are potential benefits for financial data sharing relating to sustainable lending. An additional example would be open finance products related to e-commerce data (non-financial services data). Access to this data, could enable banks to provide more tailored lending services to corporate customers. ESG data sharing could improve energy renovation loans proposal for housing classified, loan proposals for replacement of oil-fired boilers/ green loans, specialised lending (e.g. commodities finance), leasing, insurance cover, green bonds, comparison and recommendations.

An open finance framework could maximise the value of data, ensure stakeholders gain control over their data and make data more readily available for innovative use while maintaining incentives to invest. We believe there are significant opportunities for further data sharing in European capital markets, and to support common objectives such as greater security and resilience, sustainability, innovation and compliance and monitoring. In particular, we believe these benefits and use cases will be enhanced when cross-border and cross-sectoral data flows are enabled. We encourage the development of an open finance framework in support of the EC's broader data strategy, reducing fragmentation of the European Single Market and encouraging data driven finance.

Questions for firms using customer data held by financial firms

Q32. Have you had any practical experience with ad hoc contracts to ensure data access?

<i>Yes</i>	<i>No</i>
<i>X</i>	

Q33. In your experience, are data holders willing to conclude such contracts in practice?

<i>Yes</i>	<i>No</i>
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<i>X</i>	
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Q34. At how much would you estimate the average cost of concluding an ad hoc contract for data access?

As a trade association AFME cannot comment on this question as it is firm specific and one answer would not accurately reflect the cost for each individual member.

Questions for all respondents

Contractual schemes

Q35. Are you a member of any contractual scheme or expecting to become one in the next few years?

<i>Yes</i>	<i>No</i>	<i>Not Sure</i>
<i>X</i>		

Q36. Do you think that contractual schemes offer more benefits than just data & API standardisation? If yes, how would you describe these benefits or drawbacks (multiple answers possible)?

	<i>X if applicable</i>
A contractual scheme can save costs and time for negotiating and concluding multiple contracts	<i>X</i>
A contractual scheme can ensure effective dispute settlement	<i>X</i>
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 (please specify)	<i>X</i>

AFME members believe that the availability of a contractual scheme will likely not be the solution to all needs. It may be expected that a contractual scheme could be a better solution for certain services/use cases whilst generic API standards may offer more flexibility and support a broader set of use cases and new ones. A contractual scheme may offer benefits of making it easier to bring about scale while it may be suboptimal for more customized services

Q37. 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)?

As a trade association AFME cannot comment on this question as it is firm specific and one answer would not accurately reflect the cost of each individual member.

Q38. 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?

<i>Agree</i>	<i>Disagree</i>	<i>Don't Know</i>
		<i>X</i>

Q39. What further measures to promote market adoption of contractual schemes should the EU take?

	<i>X if applicable</i>
non-binding calls on stakeholders	
make adherence to specific contractual schemes mandatory	
other measures (please specify)	X
none of the above	

AFME members would support both non-binding calls as well as a regulatory environment that enables a fair and appropriate commercial model for contractual schemes to develop. We propose “other measures” To develop a regulatory framework that set clear rules on business model, reciprocity and liability allocation. These rules shall be applicable to any scheme that the industry decides to develop but should not impose any particular scheme.

For liability purposes, it would be appropriate to refer to the need for the parties to a contract scheme to be able to agree on the terms applicable to the relationship between them within the framework that can be regulated. In this way, it is the parties who will agree in each case the regime of assumption of risk and liability.

We consider that, as in any type of transaction and given that access to the data is with the prior consent of the customer, any liability relating to a subsequent action taken on the data or use of the data should be borne directly by the third party who has acquired access to the data. However, we consider that it would be good to clarify whether there would be liability under certain circumstances such as notifying the third party that a customer's data has changed, as there are different data transfer agreements. There are contracts in which it is stated that the quality of the data complies with minimum conditions at that time, but this does not necessarily include anything related to maintenance. However, there are others in which the agreement may include data maintenance aspects.

Legislative access rights

Q40. In your opinion, should the Commission consider to propose new data access rights in the area of open finance?

<i>Yes, without compensation</i>	<i>Yes but only if the data holder receives compensation for making data available</i>	<i>No</i>
		X

Q41. Should any such new data access rights cover the following categories of data related to?

	<i>X if applicable</i>
Savings accounts	
Mortgage products	
Lending products	
Securities accounts and financial instruments holdings	
Insurance and pension products	
Risk assessment (eg credit and insurance risk)	

Sustainability profile of financial services	
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Q42. 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

Q43. 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	No
X	

Q44. 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?

	X if applicable
Never	
Rarely	X
Regularly	
Every week	

Q45. Are there any specific challenges related to the data processing principles of GDPR as regards (multiple answers possible):

	X if applicable
data lawfulness, fairness and transparency	
purpose limitation	
data minimisation (limiting data collection to what is directly relevant and necessary for a specified purpose)	
data accuracy	
data storage limitation	
data integrity and confidentiality	
other, please specify	X

There have been challenges with customer engagement in GDPR. AFME members believe that perhaps there is an education gap causing a potential lack of awareness/interest for both retail and corporate customers in how their data can be used. Additionally, there are also challenges around the role of data processing and its associated liabilities (, e.g. liability of data misuse or sharing of incomplete data etc).

Q46. In your opinion, what lawful grounds for the processing of personal data would be most useful for the purpose of open finance? (1 least used, 5 most used)

	1	2	3	4	5
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		

Q47. 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 (multiple answers possible)?

	<i>X if applicable</i>
The absence of an obligation to provide the data on a continuous/real time basis	
The absence of standardised APIs	
The absence of standards ensuring data interoperability	
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	
The absence of incentives for data holders to provide high quality data, as there is no remuneration for making data available	
I don't know / no opinion	
Other (please specify)	X

'Other' – AFME members believe that it would be unclear whether there would be any obligation on the disclosing party to ensure the recipient protects the data or uses it for lawful purposes. Notionally if the recipient is in the same jurisdiction (e.g. no disclosure to third countries in the case of GDPR) then from a legal perspective the technical aspects are less relevant. However 'Standardised APIs' would (a) make compliance with the requirement to export data in a "structured, commonly used and machine-readable format" easier because there is an agreed API output; and (b) may reduce the liability of the disclosing party as it is following the standard API integration point and not designing a custom interface.

Clear rules on liability are of course central importance from a legal perspective – particularly whether the disclosing party is obligated to vet the recipient party (absent any white-listing regime such as the Financial Conduct Authority's for Account Information Service Providers (AISPs) and Payment Initiation Service Providers (PISPs)) or implement any contractual controls in relation to protection and processing of the data.

Identifying scope of data that are in scope can be ambiguous in a personal data setting – notionally financial data categories could be more easily and definitively prescribed.

IV. Technical infrastructure

Q48. Do commonly agreed standards on data formats exist in your area of activity in the financial sector?

Yes	No	They are currently being developed	Don't Know
		X	

If yes, what is the proportion of holders of customer data in the financial sector that make use of these standards?

	X if applicable
Less than 10%	
10-50%	
The majority	

If not, should such standards be developed to make open finance work and by whom?

	X if applicable
Industry stakeholders	X
European supervisory authorities	
International or European standardisation organisations	X
Other (please specify)	X
No need for standards on data formats	

Q49. Should the EU take further measures to promote market adoption of standardised data formats?

	X if applicable
non-binding calls on stakeholders	
make use mandatory	
other measures (please specify)	X
none of this	

AFME members would support the standards being developed in a coordinated way with industry developing standards but with regulators and authorities working with them as stakeholders to ensure that regulation and industry best practices are aligned.

AFME members believe that the Data Act and EDBI would already cover the market adoption of standardised data formats so no further measures would be necessary beyond these.

Q50. Should the EU take further measures to promote market adoption of standardised APIs?

	<i>X if applicable</i>
non-binding calls on stakeholders	
make use mandatory	
other measures (please specify)	<i>X</i>
none of this	

AFME members support the aim of standardisation and would support the use of non-binding calls as well as other conditions which would encourage broader market adoption of standards such as appropriate compensation and a level playing field. Furthermore, harmonisation would also need to occur across EU member states to support cross-border data sharing and to avoid legal uncertainty from differences in the implementation and interpretation of the EU legal framework. We believe these conditions, built in to the standards as guiding principles would encourage broader market adoption of standardised APIs.

Q51. Who is best placed to develop common standards for APIs?

	<i>X if applicable</i>
Industry stakeholders	
European supervisory authorities	
International or European standardisation organisations (e.g. CEN)	
Other (please specify)	<i>X</i>

AFME members would support the standards being developed in a coordinated way with industry developing standards but with regulators and authorities working with them as stakeholders to ensure that regulation and industry best practices are aligned.

Q52. 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.

<i>Agree</i>	<i>Disagree</i>	<i>Don't Know</i>
<i>X</i>		

Questions for firms using customer data held by financial firms

Q53. Absent standardisation of data, would you be able to offer your services?

<i>Yes</i>	<i>To customers of a limited number of financial firms only</i>	<i>In a limited number of Member States only</i>	<i>No</i>
<i>X</i>			

Q54. What is your estimate of cost savings from using data based on commonly agreed standards?

As AFME is a trade association it would be inaccurate to provide a quantitative estimate of cost savings as these will be unique and individual to each firm. In general, we believe that commonly agreed standards, if widely adopted, could be beneficial and cost saving. However, the exact amount depends on several factors including the complexity of the IT system needed to meet these standards. Depending on what infrastructure firms already have in place, implementation of new systems could be costly, which further illustrates the importance of appropriate compensation to continue to promote the quality and interoperability of the data.

Q55. Would you expect new products to be developed if more data were available based on commonly agreed standards?

<i>Yes</i>	<i>No</i>
<i>X</i>	

Q56. To the best of your knowledge, what is the proportion of holders of customer data in your sector of activity that make these data available based on APIs?

	<i>X if applicable</i>
a) Less than 10%	
b) 10-50%	<i>X</i>
c) The majority	

Q57. Do you expect this proportion to increase significantly in the next 3-5 years?

<i>Yes</i>	<i>No</i>	<i>Don't Know</i>
<i>X</i>		

Q58. Are currently available APIs based on generally accepted standards?

<i>Yes</i>	<i>No</i>	<i>Don't Know</i>
<i>X</i>		

Q59. Are you making use of APIs or are you planning to do so in the future?

<i>Yes</i>	<i>No</i>
<i>X</i>	

Q60. Would you expect new products to be developed if more data were available through APIs?

<i>Yes</i>	<i>No</i>
<i>X</i>	

Q61. What is your estimate of cost savings from accessing data through an API as opposed to specific case-by-case requests?

Similar to question 54 above, as AFME is a trade association it would be inaccurate to provide a quantitative estimate of cost savings as these will be unique and individual to each firm. In general, we believe that APIs, could be beneficial and cost saving. However, the exact amount depends on several factors including the complexity of the IT system needed to meet these standards. Depending on what infrastructure firms already have in place, implementation of new systems could be costly, which further illustrates the importance of appropriate compensation to continue to promote the quality and interoperability of the data.

Questions for financial firms holding customer data

Q62. Have you already developed an API for data access by customers and third parties on behalf of customers?

<i>Yes, under PSD2</i>	<i>Yes, outside the scope of PSD2</i>	<i>No</i>
		<i>X</i>

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?

	<i>X if applicable</i>
not used for other cases and no such use planned	
other use cases planned	
already used for other use cases	

If you have not developed APIs for customer data access, what prevented you from doing so (multiple answers possible)?

	<i>X if applicable</i>
lack of requests from third parties	
reuse of existing infrastructure for data access	
lack of legal basis (e.g. under the GDPR and other applicable laws and regulations)	
lack of common standards or interoperability	
lack of business case	
other (please specify	<i>X</i>

Please note that this question is specific to individual firms. In AFME's capacity as a trade association it would be inaccurate to provide a response to the above. However, members would note that the return on investment would be poor in this example as you cannot use PSD2 APIs for other services. In order to develop additional APIs for customer data access it would be important for a framework to encourage appropriate and market rate based compensation for the data service provided.

Q63. Would you see any cost savings in your operations associated with the use of such APIs?

<i>Yes</i>	<i>No</i>

Please note that this question is specific to individual firms. In AFME's capacity as a trade association it would be inaccurate to provide a response to the above.

Q64. 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?

Please note that this question is specific to individual firms. In AFME's capacity as a trade association it would be inaccurate to provide a response to the above.

Q65. Would you agree with the following statements?

	<i>X if yes</i>
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	
The cost of developing and running an API is lower if it is based on generally accepted and widely used data standards	

Q66. Do you apply or intend to apply any generally recognised standards for your APIs beyond PSD2?

<i>Yes, currently applied</i>	<i>Yes, envisaged</i>	<i>No, because no standards are available</i>	<i>No, because not interested</i>
	X		

Please note that this question is specific to individual firms. In AFME's capacity as a trade association it would be inaccurate to provide a detailed response to the above. However, members have noted that if non-binding standards are developed they would envisage potentially applying them.

PART II

V. Specific questions on selected use cases involving data sharing in the financial sector

Transferability of customer-profile data

Q67. 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)?

<i>Yes</i>	<i>No</i>	<i>Don't Know</i>
<i>X</i>		

AFME members support the sharing of some information, in particular standardised data sets such as the information that needs to be obtained when conducting standard due diligence for Know Your Customer (KYC). However, data that has added value and that has taken additional resources from market participants should be treated differently. Additionally, this sharing should be dependent on the purpose and any sharing should still come under the principle of a level playing field and same risk – same regulation.

Q68. 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?

Please note AFME will not respond to this question as AFME has responded to questions focused on retail activity only to the extent that those are also relevant to wholesale markets.

Q69. In your opinion, are there any risks and constraints associated with sharing the customer-profile data between financial intermediaries?

<i>Yes</i>	<i>No</i>	<i>Don't Know</i>
		<i>X</i>

Q70. 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:

Please note that AFME will not respond to questions 69-70 as most AFME members are not data intermediaries.

Q71. 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:

Please note that this question is specific to individual firms. In AFME's capacity as a trade association it would be inaccurate to provide a response to the above.

Access to customer data on current investments

Q72. 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?

<i>Yes</i>	<i>No</i>	<i>Don't Know</i>
		<i>X</i>

The response would vary depending on additional factors and constraints that may or may not be in place. As stated, AFME supports a framework that enables a level playing field as well as the opportunity for appropriate contractual agreements and compensation, dependent on market rates as well as data elaboration, storage, or additional associated costs. Furthermore, because of existing regulations for financial services, members would only support data sharing where there were strict requirements in place that would ensure consistency with their own data governance practices. These may include, but are not limited to KYC requirements.

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)?

<i>Yes</i>	<i>No</i>	<i>Don't Know</i>
		<i>X</i>

Suitability and appropriateness assessments, and the investment/asset allocation decisions that follow from them, depend on the firm's understanding of the client's investment objectives at a particular point in time, as well as the firm's view on likely developments. Porting answers given some time ago would not of itself allow a firm to make a new assessment, as the client's circumstances may have changed. [AFME members also consider](#) that the proposed personal investment plans/standardized asset allocations could be problematic and result in worse outcomes than now, and therefore needs careful discussion.

Our response to the suitability and appropriateness assessments consultation: www.afme.eu/Portals/0/DispatchFeaturedImages/AFME%20consultation%20response%20and%20introductory%20remarks.pdf

Furthermore, as stated in our response to Q67, AFME members support sharing standardised data sets.

Q73. Should access be granted to?

	<i>X if applicable</i>
All data on investments	
All data on some investments	
Some data on all investments	
Don't know	<i>X</i>

Q74. 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:

<i>Yes</i>	<i>No</i>	<i>Don't Know</i>
		<i>X</i>

As stated in question 67 the response would vary depending on additional factors and constraints that may or may not be in place. As stated, AFME supports a framework that enables a level playing field, supporting the principle of same risk same regulation, a level playing field, as well as the opportunity for appropriate contractual agreements and compensation.

Q75. 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?

<i>Yes</i>	<i>No</i>	<i>Don't Know</i>
		<i>X</i>

As stated in questions 67 and 74, the response would vary depending on additional factors and constraints that may or may not be in place. As stated, AFME supports a framework that enables a level playing field, supporting the principle of same risk same regulation, a level playing field, as well as the opportunity for appropriate contractual agreements and compensation

Q76. 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?

<i>Yes</i>	<i>No</i>	<i>Don't Know</i>
		<i>X</i>

As stated in questions 67, 74, and 75, the response would vary depending on additional factors and constraints that may or may not be in place. As stated, AFME supports a framework that enables a level playing field, supporting the principle of same risk same regulation, as well as the opportunity for appropriate contractual agreements and compensation. For example, if the data on current investments was clustered in such a way that resembles or was close to investment advice, it should come under the appropriate regulation and be subject to strict requirements.

Q77. 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:

Please note that this question is specific to individual firms. In AFME's capacity as a trade association it would be inaccurate to provide a response to the above.

SME financing

Q78. Is SME data accessible today via regulatory requirements or are there practical examples of contractual access to data required for SME creditworthiness assessment?

<i>Yes</i>	<i>No</i>	<i>No opinion</i>
	<i>X</i>	

If not, arrangements between whom would be needed?

This could be beneficial depending on the use cases. In some member states (for example in France) this type of data sharing is already easily accessible through the government system. If there were use cases evidencing specific data sharing practices, then further partnerships such as this might need to be arranged.

Q79. Is the required data already standardised (e.g. either by market operators or via regulation)?

<i>Yes</i>	<i>No</i>	<i>No opinion</i>
<i>X</i>		

If not, what steps would be necessary to harmonise data formats to ensure that such data sets are of needed quality (accurate, reliable, complete, etc.)?

Max 100 words N/A As replied yes.

Q80. Is the data required for SME creditworthiness assessment readily accessible from a technical perspective (e.g. via standardised APIs)?

<i>Yes</i>	<i>No</i>	<i>No opinion</i>
	<i>X</i>	

If not, which actor in the use case should bear the cost of making it available and why?

AFME members believe that this should be determined on a case-by case basis, however they are supportive of the overall principle of standardised APIs for SME creditworthiness.

Sharing of SME data across financial institutions

Q81. 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?

<i>Yes</i>	<i>No</i>	<i>Don't Know</i>
<i>X</i>		

Q82. Please provide us with quantitative estimates of costs that would be incurred by a funding provider due to setting up data access points, e.g. in the form of APIs, to allow the SME to share its funding application data with alternative funding providers?

Please note that this question is specific to individual firms. In AFME's capacity as a trade association it would be inaccurate to provide a response to the above.

Q83. Are you aware of existing practical examples of contractual access to SME funding application data?

<i>Yes</i>	<i>No</i>	<i>Don't Know</i>
		<i>X</i>

If yes, please explain:

N/A as replied don't know.

Q84. Are there any significant legal obstacles for accessing SME funding application data held by another funding provider?

<i>Yes</i>	<i>No</i>	<i>Don't Know</i>
		<i>X</i>

If yes, please explain:

N/A as replied don't know.

Q85. What steps would be necessary to harmonise data formats and access conditions to ensure adequate quality of SME data (accurate, reliable, complete, etc.)?

AFME members believe that it is important to clarify any uncertainties around data ownership and also to further clarify the role of data processing and its associated liabilities (, e.g. liability of data misuse or sharing of incomplete data etc.) Furthermore any harmonisation would also need to occur across EU member states to support cross-border data sharing and to avoid legal uncertainty from differences in in the implementation and interpretation of the EU legal framework.

PART III

VI. Other aspects of data sharing in the financial sector and related obstacles

Use of aggregated supervisory data for research and innovation

Q86. Are there any legal obstacles today to obtain and use fully anonymised and aggregated supervisory data for research and innovation purposes?

<i>Yes</i>	<i>No</i>	<i>Don't Know</i>
<i>X</i>		

AFME members would include a caveat – it is unclear what it means to 'obtain... supervisory data'. However, a key obstacle when handling or sharing anonymised data generally is in determining what is safely 'fully

anonymised'. The more certainty there is as to what constitutes 'fully anonymised' (and less subjective interpretation required) the more parties will be open to sharing datasets.

Q87. In your opinion, what areas hold research and innovation potential based on the use of anonymised and aggregated supervisory data?

AFME members welcome the potential for research and innovation, however they would note concerns with the premise of the question. It is currently very difficult to fully anonymise data, especially with GDPR constraints. This would need to be addressed first before further considerations can be made on research and innovation.

Legal certainty for voluntary data sharing among financial institutions to improve risk monitoring or compliance and further develop related tools

Q88. Would you consider it useful to provide for similar "enabling clauses" for other types of information exchange among financial institutions?

<i>Yes</i>	<i>No</i>	<i>Don't Know</i>
<i>X</i>		

If yes, please indicate in which areas and please explain:

AFME members would strongly support enabling clauses. Standard clauses prescribed for all parties exchanging data would make it faster and easier to exchange data. This would be most effective in a setting where the parties are under a white-listing licensing regime as the vetting and licensing removes substantial risk from the contracting parties (e.g. if compliance with minimum security measures and legitimate purposes when using the data are a license requirement then it does not need to be an obligation imposed by the disclosing party upon a recipient in the contract terms). AFME members believe that information sharing is essential to reduce the risk of fraud, and to share the main threats not only in the financial sector, but also with other industries. Despite this, we believe that information sharing should take place on a voluntary and non-mandatory basis, so as to allow each company to share the data it deems necessary and appropriate to share.

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About AFME

The Association for Financial Markets in Europe (AFME) is the voice of all Europe's wholesale financial markets, providing expertise across a broad range of regulatory and capital markets issues. AFME represent the leading global and European banks and other significant capital market players. AFME advocates for deep and integrated European capital markets which serve the needs of companies and investors, supporting economic growth and benefiting society. AFME aims to act as a bridge between market participants and policy makers across Europe, drawing on our strong and long-standing relationships, our technical knowledge and fact-based work. For more information, visit <https://www.afme.eu/>