

Discussion Questions -
Response Form

Chapter 1	
<p>Q1: What role do you believe financial policymakers should play in the discussion on enhancing data mobility, both for financial and non-financial data?</p>	<p>We fully agree that data mobility and data sharing are increasingly important to innovation and competition in the financial sector; as such, data mobility can and should be one of the key elements in the policy mix of financial policymakers when aiming at maintaining a competitive market environment.</p> <p>We welcome AFM-DNB's initiative in using this Discussion Paper to set out the preliminary vision on data mobility as well as policy priorities and actions with the stated aim of starting a dialogue with stakeholders. We believe open engagement and debate with stakeholders is key and should be maintained at each stage of shaping and assessing the future policy objectives and actions on data mobility.</p> <p>We agree that financial policy makers have a role to play in encouraging and contributing to a debate on how to harness the benefits of data sharing/mobility whilst preventing possible negative effects for the data holders and users. To that end, we would encourage all policy makers to carefully consider how to strike the right balance, and in particular to ensure that the regulatory actions do not stifle market driven innovation and competition. Ensuring a consistent data sharing framework, that is aligned with the EU Data Strategy, the Open Finance package and the expected PSD2 review (PSD3) is key to fostering innovation and competition.</p>
Chapter 2	
<p>Q2: What are the most significant potential benefits of broadening data sharing for financial services? The ability to share what data types would be most beneficial?</p>	<p>Broadening data sharing has the potential to bring about all of the benefits outlined in the Discussion Paper and we anticipate many more could be defined over time as new use cases emerge.</p> <p>We believe that most benefit is to be derived from sharing data types which will support propositions where there is clear market and customer demand.</p>
<p>Q3: Do you believe the ability for cross sectoral sharing of data affects the potential benefits?</p>	<p>No comment.</p>
<p>Q4: How significant do you believe privacy and information externalities of data sharing are?</p>	<p>Loss of privacy, control over data and insufficient account of data holders' interests are important considerations concerning data mobility; these externalities can however be managed by a data sharing framework which takes a balanced approach on the need for consent and alignment with the GDPR requirements (see further response to Q12) and data ethics (see response to Q14).</p>
<p>Q5: How do you assess the impact of data sharing on financial inclusion?</p>	<p>We agree that greater data sharing has the potential to both enhance financial inclusion e.g. through more tailored product offerings or better availability of customer risk or identity profile related information. At the same time, we acknowledge that it does pose the risk of reduced availability of financial services and products (including availability at an affordable price) for certain customer segments. It is important to monitor the emergence of significant adverse effects on financial inclusion, bearing in mind that it could disproportionately affect the most vulnerable members of society. Some of the financial exclusion concerns could be alleviated by establishing best practice</p>

	guidelines on customer profiling.
Q6: To what extent do you believe data sharing can help mitigate market concentration?	No comment.
Q7: Which externalities related to data sharing do you believe to be most important?	No comment.
Chapter 3	
Q8: Should other important market developments around data sharing be considered?	No comment.
Q9: What policy developments are of particular importance to financial regulators and supervisors?	<p>To ensure the potential benefits of data sharing and remove market uncertainty, financial regulators and supervisors should strive to ensure clarity over the interaction between the existing as well as any new data sharing legal frameworks. To that end, ensuring a well-thought-through and clear interaction between the EU's Open Finance framework with the (revised) PSD2 framework should be of high importance to regulators and supervisors. Removing the unintended impacts of the GDPR (see further Q12 response) and AML legislation (see Q28 response) requirements should also be ensured. Further, to achieve a coherent policy that is conducive to competition and innovation, these developments will require alignment with the broader EU's Data Strategy package, including the Data Act, the Digital Markets Act and the Data Governance Act.</p> <p>The non-EU data sharing/mobility initiatives should continue to be observed – the scope and the implementation approaches in these jurisdictions have the potential to offer valuable insights and lessons.</p>
Chapter 4	
Q10: What are your views on the policy vision and policy objectives as outlined?	The EMA supports AFM and DNB's policy vision and objectives on data mobility set out in the Discussion Paper. We would encourage their further development takes account of our comments on more specific aspects of the data sharing/mobility issues and proposals as set out in our responses.
Chapter 5	
Q11: Should Open Finance be subject to statutory regulation and public supervision?	<p>Yes, we agree that third parties (data users) receiving financial data under the Open Finance framework should be subject to regulation and supervision.</p> <p>To provide a level playing field with third parties already registered to access payment account data under PSD2 and to ensure adequate consumer protection and trust, data users under Open Finance framework should be registered and subject to proportionate adherence requirements. However, it would be disproportionate to require firms already authorised / registered under PSD2 to access payment account data to also comply with the additional Open Finance regime in order to be able to get access to a wider set of financial data sets when they become available.</p> <p>See further our response to Q18 where we elaborate on:</p> <ul style="list-style-type: none"> - issues that might arise in relation to the <u>proposed consolidation of PSD2-regulated payment account access</u> under the Open Finance Regulation; and - the need to ensure the <u>obligation to provide access to data</u> does not disproportionately affect data providers that are unlikely to experience demand from data users.
Q12: How can strong customer authentication be maintained in a way that ensures acceptable user experience? What, if any, role do you see for eIDs?	<p>We acknowledge the importance of privacy and, consequently, the principle that customer's consent is a prerequisite for sharing their financial data with third parties. However, the customer consent / authentication requirements must be designed in a proportionate manner, so as not to add unnecessary friction and complexity to user experience thus undermining the objectives behind opening up the financial data sharing and mobility.</p> <p>The shortcomings of the current PSD2 SCA approach</p>

The impact on customers, competition, and innovation in the market of applying SCA periodically for data access is starkly illustrated by PSD2's implementation of SCA for payment account access. Customers have experienced diverging and complicated practices where account servicing providers have sought to implement PSD2's SCA requirements and Article 10 of the RTS on SCA & CSC - ranging from having to conduct SCA for every account access thus requiring the customer to be present every time; to having to repeat SCA every 90-days (or every 180-days, as is more recently permitted in recognition of the impediment imposed by the restrictive SCA requirements). This has limited the market's ability to deliver innovative propositions which have considerably improved end customer experience with the data that they consented to share with third parties.

Taking into account these shortcomings and unintended consequences brought about by the current PSD2 SCA framework, we advocate that PSD2 SCA provisions should be set out as security objectives rather than prescriptive authentication requirements, allowing the adoption of risk-sensitive, adaptive solutions without undue distortion of the user experience.

However, to ensure a level-playing field with third parties registered for payment account access under PSD2, the approach to SCA for data access for the Open Finance framework should be aligned with any revised approach to SCA for payment account access under PSD2.

Proportionate application of SCA to data access

If, as it is proposed (see our response to Q11) that all third parties accessing data under an Open Finance framework should be registered and supervised, we believe that there is an opportunity to re-examine the SCA model for data access and move to a more proportionate approach where SCA is only applied when the customer first establishes a third party connection.

Thereafter, the third party (data user) should be responsible for ensuring that they continue to have the customer's consent to access data. This would mean that the third party (data user) would have to re-confirm that consent on a periodic basis, but that SCA would **not** be required for each 'data transaction' / each time the data is shared with the third party.

Subsequently, the liability model for data access under the Open Finance framework would have to accurately reflect the third party's (data user's) responsibility for maintaining on-going consent.

From a customer (data holder) protection point of view, the duration of data-sharing should be transparent, and guard against inactive customers continuing to share data when a service is no longer required. Similarly, customer access to data shouldn't be allowed to expire without their active intervention so that services, on which they rely, are not inadvertently removed. All of the parameters required to achieve the above outcomes could be provided to the customer and confirmed when the customer gives their consent to the third party seeking access to their data - in essence, a 'data access mandate' to the third party (the data user).

The information provided upfront to the customer when the customer is giving consent would disclose the salient points, for example, how long the data would be accessed and the frequency at which the data would be collected. This process will ensure the consumer is fully informed before they made their decision to consent.

Withdrawing consent to share data should also be fully informed. Consumers should be aware of the consequences of withdrawing, including the impact that it will have on their service, the specific data that they will no longer be sharing, the parties who no longer have access, and what will happen to their data.

This level of transparency at the point of customer consent (or consent withdrawal) means that the duration of data access is appropriate for the use case in which the data is being accessed.

Consent management dashboards and similar tools

We believe that consent management tools are likely to play an important role towards enhancing data sovereignty, i.e. the ability of customers to be in control of their data and which third parties can have access to it. Consequently, we would welcome a regime which encourages the provision

of consent management tools, both by data users and data providers.

This would potentially create a market for consent management tools and services that both data holders and third parties can leverage to provide innovative options to consumers and businesses for consent management.

Such tools could also help to address the challenge of complex data-sharing relationships which may emerge, and the ability of data holders or third parties to reflect the complexity in their consent management tools in a way that is meaningful and beneficial to customers.

However, in order to build user trust in Open Finance, consent management tools should be developed within a clear standardised framework around the giving and withdrawing of consent, including the duration of, and the information needed to provide informed consent. This will lead to simple transparent methods for customers to give, track and withdraw consent regardless of which data provider or third party is providing the consent management tool.

Resolving the GDPR challenges

To encourage a successful and effective framework for customer's consent management, it is also important to ensure that the Open Finance framework is not only consistent with the GDPR, but also avoids repeating the issues encountered with PSD2 and access to payment account data.

(a) Processing data on the basis of consent

The EDPB has previously published opinions regarding PSD2 access to payment account data, that indicate a third party ("TPP") must have a contract in place with payers and payees in order to obtain their consent and process their personal data. This is not correct from a regulatory perspective nor feasible from an operational perspective.

The Open Finance framework should not perpetuate this position and require that a contract is in place between third parties (data users) and data holders in order to assume consent for data sharing, as this will impede legitimate data sharing opportunities.

(b) Processing the personal data of the silent party

The Open Finance framework must create new opportunities for TPPs (data users) but also remove barriers that exist in current legislation. One barrier to new opportunities is the limitation imposed on further processing silent party data.

The EMA agrees with the previous positions taken at European level that the account servicing PSP (data provider) provides silent party data to the TPP on the basis of GDPR 6(1)(c) (necessary for compliance with a legal obligation). The EMA further agrees with the position held by European authorities that the TPP may process the personal data of the silent party on the lawful basis set out in GDPR 6(1)(f) (legitimate interest of the controller) as the TPP has a legitimate interest to perform the contract with the payment service user. To create new opportunities in Europe for the financial sector, a way forward that enables TPPs to further process silent part data must be found. Further processing of silent party data by TPPs is consistent with the EU Commission's data strategy because it will open opportunities for data-driven innovation. TPPs would have obtained silent party data rightfully in the first instance and should therefore be permitted to use it in the context of providing further products and services. These principles should equally apply in the context of broader data sharing under the Open Finance framework.

(c) Special category data

Any new Open Finance framework should clarify that transaction data does not constitute special category data as defined in the GDPR. This is a previous position taken by the EDPB and we consider that it is overbroad and causes unnecessary harm to TPPs and payment service providers generally. Transaction data, generally speaking, does not contain enough data to conclude that it is, indeed, special category data. It should therefore not be designated as such.

(d) Data minimisation

The Open Finance must expressly reiterate the TPP's (data user's) right to obtain the same information from designated payment accounts and associated payment transactions made available to the payment service user. The EDPB has previously sought to curtail this right which is inconsistent with

	<p>the EU Commission's proposed strategy as well as the policy objectives set out in this Discussion Paper (e.g. on sufficient data availability); we would therefore encourage that this right is reiterated in any future Open Finance framework.</p>
<p>Q13: Do you believe compensation for use of data-sharing infrastructure should be permitted as part of the OFR? If so, how should fee levels be determined?</p>	<p>Yes, we believe that data providers who make data available under the Open Finance framework should be compensated. The level of compensation should be limited to the cost of putting in place the required technical infrastructure. For Open Finance to fully develop, it is important that compelling customer driven commercial propositions can emerge which encourage data providers to facilitate standardised access to data. The ability to recover the costs of providing access to data will help to ensure sufficient quality of both data and the technical infrastructure to access it. We acknowledge that costs for data providers will vary by financial sector, scale, and levels of legacy technology. Hence it is important that the Open Finance framework seeks to ensure that if a cost-recovery compensation model is adopted that it does not become a barrier to third parties entering any particular financial data market if the minimum cost for access is too high.</p> <p>We recognise that in some financial data sectors, including as regards sharing PSD2 payment account data, it may also be in the public interest to mandate the sharing of data on an open and non-commercial basis. However, it is imperative that a 'two-tier' open finance technical ecosystem does not emerge where the performance or functionality of interfaces to provide access to data without compensation (such as payment account data under PSD2) become sub-optimal in comparison with interfaces provided for accessing data with commercial arrangements in place between the parties.</p>
<p>Q14: How can data ethics be incorporated as part of Open Finance?</p>	<p>Good practice for ethical use of data in Open Finance, for instance, the levels of consent, and safeguards that mitigate potentially-unreasonable outcomes for data holders, could form part of an Open Finance framework. Coupled with robust consent management standards and tools for data holders, common data ethics guidelines could underpin the trust framework for Open Finance, ensuring users have confidence in how their data will be used, and control over how their data will be shared.</p> <p>However, building data holder trust in Open Finance is a complex challenge, and for most financial institutions data ethics policy and practices will be far more wide reaching than just in the application to Open Finance.</p> <p>Therefore, we consider that if data ethics form part of the Open Finance framework that they should be proportionate and flexible enough to be integrated into data provider's and data users' broader data ethics frameworks employed in their data processing activities.</p> <p>For this reason, outcome-driven data ethic principles and guidelines for Open Finance should be considered, rather than requirements for obtaining certification of ethical use of data as a prerequisite to any open finance use of data (as suggested in Box 5 of the Discussion Paper).</p>
<p>Q15: Should scope of Open Finance be broad or focused on specific use cases?</p>	<p>Open Finance's ultimate value will only be fully realised by combining multiple financial data sets in compelling customer propositions. In the long term, this may mean that financial data will be accessible to third parties across the economy. In order to support the development of a robust and fit-for-purpose Open Finance ecosystem, the ultimate scope of Open Finance should be broad enough to <i>enable</i> sharing of a wide range of financial datasets.</p> <p>However, for Open Finance to flourish there needs to be a clear set of genuine customer problems and demand for Open Finance-based solutions. Each financial sector beyond payments – savings, loans, investments, pensions and insurance, etc; will have to define the use-cases where Open Finance could deliver value.</p>
<p>Q16: How should implementation (priorities, sequencing) be organized?</p>	<p>We consider that the evolution of Open Finance should be driven by clear customer and market demand so as to ensure that data providers and TPPs (data users) have an incentive to participate, and maximum benefits are achieved for as many consumers and businesses as possible.</p> <p>The Open Finance implementation prioritisation/sequencing should be based</p>

	<p>on determining the target data sets for Open Finance which will support propositions where there is clear market and customer demand. This may involve assessing the value of financial datasets alone or when combined with other datasets, the relative costs to data providers of making single or multiple datasets available, and the digital readiness of certain financial sectors to support the prioritisation and sequencing of accessing various datasets. This may also include establishing minimum required data elements (within a prioritised data set).</p>
<p>Q17: How do you see the role of financial entities in data intermediation evolve?</p>	<p>We agree that financial institutions are well-positioned to become data intermediation service providers, and that also being data users or providers should not preclude a financial institution from developing data intermediation services.</p> <p>We acknowledge that a financial institution acting as data intermediary could create tensions with data holders if Open Finance services may have competing interests. For instance, if a financial institution provides data for an analytical service which it also provides as a data intermediary, and could impact financial outcomes for the data holder. For this reason, we also agree that a clear framework of cooperation between financial and data intermediary supervisors will be required to allow the development of data intermediation services by financial institutions.</p>
<p>Q18: What should the relationship be between the Open Finance Regulation and the expected amendments for PSD2 (“PSD3”)?</p>	<p>Obligation to provide access to data Experience from PSD2 has proven that the requirement to provide data access has had a disproportionate impact on smaller data providers who, as yet, have not seen significant demand for access by data users. Indeed, some of our Members have implemented, and now maintain, PSD2 compliant interfaces to payment accounts, and report no demand at all for access from third parties. The requirement can also be a barrier to entry for small and niche innovative financial solutions. The obligation to provide data access could be developed to distinguish between data providers offering data sets that are likely to be sought by data users and those that are niche and unlikely to be in demand.</p> <p>Consolidation of PSD2 payment account data under OFR In the long term we can see the possible rationale for providing the PSD2-regulated account information services (“AIS”) within a new Open Finance framework.</p> <p>However, the consolidation of the PSD2 payment account data access (as proposed in this Discussion Paper) under a single Open Finance framework should only be pursued after careful examination - it is important to ensure that such consolidation does not bring about unintended consequences, undermining the innovative solutions built on and the investments made in implementing the PSD2 access framework. For example, PSD2 data sets should continue to be freely available, without requiring contracts to be put in place between the account providers and TPPs. This means PSD2 data access may warrant a degree of divergence from the intended Open Finance framework, at least in the short-term. For this and further reasons highlighted below, the EMA is not in favour of moving AIS under the OFR framework in the short-term.</p> <p>The impact of consolidation on TPPs who wish to offer both AIS and payment initiation (“PIS”) services may be significant, as this may require authorisation under two separate regimes. There should be a means for payment firms to be able to offer AIS services that are related to their payments business under a single regulatory framework, even if AIS services are also made available under a separate (Open Finance) framework. This could for example be analogous to credit institutions being able to offer e-money services under their banking licence, while EMLs are able to do so separately under the e-money Directive.</p> <p>As per our response to Q11, it would be disproportionate to require firms already authorised/registered under PSD2 to access payment data to also comply with an additional Open Finance regime in order to be able to access</p>

	<p>a wider set of financial data sets when they become accessible.</p> <p>To the extent that (as it is proposed in this Discussion Paper) PSD2 payment account access is to be removed from the PSD2 framework and placed under the Open Finance framework, a proportionate regime must be put in place which ensures:</p> <ul style="list-style-type: none"> - payment firms can continue to provide AIS as required for their business under a single regulatory framework, without requiring any form of re-authorisation under the new Open Finance framework; - appropriate carve-outs or exemptions for AIS services should be considered in relation to, e.g. rules on compensation or standardised contracts under the Open Finance framework.
<p>Q19: Should access to financial data be subject to reciprocity? If so, in what way?</p>	<p>No comment.</p>
<p>Q20: What components of data sharing should be standardized through a framework?</p>	<p>We agree that standardisation in all of the areas highlighted in the Discussion Paper (APIs, information security, data standards, user experience, compensation and dispute resolution) is important in encouraging the implementation of data sharing under the Open Finance framework.</p> <p>The practical benefits of data access and data sharing may be very limited if data providers provide data in an expensive or hard to use format which has not been standardised. Adhering to common data formats and definitions will ensure interoperability, minimise barriers for third parties accessing data, and enable the market to develop new ways to benefit from their data.</p> <p>However, experience from PSD2 implementation has shown that:</p> <ul style="list-style-type: none"> - <u>Legislative mandates can lead to compliance driven approaches</u> to standards and implementation which can slow the pace of innovation as the interpretation by the data providers and third parties (data users) of legislation and requirements are often not aligned. A clear customer and market demand must provide sufficient incentive for data providers to provide fully open and functioning access to data. - <u>Common standards do not always result in standardised approaches</u>- while undoubtedly crucial to facilitating market adoption and growth, common technical standards don't necessarily result in standardised implementation approaches. This can lead to increased cost and complexity for third parties entering the market and ultimately may impact on their ability to scale their operations. <p>Further, whilst APIs are currently best practice for exchanging data, rapid technical change could easily lead to new alternatives emerging. Limiting the scope of open finance to a single technology or data access approach immediately constrains the pace of change and could limit the potential for innovation as technology evolves. The Open Finance framework should be technically neutral, and focused on incentivising the desired standardisation outcomes rather than constraining the approach the market takes to deliver them.</p> <p>In addition to (technical and data) standardisation, the Open Finance data sharing framework should also include:</p> <ul style="list-style-type: none"> - Horizontal liability principles across the financial sector. The Data Act sets down a model whereby the "data holder" is the party responsible for the quality of the data that is shared, amongst other things. Any proposal for an open finance framework should include principles legislating for liability. Whilst we feel the data-sharing mechanism in the Data Act will be effective in giving rise to commercial opportunities in the context of the IoT, a similar data-sharing mechanism in the financial sector is likely to involve a variety of financial products and many different financial entities, thereby necessitating more sophisticated rules. - A common framework for dispute resolution and redress. To ensure consistency across Open Finance consumers, third parties (data users), and data providers must be able to raise and resolve disputes between all parties. The dispute settlement provisions of the Data Act appear to set down an effective dispute resolution mechanism that could be used as a basis for the Open Finance proposals.

	Finally, standard contractual schemes have the potential to substantially address the incentive for market participants to take part in Open Finance, and reduce the cost of the development of standardised data access, sharing, portability, and interoperability rules as well as to avoid the costs of bilateral contract negotiations. All of which we consider as foundational to establishing and sustaining a successful Open Finance framework. However, any movement to establish schemes should be done cautiously, only when market conditions require it, to avoid competition issues arising from their governance structure and development.
Q21: Should OFR aim for a single EU level financial-data sharing framework (e.g. SPAA) to underpin Open Finance? Or should it leave room for multiple (e.g. national-level) schemes?	We believe that Open Finance framework would benefit from EU-wide standards developed by industry standardisation body(ies). The establishment of any schemes, however, should be approached with caution - see our response to Q20 above.
Chapter 6	
Q22: What, in your view, would be the added value of discussed novel techniques?	No comment.
Q23: What is your view on the need and design of reasonable data use requirements?	Please refer to our response to Q14 on data ethics as regards Open Finance.
Q24: Is a horizontal data-sharing right a feasible and desirable alternative to sectoral rights?	No comment.
Q25: Do you believe a horizontal data sharing framework is desirable and feasible?	No comment.
Q26: How should the development of and compliance with a horizontal framework be organized?	No comment.
Chapter 7	
Q27: What, if any, data should financial supervisors and central banks consider providing?	No comment.
General	
Q28: Do you have any other points or comments regarding the content of the discussion paper?	Regulation as an enabler, not the driver PSD2 open banking implementations offers valuable lessons as regards the significant challenges to applying a legal framework to an area defined by rapid digital innovation. Firms have had to navigate their way through numerous pieces of legislation, regulatory guidance, opinions, and industry thinking before turning to technical standards and solution implementation. The substantial investment by all participants in the open banking ecosystem over a prolonged period of time cannot be underestimated, and has far exceeded original costs envisaged by regulators. This has to be a key consideration when planning a way forward for Open Finance. Regulation as the motivating force has inevitably resulted in a compliance-driven approach to developing open banking technical standards and their implementation. This has slowed the pace of innovation as account servicing PSP and TPP legislative interpretation, expectations, and requirements have often not been aligned. Data providers must be sufficiently commercially incentivised to provide fully open and functioning access to data. This will only be achieved where the services developed are driven from clear customer and market demand. Whilst some regulatory incentive may undoubtedly be required to achieve some of the objectives of Open Finance, the boundaries of the regulation and when it should be applied should be carefully considered so as not to stifle market-driven innovation. Standard setting for interoperability and data portability should be left as much as possible to voluntary industry initiatives. For Open Finance to develop it is important that compelling customer driven

commercial propositions are allowed to develop, and encourage data providers to facilitate standardised access to data. As we discuss above, regulatory intervention may lead to a minimal compliant approach to opening up customer data, which in turn could lead to sub-optimal outcomes for consumers and businesses. However, regulatory incentives may be required to unblock access to data in specific Open Finance sectors as the opportunities are better understood.

Avoiding unintended AML legislation consequences

Consistency with the AML legislation should be ensured so that the recipients of payments or other financial data are not unintentionally brought within scope of the AML legislation. For example, the capture of PSD2 AIS providers as obliged entities under the EU Anti-Money Laundering Directive was a consequence of the legislative framework within which they were established - it is unwarranted and disproportionate. Bringing any data recipients (including those regulated under the Open Finance framework) within the AML legislation should be avoided, not least because it could risk undermining the objectives and success of the data sharing initiatives, as customers (data holders), recognising that their personal data is being monitored, analysed and then potentially reported, could regard such intrusion on privacy as disproportionate and unwarranted.