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COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

Accompanying the document

Proposal for a Regulation of the European Parliament and of the Council

on a framework for Financial Data Access and amending Regulations (EU) No 1093/2010, (EU) No 1094/2010, (EU) No 1095/2010 and (EU) 2022/2554

{COM(2023) 360 final} - {SEC(2023) 255 final} - {SWD(2023) 224 final}

Need for action

In the financial sector and beyond, there is a technology-driven trend towards greater use of data and data sharing. In accordance with the digital finance strategy published in 2020, the promotion of data-driven finance is also high on the Commission's agenda. The data economy, driven by the production and use of data, has significant growth potential. Among the various sectors, financial services are the biggest user of data in the EU, with wide links to other sectors. Unlocking further innovative potential in this sector is therefore key for the success of the Commission's wider data strategy.

In spite of the significant potential, many innovations are hindered by the fact that, beyond payment accounts covered by the revised Payment Services Directive, financial services customers do not have effective control over their data. This makes it difficult for them to share the data with other providers who could have used it to provide data-driven financial and information services to customers. There are a number of reasons for this: first, customers lack trust and therefore hesitate to share their data. Second, even if customers would like to share their data, this is difficult in practice, notably due to the unclear legal situation over data users' access to such data. Third, customer data and data interfaces in the financial sector beyond payment accounts are rarely accessible and if they are, they are largely not standardised, rendering data processing more costly. Finally, data owners lack incentives to develop high-quality interfaces that meet data users' operational business requirements.

As a consequence, it is more difficult for new market entrants and smaller innovative service providers to offer tailored products and services that could better fit specific customer needs, while consumers cannot access these innovative services and will pay higher fees for services due to limited competition. In addition, existing barriers prevent firms, especially small and medium-sized enterprises (SMEs), from benefiting from better, more convenient and automated financial services. These barriers also perpetuate suboptimal customer experience at financial institutions by slowing down their digital transformation, and face third-party data users with lost business opportunities. For the economy as a whole, this puts a break on the adoption of data-driven business models, resulting in lower private investments, lower take-up innovative services, and a general lack of trust and confidence in data sharing.

The problems are common to all EU Member States, and since the holders and potential users of financial data in the internal market for financial services often operate in several Member States, it is unlikely that the problems can be solved by Member States alone. Moreover, the current EU legal framework insufficiently addresses the challenges outlined above. While the EU has adopted several pieces of legislation that apply across all sectors of the economy in the context of the European data strategy, these still need to be complemented at sectoral level in order to reach their full effect. New sectoral rules in EU financial services are needed to enable scalable and more efficient business models that can take full advantage of the EU single market, with the aim of giving customers – whether consumers or businesses – greater control over how their financial data is accessed and used.

Policy options

Various policy options emerged during the preparation of this impact assessment. The policy options also took account of the work of the Commission Expert Group on the European Financial Data Space and of stakeholder feedback received during the public and targeted consultations on open finance. The analysed policy options are grouped by specific objectives, which were formulated in response to the identified problem drivers, as follows: (A) enhance customer trust in data sharing in the financial sector; (B) oblige data holders to share customer data with data users; (C) promote standardisation of customer data and interfaces; and (D) promote implementation of high-quality interfaces for customer data sharing.

The options were analysed in the light of their effectiveness in achieving the specific objectives, their efficiency in terms of the associated cost, and their coherence with the existing EU regulatory framework in the area of data sharing.

Impacts of the preferred option

As a result of a thorough analysis, the following policy option bundle was found to be preferable:

- Require market participants to provide customers with open finance permission dashboards, set eligibility rules on access to customer data and empower the European supervisory authorities to issue guidelines on personal data use perimeters (Option A.3)
- Mandate access for data users to selected customer data sets across the financial sector (Option B.2)
- Require market participants to develop common standards for customer data and interfaces concerning data that are subject to mandatory access under the specific objective B, as part of financial data sharing schemes (Option C.1)
- Require data holders to put in place application programming interfaces (APIs) in exchange for compensation, implementing the common standards for customer data and interfaces developed as part of financial data sharing schemes under objective C and require scheme members to agree on contractual liability (Option D.3)

The open finance policy would have a positive impact on society and the environment, as well as on fundamental rights and SMEs. Customers willing to share their data would benefit from new products and services that would improve their economic outcomes. At the same time, the carefully defined scope of this initiative would exclude data sets with the highest risk of financial exclusion of vulnerable consumers outright. Furthermore, open finance permission dashboards, combined with eligibility rules and personal data use perimeters, would protect customers from any other potential negative impacts on data protection and privacy rights.

Customer data would only be shared at the request of the customer and in accordance with the EU General Data Protection Regulation (GDPR) in case of personal data, thus increasing overall customer confidence in data sharing. Data holders would be required to provide access to customer data sets from across the financial sector that have high added value for data users

and pose low risk to customers in terms of financial exclusion. This would enable greater competition, better access to financial services, and a better customer experience through automation. Requiring market participants to adhere to a system for developing common data and interface standards will affect data holders, data users and customers alike, and facilitate direct connectivity between data holders and users, thereby reducing the cost of data access and processing.

The right of the data holders to demand reasonable compensation for providing standardised technical interfaces would provide them with clear incentives to make the necessary investment in good quality interfaces and speed up industry adoption. While data holders will have to invest in technical interfaces, the cost of setting them up will be passed on to data users over time. By limiting the level of this compensation in line with the provisions set out in the Data Act proposal, which cap it at cost in the case of data users that are SMEs, the risk of undesirable anticompetitive effects is kept in check.

SMEs, which can be either data users or customers, would benefit from the open finance framework in both those capacities. As customers, their security and confidence in data exchange would be strengthened and they would be able to access more innovative services, which could reduce their costs and contribute to their competitiveness. As data users, SMEs would bear the cost of providing open finance permission dashboards and licensing for access to customer data, while innovative services could increase their efficiency and standardisation of data would open up new business opportunities. The initiative is expected to facilitate market entry of innovative start-ups that offer new types of services involving new business models.

While the impact of the initiative will be monitored as of its entry into force, an evaluation should be carried out no earlier than 3 years after its implementation. In this way, the results will be based on a sufficient period of observation.