



Finance Watch

Making finance serve society

Citizens are Not the Product

The Necessity of Data Safeguards in Open Finance

A Finance Watch Policy Brief



September 2023



→ Key Takeaways

Open finance can bring welcome benefits to retail consumers, like new financial management tools and personalised products, but the framework risks significant retail consumer detriment if the proper safeguards are not in place.

Strong regulatory safeguards are needed to ensure that the increased data access and sharing does not lead to misuse of data by firms. Such misuses of retail consumer data would lead to mis-selling, financial exclusion, and unfair and discriminatory commercial practices like discriminatory pricing.

The Commission's proposal from 28 June 2023 does not contain the robust safeguards needed to prevent data misuse by firms. Therefore the co-legislators need to introduce amendments in this area as the file moves along the ordinary legislative procedure.

Authors: Peter Norwood and Christian M. Stiefmüller

Editor: Daniel Lockwood

Acknowledgement: We would like to express our sincere gratitude to the members of Finance Watch for their valuable input and comments, and to the many professionals and experts who contributed to this report by sharing their thoughts and experience.

Cover photo: Adobe Stock

Graphics and typeset: Camila Dubois

© Finance Watch 2023

The contents of this report may be freely used or reproduced without permission provided the original meaning and context are not altered in any way. Where third party copyright has been acknowledged, permission must be sought from the third party directly. For enquiries relating to this report, please email contact@finance-watch.org. Finance Watch has received funding from the European Union to implement its work programme. There is no implied endorsement by the EU or the European Commission of Finance Watch's work, which remains the sole responsibility of Finance Watch.



**Co-funded by
the European Union**

I. Contents

Key Takeaways	2
Executive Summary	4
Finance Watch Key Recommendations	6
I. Benefits of the Proposed Framework to Retail Consumers	7
a. Efficiency Gains for Consumers and Firms	7
b. Personalised Products and Services	7
c. New Financial Management Tools	7
II. Risks to Retail Consumers	8
a. Misuse of Retail Consumer Data	8
b. Erosion of Risk-Based and Risk-Sharing Business Models	9
c. Discriminatory Pricing	9
d. Loss of Control over Consumer Data	10
III. Key Shortcomings of the Proposed Framework	11
a. “Data Use Perimeter” Rules	11
b. Defining Permissible Data Use Cases of Financial Information Service Providers (FISPs)	13
c. Penalties for Infringement	14
IV. Key Positive Aspects To Be Preserved and Improved	15
a. Design Features of Data Access Permission Dashboards	15
b. Strong Customer Authentication Rules for Consent Management	15
c. The Role of Consumer Organisations in Data-Sharing Schemes	16
V. Finance Watch Policy Recommendations to Address the Shortcomings of the EU Commission Proposal	17
Conclusion	19

Executive Summary

On 28 June 2023, the European Commission published a legislative proposal establishing an open finance framework. This framework, known as the Financial Data Access (FIDA) Regulation, aims to enable the sharing and third-party access to customer data for a wide range of financial sectors and products. It builds on a similar framework known as open banking which is limited to consumers' payment account data and was established under the Payment Services Directive (PSD) 2.

While the open finance proposal can bring a number of benefits for retail consumers (while the proposal covers the data of both natural and legal persons, this policy brief focuses on natural persons, referred to throughout this policy brief as 'consumers'), it also bears considerable risks that must be adequately addressed since the consumer detriment associated with these risks are substantial. In terms of benefits, the facilitation of data access about a retail consumer can make the sales process for financial services faster as processes firms must undertake in the pre-sales phase, such as creditworthiness assessments for loans, become faster and easier. In addition, the personalisation of products enabled by open finance has the potential to give retail consumers access to products that are better suited to their specific needs as firms will have more and easier access to data on a consumer's needs, financial situation, and risk profile. Moreover, open finance can facilitate the development of tools to help citizens manage their personal finances and access relevant information about different financial services.

If the proper safeguards are not incorporated into the new framework, however, open finance can potentially bring considerable detriment to consumers. The easy and unconstrained access to a variety of personal data via open finance can lead to the misuse of consumer data by firms which, in turn, can lead to the mis-selling of financial services, consumers being unfairly excluded from certain products or services, and to unfair and discriminatory commercial practices such as discriminatory pricing. Moreover, the easy availability of vast amounts of consumer data enables excessive personalisation of product prices which, if unchecked, can lead to large swathes of vulnerable consumers becoming uninsurable as it undermines the existing risk-sharing business model of insurers.

Unfortunately, the European Commission's proposal on open finance lacks the strong appropriate safeguards needed to prevent the misuse of consumer data in the provision of financial services and thereby, if left unchanged by the co-legislators, exposes consumers to considerable risks. As long as retail consumers do not feel in control of their personal data, policymakers should not be surprised by the general public's lack of trust in data-sharing schemes.

To ensure consumers do not lose control over their data, the proposal contains welcome provisions that must be preserved in the final legislative text, such as the introduction

of financial data access permission dashboards. However, a few tweaks are needed to further improve and strengthen these measures. For example, a rule should be introduced to ensure that the design of data access permission dashboards does not unduly influence the consumers' decisions when withdrawing or granting data access. Moreover, a stronger role for consumer organisations in data-sharing schemes is needed.

Article 7 of the Commission's proposal recognises the need for 'data use perimeter' rules which set out how data can be used in the provision of different financial services. However, this proposal falls short of providing the robust safeguards needed to prevent data misuse, e.g. for the excessive personalisation of insurance premiums by firms.

Specifically, the Commission's proposal fails to prevent data misuse in at least the following ways:

1. The proposal does not adequately determine the appropriate level of granularity that should be applied in setting the perimeter for the permissible (re-)use of consumer data;
2. The proposal fails to cover all relevant financial services use cases such as suitability and appropriateness assessments for retail investment products;
3. To implement the requirements of Article 7, the proposal calls for using EBA and EIOPA guidelines, a regulatory instrument that is not legally binding and therefore not appropriate in this context.
4. The proposal's provisions on penalties for data holders and data users in the case of breaches of the rules are not strong enough.

The European Commission's proposal on the open finance framework, officially called the Financial Data Access (FIDA) Framework, covers the sharing and (re-)use of customer data, encompassing the data of both natural and legal persons (including businesses of all sizes). This policy brief focuses, however, on the interest of EU citizens who are affected by this legislation in their capacity as natural persons (referred to throughout this policy brief as 'consumers').

This policy brief provides concrete policy recommendations to address the shortcomings in the EU Commission proposal. Finance Watch calls on the EU co-legislators to take these proposals on board as this file moves along the ordinary legislative procedure.

Finance Watch Key Recommendations

Protection from Financial Exclusion

Introduce a rule explicitly stipulating that a consumer cannot be denied access to a financial product if they do not consent to their data being shared/accessed via the open finance framework.

More Data Use Cases

Data used for risk assessment and pricing of a consumer for motor and home insurance products, for carrying out suitability and appropriateness assessments for all retail investment products (including personal pensions) sold to retail investors/customers under MiFID II and IDD, and for carrying out suitability assessments related to investments in crypto-assets should be added to the Article 7 data use perimeter rules.

Legally Binding Standards

To ensure that data use perimeter rules are adhered to, the European Supervisory Authorities (ESAs) should be mandated to draw up legally-binding Regulatory Technical Standards (RTS).

I. Benefits of the Proposed Framework to Retail Consumers

The open finance framework can benefit retail consumers if third-party access to data and data sharing, promoted by the initiative, are properly regulated.

a. Efficiency Gains for Consumers and Firms

These benefits include efficiency gains for both consumers and firms. For example, the facilitation of data access about a consumer can make the sales process for consumer loans and retail investment products faster, as easier digital access to consumer data reduces the time to perform creditworthiness, appropriateness and suitability assessments. In addition, this faster and easier access to data makes the pre-contractual sales phase cheaper for the firm, and those cost savings can be passed down to consumers.

b. Personalised Products and Services

If properly regulated, the open finance framework can facilitate an industry transition from the current supply of standardised products to more personalised solutions that are better suited to the customers' specific needs as firms have faster and easier access to data on the consumer's preferences, financial situation, and risk profile. In addition, the proposed framework could give new innovative entrants the possibility to gain a foothold in the retail market, increasing choice for consumers and competition (and, as a consequence, possibly lower prices for consumers) in the marketplace.

c. New Financial Management Tools

The open finance framework can facilitate the development of tools to help citizens manage their personal finances and access relevant information about different financial services. Such management tools are already being developed in the market. They can develop more effectively in the context where a consumer can share data on their holdings of financial services products, such as investment-related data.

II. Risks to Retail Consumers

a. Misuse of Retail Consumer Data

If the right safeguards are not in place, there is a high risk that the framework can lead to the misuse of retail consumers' data by financial services providers. This misuse of retail consumer data, in turn, can lead to mis-selling of financial services, resulting in financial detriment of a consumer, such as over-indebtedness. Conversely, it can result in consumers being unfairly excluded from certain products or services. Finally, if applied without adequate safeguards, personalisation could expose consumers to unfair and discriminatory commercial practices.

Wider sharing and access to consumer data in the financial services sector without adequate safeguards can lead to the wrong type of data being collected and used for different use cases in the provision of financial services to consumers.

Use cases include:

1. *Creditworthiness assessments (CWAs)* - to determine whether a loan should be sold to a consumer based on their capacity to repay it.
2. *Suitability and appropriateness assessments* - to assess whether a retail investment product, including personal pension products, is suitable and appropriate for a certain consumer.
3. *Suitability assessments* - to assess whether an investment in crypto-assets is suitable for a certain consumer.
4. *Risk assessments* - to determine at what price an insurance product should be sold to a consumer based on their risk profile.

A proper creditworthiness assessment (CWA) is based on data relevant to analysing the financial capacity of the borrower to repay the loan offered. This includes data on the consumer's income, essential expenditures, and the consumer's ability to manage their budget, including credit and debt instalments.

If the wrong data is used for a CWA, however, it can lead to consumers being sold a loan they cannot afford. This, in turn, can lead to and exacerbate over-indebtedness, which brings with it not only economic hardship for the affected consumer but also physical and mental health issues as well as a strain on a country's economy as a whole due to a loss in production and rising costs for social welfare systems.¹ Likewise, if the wrong type of data is used for the assessment, it can also lead to financial exclusion, meaning a consumer being denied a loan not because they are unable to afford it but because the assessment is based on data irrelevant to the assessment.

1 R. Ahlström et al., The Swedish Consumer Agency, Report, *Is debt relief rehabilitative?*, 2014

A 2021 study from Finance Watch showed that financial services providers often collect and rely on irrelevant data to conduct a CWA. The data in this study show that, in 31% of the cases, information about a consumer's budget balance (level of income/level of expenditures) is not gathered as part of the CWA.² Instead, some credit providers use irrelevant data that can give rise to discrimination, such as information about consumers' type of housing and previous address. Not only is this type of data irrelevant in determining a consumer's ability to afford a loan, but it can also lead to an unjust refusal of credit (and thereby to financial exclusion) based on the neighbourhood they live in.

b. Erosion of Risk-Based and Risk-Sharing Business Models

Another strong example of a use case in financial services provision that can lead to exclusion if there aren't any rules regarding which types of data can and cannot be used is insurance. Since its establishment, the insurance business model has been built on 'solidarity' or 'risk pooling'. This business model has allowed potentially vulnerable consumers with higher risk profiles to still be able to afford insurance (be 'insurable'). Today, insurance companies calculate every individual's personal risk and set premiums accordingly. However, the assessment is not overly personalised and, therefore, still allows consumers with high-risk profiles to be insurable as the risk is spread out collectively between policyholders. The proliferation of access to consumer data under open finance, however, could endanger this business model as the easy accessibility of large amounts of personal data will allow highly granular personalised risk assessments, which can lead to certain vulnerable consumers becoming 'uninsurable', i.e. financially excluded (denied insurance coverage or being faced with prohibitively high insurance premiums).

c. Discriminatory Pricing

Without the proper safeguards in place, open finance can lead to discriminatory pricing for retail consumers. The proposed open finance framework could make it easier for firms to charge higher prices for insurance, especially, based on the optimum amount of margin firms can earn from an individual consumer rather than the individual policyholder's risk and/or cost.

Open finance will unlock firms' access to data on consumer's financial products holdings. It could therefore provide insights into aspects such as data on whether consumers tend to switch general insurance products, such as home or motor insurance at renewal, or tend to hold them for long periods of time and are therefore unlikely to react to price rises immediately and shop around. This information can, in turn, be misused by firms to charge consumers higher premiums.

² Finance Watch, *Consumer credit market malpractices uncovered*, 2021

The UK's Financial Conduct Authority (FCA) recently conducted a thematic review of the pricing practices of general insurance contracts, including motor and home insurance. This review revealed that firms are increasingly setting premiums based on data that is not pertinent to the pricing of a particular insurance product such as the consumer's risk profile, resulting in price discrimination.³ Moreover, FCA research shows that vulnerable and disengaged consumers are particularly at risk of being negatively affected by price discrimination practices. According to their study, 1 in 3 customers paying higher premiums have at least one vulnerability characteristic, such as being low-income.⁴

The risks of financial exclusion and price discrimination through the increased availability of consumer data are exacerbated by the increasing use of AI-supported systems used by financial services providers at the pre-contractual stage to decide whether and at what price to sell financial services to consumers. These AI-assisted systems often bring with them severe limitations regarding the transparency and explainability of the outcomes they generate. This, in turn, makes it difficult for the financial services provider to be able to understand the logic and critical decision-making factors of the AI-assisted process, to determine whether the outcome of the AI-assisted decision is accurate and justified and for the consumer to legally contest the outcome of the assessment, let alone obtain the necessary documentary/ factual evidence to contest the outcome of the automated decision.

The Commission's proposed framework risks that those consumers who do not consent to share their data under the framework due to privacy concerns could face restricted access, be required to pay higher prices/premiums or be entirely excluded from taking out financial services.

d. Loss of Control over Consumer Data

Open finance brings with it considerable data protection and privacy risks for consumers. If robust safeguards ensuring that consumers still have control over their data are not included in the open finance rulebook, the framework could lead to a situation where consumers lose control over whom their data is shared with and for which purposes.

³ FCA, *General Insurance pricing practices Market Study*, 2020.

⁴ Ibid

III. Key Shortcomings of the Proposed Framework

The Commission's proposal for an open finance framework seeks to address the risks outlined in chapter II. above.

The proposed framework introduces a number of new measures:

1. Data-use perimeter rules (Article 7) - to address data misuse and price discrimination risks;
2. Data-access permission dashboards (Article 8) - to address the risk of loss of control; and,
3. A financial data sharing scheme (Articles 9-11) - to develop data and interface standards, joint standardised contractual frameworks governing access to specific datasets, and governance rules related to data sharing.

Nonetheless, the proposal lacks robust safeguards to ensure that firms' increased ability to share and access retail customer data, enabled by this new framework, does not lead to the misuse of consumer data in the different use cases for financial services.

a. "Data Use Perimeter" Rules

The proposal recognises the need for a "data use perimeter" to address the risks discussed in the previous section of this policy brief. The proposed "data use perimeter" sets out how a consumer's data can be used in the provision of financial services with a view to prevent data misuse, discriminatory pricing and the erosion of risk-based business models, but the measures proposed are not robust enough to adequately protect consumers against these risks. Article 7 of the proposal includes a call for guidelines from the European Supervisory Authorities (ESAs) on how firms should use consumer data for the risk assessment (credit scoring), and pricing of life, health and sickness insurance.

This proposed measure is not sufficient, however, for several reasons:

- The measure does not adequately determine the appropriate level of granularity that should be applied in setting the perimeter for the permissible (re-)use of customer data;
- The measure fails to cover all relevant financial services use cases; and,
- The measure calls for the use of guidelines that are not legally binding. Legally-binding measures at level 1 or level 2 are needed instead.

As discussed in the previous section of this paper, the risks and consequences associated with the misuse of consumer data are so considerable that strong and binding measures are needed to prevent them. Guidelines are legally non-binding and, therefore,

insufficient to rein in this malpractice. The ineffectiveness of guidelines alone in this context is backed by evidence in two Finance Watch studies on malpractices in the EU consumer credit market⁵. This study shows that the already existing EBA Guidelines on Loan Origination and Monitoring which include guidelines on CWAs, have not been effective in preventing the misuse of data irrelevant for CWAs. To protect citizens against the excessive use of personal data, including data that may be irrelevant to the original purpose of the financial product or service in question, and to provide a more comprehensive definition of “responsible data use”, Article 7 should therefore be expanded to include a mandate for the European Supervisory Authorities (ESAs) to develop regulatory technical standards (RTS) that list a finite set of data that may be collected and used for each of the use cases covered in this article. This approach would be in line with the principle of “purpose limitation” and “data minimisation” (items b. and c. of Art. 5(1) GDPR) while preserving a degree of flexibility as technical standards could be updated to reflect new (technical and other) developments without requiring amendments to the legislative text.

Moreover, to establish strong safeguards against the use of irrelevant sensitive data that can lead to financial exclusion based on discrimination, the rules should make it clear that the regulation does not cover sensitive data under Article 9 of the GDPR. This data includes data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data to uniquely identify a natural person, data concerning health or data concerning a natural person’s sex life or sexual orientation. This data is irrelevant for decisions regarding financial services and can easily lead to discriminatory practices when used. For these reasons, the co-legislators agreed to explicitly prohibit using this information for creditworthiness assessments under Article 18 of the revised Consumer Credit Directive (CCD). Therefore, introducing an equivalent rule in the open finance framework regulation would make sense to align them.

In addition, the data use perimeter proposal of the European Commission does not cover all possible use cases in the provision of financial services. The proposal (Article 7) only covers CWAs for mortgage and consumer credit as well as risk assessments and pricing of a consumer in the case of life, health and sickness insurance products.

The proposal fails to cover risk assessments for other important general insurance products such as motor and home insurance. As discussed previously, the misuse of consumer data for other general insurance products such as motor insurance, is a major issue and can lead to financial exclusion and price discrimination.

In addition, the proposal fails to cover data use perimeter rules for suitability and appropriateness assessments when selling retail investment products under MiFID II,

⁵ Finance Watch, [Consumer credit market malpractices uncovered](#), 2021, see pages 18-19 and Finance Watch, [Tackling causes of over-indebtedness in the EU consumer credit market](#), 2022, see pages 20-22.

insurance-based investment products (which includes personal pensions) under the IDD, and crypto-assets/asset-reference tokens under MiCA. Given that these products are risky – they can potentially entail significant losses for consumers, in some cases all of the money invested – it is essential that any data use perimeter measures also cover suitability and appropriateness assessments. Accurate assessments based on the right kind of data are key as they ensure that financial institutions only recommend products suitable for the client and in accordance with the client's risk tolerance and ability to bear losses.

Finance Watch Recommendations

- Widen the use cases mentioned in Article 7 to also include the following data:
 - A. Data used for the purposes of risk assessment and pricing of a consumer for motor and home insurance products.
 - B. Data used for the purposes of carrying out a suitability and appropriateness assessment for all retail investment products, including personal pensions, sold to retail investors/customers under MiFID II and IDD.
 - C. Data used for the purposes of carrying out suitability assessments related to investments in crypto-assets.
- To ensure that the data use perimeter rules under Article 7 are adhered to, the European Supervisory Authorities (ESAs) should be tasked with developing legally binding regulatory technical standards (RTS) that set out a finite set of data that may be collected and used for each of the above purposes. To avoid a situation where certain consumers become uninsurable due to overly granular risk assessments for essential general insurance (life, motor, home, health and sickness insurance products), EIOPA should stipulate how this data may be used to avoid excessive granularity that undermines the “risk sharing” principle of insurance.
- Sensitive data (GDPR Article 9 data) should be explicitly excluded from the scope of the open finance framework to prevent this data from being shared and accessed by third parties under the open finance framework.
- Introduce a rule explicitly stipulating that a consumer cannot be denied access to a financial product if they do not consent to their data being shared/accessed via the open finance framework.

b. Defining Permissible Data Use Cases of Financial Information Service Providers (FISPs)

The open finance framework proposal introduces new entities called financial information service providers (FISPs). However, their precise role and therefore their possible use cases of customer data are not well-defined in the legislative proposal which is

a problem as it could lead to a misuse of customer data. Article 3(7) of the proposal stipulates that these new entities are data users authorised to provide ‘financial information services’. However, it is fully unclear what these financial information services entail as “financial information services” are not defined in the proposal.

We would suggest that the definition of “financial information service” replicates the definition of the equivalent “account information service” in the Payment Services Directive 2 (PSD 2). This would give financial information service providers a similar role to account information service providers; that is, providing retail consumers with a comprehensive overview of their different financial products across financial institutions allowing them, for example, to manage their personal finances.

Finance Watch Recommendation

Clearly define the role and possible data use case of financial information service providers (FISPs) limiting their role to providing consolidated information on one or more financial services products covered by Article 2(1) of this Regulation so that customers have an overall view of their financial situation.

c. Penalties for Infringement

The provisions on penalties in case of infringements of the rules are not strong enough. Given the strong negative implications consumers face if the rules proposed under open finance are breached, it is important that strong penalty provisions are in place to deter data holders and users from breaching the rules laid down by the framework.

The proposed open finance rules on penalties are weaker than the penalties provisions in the European Commission’s proposed Payment Services Regulation (PSR 1) which sets out rules for open banking. Given that the risks and negative implications for rules breaches for consumers are the same for both open banking and open finance, it makes sense to align the penalties provisions for both and for the stronger open banking penalties provisions to be also introduced in the open finance proposal.

The proposed penalty provisions for legal persons under open banking are, for example, administrative fines of 10% of the total annual turnover of the legal person while for the proposed provisions for open finance, they are only 2% of the total annual turnover.

Moreover, for natural persons, the proposed maximum administrative fine under the open banking proposal is up to a total of EUR 5 Million. In contrast, this figure only totals EUR 250.000 annually under the proposed open finance framework.

Finance Watch Recommendation

Strengthen the penalties provisions for infringements by aligning the open finance penalties provisions with the stronger and more appropriate penalties provisions for open banking as laid down in the Payment Services Regulation (PSR 1).

IV. Key Positive Aspects To Be Preserved and Improved

a. Design Features of Data Access Permission Dashboards

Finance Watch is glad to see that the European Commission proposal gives consumers adequate means to provide and withdraw consent to access their data, with market participants required to provide consumers with financial data access permission dashboards. This is vital to address the risk listed under chapter II.d of this policy brief. Without such dashboards, open finance could lead to an uncontrolled dissipation of personal data, as well as a loss of transparency and control of data for the individual.

Rules are needed, however, to ensure that dashboards are well-designed so as not to encourage or unduly influence the customer to grant or withdraw permissions. Without such safeguards, there is a risk that market participants may try to influence consumers' decisions regarding this matter out of purely commercial interests.

Finance Watch Recommendation

Introduce an explicit rule in the regulation stipulating that data access permission dashboards should be designed in a way that would prevent nudging or influencing a consumer's decision to grant or withdraw permissions.

b. Strong Customer Authentication Rules for Consent Management

To ensure a high standard of data protection and foster EU citizens' trust, strong and public tools must be used to help identify a customer online and authenticate consent to grant or withdraw permissions. Hence, under the regulation data holders should be obliged to use the European Digital Identity Wallet issued by a Member State as introduced by the proposal amending Regulation (EU) No 910/2014 as regards establishing a framework for a European Digital Identity for the purposes of consumer permissions to grant or withdraw consent to access to their data.

In addition, to ensure that data sharing and reuse under the open finance framework only happens within a well-regulated framework, it is key that access to data is limited to entities that are regulated and authorised. Therefore, Finance Watch strongly supports the Commission proposal mandating that data can only be accessed by regulated financial institutions or by firms that are subject to a dedicated Financial Information Service Providers' (FISP) authorization.

Finance Watch Recommendation

Data holders should be obliged to use the European Digital Identity Wallet issued by a Member State for consumers introduced by the e-IDAS Regulation to help identify a customer online and authenticate consent if a consumer wants to provide permissions via the data access permission dashboards.

c. The Role of Consumer Organisations in Data-Sharing Schemes

The proposal introduces the concept of data sharing schemes (DSS, Articles 9 and 10), which is designed to bring together data holders, data users and data subjects (customers) to facilitate the exchange of data in a transparent and properly supervised setting. Competent authorities should be tasked with a comprehensive review of the scheme's arrangements that is not limited solely to a formalistic, "box-ticking" exercise of the criteria set out in Article 10(1) but includes an assessment whether the scheme's arrangements appear appropriate and credible for the purposes of ensuring the responsible treatment of customer data. After all, the effectiveness of the proposed DSS hinges on the strength and credibility of the underlying governance arrangements.

In addition, for customer organisations and consumer associations to adequately fulfil their role as representatives of the ultimate owners of the data, and not merely have a symbolic presence lending legitimacy and a veneer of credibility to the scheme, they should be given equal representation in the scheme's governance bodies and participate in its decision-making process.

Finance Watch Recommendations

- Competent authorities should be tasked with a comprehensive review of data sharing schemes' arrangements that is not limited solely to a formalistic, "box-ticking" exercise of the criteria set out in Article 10(1) but includes an assessment whether the schemes' arrangements appear appropriate and credible for the purposes of ensuring the responsible treatment of customer data.
- Provide customer organisations and consumer associations with equal representation in financial data sharing schemes' governance bodies and participation in their decision-making processes.

V. Finance Watch Policy Recommendations to Address the Shortcomings of the EU Commission Proposal

To address the shortcomings in the European Commission proposal highlighted in this paper, we propose the following amendments to the European Commission's proposal on open finance:

a. Extend Use Cases in Article 7

Add additional use cases in Article 7 to include the following data:

1. Data used for the purposes of risk assessment and pricing of a consumer for motor and home insurance products.
2. Data used for the purposes of carrying out a suitability and appropriateness assessment for all retail investment products (including personal pensions) sold to retail investors/customers under MiFID II and IDD.
3. Data used for the purposes of carrying out suitability assessments related to investments in crypto-assets.

In line with the principle of “data minimisation” (item c. of Art. 5(1) GDPR), the European Supervisory Authorities (ESAs) should be tasked with developing regulatory technical standards (RTS) that set out a finite set of data that may be collected and used for each of the above purposes. Moreover, in order to avoid a situation where certain consumers become uninsurable due to overly granular risk assessments for essential general insurance (life, motor, home, health and sickness insurance products), under point a. above, EIOPA should stipulate how this data may be used to avoid excessive granularity that undermines the “risk sharing” principle of insurance.

b. Mandate Legally-Binding Regulatory Technical Standards (RTS)

To ensure that the data use perimeter rules under Article 7 are adhered to, instead of mandating the European Supervisory Authorities (ESAs) to draw up guidelines for the implementation of the data use perimeter rules, mandate the ESAs to draw up legally-binding Regulatory Technical Standards (RTS) for this.

c. Exclude Sensitive Data from Scope

Sensitive data (GDPR Article 9 data) should be explicitly excluded from the scope of the open finance framework to prevent this data from being shared and accessed by third parties under the open finance framework.

d. Lack of Consent Does Not Justify Denial of Access

Introduce a rule explicitly stipulating that a consumer cannot be denied access to a financial product if they do not consent to their data being shared/accessed via the open finance framework.

e. Define Permissible FISP Use Cases

Clearly define the role and possible data use cases of financial information service providers (FISPs).

f. Dashboard Design May Not Influence Consumer Consent

Introduce an explicit rule in the regulation stipulating that data access permission dashboards should be designed in a way that would prevent nudging, influence on consumers' decisions to grant or withdraw permissions.

g. Oblige Data Holders to Use European Digital Identity Wallet for Access Permissions

Data holders should be obliged to use the European Digital Identity Wallet issued by a Member State for consumers introduced by the e-IDAS Regulation to help identify a customer online and authenticate consent if a consumer wants to provide permissions via the data access permission dashboards.

h. Align Penalties with Open Banking

Strengthen the penalties provisions for infringements by aligning the open finance penalties provisions with the stronger and more appropriate penalties provisions for open banking as laid down in the Payment Services Regulation (PSR 1).

i. Equal Representation of Consumers in the Governance of Data-Sharing Schemes

Provide customer organisations and consumer associations with equal representation in financial data sharing schemes' governance bodies and participation in their decision-making processes.

j. Task Competent Authorities with Comprehensive Review of Data-Sharing Schemes' Arrangements

Competent authorities should be tasked with a comprehensive review of data-sharing schemes' arrangements, that is not limited solely to a formalistic, "box-ticking" exercise of the criteria set out in Article 10(1) but includes an assessment whether the schemes' arrangements appear appropriate and credible for the purposes of ensuring the responsible treatment of customer data.

Conclusion

Open finance has the potential to bring the benefits EU policymakers would like it to achieve, such as efficiency gains, personalised products and services, and new personal finance management tools. It also brings with it considerable risks, however, which, if left unaddressed, could cause substantial detriment to consumers.

The European Commission's proposal from 28 June 2023 establishing an open finance framework in the EU unfortunately lacks the strong safeguards needed in some key areas, to adequately address the risks associated with open finance.

The proposal falls short in preventing the misuse of consumer data in the provision of financial services, which can lead to the mis-selling of financial products and services, financial exclusion, and discriminatory and/or unfair commercial practices. Moreover, the proposal in its current form would have the potential to undermine/erode the risk-sharing business model of insurers and thereby leave vulnerable consumers with high-risk profiles exposed to the risk of becoming uninsurable.

This policy brief lays out policy recommendations concerning which regulatory safeguards need to be introduced to adequately address these risks. Shortcomings in the Commission's proposal can be easily tackled by means of a number of amendments, in particular to the Article 7 proposal on data use perimeters.

As the legislative file moves along the ordinary legislative procedure, Finance Watch calls on the co-legislators to introduce these much-needed policy amendments to prevent open finance from becoming a source of financial detriment and exclusion rather than the force for good that it has the potential to become if the right safeguards are incorporated in the final legislative text.

About Finance Watch

Finance Watch is an independently funded public interest association dedicated to making finance work for the good of society. Its mission is to strengthen the voice of society in the reform of financial regulation by conducting advocacy and presenting public interest arguments to lawmakers and the public. Finance Watch's members include consumer groups, housing associations, trade unions, NGOs, financial experts, academics and other civil society groups that collectively represent a large number of European citizens. Finance Watch's founding principles state that finance is essential for society in bringing capital to productive use in a transparent and sustainable manner, but that the legitimate pursuit of private interests by the financial industry should not be conducted to the detriment of society. For further information, see www.finance-watch.org

Finance Watch
Rue Ducale 67 b3
1000 Bruxelles
T: + 32 (0)2 880 0430

www.finance-watch.org



Finance Watch