



European Financial Services
Round Table

EFR PAPER ON PSD2 LESSONS AND IMPLICATIONS FOR OPEN FINANCE

Data sharing has the potential to positively impact both consumers and the financial services industry. EFR calls for the future Open Finance framework to take the lessons learned from PSD2 into account in terms of the asymmetry in data access, misaligned incentives and the unbalanced liability regime, as well as the constantly evolving nature of the market. A focus on defining principles and outcomes should prevail over prescribing specific solutions that have proven to become ineffective and technically obsolete at a rapid pace.

Introduction

We agree with the Commission recognising the importance of data for innovation in the financial sector and beyond. Considering the interconnectedness and increasingly blurred lines between sectors and the firms operating in them, the focus should not be on Open Finance but, rather, on open data as part of a broader data economy. To ensure a positive impact on the economy and society, the future data-sharing economy should be fair, competitive and secure. It should have the same rules for all participants, promote incentives (e.g. compensation) for innovation and fairly allocate accountability and liability in order to better protect consumers.

Moreover, we would make the observation that the Open Finance initiative will be based on the horizontal regulatory framework encompassing DGA, Data Act, GDPR, and e-IDAS, in addition to PSD2. Thus, the initiative should complement this framework and avoid any risk of incoherence or overlap with the other legislative texts currently being implemented. Consequently, it is important for the Open Finance proposals to be adopted once the general framework is at least stabilised if not finalised.

The Payments Services Directive (PSD2) is a piece of sectoral legislation and does not break the silos to create an overarching and cross-sectoral data economy. However, it has brought experiences with user-controlled real-time data access. The experience with its implementation over the last few years therefore provides valuable lessons that should be considered during the Commission's impact assessment work, the review of PSD2 as well as the Open Finance proposal itself. The EBA's recently published technical advice on the review of the Payments Services Directive (PSD2) should also be taken into account.

The adoption of account information and payment initiation services following the PSD2 varies across member states. In some markets, Payment Initiation Services account for only 1% of regular payments. The EFR believes that PSD2 has not yet had sufficient time to reveal its full potential, given the short time since its full application. It should be thoroughly reviewed and aligned with current market practices with a broader open data approach. However, the financial services industry thrives on legal certainty and regulatory stability in order to make use of the Open Banking opportunities. As PSD2 is seen as an example of further user-controlled data access, it is particularly important to address the asymmetry in access to data, the unbalanced liability regime and misaligned incentives. The current 'free' model and lack of remuneration opportunities for Account Servicing Payment Service Providers (AS PSPs) does not drive the right incentives in the market. It constrains innovation and improvements in customer journeys, as well as the provision of additional data and account access.

As Open Finance aims to broaden financial data sharing within the financial sector (beyond payment accounts data), EFR believes it is crucial for its success to take account of the lessons learnt from PSD2 in order to ensure fair competition in the market for all types of actors. This paper will elaborate on those lessons.

Data Asymmetries & Level Playing Field

Mandatory unidirectional data access is the current practice in the financial sector in the context of PSD2. Indeed, only AS PSPs (banks) are obliged to provide free access to payment account data, while banks have not been granted similar access to regulated third-party data or other types of data (e.g. non-financial data) which would be relevant for the provision of innovative financial services and to the benefit of customers. We believe there is an unlevel playing field between banks and their non-bank competitors, as regulated access to data only applies in one direction.

Yet, it is the combination of data from different sectors that holds the greatest potential for delivering new services and experiences for customers. Data sharing must therefore be seen as part of the data economy as a whole in a more all-encompassing data-sharing framework and not be approached in an isolated or differentiated way as it is the case with Open Finance.

Moreover, to have a level playing field in the context of data sharing, all parties active in the value chain must be subjected to adequate regulation and supervision. Therefore, the future Open Finance framework shall not be isolated and shall set clear principles and requirements that enable the sharing of any kind of data and ensure a conformant eco-system for customers. A level playing field can also be supported by interoperability so that data shared outside the financial services sector is subject to appropriate requirements and remains high quality and fit for purpose. By the way, we would expect that any harmonisation would also need to occur across EU Member States, while also being complementary to global frameworks.

Innovation & Incentives

The regulatory requirements imposed by PSD2 required major investments, which had a negative impact on the ability of banks to innovate. To ensure a fair and competitive market, it is key that the entities building the infrastructure and providing the data are allowed to receive compensation for this service.

Sustainable and fair business models are a key objective of the data-driven economy. Remuneration for data access should be determined by market dynamics where AS PSPs as well as any other data-holding entity should be able to recoup the development and running costs with regards to collecting, maintaining and refining data and making it available. This will result in better outcomes for users, further investments and innovation.

A business-driven open data approach

As regards the provision of new services to customers based on open data, PSD2 did not achieve the objectives that regulators had set. Despite the major costs of developing APIs, finally passed on to consumers, there has been little commercial development. Most customers have not been very interested in the new services proposed by fintech and have not been willing to pay for them. Even banks' customers showed little interest in new services proposed by their bank based on these APIs, such as accounts aggregation. As a result, the cost benefit analysis of PSD2 regarding open data has been negative.

We believe that PSD2 has not taken sufficient account of the commercial aspect based on usefulness and the value of the services.

Any new initiative should therefore be based on robust marketing analysis starting from customer needs and on a market failure assessment. It should be based on private voluntary initiative enabled by cross-sectoral open data rules, identical for all stakeholders.

Liability and responsibility for customer complaints

The PSD2 liability regime is unbalanced, since AS PSPs are obliged to compensate customers even when a third party is involved and liable for the damage caused. Based on this experience, we believe that each provider of services in the value chain of delivering a financial service should be directly liable for

the services they provide; i.e. allocation of accountability and liability should be fair. However, due to the complex nature of some services, it is not always clear to the customer where liability lies. Furthermore, in case of a data breach or data misuse, we noticed under the PSD2 framework that customers generally complain to the AS PSP first (i.e. to their bank), while this breach may have happened on the part of the third party to which the customer gave consent to access his/her data. In light of this, we are of the view that customers' first recourse should be to the company with which they contracted a given service (in this case the Account Information Payment Services Provider (AI PSP), although this also applies to Payment Initiation Service Providers (PISP).

Security issues

Strong customer authentication (SCA) has been one of the successes of PSD2 from a fraud perspective, as highlighted by the EBA's technical advice on the review of PSD2, where it states that: "for remote card payments reported by issuers, the share of fraud in total volume is five times higher for payments authenticated without SCA compared to the payments authenticated with SCA, and three times in terms of value".¹ Nevertheless SCA is not a panacea for all types of fraud since, at the same time, social engineering practices are on the increase where customers are tricked into performing a valid SCA authentication. The evolution of fraud techniques therefore requires a review of the liability regime, in particular in terms of including all service providers along a value chain to facilitate an efficient data-driven financial market in the EU.

Therefore, it is essential for the future Open Finance framework to take these learnings into account and set clear authentication rules, as well as establish a suitable liability regime that incentivises financial and non-financial parties involved in a service to develop highly secure procedures and services.

Conclusion

The lessons learned from PSD2, in terms of the asymmetry in data access, misaligned incentives and the unbalanced liability regime, as well as the constantly evolving nature of the market must be taken into consideration for future legislation on open finance, where a focus on defining principles and outcomes should prevail over prescribing specific solutions that have proven to become ineffective and technically obsolete at a rapid pace.

If designed with the right framework, data sharing has the potential to positively impact both consumers and the financial services industry. However, given the experience with PSD2, EFR calls for the future Open Finance framework to follow a different approach and ensure that these lessons are taken into account.

¹ EBA Opinion of the European Banking Authority on its technical advice on the review of Directive (EU) 2015/2366 on payment services in the internal market (PSD2), 23 June 2022, page 2

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