

■ POSITION PAPER

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SUBJECT: Open Finance Framework

Dutch pension funds' view on pension data availability in line with the Open Finance Framework

The Dutch Federation of Pension Funds welcomes the European Commission's work on the Open Finance Framework.

Pension-related data make up an important part of an individual's financial situation. Pension data sharing could help pension fund participants in obtaining a holistic overview of pension entitlements and personal wealth. As most participants are mandatorily enrolled in a certain pension scheme, Dutch pension funds have a heightened duty of care to share participants' personal data upon request. By receiving financial data, pension funds could provide better services to participants and assist them in making better-informed financial choices, for example concerning lump-sum withdrawal of pension entitlements. The Dutch Federation of Pension Funds supports the objectives of the EU's Open Finance initiative, provided safeguards are put in place.

Second pillar occupational pension funds are not typical financial market participants. They are non-profit organizations governed by social partners providing social security. Strict regulation restricts pension funds from giving financial advice. Nor are pension funds allowed to offer additional products on the basis of incoming open finance data. Because of minimum harmonization of legislation, there is a wide diversity of pension systems built on national social, labor and tax law, which makes data hard to interpret and compare.

Voluntary pension data sharing already exists in national and EU pension tracking services, which give an overview of pension entitlements for different pension pillars. ***Pension data sharing in the open finance framework should build on pension tracking services by allowing their sub-sector data standards and data sharing through intermediaries.***

The complexities and specificities of the pension sector mean the open finance framework needs to put certain safeguards in place. In short: fair compensation for data holders is needed. To maintain trust, data users should be licensed, under financial supervision and held to high communication standards. Considering the sensitivity of data, consumers should give explicit consent and only data that are necessary for a certain use case should be shared.

A phased approach: from sector to cross-sector and from national to cross-border data sharing

We agree with the vision of a cross-sector, cross-border open finance framework. It is best achieved in a controlled manner, where data is opened with a purpose. We suggest taking a phased approach, from sector level to cross-sector data sharing; and from national to cross-border data sharing.

Most employees in a certain industry mandatorily participate in the industry pension funds, by which there is low competition between pension funds. Likewise, because of minimum policy harmonization, there is not a lot of cross-border competition. In this context, there is a high degree of cooperation between pension stakeholders to exchange data voluntarily. As a result, market failures of voluntary data sharing are not apparent in the pension sector.

Pension tracking tools provide citizens with a comprehensive overview of pension entitlements and retirement income. A [European Tracking Service \(ETS\) on Pensions](#) is under construction. It takes a stakeholder-driven approach to implement voluntary cross-border data sharing on a sectoral level. The EU co-financed the ETS pilot project that was completed in 2022; from 2023 the tracking service will be rolled out.

Several Member States have already developed pension tracking tools that enable clients to get a comprehensive overview of future financial needs. The Dutch pension tracking tool mijnpensioenoverzicht.nl makes pension data available to pension participants in an integral manner. A major advantage of pension trackers over the open finance framework is that it includes first pillar pensions, which most likely have no place in the open finance framework.

In developing a broader personal wealth information use case, the open finance framework should complement what exists and works well in the market today. It would be a waste to pay high costs for replacing existing APIs. That also means giving the sector time to fully develop their tracking services.

We believe industry stakeholders are best placed to develop standards for APIs. That means standards should be set at the sub-sector level. Whereas standardization of payment services under the PSD2 is relatively simple and unintrusive, standardization is much harder for the heterogeneous pension products. In order for the open finance initiative to work, we agree a certain level of standardization will be necessary. Just as well, we support a requirement for mandatory data sharing, to ensure the participation of all parties involved.

Allow for sector-level cooperation

Pension tracking tools are currently managed by pension tracking services. They are developed on the basis of sector level cooperation and cost-sharing, which benefits pension participants. A trustworthy intermediary party ensures data access management and data protection. We suggest indirect data sharing should remain possible in an open finance framework. Pensions tracking services could act as access platforms that access and integrate data.

We see a potential for contractual schemes to allow pension institutions to cooperate more effectively. They allow for cost-pooling arrangements for building basic technologic infrastructure that would otherwise have to be paid and built individually. That would be in the customer's interest.

Fair compensation

Dutch pension funds are non-profit foundations by law. That means that all operating expenses are subtracted from the communal pension pot. Other than in PSD2 regulation of service providers, pension customers would directly bear the costs of open finance data sharing. It would be unfair if the costs of data sharing of an individual pension fund participant would be borne by the pension fund participants collectively. We should also avoid a situation in which the pension fund participant pays twice, through both the data holder and data user.

We believe fair compensation should cover the costs involved in setting up and maintaining the required infrastructure and pursuant data requests. Third parties should be able to develop commercial products, but not at the expense of the pension participant. Principles introduced in the proposed Data Act should be followed that require compensation for the costs of granting access to data and the prevention of any negative impact on data holder's business opportunities. Fair compensation could further incentivize the exchange of high quality data and secure data sharing.

Who to share with? Ensuring a level playing field

Customers should enjoy the same level of protection for each party that holds their financial data. Open finance data should therefore only be shared with parties that are fully under (financial) consumer protection regulation (e.g. IDD, MiFID, GDPR, DORA), without regard for proportionality, regardless of whether they are an incumbent financial institution, BigTech or start-up. As advised by both the Expert Group on Regulatory Obstacles to Financial Innovation ([recommendation 13](#)) and the Expert Group on European financial data space ([paragraph 8.2](#)), financial regulation must ensure that all market participants carrying out the same activity and creating the same risks are subject to the same standards in relation to consumer protection and operational resilience. Consequently, financial data users should be under financial supervision.

Considering the sensitivity of financial data, we think it would be best for the general acceptance of the open finance framework to create a license and a public list of users that are allowed access to APIs. Data users should be held to fair standards for competition and data access. Data reciprocity, symmetry and portability should hence be safeguarded to avoid that some actors make data accessible while others solely receive data.

The purpose of open finance should be to create complementary services and products. Independent intermediaries are best able to provide such services, competing providers are not. We would like to avoid a situation where a couple of firms benefit disproportionately. BigTech should be avoided from creating

data monopolies. In line with the Data Act proposal, gate keepers – as defined by the Digital Markets Act – should not be able to receive open finance data.

How to share? Data security is essential

Consumer trust and confidence is a key condition for open finance to succeed. It requires a high level of data security and strong attention to privacy concerns. Digital ethics should be enshrined in legislation and applicable to all players.

Data sharing starts with authorization. The open finance initiative departs from the principle that financial service customers (the data subjects) own and control the data they supply and the data created on their behalf. It follows that only the data subject should be able to initiate a request for data utilization. Extending this right to data users departs from this principle and would create risks of mass data extraction from data holders.

We envisage that a legal framework for authorization of data sharing starts with customer consent on the side of the data subject. PSD2 Article 94 (2) offers an appropriate framework, in which data subjects must be made fully aware of what the data is shared with whom, the specific categories of personal data that will be processed and the specific purpose for which their personal data will be processed.

The data subject should be in control. That means keeping control over what type of data is being shared; tracking and controlling consent, including the ability to withdraw, erase or rectify it at any time; and tracking who has access to the data and how it can be used. The expiration and extension of consent should be designed in a user-friendly way. To avoid data from being held and used unnecessarily – with risks of data leaks and misuse at the part of the data holder – consent should expire after a certain period of time, meaning the data subject periodically reaffirms consent. To prevent customers from losing access to their data once consent expires, extension must take place in a timely fashion.

An Open Finance Framework would need a fully functioning electronic identification and authentication mechanism that works across all member states and sectors. The European Tracking Service on Pensions uses a ‘circle of trust’ model for identification. This works within the context of a limited amount of national pension tracking services sharing data, but cannot be relied on when moving beyond sector-level data sharing. Going forward, data holders should not be forced to trust the identity and access management of the third party requesting data access. eIDAS should become the norm.

Once consent is given, the data holder would have a legal obligation to share data with the data user. The data holder and data user would consequently enter into a contractual relationship. Within this contract, the data user is responsible for a secure and trusted service. It also has a duty of care over the data subject, who is the least knowledgeable party in the contract. The data holder would have limited agency, as open finance legislation would give a legal obligation to share data. Liability should therefore predominantly lie with the

data user. Open finance legislation should have teeth, by imposing a fine on data users in case of malpractices. Data holder's liability for providing wrong data should be maximized to a limited amount of money. They should have no liability over how data is shared and what happens after sharing.

What to share? Depart from use cases

The combination of datasets from multiple sources, may ultimately expose data subjects far beyond their immediate perceived and intended exposure. To minimize risks to privacy and to maintain trust in the financial sector and open finance, privacy risks should be minimized within the regulatory framework. The decision of what data to share should be based on what is needed for a certain use case. As required by the principle of purpose limitation, personal data must be collected for specified, explicit and legitimate purposes (Article 5.1 b of the GDPR). Use cases should be clearly and specifically identified.

The rationale for open finance is delivering useful products and services to customers, not to enhance customer profiling or treating financial data as commons. Therefore, data altruism consent should not be used for open finance.

We think sectors should get an opportunity to design data sharing frameworks themselves, including customer data field lists, before sharing with parties beyond the pension sector. This approach is appropriate to address implementation costs and potential privacy issues. For example, in the Netherlands, pension funds do not just hold financial data, but also personal data from a government database. The sensitivity of data should be taken into account when determining its accessibility and place in the Open Finance Framework. According to GDPR Article 9 explicit consent is warranted for sensitive data.

A list of customer data fields could be published to determine the necessary data for a certain use case. For consumer protection reasons, the list should not go beyond the one-to-one approach taken in GDPR Article 15. Data holders should not be obliged to publish data fields that are unnecessary for open finance use cases.

To promote data protection and transparency, we recommend clearly delineating the categories and sources of personal data that should and should not be processed. A data perimeter minimizes the risk of data misuse by creating a controlled environment of what data is safe to use for a specific use case. Experience from the European Tracking Service shows the pension sector is able to define a data perimeter and sub-sectoral data standards. A higher level of standardization should only be used for core data fields such as for authentication and identification management.

In accordance with the principle of data minimization of GDPR Article 25, a data perimeter should not legitimize the use of more data than is necessary. Data sharing should be limited to existing data; pension funds should not be obliged

to gather and keep supplementary data. Likewise, sharing should be limited to raw data, so that pension funds do not have to do additional processing.

We plead for a transparent way of establishing and communicating standards for data definitions. Methodologies for data identification and aggregation should make it easy for both data subjects and holders to track who has access to what data.

How to use data? Interpretation and communication can be complex

Keeping pension participants informed on their pension accruals is challenging: information is complex. To advise participants, one needs deep knowledge of relevant national legal, fiscal and accounting standards; and to be able to communicate pension information correctly. Furthermore, European pension systems are heterogeneous: various forms of Defined Benefit and Defined Contribution systems exist, alongside first pillar state sponsored pensions systems and third pillar pension saving and insurance products. Comparing pension entitlements therefore requires making assumptions and accounting for many risks.

Pension funds are subject to minimum communication requirements under the IORP-II Directive. In the Netherlands, pension institutions collaborate in the national pension tracking service mijnpensioenoverzicht.nl not only to give participants a more holistic pension overview, but also to communicate about their pensions more effectively. The European Tracking Service on Pensions is crucial for citizens and participants to understand different national pension systems and obtain an overview of pensions entitlements across Member States. We believe that it is adamant to subject data users to the same communication requirements, in order to avoid bad advice and misselling.

Pension schemes are also hard to compare with other financial products. Investment risks are often mitigated by employer sponsor guarantees, state guarantees or solidarity mechanisms between pension fund participants. Most Dutch pension schemes offer insurances next to investment returns in the form of incapacity and survivor's benefits. Because of these complexities, we recommend against the use of open pension data in creating personal risk profiles. Open finance data users should also face requirements to adequately advise on pension products when comparing financial products.