



# Towards data-driven **digital finance**

Options for an Open Finance framework



The Dutch Banking Association (the NVB) represents the collective interests of the Dutch and non-Dutch banks operating in the Netherlands. This document is intended for all those interested in Open Finance and the perspective of the banks on this issue.

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# Summary



The Dutch Banking Association (the NVB) considers that data access and sharing of personal data between businesses – on the initiative of and with the explicit approval of the consumer – can and must be structured in a standardised and transparent manner. This will ensure a competitive ecosystem for data-driven products and services for consumers.

The NVB considers that there needs to be a good balance between the various participants in the data economy – the data users and owners. This requires a new legal framework for access to and sharing of personal data, that gives individuals more control of their data that are managed by businesses and the government (the data users). For this, there will need to be a 'Data Services Regulation', so that data can be reused with the consumer's approval. This would have to bring about Open Data within and between different sectors.

The data economy is an essential element in innovative products and services, and is important for future business models in the Netherlands and Europe. The importance of this is widely recognised. It has also led to new policy initiatives by both the European Commission and the Dutch government, including a European data strategy and the Dutch government's view on data sharing between companies.

Open Finance is an important element in the Open Data debate. In the recent Fintech Action Plan<sup>1</sup>, the Minister of Finance announced that he wished to formulate a position on the European Digital Finance Strategy. Open Finance is a part of this strategy, and could lead to additional EU regulation for Open Finance. In addition, the Data Governance Act creates a Finance dataspace. As part of its PSD2 review<sup>2</sup>, the European Commission will consider an expansion of the scope. The ambition is to introduce an Open Finance framework in 2024. A proposal for a regulatory framework will follow in the summer of 2022.

The Dutch banks want to actively contribute to the formulation of this initiative. The sector is accordingly putting forward some proposals for how we believe Open Data and Open Finance can be created in a European context. We hope this will contribute to the debate on Open Data and Open Finance in both the Netherlands and Europe in the coming period.

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1 <https://www.rijksoverheid.nl/documenten/kamerstukken/2020/07/03/fintech-actieplan>  
2 <https://www.rijksoverheid.nl/onderwerpen/financiele-sector/nieuwe-wetgeving-voor-betalingsverkeer-psd2>

## Our key recommendations

- Create a broad and horizontal framework for Open Data.
- Focus the scope of new proposals for financial services in Open Finance on the entire financial sector.
- For the creation of Open Finance, choose minimal legislation for the scope and access to data, and use market operation as far as possible for the actual structure of data exchange.
- Create a level playing field between the various actors.
- Do not increase mandatory data sharing for the financial sector unless this is extended to other sectors as well.
- Restrict Open Finance to natural persons, in line with the GDPR.

In this position paper we describe how Open Finance can contribute to innovative financial services and the practical advantages for customers. We also look in more detail at the lessons learned from PSD2 and list the advantages and disadvantages of this approach.

# 1 Open Finance



**The strategic importance of data in the digital economy is increasing. Access to data and sharing of data are important for the economy – in both the Netherlands and Europe. Both the European Commission and the Dutch government recognise the importance of this issue. Generally speaking, data use leads to new services, and also improvements to existing services and products for consumers and businesses.**

Data use, including the use of artificial intelligence, leads to further enhancement and personalisation of products and services and also to more efficient business operation. To be able to use these benefits, widespread availability of large and diverse datasets is needed. Not only the sharing of non-personal datasets, but especially also the voluntary sharing of personal data by the data owners has an important part to play. The NVB therefore also supports the wider concept of Open Data.<sup>3</sup>

The concept in which consumers have access to their financial data and, with their permission, can share their data with third parties within financial services – what is known as ‘Open Finance’ – is a derivative of the Open Data concept. This has been the subject of consideration for some time already. A first step has been taken with the introduction of PSD2; consumers were given the means to easily access their payment data and share these data with other regulated parties. The debate on the development of an Open Finance framework has once again come to the forefront, as part of the European data strategy and the Digital Finance strategy.

In the public discussion, the terms Open Banking and Open Finance are sometimes used interchangeably. Open Finance concerns more products and services than are currently in scope for PSD2. This covers payment initiation and – most relevantly – the payment transaction data. Open Finance also goes further than Open Banking. Open Banking concerns only digital banking services, such as savings, loans, mortgages and investments.

Open Finance can – subject to adequate safeguards and if desired by the consumer – deliver significant benefits for the financial welfare of consumers. Combining financial data can provide better insight into the financial position of customers. This will enable new financial services, such as more personalised financial advice and personalised financial planning. A better understanding of a consumer’s financial housekeeping will, for example, make it possible for them to purchase better and cheaper financial services. This may be through comparing charges, avoiding over or under insurance, or comparing different banking, insurance and investment products for the same financial goal, such as an important life event like retirement.

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<sup>3</sup> <https://www.nvb.nl/nieuws/banken-pleiten-voor-balans-tussen-eigenaar-en-gebruiker-van-data/>

By data sharing in the context of Open Finance, we mean the horizontal operation of data sharing, based on consent-driven data sharing by consumers, for which the legal basis is established in the General Data Protection Regulation (GDPR). Data sharing will therefore always be demand-driven: consumers that wish to share their data must be able to have confidence that their data are secure and their privacy is safeguarded. This excludes data sharing in the vertical financial value chain, such as outsourcing to partners and suppliers of financial services providers.

*In general, Open Finance concerns the financial data of consumers at all regulated financial services providers: banks and non-banks such as payment institutions, investment firms, insurance companies and pension funds.*

## 2 A European approach to ‘Open Finance’

- ● Open Finance as an opportunity for better financial services

The increasing digitalisation of financial services – in which respect the Dutch financial sector is among the leaders in Europe – enables usage of the possibilities presented by Open Finance. Further development of Open Finance is first of all in the interests of customers, both consumers and businesses. There is clearly a public interest in the use and reuse of data, both private and public data. For these reasons, the Dutch banks support the principle of Open Finance, and of Open Data in the broad sense.

Various Open Finance initiatives exist around the world. While in the United States and Canada this development is mainly market-driven, Europe and also Australia for example are choosing more government-driven initiatives in data access and data sharing. A good example is the way in which the GDPR and PSD2 came into being.

As part of the European Digital Finance Strategy<sup>4</sup>, the European Commission is considering additional initiatives for the formulation of Open Finance. This ambition is also part of the European Data Strategy, for which the European Commission has recently presented the Data Governance Act. The principle here is that the data owners retain full control of their data. Besides the opportunities for innovative financial services, the European Commission also recognises explicit risks, such as privacy risks, misuse of data and the absence of a level playing field.

The Dutch banks emphasise that Open Finance can be an important driver of innovation, leading to better, more personal and possibly cheaper financial services for customers. This however depends on follow-up steps related to data access and data sharing being taken at European level. In addition, a level playing field will only be possible by creating the necessary conditions for Open Data, whereby all sectors – not only the financial sector – make it possible for their customers to share data in a uniform and convenient manner.

4 [https://ec.europa.eu/info/publications/200924-digital-finance-proposals\\_en](https://ec.europa.eu/info/publications/200924-digital-finance-proposals_en)



We are living in a digital world where remote access to a wider spectrum of online financial and other services is possible. In this world, it is also essential that both parties to a transaction can identify each other easily and reliably. Confidence that someone is who they say they are is a basic requirement for all such transactions. The legal certainty offered by digital identity and the Trust Services under eIDAS (such as e-signature and virtual time stamps) is a crucial and essential condition for the development of an Open Finance framework.

*The Dutch banks emphasise that Open Finance can be an important driver of innovation, leading to better, more personal and possibly cheaper financial services for customers.*

## ● ● How to realise Open Finance?

There are currently at least two important regulatory bases for data sharing in the financial sector as foreseen in Open Finance: PSD2 and the GDPR. The regulations for processing personal data are established in the GDPR, which includes the right to transfer data (data portability). PSD2 offers the possibility of standardised sharing of payment and current account data in real time by means of APIs.

It is tempting to build on the PSD2 framework when designing new initiatives in the financial sector. However, there are two fundamental objections to this. A horizontal issue such as data access and sharing is now still included in specific payments legislation, the Payment Services Directive. For Open Finance, this would mean a derivative of PSD2 would have to be included in much other financial legislation, such as the Consumer Credit Directive, the Mortgage Credit Directive, MiFID2, etc. This entails a risk of far-reaching fragmentation and an extremely complex legislative process. This is why the realisation of a horizontal European Data Regulation is important, as part of the European Data Act that has been announced.

Secondly, PSD2 currently focuses on specific market participants. This creates an unequal playing field in the broader financial ecosystem. The sharing of payments data is currently focused only on the banks. Not all parties are obliged to share payment data within the financial sector in the same way.

Open Finance should also not be developed asymmetrically compared to other sectors. The sector borders within the financial sector are becoming blurred as a result of digitalisation. Non-bank parties such as the Big Techs are becoming increasingly active in financial services. While there is no progress on Open Data sharing, no specific subsequent steps in Open Finance should be taken, in order to prevent an unequal playing field between traditional and non-traditional service providers.

In the current design of PSD2, the data owner is not sufficiently prioritised. The system developed means that the data owner does not have sufficient control of his data, concerning either access (the granting and withdrawal of permission) or sharing (gone means gone, the right to be forgotten). The removal of friction has taken priority over the consumers' ability to monitor and control its data. These are two key terms that are given central priority in the GDPR. The NVB considers that wider sharing of data under Open Data – and therefore also Open Finance – should be based on the best of PSD2 (standardised real-time access) combined with the best of the GDPR (data protection, privacy and horizontal in scope).

PSD2 and the GDPR can certainly serve as examples for future data access and data sharing, but they also have important differences that need to be addressed in the design of a future system:

- Data portability in the GDPR is restricted to individuals, while PSD2 also covers business customers.
- The GDPR does not include any standardised access to data, while PSD2 has specific agreements on data fields and technical standards (APIs).
- Under the GDPR, data portability online and in real time is not mandatory. This will usually be essential for innovative applications and increasing competition – something that is possible under PSD2.
- PSD2 does not allow for the consumer to retain sufficient control of data after permission has been granted. This does not contribute to a feeling of control over one's own data.
- Some data privacy rights are specified in sectoral legislation, in addition to broader cross-sector privacy legislation. This creates fragmentation and inconsistency within the EU legal framework.
- Banking supervision is very comprehensive compared to oversight of non-banking sectors. As a consequence data management by banks is relatively professionally structured.
- Convergence of European supervision is an important requirement for a more harmonised framework, but is frequently still structured nationally.

### PSD2 is not the right starting point for Open Finance

The current thinking on data access and data sharing usually turns to PSD2. But for wider forms of data sharing, PSD2 is not the right starting point, in the opinion of the NVB; this needs to be based on the GDPR, and more specifically, on Article 20 of the GDPR.

The underlying principle of PSD2 can also be used, with sharing of a minimum mandatory dataset per sector (for example, telecommunications companies and energy companies, but also digital platforms) – with the customer's permission.

Nonetheless, the Dutch banks also believe that subsequent steps towards Open Finance are indeed possible. If the customer's data rights in the GDPR are taken as the starting point, the development towards Open Finance – and more importantly, towards Open Data – can proceed through a combination of a uniform European legislative framework and voluntary implementation.

Minimal legislation on products and services in scope in each sector would then be needed. The NVB believes that for the scope of Open Finance to be clear, the government must first declare that the entire financial sector is in scope. In other words, any party offering financial services and/or advice.

The government should then declare which products and datasets are included in mandatory data sharing in a standardised manner. A situation in which consideration is given to each type of institution or sector should be avoided, as this would lead to an unequal playing field. This would also increase the risk that the large tech companies such as the bigtechs would acquire even greater data power.

The customer must be explicitly designated as the starting point. A customer looking for financial services does not search for one single provider or a specific product, they are looking for a financial solution. Take for instance the financing of a new home. It is in the interest of the customer that all mortgage providers are involved on an equal basis. This is why it is not useful to base the consideration on one type of institution, as instead the activity should be the leading consideration.

In addition, account needs to be taken of the interests of all parties. After all, data has a value in the data economy. Through data processing, businesses can enrich these data and thereby add value. This could for instance involve risk assessments or insight into a customer's financial position. This means that 'raw' data should also be in scope for an Open Finance framework. On this basis, each service provider can create added value for the customer.

The means of actual data exchange will have to be determined by the market. The creation of the underlying infrastructure would in our view be best achieved on a voluntary basis. Market operation in the formulation of a trust framework for instance would provide the best guarantee of efficient data exchange at the lowest cost. A trust framework would also offer the best guarantee of the necessary market standards. One clear lesson learned from PSD2 concerns the importance of standardisation, the use of standardised APIs and the need for clear requirements.

*The banks argue for minimal legislation in the determination of scope, maximum market operation in implementation.*

## ● ● Distinguish between consumers and businesses

Although Open Finance offers benefits for both consumers and businesses, the focus of new initiatives should be solely on consumers for the time being. The choice of the principles of the GDPR as the basis for data portability also affects the scope of Open Finance. The GDPR covers only natural persons. Since an amendment to the GDPR is not currently an expedient option, the NVB contends that Open Finance should apply solely to natural persons. The regulation should be restricted to business-to-consumer (B2C) products (natural persons). For B2B products, bilateral agreements between legal entities should be leading.

There are however instances in which such agreements cannot be made voluntarily, or at any rate not adequately. The portability of data by businesses from one platform to another, such as ratings and rankings, is a good example of this. This issue is already part of the ongoing discussions in relation to the Digital Services Act and should therefore remain out of scope for Open Finance.

Small business users could also benefit from Open Finance, but there are obvious obstacles here. A similar discussion of the scope of PSD2 led to huge complexity in implementation. One major reason for this is that there are various definitions of legal entities within Europe. In the interests of feasibility, the NVB argues that the scope should be limited to natural persons.

## Policy recommendations for Open Finance

- \* **Develop Open Finance within a wider framework for Open Data**  
based on the already existing right of data portability in Article 20 GDPR.  
Provide technical support for the access to and sharing of financial and non-financial data with third parties on the initiative of the consumer. This will apply the lessons of PSD2, but PSD2 cannot be used for Open Data and Open Finance in its current form.
- **Provide clarity and European harmonisation in relation to the (re)use of personal data in legislation and regulation as in the GDPR**  
In addition to their existing right to data portability, ensure that consumers have the means to exercise this right without parties erecting barriers. This would need to be established in a European Data Act.
- **First widen to include the entire sector, and then go into more depth for each product**  
First of all, widen the concept of Open Finance to include all financial and other parties that manage financial data, including the bigtechs. Then determine which products and services should be in scope for all the parties involved. A limited focus on the banks will lead to an unequal playing field in a sector where sector boundaries are becoming increasingly blurred.
- **Limit legal initiatives to a minimum**  
But determine for each sector which data are in scope for data portability.
- **Allow maximum market operation in the realisation of the necessary infrastructure**  
Make use of trust frameworks (schemes) for efficient data exchange. The SEPA API Access Scheme, for example, offers a good basis for this. In this type of scheme, agreements can be made on standards, governance, interoperability requirements, the business model, the giving of consent and requirements in relation to availability and security.
- **Create a level playing field between the various actors**  
Ensure that there is a fair model in which all parties can benefit and offer new services. Avoid the current asymmetry, in which the banks as ASPSPs (Account Servicing Payment Service Providers) are obliged to share data, but on the other hand are not allowed to make use of data held by these parties.

# 3 Trust framework



**There are several public and private models that could be used for the provision of Open Finance services. The NVB considers that the most efficient means can be established between market parties. This would have to involve both providers and users. Existing trust frameworks in payments infrastructure – known as schemes – could serve as an example.**

In a scheme, market parties make agreements on contractual relationships/business model, governance and the use of standards for efficient and secure implementation. The proposals from the Euro Retail Payments Board (ERPB) within the Working Group on the SEPA API Access Scheme form a starting point for such a scheme for Open Finance.

The principle has to be that the legislation provides incentives for market parties to conclude such agreements. In addition to mandatory legal minimum requirements, schemes featuring objective ‘adherence criteria’ offer the desired mechanism for giving parties conditional access.

## The building blocks of a scheme

- A trust framework for affiliated third parties.
- Requirements for interoperability and standardisation, such as an API framework.
- Set-up of scheme owner organisation, for governance, adherence criteria, standards, business rules, documentation, stakeholder communication, promotion, fraud prevention and dealing with complaints.
- Room for a business model with (mutual) remuneration.
- Consent (authentication/authorisation/verification) mechanisms that give users control of their data and an overview of consents granted – with the possibility of amendment or withdrawal.
- Availability requirements (near real-time, uptime) and security of online access. In addition, leaving room for supplementary bilateral agreements between business users.

## 4 The opportunities and risks of Open Finance

### ● ● Use cases Open Data & Open Finance

As stated above, better access to data leads to better service for customers. To create a complete financial overview and insight, access to and sharing of financial data must apply to all financial services providers. The banks see sufficient use cases for the use of Open Data. But there may also be new applications in the future that are not yet envisaged.

### ● ● A non-exhaustive overview of applications



#### **Personal Financial Management (PFM)**

Currently, better insight and overview can be obtained on the basis of payment data. Open Finance can provide a more complete picture of the financial household. This will enable customers to have more control of their financial well-being, make better financial decisions and have a good overview of their financial situation, now and in the future.



#### **Pension and provision for retirement**

Too few Dutch people have a good awareness of the provisions for their retirement. For many years, efforts have been made to raise the public's awareness of pensions. The website [mijnpensioenoverzicht.nl](https://mijnpensioenoverzicht.nl) was an important step, as it gives consumers a complete overview of their various pension products. Open Finance would further enrich this information into a complete financial overview, also creating a perspective for action.



#### **Non-life insurance**

Many consumers are well insured, over insured in some cases. Certainly when insurance products are purchased from several providers, there is a risk that the consumer will be over or under insured. Open Finance can provide better insight into insurance products, the cover they provide and the costs.



#### **Digital identity and remote customer intake**

Open Finance can increase the efficiency of verification of customers in the know-your-customer process. By combining simple transfer of data with the possibility of remote identification, a customer can easily move to a different provider.



### Mortgages

For most Dutch people, the purchase and financing of a home is one of the most important financial decisions in their lives. Securing a mortgage involves many aspects of financial services: the use of data could simplify many of the processes involved. In addition, improved access to data will give greater insight and overview of affordability in the short term (the monthly costs), and also in the long term (capital accumulation).



### Debt problems and overindebtedness

Overview and insight are important for preventing debt problems and providing assistance when they occur. Open Finance can offer an accessible way for consumers to obtain an overall impression of multiple providers. By combining information with payment data, a consumer can get more control over their income and expenses.

## ● ● Impact on financial services and the sector

Despite the innovations that access to and sharing of data via Open Finance will facilitate, this will also lead to an entirely new dynamic in financial services. Open Finance will accelerate the development of data-driven business models and the arrival of new players in the market. Furthermore, the role of various financial services providers in the value chain will continue to change. For initiatives in relation to Open Finance a thorough consideration of what the desirable frameworks for innovation should look like would be needed.

### **New players and concentration**

In the data economy, large technological platforms are becoming increasingly data-powerful. Open Finance will make even more data available to them. The combination of financial and non-financial data will further increase their dominance as gatekeepers, certainly if they do not share data on an equal basis. The development of many of the use cases cited requires large investments, for instance in the customer experience and data analysis, but also in data security. The Big Techs will want to keep customer contacts to themselves, also because their business model is based on the customer data and not so much on financial services.

### **Duty of care**

With Open Finance, platforms will increasingly position themselves between customers and financial services providers. They will take the intermediary role that is currently offered by traditional parties. The duty of care that currently rests on the banks will be transferred to these platforms, as the overall profile of the customer will no longer be available to the providers of financial products.



**An unequal playing field**

Providers of these services should compete with the incumbents, the established parties, in a level playing field. The principle of 'same services, same risks, same rules and same supervision' should apply to all market parties.

**Financial stability**

The automation of financial decisions could have a negative effect on financial stability. For instance, automated transfers between savings accounts on the basis of interest payments could create high volatility.

**Operational resilience and cyber security**

As has already become evident with PSD2, Open Finance will also lead to further fragmentation of the value chain. This also raises new risks in relation to operational resilience and cyber security. Agreements on standardisation will be needed to mitigate these risks. There will also need to be as much use of Application Programming Interfaces (APIs) as possible.

**Public support & privacy**

Given the increasing role of data in public life, there will also need to be sufficient support for the application of these data in new propositions. The further expansion of data access and data sharing is very much a political decision; it is only possible with the support of the data owners (the public). Clearly, any next step towards Open Data has to provide the necessary safeguards with respect to privacy, data protection and control by data owners of their data.



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