



Association Européenne des Institutions Paritaires
European Association of Paritarian Institutions

Open Finance Framework

AEIP Position Paper

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European Association of Paritarian Institutions (AEIP)

Opening statement

On 24 September 2020, the European Commission adopted a [digital finance package](#) to support the EU's ambition for a recovery that embraces the digital transition and builds a competitive EU financial sector that gives consumers access to innovative financial products, while ensuring consumer protection and financial stability. To accelerate its work on digital finance the Commission aims to publish a proposal on open finance in the second quarter of 2023. The purpose of an 'open finance framework' is to allow data to be shared and re-used by financial institutions for creating new services, provided that customers agree to it and subject to data protection rules and clear security safeguards¹.

AEIP welcomes the initiative on open finance framework and wishes to make the following observations in relation to pension funds.

Scope of the framework should be clearly defined

It still remains **unclear whether the Commission's proposal will bring into scope the entire financial sector irrespective of legal personality, including occupational pension funds**. AEIP stresses that **second pillar pension funds are inherently different from other financial market entities**. This stems from the fact that they are not-for-profit, they play an important social role in adequate social protection, they do not have any shareholders and, most importantly, they do not sell any products, since employees mainly benefit from mandatory affiliation to the occupational pension scheme based on their employment relationship, and are not customers.

The Expert Group on European financial data space in its [report on Open Finance](#) also considered the use of statutory pension and social security data. Second pillar pensions are supplementary to first pillar pensions. Combining financial information on second pillar pension plans with other financial products, without including information on first pillar or third pillar pension plans gives individuals a **misleading picture** on their financial situation. Yet, it should be underlined that some of **AEIP members oppose the idea of including first pillar pension data in the scope of open finance** emphasising that it is imperative that the national legislation and discretion on use of first pillar statutory pension data is respected. Moreover, including **first pillar pension in the open finance framework is not possible on the legal basis** of Article 114 TFEU. It could be explored whether Member States could voluntarily share statutory pension data within the open finance framework. The absence of statutory pension data should be accounted for, by requiring third party data users that offer financial advice on the basis of occupational pension data, to point at the existence of statutory pension and where information on it can be found.

Open finance should build on existing pension tracking services

Voluntary, and in some Member States compulsory, pension data sharing already exists in national and EU pension tracking services, which give an overview of pension entitlements for different pension pillars. Several Member States have already developed pension tracking tools that enable beneficiaries to get a comprehensive overview of future financial needs. For instance, the Dutch pension tracking tool mijnpensioenoverzicht.nl or the Belgian tracking tool <https://www.mypension.be/fr> allow pension participants to check their pension record and how their pension grows. In Finland <https://www.tyoelake.fi/en/pension-record/> enables individuals to follow up on accrued statutory

¹ COM (2021), Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions: *Capital Markets Union – Delivering one year after the Action Plan*.

earnings-related pension benefits. At **European level** a [European Tracking Service \(ETS\) on Pensions](#) is being developed. The ETS takes a stakeholder-driven approach to implement voluntary cross-border pension-data sharing on a sectoral level.

EIOPA, in a report from December 2021², gives an overview of the differences in national pension tracking services. They provide digital personal information on one or more of the following: statutory, occupational and personal pensions. They use different methods for identification and authorization. The model can be based on either live access to data or central data storage. And they can be organized as a private entity, public-private partnership or a public entity.

Pension data in the open finance framework should build on these pension tracking services and use the information that is already available in these systems. The pension sector should be able to use a stakeholder driver approach to developing data standards, to ensure that it consider the specificities of the pension funds sector and differences between Member States. Also, the open finance framework should complement the existing practices in the market. Importantly, the open finance framework should recognise national approaches and procedures and **should not create an additional layer of regulation which might lead to excessive administrative costs for pension funds or statutory pension providers.**

Sharing data through pension tracking services makes it possible for pension funds to pool costs for setting up and maintaining data sharing infrastructure. Many European pension funds are very small and would not be able to carry such costs independently. Pension tracking services make it possible for them to participate in data sharing, so that a more complete pension overview can be provided. The open finance framework should therefore allow pension funds to share data through a third party. It should allow for such a third party, the pension tracking service, to be organized as a private entity, public-private partnership or a public entity.

The open finance framework should further respect national differences in ways to share data and allow for data to be updated periodically. Member States should be able to choose between a live access or central data storage model. Pension transactions are infrequent and highly expectable; pension premium payments and pay-outs are usually similar month by month. A delay in updating pension data should therefore be acceptable. To give two examples: Belgium uses a central data storage model, in which data are updated annually, or more often if specific events occur. The Netherlands uses a live access model, though pension providers data can be up to three months old. If open finance would require up-to-date data, the costs of setting up the required infrastructure in several countries would be unbearable for beneficiaries, as it would require a change of administration systems and all related data flows.

Data sharing and consumer protection

AEIP believes that any data exchange should always happen **based on legal obligations and should be duly justified.** Data sharing should be **limited to the specific purpose of processing as agreed with the data subject** based on the nature, scope, context and purposes of the data subject's agreement.³ Also, the decision of what **data to share should be based on what is needed for the certain use case and should respect the already applicable national rules** i.e. pension data that is already shared by pension funds to national tracking systems. The **data subject must remain in control of the data** they wish to share and be

² EIOPA Technical Advice on the Development of Pension Tracking Services, December 2021. See: https://www.eiopa.europa.eu/system/files/2021-12/technical_advice_pension_tracking_systems_for_publicationfinal.pdf

³ Terms as defined in the Report of the Expert Group on European financial data space (2022), *Report on Open Finance*, p.8-9.

able to keep track of who they have granted access to; including the ability to withdraw, erase or rectify it at any time. The expiration and extension of consent should be designed in a user-friendly manner and extension should take place in a timely manner to ensure that customers can have access to their data once consent expires.

To ensure a proper **legal framework for authorization of data sharing certain principles shall be taken into consideration such as customers' trust, confidence, and transparency**. In this regard, AEIP believes that PSD2 Article 94 (2) offers an appropriate framework, in which data subjects must be made fully aware of what data is shared with whom, the specific categories of personal data that will be processed and the specific purpose for which they will be processed.

Same activity creating the same risks should be regulated by the same rules

AEIP agrees with the **principle of same activity, same risks, same rules** mentioned in paragraph 8.3 of the [report on Open Finance](#) prepared by the Expert Group on European financial data space. Precisely, financial regulation must ensure that all market participants who carry out the same activity and create the same risks are subject to the **same standards in relation to consumer protection and operational resilience**. Open finance data should therefore only be shared with parties that are fully under (financial) consumer protection regulation (e.g. IDD, MiFID, GDPR, DORA) and without regard for proportionality. AEIP is in favor to **create a license with a supervisory criterion that would outline the conditions for access and the obligations to maintain access** for the data users. This can maintain a true level playing field between the market participants as mentioned in recommendation 13 of the European Commission's expert group on regulatory obstacles to financial innovation (ROFIEG) [recommendations](#).

The open finance framework should not introduce higher regulatory standards for pension funds in their capacity of data holders. Proportionality considerations could be brought in line with DORA.

API standardisation requirements

Standardisation of data and Application Programming Interfaces (APIs) are an important element to support open finance. The starting point to **develop standards for APIs is to engage with industry stakeholders (e.g. Pension Tracking Systems) to ensure that these standards are well aligned with specific national and industry standards and practices**. Whereas standardization of payment services under the PSD2 is relatively simple and unintrusive, standardization of the heterogeneous pension products is much more complex.

Liability should in principle lie with the data user

Open finance should be based on clear obligations and rights to determine liability with regards to accessing, processing, sharing and storing data. Overall, second pillar pension funds would mostly share data and not get access to data as they are restricted from offering financial advice and products. In practice, this means that once the data subject gives consent, the data holder (i.e. pension fund) would have a legal obligation to share data with the data user (i.e. financial information service provider). 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 impose a fine on data users in case of malpractices.

Data holder's liability for providing wrong data should be capped to a limited amount of money and should have no liability over how data is shared and what happens after sharing.

Fair compensation for data holders is needed

Pension funds are mainly 'not-for-profit' and in practice pension funds' accumulate capital with the **aim to offer pension to the employees of a company or a group of companies after retirement**. In this context, any **additional administrative costs due to data sharing could lead to lower future benefits or might give rise to higher costs for an individual pension fund participant**. AEIP underlines that a **fair compensation scheme should allow data holders to recover the costs involved** in setting up and maintaining the required infrastructure and pursuant data requests (e.g. collecting, generating preparing and sharing the data). Additionally, it is essential to maintain incentives for data holders to continue investing in high-quality data collection and processing. For example, a suggestion is to consider principles introduced with the proposed Data Act; i.e. compensation for the costs of granting access to data and the prevention of any negative impact on data holder's business opportunities.

Conclusion

We ask the decision-makers to consider the above points, in order to ensure the proper functioning of the pension funds and the protection of the interests of members and beneficiaries. AEIP looks forward to providing a pension funds' perspective throughout the whole process and calls the decision-makers to exchange with AEIP and pension funds to assess how potential future measures can best work in practice.

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AEIP Disclaimer



AEIP represents the European Paritarian Institutions of Social Protection in Brussels since 1997. The Association gathers 29 leading large and medium-sized social protection providers, which are managed on the basis of joint governance and equal representation by both employees and employers' organizations (the social partners) in 12 EU Member States.

AEIP represents its members' values and interests at the level of both European and international institutions. In particular, AEIP - through its working groups - deals with EU coordinated pension schemes and pension funds, healthcare, unemployment, provident and paid-holiday schemes.

Owing to the quality of its members and to the delegation of powers conferred to its Board, AEIP aims at becoming the leading body for the promotion of balanced paritarian social protection systems in Europe. AEIP promotes and develops programs and orientations aiming at the sustainability of paritarian social protection systems at local level taking into account the national specificities aiming at ensuring social cohesion in Europe.

Based thereon, AEIP prepares recommendations, proposes local programs and influences European decisions to safeguard and promote the interests of its members. AEIP thinks ahead and anticipate modern paritarian social protection systems that take into account changing economic and societal pattern. It furthermore seeks to find a new balance between and across generations.

For more information: www.aeip.net