
Inception Impact Assessment Response

European Commission's Roadmap for a *'Legislative Framework for the governance of common European data spaces'*

31 July 2020

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on the Inception Impact Assessment (referred to hereafter as the "Assessment") on a **LEGISLATIVE FRAMEWORK FOR THE GOVERNANCE OF COMMON EUROPEAN DATA SPACES**. AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors, and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia.

AFME is registered on the EU Transparency Register, registration number 65110063986-76.

Please find below our response to sections A, B and C of the Assessment published by the European Commission on 3 July 2020.

A. Context and Problem Definition

Context:

AFME welcomes the Commission's Assessment as a roadmap towards adopting a legislative framework for the governance of common European Data Spaces that promotes interoperability, competition, and cyber security.

We are supportive of this Assessment's objectives, as a component of the European Data Strategy, and we welcome the development of common European Data Spaces (CEDS), particularly to support greater cross-sectoral data sharing.¹ We believe that a successful European Data Strategy, and CEDS, must be cross-sectoral to bring benefits to all participants in the data economy. This should as a minimum include the key sectors identified within the Data Strategy, but also digital platform providers, to ensure a level playing field.

Both regulatory and non-regulatory data initiatives could support European financial institutions (FIs) to remain competitive, take advantage of new technologies and services, and further transform their business models.

To compliment and support CEDS, we believe that it should be easier for users to give access to their existing data, enhancing data portability so that users can better understand and effectively utilise their rights. This would also contribute to the further work that is required to improve processes around user's consent, such as improving controls to manage data use and access. A first step towards this should be taken through the forthcoming Data Act.

We also encourage the Commission to continue to assess how to extend this portability to firms, cross-sector, as well as use the opportunity to develop ex ante rules for large digital platforms, planned for the Digital Services Act,² to ensure that platform users have control over their data.

Problem the initiative aims to tackle:

We agree that technical barriers are a main obstacle to greater data sharing in Europe. We also believe that barriers relating to misaligned incentives should be added to the list of identified obstacles, as currently there may be instances

¹ [https://www.afme.eu/Portals/0/DispatchFeaturedImages/2020%2005%2029%20AFME%20EC%20European%20Strategy%20for%20Data%20response%20\(FINAL\)_CLEAN.pdf](https://www.afme.eu/Portals/0/DispatchFeaturedImages/2020%2005%2029%20AFME%20EC%20European%20Strategy%20for%20Data%20response%20(FINAL)_CLEAN.pdf)

² <https://ec.europa.eu/digital-single-market/en/digital-services-act-package>

where users wish to share their data held by an organisation (public or private), but they are unable to do so due to a lack of incentives for the organisation to facilitate this outcome.

Policy actions to improve interoperability and standards (such as standardisation of APIs) should be a priority. Incentives for greater data sharing require the process to be efficient, user-friendly, and to maintain users' confidence. Certain standard approaches can help ensure this is adhered to by all organisations. This could include, for example, maximum API response times, minimum API uptimes, and the removal of artificial barriers during the user journey.

We note that standardisation of data definitions will also be an important requirement to facilitate data sharing. European and national authorities can play an important coordination role by supporting the prioritisation of standardisation needs, their development, and updates and maintenance.

Considerations on the quality, processes, and management of data will be needed to support the objectives of CEDS. We request the Commission to consider, working with the industry, how minimum standards for data quality could also support their intention and objectives. In addition, we request ongoing discussion with the industry to provide further clarity and input as the framework for a financial services CEDS is progressed (e.g. objectives and use cases, governance and management procedures, infrastructure and location, breadth of access and usage, alignment to existing regulations, such as GDPR).

Finally, we also request the Commission to continue to address, as part of the CEDS objectives, data localisation restrictions across Member States, which act as a barrier to greater data sharing.

B. Objectives and Policy Options

Regarding the four objectives and policy options proposed by the Commission:

(i) Unlock data held by public sector bodies:

AFME agrees that mechanisms should be put in place to ensure individuals and organisations are able to share their data that is stored by public sector bodies. This could yield greater efficiencies (including potentially within the public sector itself) and allow for more effective reuse of data across private sector services.

Decisions around the sharing of public sector data must be transparent to preserve trust between parties (e.g. disclosure on the way data will be shared, how it may be changed or amended, and what data will be available). Any measures taken as part of CEDS must ensure that sensitive data, and any inadvertent disclosure, is appropriately governed.

(ii) To support individuals in making data available:

AFME agrees that it should be easier for users to give access to their existing data. Further, we support enhancing data portability to empower users to understand and effectively utilise their rights. This portability should ensure that data can be shared in a way that is simple, ongoing, real-time, standardised (via APIs), and secure. Data portability will have benefits beyond business use cases and will provide the mechanisms for individuals to make their data available for the common good.

A common consent form can help to overcome information and legal barriers facing firms and individuals; however, any approach should remain optional, not mandatory.

(iii) To tackle interoperability and standardisation needs:

AFME believes that European and national government bodies can play an important coordination role by supporting standardisation (e.g. the prioritisation of standardisation needs, their development, and updates and maintenance). Standards should be set by professional global or European standard setting organisations; however, these standards should also be clearly endorsed by EU government bodies to avoid market and regulatory fragmentation. Consideration as part of CEDS should also be given to how the relevant organisations, and standards, can help to enable improved data governance and quality.

As noted earlier, enhancing data portability can allow users to better understand and effectively utilise their rights and can complement the policy objectives for improved interoperability and standardisation.

(iv) To lower transaction costs in data sharing:

AFME believes that data intermediaries (e.g. data brokers) may play a useful role in enabling individuals or FIs to take greater control over their data and facilitate data sharing with other organisations. However, regulation should not prescribe a particular business model for intermediaries. Individuals and organisations should be able to share their data with or without intermediaries.

Regarding voluntary labelling and certification, we note that the awarding of a quality label introduces an element of market discipline. However, we request further detail on how a voluntary labelling or certification system would be useful to users or intermediaries, or how it would be presented. For instance, users would need an adequate explanation to understand why a data intermediary may or may not have a label applied, what this means in practice (e.g. use), and the value.

C. Preliminary Assessment of Expected Impacts

Likely environmental impacts:

AFME agrees that the creation of a “European Green deal data space” would allow wider and increased access to data that promotes sustainability objectives. A European Green Deal data space may support access to and sharing of data that is useful across several different sectors, including the financial sector. The financial sector could use relevant data to contribute to its role in helping investors and the wider economy meet their sustainability objectives (e.g. improved climate change related risk assessments, or the provision of green-loans). Further considerations on the quality, procedures, and management of European Green Deal space data is required to support the financial sector to achieve these outcomes and to use the data appropriately and to the maximum value.

Likely economic impacts:

AFME believes the benefits of an open data policy will be most prominent if implemented across sectors. A cross-sectoral approach would allow for increased data flows within and between sectors, leading to increased competition and data-driven innovation. This should include the key sectors identified in the Data Strategy, as well as digital platform providers.

We agree that standardisation would result in lowered technical costs for firms. There is a need to consolidate the different data types, standards and taxonomies that are in use in different sectors in the market today. We believe standardisation of APIs will be an important first step, as APIs are the preferred industry method for the transmission of data. They are secure, efficient and can provide access on a real-time and/or regular basis. Further, access can also be more easily revoked, where appropriate.

We believe this Assessment should also consider that a lack of robust cyber security measures from all participants in CEDS could result in negative economic impacts in cases of a data breach. Operational standards for data access should be put in place to ensure data can be seamlessly connected in a secure environment. This will be essential for creating trust between parties and encouraging greater data sharing.

We understand that CEDS as part of this initiative aim to support more voluntary data sharing. However, if other data sharing initiatives at the European level introduce new obligations that are not cross-sectoral, it could create risks to the level playing field. For example, if mandatory data sharing requirements are put in place for FIs (where PSD2 is already in place), without similar action across other sectors, this would further exacerbate an unlevel playing field in terms of data access and would be inconsistent with principle of ‘same activity creating the same risks should be regulated in the same way’ that is set out in the Commission’s Digital Finance Strategy consultation.³ In particular, some authorities^{4,5} have identified that the entry or expansion of large technology firms in financial services verticals, as open banking / open finance policies can play a catalysing role by accelerating entry into new business lines and opening up new risk vectors.

Likely impacts on simplification and/or administrative burden:

AFME agrees it is important to consider the potential impact on firms providing data sharing services, who may face additional administrative burdens in terms of certification or labelling. Before any such initiatives are made compulsory,

³ https://ec.europa.eu/info/consultations/finance-2020-digital-finance-strategy_en

⁴ FSB, <https://www.fsb.org/wp-content/uploads/P091219-1.pdf>

⁵ BIS, <https://www.bis.org/publ/arpdf/ar2019e3.htm>

the Commission should facilitate further engagement with the industry to determine how best to minimise administrative burdens. Any initiative should look to utilise existing frameworks and processes.

Consultation of stakeholders

We commend the Commission for the sectoral outreach it has conducted (including stakeholder workshops on data sharing during 2019, and the Digital Finance outreach during 2020). We encourage the Commission to continue engagement with industry stakeholders via this model.

We would also encourage the Commission to host roundtables on specific aspects of CEDS that require further in-depth discussion, such as their intended governance and management procedures, infrastructure and location, breadth of access and usage, monetisation, and alignment to existing regulations, such as GDPR.

Finally, we request further detail from the Commission regarding next steps for the Data Act, expected 2021.

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