

Kennedy Van der Laan

Open Access beyond PSD2

18 April 2023

Dutch Payment
Association



With you today



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**Erasmus
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Financial services at Kennedy Van der Laan

Key industries



Payments



Investment services and
asset management



Lending platforms (including
consumer lending)



Crypto-assets



Open Finance and Big Data

Key capabilities

- Financial Regulatory (including AML/TF, license applications)
- Financial litigation (consumer disputes)
- Competition (schemes and intra-industry cooperation)
- Privacy
- IT outsourcing

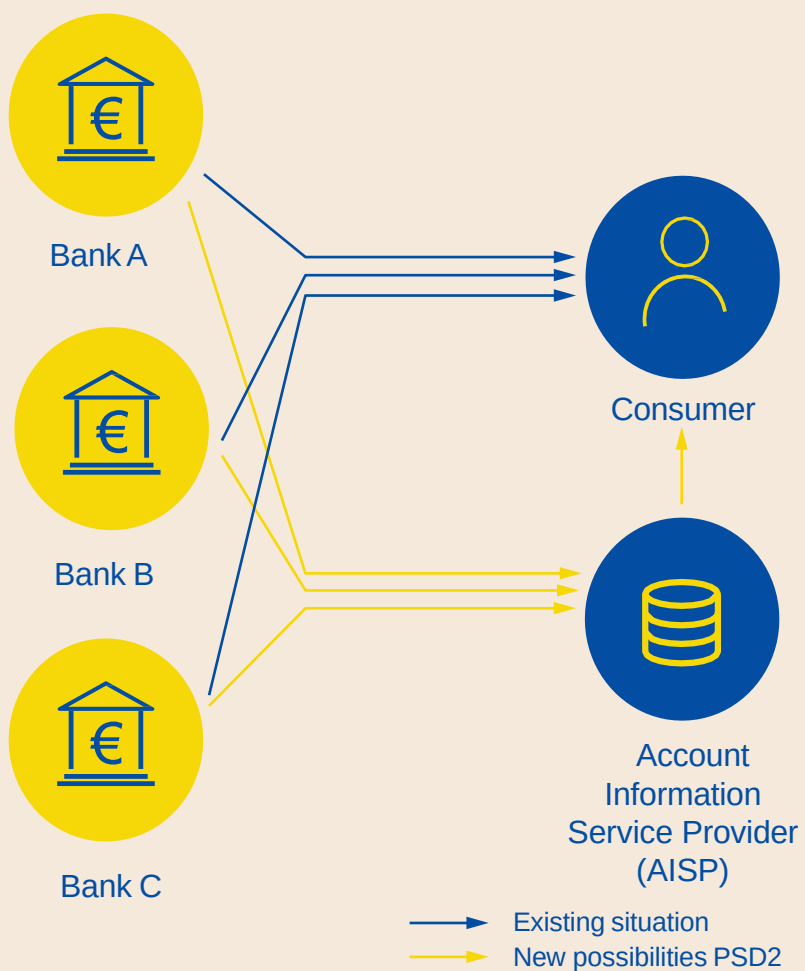


Our FinTech practice is ranked Tier 1 in the Chambers 2022 FinTech edition

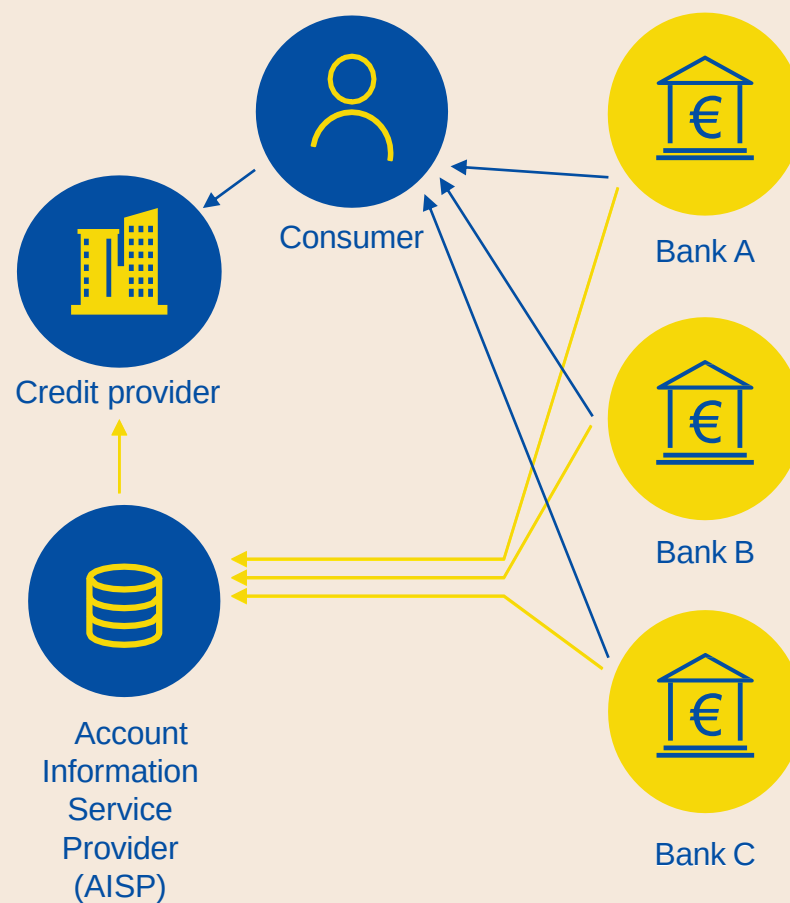
Open Finance 1.0

Changing data flows due to PSD2 directive

PSD2 originally



PSD2 as-a-service



New business models

New business models

Using account holder data
for own business operations

PEAKS

floryn

Lendex

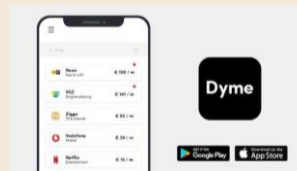
Money management and
accounting tools for businesses

cobase

MoneyMonk

Money management
for consumers

ABN·AMRO



Using data for others
(PSD2 as a service)

INVERS enablenow
creating FinTech solutions

OCKTO



An important benefit of
Open Finance is that
financial institutions get
access to source data,
which is more reliable than
customer provided data.

B

BUNDELZ

De prepaid autoverzekering voor de af&toe rijder

Open Finance 2.0

Three principles of Open Finance

Data portability

Client of financial institutions should be able to share data with third party providers (TPPs). The GDPR contains a general right of data portability, but only for data that has been acquired by the (financial) institution through consent of its clients or an agreement. PSD2 covers this right with regard to payments data of clients.

It is likely that more data will be made portable and accessible due to Open Finance in the future.

Machine-readable data

Data has to be made available in a machine-readable way. This enables the data to be easily processed by different parties who acquire the data. Think about CSV or XML files instead of PDF or Word. With regard to data portability, the GDPR contains the provision to make data available in a machine-readable way.

More data will have to be made available in a machine-readable way. See for example in relation to crypto's the MiCA and in relation to sustainability reporting the CSRD.

General access to data

It should be possible for data to be re-used. Data should not only be available for clients and TPPs with whom they share their data but should also be accessible to other companies who are interested in that data. The privacy of the data subject should be respected. Governments in the EU already have to share and publish (public) data based on the Open Data Directive.

The Digital Markets Act is a step in making the re-use of data possible.

Sharing of data sets as part of the Financial Data Space

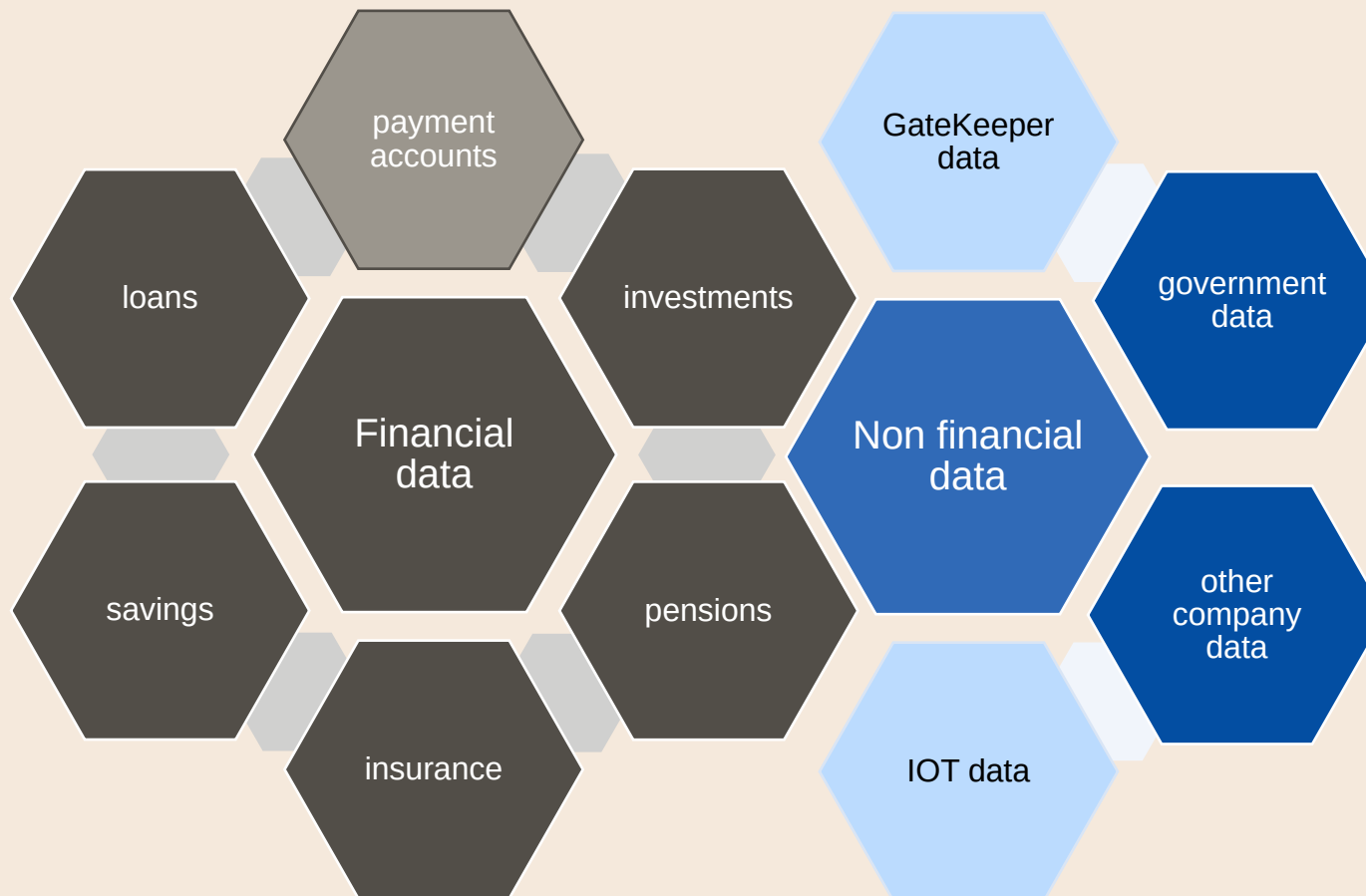
In order to achieve the policy vision for data mobility, consideration should not only be given to the sharing of data belonging to individual data holders. The **sharing of datasets**, too, can be of importance to innovation and a level data playing field, including in the financial sector. Financial supervisors and central banks can consider their role in making data available.

DeNederlandscheBank

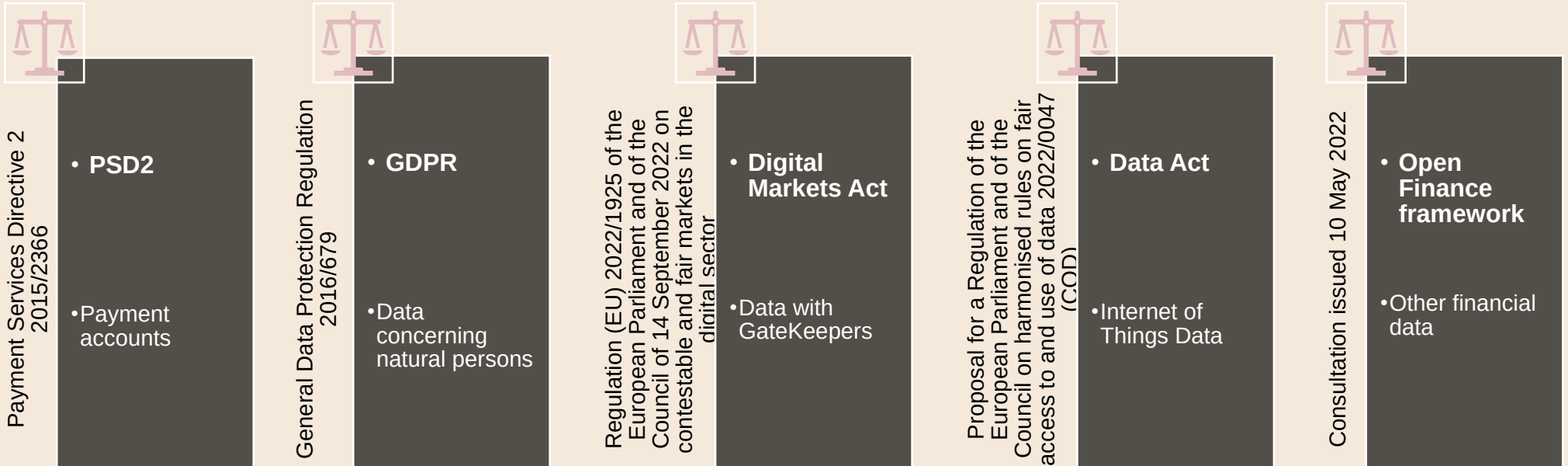
EUROSYSTEEM



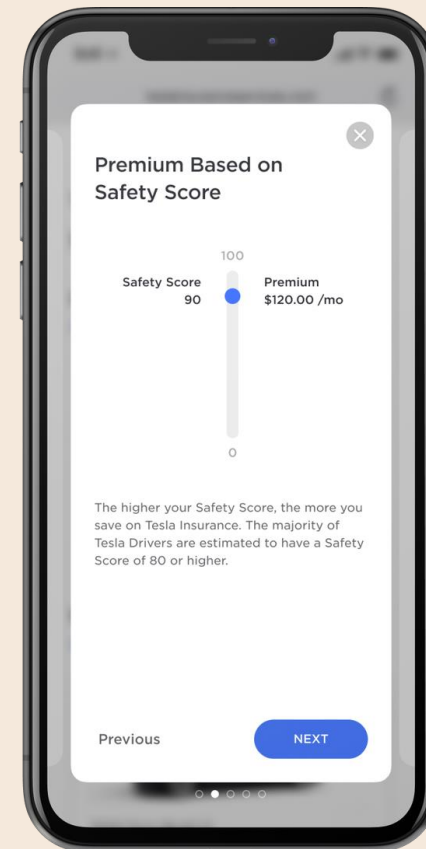
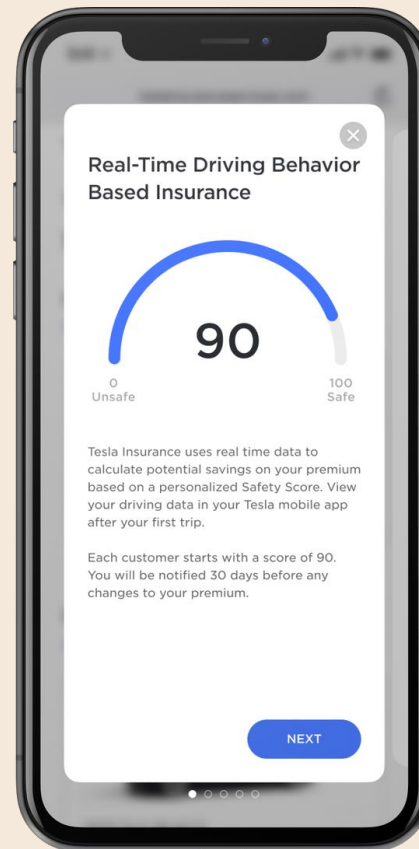
Open Finance industries in scope



Key rules relevant for Open Finance



Tesla Real-Time Driving Behavior Based Insurance: the new way of insurance?



Open Finance in action: platform data

Rabobank E-commerce Financiering

★★★★★ (4 Reviews)

Speciaal voor bol.com partners ontwikkelde Rabobank E-commerce Financiering. Investeer in de groei van jouw bedrijf door een kortlopende lening aan te vragen. Je leent op basis van je e-commerce omzet en lost elke maand een vast bedrag af. Geschikt voor klanten van Rabobank, KNAB, ING, ABN Amro, SNS, Regio Bank, Triodos en ASN Bank klanten.

> [Naar de website](#)



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Open investment data and financial advisory use case

What is the purpose of the use case?

The purpose of the use case is to make relevant individual customers' data available to financial institutions and, by taking into consideration additional relevant parameters, to facilitate provision of high-quality financial advice to these customers.



When having access to such data, financial institutions could achieve better portfolio analysis results for individual customers' portfolios.



Thus, enhance their offers to individual customers through a retirement planning advice that is more personalized.

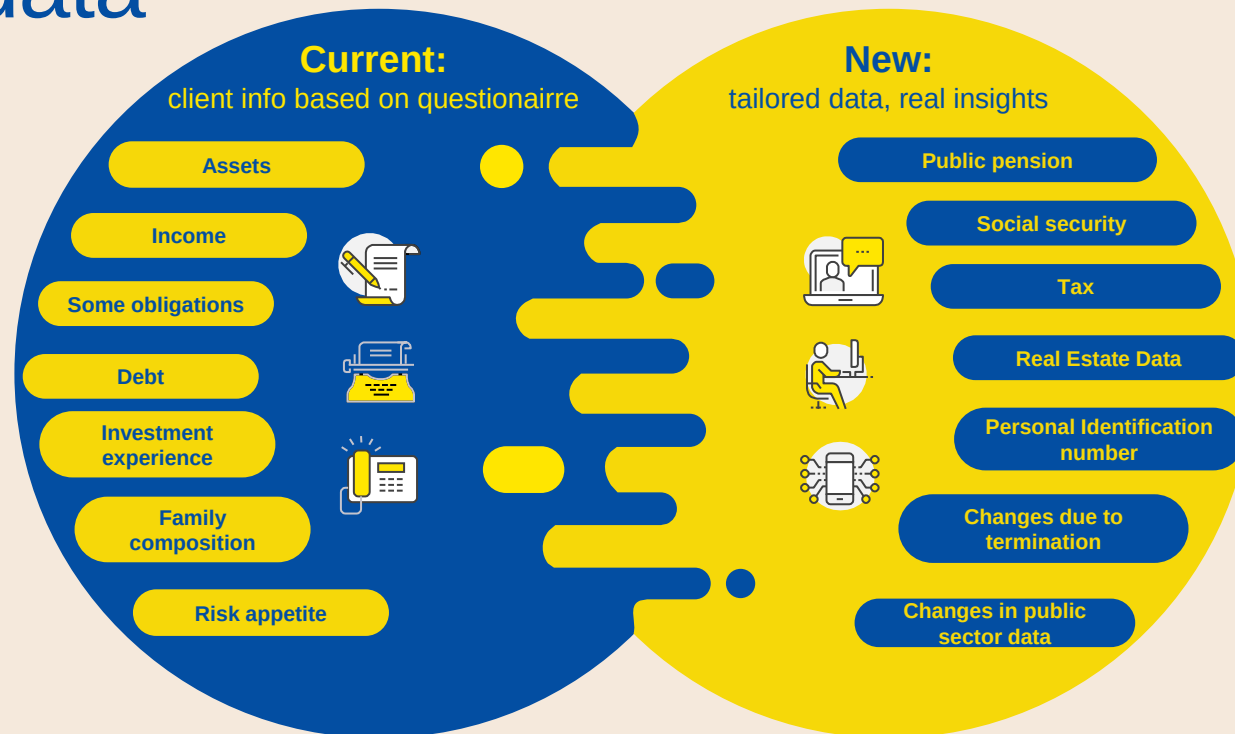


This supports long-term savings.



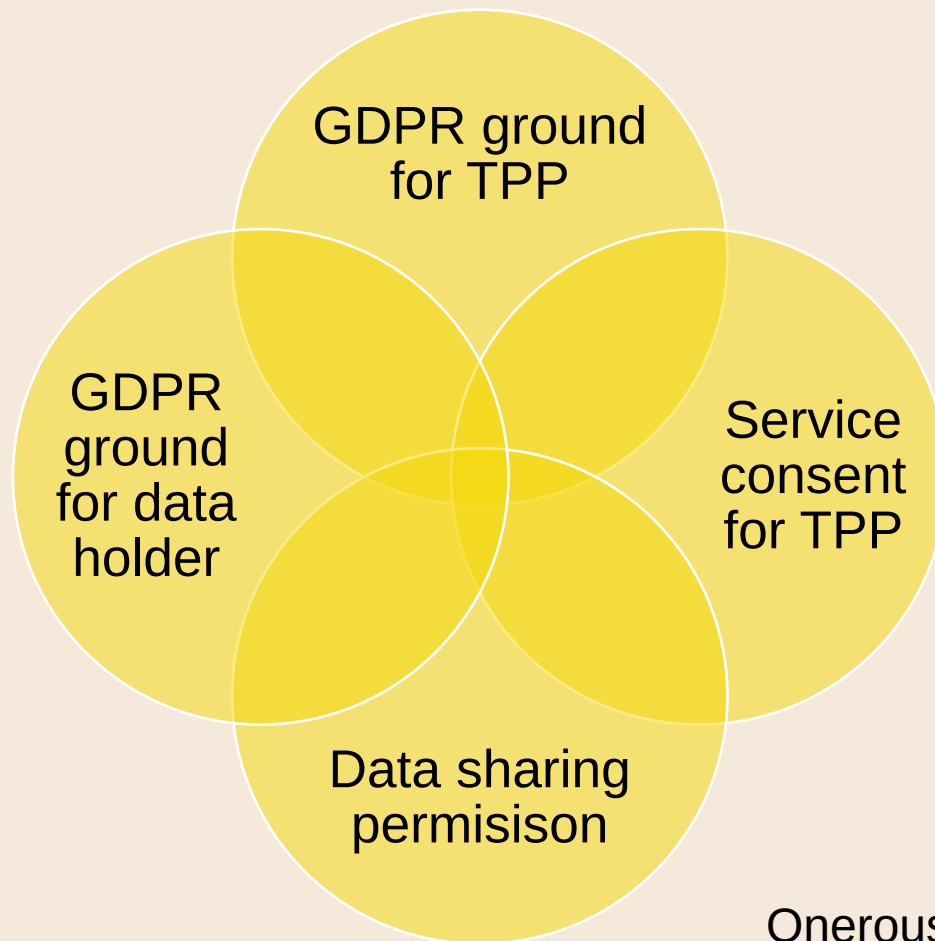
Open investment data and financial advisory use case

Type of data



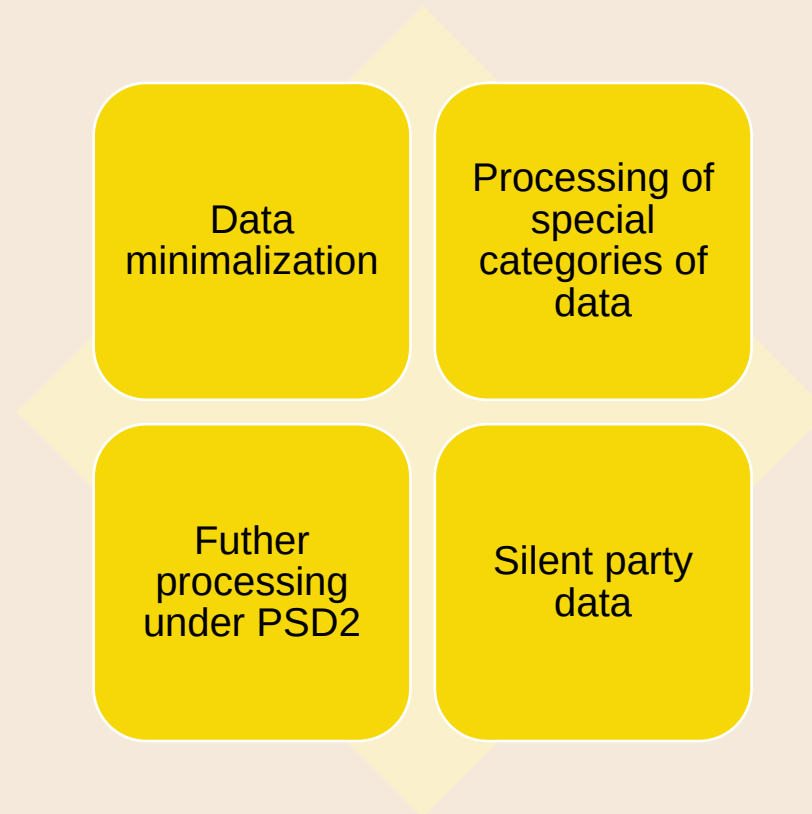
Open Finance: position of the client in

The customer permission model: where and how to provide access permission



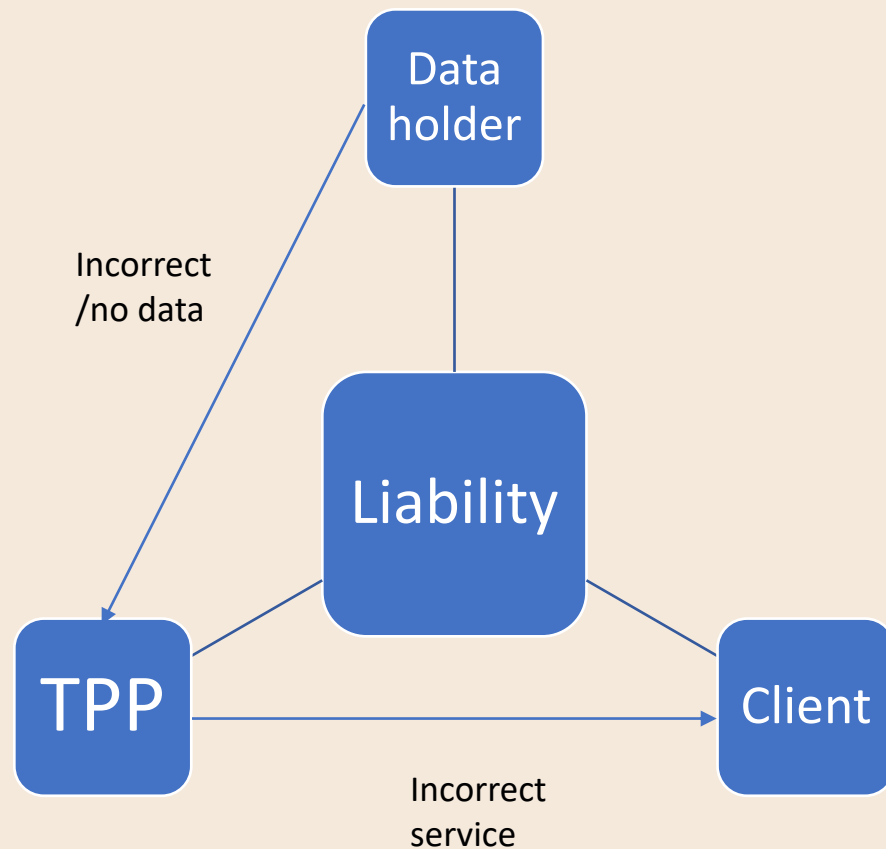
Onerous data sharing permission vs. duty of care of financial service provider?

Privacy: some key issues



Letter to EDPB of 31 January 2022

The liability model



Statutory protection of consumer/SME as client is necessary?

Types of data intermediaries

AISP registration or license

An AISP needs to at least register as an AISP under PSD 2. The AISP has to comply with several requirements, including certain documents and processes. This includes the internal governance, IT security and business plan among other documents.

In the Netherlands, an AISP requires a license from DNB.

Notification or authorisation as provider of data intermediation services

In the Data Governance Act, data intermediation services (which are quite similar to the services of an AISP) are introduced and providers of these services are regulated. Such a provider can choose for a simple notification or an authorization. The latter gives the provider the right to bear the title as 'provider of data intermediation services throughout the Union' and can use a special logo. The requirements that apply are the same for both providers who only notify or have an authorization.

The requirements for providers of data intermediation services are less stringent than for AISPs.

Open Finance: competition or cooperation

Alternative realities on data sharing

Memo | 6 October 2017 | Brussels

Antitrust: Commission confirms unannounced inspections concerning access to bank account information by competing services



Build fintech apps you can't build anywhere else and reshape your banking experience the way you want it! Save time with our tools and SDKs!

Moreover, given the market power — including data ownership — of certain brands, the relationship between insurance manufacturers and distributors may change, with distributors imposing conditions on insurers (e.g. Payment of high commissions) that may not necessarily correspond to the service they offer. As insurers are often secondary providers, high commissions paid to ecosystem operators may also incentivise pressured sales techniques. Given that they have control over customers' data and the competitive advantage of having a generally large pool of customers, operators may set up upfront commissions — while offering limited mediation services — to be paid by those undertakings that want to participate.

[EIOPA discussion paper on the \(re\)insurance value chain and new business models arising from digitalisation 14 April 2020](#)



PSD2: Regulating competition or cooperation

	PSD2	Data Act
Contracts		
Compensation		
Privacy management		
Competing products		

Scheme based data exchange

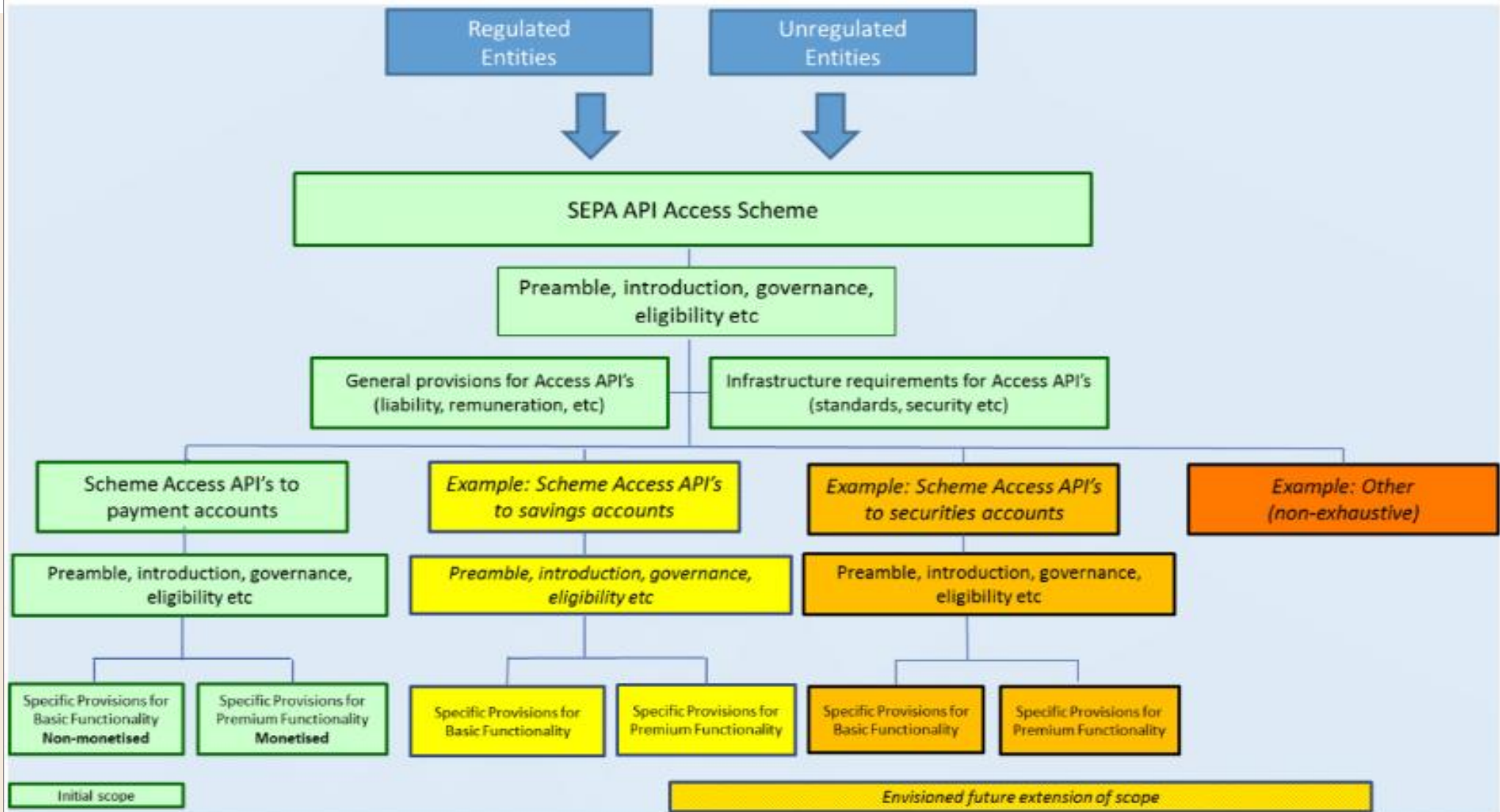
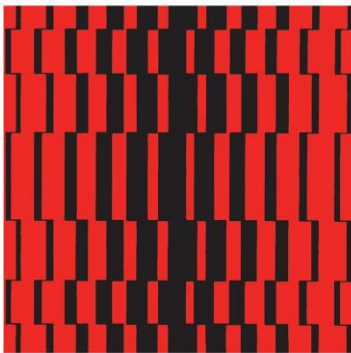


Figure 2: Envisaged structure of the SEPA API Access Scheme

Some further reading

PSD2: naar open banking en bankieren in een ecosysteem

Preadvies voor de Vereniging voor Financieel Recht 2020



Mr. dr. E.J. van Praag

SERIE VANWEGE HET VAN DER HEIJDEN INSTITUUT

Prof. mr. E.J. van Praag¹

Artikelen

The European Financial Data Space: Open Banking in actie

Ondernemingsrecht 2022/33

Een nieuwe trend in de financiële industrie is Open Banking (Open Finance). Open Banking is een belangrijk speerpunt in de Digital-Finance-strategie van de Europese Commissie. Open Banking omvat drie kernbeginselen: (i) (financiële) instellingen moeten het mogelijk maken dat de client zijn data effectief ter beschikking stelt aan een derde (data-portabiliteit), (ii) data moeten machine-readable zijn en (iii) data moeten zoveel mogelijk beschikbaar gemaakt worden voor hergebruik. Doel is dat de client makkelijker van financiële instelling kan wisselen, wat de concurrentie ten goede zal komen, maar ook dat de toename van beschikbare data over de client leidt tot betere dienstverlening aan de client en ontwikkeling van nieuwe creatieve producten die nu nog niet bestaan. Bij de vormgeving van deze regels is er nog een aantal aspecten dat moet worden geadresseerd. Zo moet onder meer worden bepaald voor data uit welke sectoren de regels zullen gelden, wat voor soort data dan gedeeld moeten worden en of dit alleen data over klanten betreft of ook data voor de (financiële) instelling zelf, zoals eigenschappen van producten en diensten. Open Banking leidt bovendien tot nieuwe vragen, zoals hoe de privacy en veiligheid van gegevens gewaarborgd moet worden en welke (vergunning)sleisen gesteld worden aan partijen die van dergelijke datadeling gebruik maken. De auteur bespreekt deze vragen aan de hand van de reeds bestaande regeling voor gegevensdeling in PSD2. PSD2 is een voorloper op het gebied van Open Banking, maar beperkt zich qua toepassing tot de betaalrekening. Open Banking zal naar verwachting veel breder worden qua producten en data.

1. Introductie

Een nieuwe trend in de financiële industrie is Open Banking. Hoewel niet alles in geld is uit te drukken, lijkt deze trend toch wel heel belangrijk te zijn voor banken. Een doorsnee bank in Europa zou in 2020 een investeringsbudget van tussen de € 50 en € 100 miljoen hebben gehad om Open Banking te realiseren.² Bij 44% van de banken bedroeg dit budget zelfs meer dan € 100 miljoen. Deze ontwikkeling heeft ook de aandacht getrokken van de Bank for International Settlements (BIS) en wordt door deze als

volgt gedefinieerd:³ "as the sharing and leveraging of customer-permissioned data by banks with third party developers and firms to build applications and services, including for example those that provide real-time payments, greater financial transparency options for account holders, marketing and cross-selling opportunities". Een voorbeeld van Open Banking in actie betreft het leningsbedrijf BridgeFund.⁴ De leningnemer, een kleine onderneming, geeft BridgeFund toestemming om zijn betaaltransacties bij zijn bank van de afgelopen 12 maanden online in te (laten) lezen. Op basis van deze data heeft BridgeFund een zeer goed beeld van de kredietwaardigheid van de leningnemer en kan BridgeFund binnen een dag besluiten of zij de leningnemer een lening geeft. Traditionele documenten die banken doorgaans vragen om een leningsaanvraag te beoordelen, zoals jaarverslagen en bedrijfsplannen, heeft BridgeFund niet nodig.

Binnen de Europese Unie is Open Banking (in de EU ook wel aangeduid met 'Open Finance') een prioriteit in de 'Mededeling inzake een Europese datastrategie' van de Europese Commissie.⁵ De Europese Commissie introduceert in deze Mededeling het concept van een Common European Data Space. Een Data Space kan gezien worden als een combinatie van regels en maatregelen met als doel om (in de woorden van de Europese Commissie):⁶ "een Europese gegevensruimte tot stand te brengen, om interne markt voor data, ook data uit de rest van de wereld, waar alle personen- en andere gegevens, inclusief vertrouwelijke bedrijfsgegevens, veilig zijn en waar bedrijven ook makkelijk toegang krijgen tot een bijna oneindige hoeveelheid kwalitatieve industriële gegevens, wat groei en toegevoegde waarde oplevert bij een zo gering mogelijke ecologische voetafdruk". En dit alles binnen de grenzen van Europese spelregels en op basis van Europese waarden: "Het moet en ruimte zijn waar de EU haar wetgeving doeltreffend kan handhaven en waar alle data-gestuurde producten en diensten voldoen aan de normen van de interne markt van de EU. Hiervoor moet de EU efficiënte wetgeving en een goede governance voor een gegarandeerde beschikbaarheid van data combineren met investeringen in de normen, instrumenten, infrastructuur en competenties die nodig zijn om data te verwerken. Dit garandeert, stimuleert en klimaat met keuzevrijheid zal er-

OPEN FINANCE IN EUROPE: WHAT IS COMING AND WHY DOES IT MATTER

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ABSTRACT

Open Finance is a new development in the financial services industry that entails the sharing, access, and reuse of customer (business and consumer) data with customer agreement across, and in order to provide, a wide range of financial services. This article explains a number of use cases of "open finance" in order to understand its potential and then discusses some important aspects of this regime, which are still to be decided upon by the legislator. The advantages and disadvantages are explained in order to have a critical view of this development in the financial services industry. The article concludes with a number of recommendations for financial institutions.

1. INTRODUCTION: WHAT IS OPEN FINANCE?²

A data economy is rapidly emerging in the European continent and globally. Simultaneously, digitalization is growing, bringing efficiencies for customers (both business and consumer). Policymakers, therefore, need to decide how to bring these developments to their advantage. Open finance is a policy choice of the European Union (E.U.) in the financial services sector and part of a wider strategy to progress towards a digital economy.³ Open finance can be defined as the sharing, access, and reuse of customer data with customer agreement across, and in order to provide, a wide range of financial services.⁴ It aims to address the difficulties that arise in accessing and

reuse of customer data and the low interoperability of data in the financial services sector. This problem hinders innovations and constrains customer choice. By sharing data with third parties, more tailored services can be offered and comparison will be possible leading to improved outcomes.⁵

While currently there is no legislation on open finance, the European Commission is expected to publish a proposal by the second quarter of 2023.⁶ In the E.U., a call for impact assessment has been made⁷ and an expert group has been set up⁸ in order to work out the features of such a regime. A number of principles of open finance can be identified at the time of writing.

¹ Emanuel van Praag is also member of the EC Expert Group on European Financial Data Space.

² This article builds on one of the authors' prior articles and draws from its ideas. The article is in Dutch: van Praag, E., 2022, "The European financial data space: open banking in Actie," 5:33, Ondernemingsrecht 6-8, <https://bit.ly/3K0YhUd>

³ European Commission, 2022, "Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A European strategy for data," (COM(2020) 66 final, February 19, <https://bit.ly/3Q2u6Rl>)

⁴ See the definition in European Commission, 2022, "Call for evidence for an impact assessment," May 10, <https://bit.ly/41xa5dR>; and in EC Expert Group on European Financial Data Space, 2022, "Report on open finance," October 24, <https://bit.ly/3ZsFh30>

⁵ European Commission, 2022, "Call for evidence for an impact assessment," September 28, <https://bit.ly/3Lm5c>

⁶ European Commission, 2022, "Agreement to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Commission work programme 2023, a Union standing firm and united," October 18, <https://bit.ly/385r5C>

⁷ European Commission, 2022, "Call for evidence for an impact assessment," September 28, <https://bit.ly/3Lm5c>

⁸ European Commission, 2021, "Expert group on European financial data space," March 15, <https://bit.ly/36G2hbd>

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