



EUROPEAN CENTRAL BANK

EUROSYSTEM

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ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 30 August 2024

on a proposal for a regulation on a framework for Financial Data Access and amending Regulations (EU) No 1093/2010, (EU) No 1094/2010, (EU) No 1095/2010 and (EU) 2022/2554 (CON/2024/29)

Introduction and legal basis

On 28 June 2023 the European Commission adopted a proposal for a regulation of the European Parliament and of the Council on a framework for Financial Data Access and amending Regulations (EU) No 1093/2010, (EU) No 1094/2010, (EU) No 1095/2010 and (EU) 2022/2554¹ (hereinafter the 'proposed regulation'). The European Central Bank (ECB) considers that the proposed regulation falls within its scope of competence and has therefore decided to exercise its right, as provided for in Article 127(4), second sentence, and in Article 282(5) of the Treaty on the Functioning of the European Union, to adopt an own initiative opinion on the proposed regulation.

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union, since the proposed regulation contains provisions affecting the ECB's tasks concerning prudential supervision of credit institutions under Article 127(6) of the Treaty. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

1. **General observations**

1.1 The proposed regulation is an important component of the European strategy for data². The establishment of a robust legal framework for the management of customer data sharing in the financial sector beyond payment accounts aims to enable customers, individual consumers and businesses to access personalised, data-driven products and services that better meet their specific needs. The ECB welcomes the objective of the proposed regulation with regard to introducing a framework for access to and use of customer data. This should promote innovation, make financial services more competitive and give customers more control over their own financial data. The proposal could also contribute to the development of the Capital Markets Union to the extent that it

1 COM(2023) 360 final.

2 COM(2020) 66 final.

encourages providers to offer a broader range of services that are better tailored to customers' needs and to lower fees as the marketplace becomes more competitive.

- 1.2 The proposed regulation adopts a customer-focused approach by providing tools that allow for control over customer financial data. In this respect, the proposed regulation grants customers the right to request that data holders³ share customer data with data users⁴ for the purposes and under the conditions specifically permitted by the customers⁵, thus ensuring that data sharing always follows the customer's granting of permission for such data sharing. To this end, the proposed regulation imposes obligations on data holders to provide such access⁶ and to provide customers with financial data access permission dashboards⁷ that allow them to monitor and manage the permissions they have granted. This set of rules, which is designed to enhance transparency and customer trust in the data-sharing process, is complemented by additional safeguards. These include ensuring responsible data handling by restricting access to customer data to already authorised financial institutions and to newly authorised financial information service providers⁸, which constitute a new category of service providers⁹. Moreover, the European Banking Authority and the European Insurance and Occupational Pensions Authority, in cooperation with the European Data Protection Board, are required to develop targeted guidelines establishing a data use perimeter that protects the consumer against unfair treatment or exclusion risks¹⁰. Additionally, the proposed regulation requires the standardisation of customer data and establishes requirements for creating and governing financial data sharing schemes to streamline data sharing and to ensure a level playing field by developing a contractual framework for access, transparency, compensation, liability, and dispute resolution. The proposed regulation also requires competent authorities to assess compliance with these governance requirements¹¹.
- 1.3 The ECB notes that the customer data that data holders are obliged to provide to data users upon request from a customer may include data on mortgage credit agreements, loans and accounts, except payment accounts, as well as data which forms part of a creditworthiness assessment of a firm which is collected as part of a loan application process or a request for a credit rating¹². Data collected pursuant to Regulation (EU) 2016/867 of the European Central Bank (ECB/2016/13)¹³ (hereinafter the 'AnaCredit Regulation') that have been shared with credit institutions via the feedback loop mechanism on the basis of Article 11 of the AnaCredit Regulation must not be further shared with data users on the basis of Articles 4 and 5 of the proposed regulation. Such sharing

³ See Article 3, point (5), of the proposed regulation.

⁴ See Article 3, point (6), of the proposed regulation.

⁵ See Article 3, point (2), and Article 5 of the proposed regulation.

⁶ See Articles 4 and 5 of the proposed regulation.

⁷ See Article 8 of the proposed regulation.

⁸ See Article 6 of the proposed regulation.

⁹ See Articles 12 to 14 of the proposed regulation.

¹⁰ See Article 7 of the proposed regulation.

¹¹ See Articles 9 and 10 of the proposed regulation.

¹² See Article 2(1), points (a) and (f), and Articles 4 and 5 of the proposed regulation.

¹³ Regulation (EU) 2016/867 of the European Central Bank of 18 May 2016 on the collection of granular credit and credit risk data (ECB/2016/13) (OJ L 144, 1.6.2016, p. 44).

would contravene Article 11(1) of the AnaCredit Regulation, which restricts the use of this data exclusively to the management of credit risk by the credit institutions and improving the quality of credit information, expressly prohibiting its disclosure to other parties except in certain restricted circumstances. Therefore, the ECB would welcome an explicit statement in the proposed regulation to clarify that the data shared with credit institutions via the feedback loop mechanism on the basis of Article 11(1) of the AnaCredit Regulation are excluded from being shared with customers or data users under Articles 4 and 5 of the proposed regulation.

- 1.4 The proposed regulation requires Member States to designate the competent authorities responsible for carrying out the functions and duties provided for in it¹⁴. With reference to financial institutions, the proposed regulation identifies as competent authorities those specified in Article 46 of Regulation (EU) 2022/2554 of the European Parliament and of the Council¹⁵ (hereinafter 'DORA')¹⁶. The competent authorities are to ensure compliance with the proposed regulation in accordance with the powers granted by the proposed regulation and by the respective legal acts listed in Article 46 of DORA¹⁷, which provides that compliance with DORA is to be ensured for credit institutions classified as significant in accordance with Article 6(4) of Council Regulation (EU) No 1024/2013¹⁸ (hereinafter the 'SSM Regulation') by the ECB in accordance with the powers and tasks conferred by the SSM Regulation¹⁹. It is crucial to note that DORA focuses on operational resilience, while the primary focus of the proposed regulation is consumer protection, and this difference may necessitate different competencies.
- 1.5 Against this backdrop, the ECB's role under the proposed regulation, in terms of its prudential supervisory competence, should be clarified (see paragraph 2).

2. Clarification of the ECB's supervisory competence

- 2.1 The proposed regulation provides that the ECB supervises significant credit institutions' compliance with it. The ECB is concerned that the proposed regulation thereby assigns to the ECB supervisory tasks which are not prudential in nature, but rather relate to consumer protection. This would be inconsistent with the fact that the Council may unanimously confer only specific tasks relating to prudential supervision on the ECB under Article 127(6) of the Treaty. Accordingly, the SSM Regulation assigns to the ECB, for prudential supervisory purposes, the task of ensuring compliance by significant credit institutions with all relevant Union acts, which impose requirements on credit

14 See Article 17(1) of the proposed regulation.

15 Regulation (EU) No 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909/2014 and (EU) 2016/1011 (OJ L 333, 27.12.2022, p. 1).

16 See Article 17(4) of the proposed regulation.

17 See Article 17(4) of the proposed regulation.

18 Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

19 See Article 46, point (a), of DORA.

institutions to have in place, inter alia, robust risk management processes and internal control mechanisms²⁰. The ECB's prudential supervisory role in this respect is limited to ensuring that credit institutions implement policies and processes to evaluate and manage their exposure to prudential risks, including risks related to different aspects of banks' business models, governance, and operational risks. These tasks are assigned to the ECB to ensure the safety and soundness of credit institutions and the stability of the financial system²¹. Therefore, the ECB may be considered a competent authority only insofar as is necessary for it to carry out the tasks conferred on it under the Treaty and the SSM Regulation²².

- 2.2 The proposed regulation pursues the objective of consumer protection and not of ensuring the safety and soundness of credit institutions. It does so (1) by setting out rules on the sharing of and access to customer's financial data, and (2) by seeking to ensure that these rules meet the requirements and obligations needed to increase control and transparency. Consequently, supervising significant credit institutions' compliance with the requirements set out in the proposed regulation falls outside the scope of the ECB's prudential supervisory competences under the Treaty and the SSM Regulation. This conclusion aligns with recital 28 of the SSM Regulation, which clarifies that consumer protection is not among the supervisory tasks conferred on the ECB and remains within the remit of national authorities. Therefore, the text of the proposed regulation should unambiguously clarify that the ECB is not designated as competent authority entrusted with any consumer protection tasks²³, including in its role as consolidating supervisor²⁴.
- 2.3 Nonetheless, the ECB emphasises the need to provide a clear legal basis to ensure cooperation²⁵, including facilitating relevant information exchanges between the ECB and the competent authorities designated under the proposed regulation. This is in line with recital 29 of the SSM Regulation, which specifies that the ECB should cooperate, as appropriate, fully with the national authorities which are competent to ensure a high level of consumer protection.
- 2.4 On that basis, the ECB suggests that Articles 3(4) and 17(4), Article 18(1), point (b)(v), and Article 26(1) of the proposed regulation should be amended to ensure that the ECB's competences under the proposed regulation reflect the tasks conferred on it by the Treaty and the SSM Regulation.

20 See Article 4(1), point (e), of the SSM Regulation.

21 See recital 30 of the SSM Regulation.

22 The observation that only prudential supervisory tasks can be assigned to the ECB is without prejudice to the possibility for the Member States to assign the supervisory tasks set out under the proposed regulation to national prudential authorities.

23 See paragraph 2 of Opinion CON/2021/40 of the European Central Bank of 29 December 2021 on a proposal for a regulation laying down harmonised rules on artificial intelligence (OJ C 115, 11.3.2022, p. 5).

24 See Article 18(1), point (b)(v), of the proposed regulation.

25 See paragraph 3 of Opinion CON/2022/4 of the European Central Bank of 16 February 2022 on a proposal for a regulation establishing the Authority for Anti-Money Laundering and Countering the Financial of Terrorism (OJ C 210, 25.5.2022, p. 5).

Where the ECB recommends that the proposed regulation is amended, specific drafting proposals are set out in a separate technical working document accompanied by an explanatory text to this effect. The technical working document is available in English on EUR-Lex.

Done at Frankfurt am Main, 30 August 2024.

[signed]

The President of the ECB

Christine LAGARDE



Technical working document

produced in connection with ECB Opinion CON/2024/29¹ on a proposal for a regulation on a framework for Financial Data Access and amending Regulations (EU) No 1093/2010, (EU) No 1094/2010, (EU) No 1095/2010 and (EU) 2022/2554

Drafting proposals

Text proposed by the Commission	Amendments proposed by the ECB ²
<p>Amendment 1</p> <p>Article 3, point (4), of the proposed regulation</p>	
<p>'(4) "competent authority" means the authority designated by each Member State in accordance with Article 17 and for financial institutions it means any of the competent authorities listed in Article 46 of Regulation (EU) 2022/2554;'</p>	<p>'(4) "competent authority" means the authority designated by each Member State in accordance with Article 17 and for financial institutions it means any of the competent authorities listed in Article 46 of Regulation (EU) 2022/2554;'</p>
<p><u>Explanation</u></p> <p>See explanation for Amendment 2.</p>	
<p>Amendment 2</p> <p>Article 17(4) of the proposed regulation</p>	
<p>'4. For financial institutions, compliance with this Regulation shall be ensured by the competent authorities specified in Article 46 of Regulation (EU) 2022/2554 in accordance with the powers granted by the respective legal acts listed in that Article, and by this Regulation.'</p>	<p>'4. For financial institutions, compliance with this Regulation shall be ensured by the competent authorities specified in Article 46 of Regulation (EU) 2022/2554 in accordance with the powers granted by the respective legal acts listed in that Article, and by this Regulation designated by the Member States.'</p>
<p><u>Explanation</u></p>	

¹ This technical working document is produced in English only and communicated to the consulting Union institution(s) after adoption of the opinion. It is also published on EUR-Lex alongside the opinion itself.

² Bold in the body of the text indicates where the ECB proposes inserting new text. Strikethrough in the body of the text indicates where the ECB proposes deleting text.

Text proposed by the Commission	Amendments proposed by the ECB ²
<p><i>To avoid deviating from the prudential supervisory competences conferred on the ECB by the Treaty and the SSM Regulation, the ECB proposes to refer to the ‘competent authorities designated by the Member States’ instead of the ‘competent authorities specified in Article 46 of DORA’, which would include the ECB.</i></p> <p><i>See paragraphs 1.4, 2.1 and 2.2 of the ECB Opinion.</i></p>	
<p style="text-align: center;">Amendment 3</p> <p style="text-align: center;">Article 18(1), point (b)(v), of the proposed regulation</p>	
<p>‘(v) subject to other conditions set out in Union law or in national law, the power to conduct necessary inspections at the premises of the legal persons and at sites other than the private residence of natural persons referred to in point (a), as well as of any other legal person included in consolidated supervision where a competent authority is the consolidating supervisor, subject to prior notification of the competent authorities concerned.’</p>	<p>‘(v) subject to other conditions set out in Union law or in national law, the power to conduct necessary inspections at the premises of the legal persons and at sites other than the private residence of natural persons referred to in point (a), as well as of any other legal person included in consolidated supervision where a competent authority is the consolidating supervisor, subject to prior notification of the competent authorities concerned and the consolidating supervisor.’</p>
<p style="text-align: center;"><u>Explanation</u></p> <p><i>To address the fact that the ECB could be the consolidating supervisor but has no mandate for consumer protection, the ECB proposes to specify that the consolidating supervisor must only be notified.</i></p>	
<p style="text-align: center;">Amendment 4</p> <p style="text-align: center;">Article 26(1) of the proposed regulation</p>	
<p>‘1. Competent authorities shall cooperate with each other and with other relevant competent authorities designated under Union or national law applicable to financial institutions for the purposes of this Regulation carrying out the duties of the competent authorities.’</p>	<p>‘1. For the purposes of this Regulation, Competent authorities shall cooperate with each other and with other relevant competent authorities designated under Union or national law applicable to financial institutions for the purposes of this Regulation carrying out the duties of the competent authorities.</p>
<p style="text-align: center;"><u>Explanation</u></p> <p><i>The ECB emphasises the need to provide a clear legal basis to ensure cooperation, including facilitating relevant information exchanges, between the competent authorities designated for supervising financial institutions’ compliance with their obligations under the proposed regulation and the authorities responsible for the prudential supervision of credit institutions, including the ECB. This would be in line</i></p>	

Text proposed by the Commission	Amendments proposed by the ECB²
<p><i>with the objective of the proposed regulation and with the ECB's prudential supervisory competence under Article 127(6) of the Treaty and under the SSM Regulation.</i></p> <p><i>See paragraph 2.3 of the ECB Opinion.</i></p>	