EBF_046284

31 October

European Banking Federation (EBF) response to the European Commission Have Your Say Consultation on the proposal for a Framework for Financial Data Access

We recognize efforts by the European Commission to develop a strong European data economy through initiatives such as the Data Act and Data Governance Act. Under this horizontal framework is the proposed sectoral Regulation on Financial Data Access (FIDA). The proposal aims at promoting data-driven innovation in the financial sector, possibly opening new opportunities for customers while also increasing their control of how and with whom they share data, including through tools such as permissions dashboards.

We welcome that the **management of the access to customer data** will be left to **market actors through the setting-up of financial data sharing schemes**, supported by **high level principles** in the Regulation – notably the principle of **compensation** (missing from the revised Payment Services Directive (PSD2)) which allows for a degree of flexibility in implementation.

However, we are concerned that the **scope** of the proposed mandatory customer data access rights **covers a wide range of financial services products, with a potentially large amount of data that is sensitive for the customer and the data holder without clear predictions on the benefit or an appreciation of the risks.** As stated in the Commission impact assessment report: "*given the limited data availability and the nature of the open finance initiative, it is inherently difficult to make quantitative predictions about how its benefits at the whole economy level*[1]*".*

A consideration of **potential impacts on financial intermediaries' business models is equally missing**, which was explicitly mentioned in the Council Conclusions on the European Commission Communication on a Retail Payment Strategy for the European Union[2].

We also note that this initiative is still rooted in financial data held by entities acting in the financial space, while we believe that, in order to build real innovative data-driven financial products, there is a need to unlock the potential of data held by economic actors in other sectors and make this data accessible by financial actors, thus creating a real level playing field. There have been some steps in this direction – but more is needed.

Given that it was difficult to make quantitative predictions about the benefits of the initiative at the whole economic level, we strongly recommend a measured approach, one that strikes **a balance** between mandatory data sharing elements, including the potential

[1]European Commission, Commission Staff Working Document: Impact Assessment Report, Accompanying the Document 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) 2022/2554, June 2023, pp. 61

[2] Council Conclusions on the Commission Communication on a Retail Payments Strategy for the European Union, March 2021

risks, and market driven elements and sets the right incentives for innovation while maintaining customer trust. To this end, we recommend for the proposal to:

1. **<u>Set out a precise scope, supported by clear definitions</u>**

    - The proposal must be more **granular** under Art. 2(1) as to what data falls in the data access right to give certainty for data holders and to aid scheme development later on.
    - **Derived and inferred data** must be **clearly excluded from the scope of access**; this should be reflected in the definition of customer data under Art. 3(3) and in the **relevant data categories** under Art. 2(1). Not excluding data that is inferred or derived by financial institutions, such as the results of internal assessments, which constitutes an added value, could have a negative impact on market-driven offerings. The same holds true for collected data for suitability and appropriateness assessment and data which forms part of a creditworthiness assessment of a firm; what data is requested and in which format **is highly specific to the market and the product offering of a financial institution** and could therefore allow for reverse engineering of a financial institution's processes and offerings.
    - **Third party data should be out of the scope**. The data holder should not function merely as a conduit of second-hand information. Data should be collected at the (original) source/data holder.
    - Limit obligations to **retail and SME customer categories and the corresponding data.** Only after the review of FIDA, expand to data of corporate customers.

2. **<u>Include a clear, gradual approach for the negotiation and development of data sharing schemes, supported by a workable timeline that reflects the complexity of the process</u>**

    - We recommend adopting an implementation approach that opens up customer data sharing in **different stages**, starting by a first customer data set and progressively opening to further data categories, after a careful assessment of the impact of market demand.
    - An **18-month timeline** for scheme set up, development of standards, definition of liability and negotiation of the compensation, etc. and scheme implementation, **is not feasible.** We recommend **to introduce a timeline of 48 months** for establishing data sharing schemes. This would reflect the different stages of the process: or i) **scheme set up** (gathering participants, determining/designating the scheme owner, **agreeing the governance rules**, etc) ii) **scheme development** (including meeting Art. 10 requirements) and iii) scheme **implementation**. The interoperability of schemes and avoiding fragmentation also needs to be considered.
    - Allocating the necessary time for the scheme development process **allows market actors to identify potential use cases** where there is customer demand, and to begin work on a scheme accordingly. This also gives space for

a pilot phase of the different use cases, which would allow to assess practical implications and potential risks.

- An understanding of the potential use cases and, in that context, the potential value generated by the follow-on use of the data[3] is an important criterion for determining the compensation under Art. 10(h). This will in turn **help to gather data holders and data users** around the table. More generally, we underline that reasonable compensation to the data holder by the data user (including FISP) **should not be limited to costs directly related to making the data available** (Art. 10(h)(i). It should take into account the **investments made by data holder** in the collection, generation, structuring, preparing, and sharing of the data.
- The inclusion of **Article 11** may serve as a disincentive to data holders to invest in scheme development, if there is a risk of work done so far being jeopardized because it does not fit in the time frame or the conditions of the Commission. We would suggest to delete it from the text or, as an alternative, reconsider the approach, focusing instead on evaluation and dialogue with data holders and data users.

3. Clearly define "Financial Information Services" and strengthen their authorization requirements

- The **Financial Information Service Provider (FISP) authorisation must not be a "shortcut" to providing financial services and products**. Yet recital 31 of the proposal indicates that FISP *"would provide financial products and service to customers in the union."* We stress that in this case, they should seek the **appropriate licence to do so** and would, as a result, participate in FIDA as one of the other entities under the scope.
- Include a definition of **"financial information services" in the proposal**, clearly setting out the scope of activities and, therefore, **safeguarding that the FISP authorisation is appropriate**. The scope should confirm that the data accessed under FIDA by FISP can only be used to provide financial information services.
- Update the authorisation process to include an **evaluation of whether an entity applying for a FISP licence should also be a data holder under FIDA**. The criteria would be if the entity, upon application, holds other categories of customer data listed under Art. 2(1). This would help to ensure a level playing field between FISP and the other entities in the scope. For entities from outside the financial sector seeking a FISP authorisation, including a reciprocity clause as a requirement for their participation in data sharing schemes could be considered.
- Third-country FISP should be required to have a **direct legal presence – a subsidiary or a branch** (as defined throughout the Union acquis, namely in Directive 2013/34/EU) to receive the authorization. A legal representative is not sufficient. They must be subject to the same level of supervision under

[3] European Commission, Study for developing criteria for assessing reasonable compensation in the case of statutory data access right," November 2022, pp. 8

same conditions (compliance with GDPR, DORA, other relevant legislation).

4. **<u>Clarify roles and responsibilities in the operationalisation of permissions dashboard and ensure strong security and fraud protection</u>**

   - The **responsibilities of the data holder and the data user in the provision and update of the dashboard** must be clear.
   - Specify that permission focuses on the 'access' versus the legal basis for processing – **the latter being defined between the data user and the customer and, therefore, it cannot be managed via the data holder.** The requirements for the permissions dashboard should not be too prescriptive to allow for data holders to develop them and adapt these for user needs. It must also be aligned with requirement under the Payment Service Regulation (PSR) in order to facilitate customer's experience and allow data holders to leverage on the investments made.
   - Compliance with the **Digital Operational Resilience Act (DORA)** by all entities participating in FIDA (including FISP) is a crucial step forward. Yet there still may be differences between data holders and data users in terms of the level of requirements; **there should not be a different level/standard of security applied by data holders and data users on the same type of data and on the same type of services.** This is particularly important in view of the broad scope of data and the number of actors in the FIDA ecosystem. Security must be at the foundation of any data sharing- without it there is no trust from customers.

5. <u>Take lessons learned from PSD2, specify the interplay with relevant regulation, and work towards real cross sectoral data sharing</u>

   - In FIDA, data holders and data users should build on the **lessons learned, the implementation and the investments** (e.g., API infrastructure, standards, etc) **under PSD2**.
   - The interplay with horizontal legislation including the GDPR, Digital Markets Act (DMA), the Data Governance Act and the Data Act should be developed in the text. Further on the DMA, we stress the need for an **operationalised implementation of the data related obligations by designated gatekeepers**.
   - The goal of cross-sectoral data sharing should not be lost in FIDA, thereby jeopardising the full opportunities of the data economy. Steps in data sharing have been made in other sectors in the past years, and this should continue.

Considering the elements above would, in our view, help create a framework that provides legal certainty as well as conceivable opportunities for data holders, data users, and customers when sharing their data, while also helping to address the risks.

ENDS

For more information:

Alexandra Maniati
Senior Director – Innovation & Cybersecurity
a.maniati@ebf.eu

Liga Semane
Policy Adviser – Data & Innovation
l.semane@ebf.eu

About the EBF

The European Banking Federation is the voice of the European banking sector, bringing together 32 national banking associations in Europe that together represent a significant majority of all banking assets in Europe, with 3,500 banks - large and small, wholesale and retail, local and international – while employing approximately two million people. EBF members represent banks that make available loans to the European economy in excess of €20 trillion and that reliably handle more than 400 million payment transactions per day. Launched in 1960, the EBF is committed to a single market for financial services in the European Union and to supporting policies that foster economic growth.

www.ebf.eu @EBFeu

www.ebf.eu