



Hon. Florian Toncar

Parliamentary State Secretary

Federal Ministry of Finance

Wilhelmstraße 97

10117 Berlin

Germany

Email: florian.toncar@bmf.bund.de

Brussels, 4 November 2024

Financial Data Sharing – The need for a sound approach for an effective Open Finance Framework in the EU/EEA

Dear Mr Toncar,

As representatives of the broader European financial services industry, we would like to draw your attention to the **significant concerns raised by the proposed Financial Data Access (FiDA) Regulation, particularly regarding the protection of data of EU/EEA citizens and the competitiveness of the European financial industry**¹. We remain especially concerned as, thus far, ongoing Council negotiations have yet to adequately address these issues that are key to the development of a sound framework for Open Finance in Europe.

While we believe that the data economy can offer new opportunities to drive economic growth through data-driven innovation and digital transformation, building a robust data economy within the financial sector calls for a **focused and evidence-based approach that delivers clear benefits to European citizens and companies**. Without such approach, FiDA will not only fall short of its ambition, but also undermine the protection of EU/EEA citizens and competitiveness alike. More specifically:

- **European Competitiveness:** the framework should **balance value for customers, market demand, and costs for financial institutions prior to**

¹ For more details on industry concerns and recommendations related to FiDA, we refer addressees to our joint letter dated 27 September 2024 “Ensuring the FiDA Regulation is Fit-for-Purpose and Considers Market Impact” (included as an addendum).

implementation.² Mandating a general data sharing obligation, including in areas that do not cater to any customer appetite or usage, would compromise the financial sector's capacity to remain competitive by detracting resources from innovation plans, including from areas where FiDA can be successful. It is noted that the **costs of FiDA** have not been adequately assessed, nor has **customer and market demand** for data sharing been evidenced. Indeed, the Commission's impact assessment for FiDA suggested difficulty in assessing its quantitative impact but generally estimated costs to be in the range of EUR 2.2bn to 2.4bn in one-off costs, and between EUR 147mn to 465mn in recurring annual costs. Industry estimates, based on experience with Open Banking and scheme development and implementation, indicate that the **actual costs will most likely be higher** since, for the deployment of Payment Services Directive 2, payment data were already relatively standardised compared to the data categories under FiDA. **The FiDA framework needs to be driven by demonstrated evidence of benefits to customers and market demand, as otherwise it risks undermining the competitiveness of financial institutions operating in the EU/EEA.**

- **Data Protection:** as FiDA creates new entities (financial information service providers - FISPs) that will be on the receiving end of large quantities of sensitive customer data, **implications for data security and privacy need to be carefully considered.** This necessitates, at a minimum, **robust regulation and supervision of FISPs** (to the same standards as those applied to regulated financial institutions). These key aspects of data sharing cannot be achieved by the current design of FiDA, therefore creating risks to upholding European citizens' fundamental right to data protection.

The current Council draft text, being very broad in scope in terms of geographical reach, type of customers and data categories, fails to address the competitiveness and data protection concerns mentioned above. We have previously reiterated these concerns on many occasions and in several papers and letters, also proposing relevant solutions, however they remain largely unaddressed.





We therefore urge legislators to devote **adequate time to thoroughly assess FiDA's impact** throughout the value chain and for relevant stakeholders (data holders, data users, FISPs, and customers) on a practical basis (by use case, data category, and potential schemes on national and EU levels), **undertake proper assessments on FiDA, and postpone decision-making until such assessments are completed.** Enclosed to this letter you may find our previous detailed proposals which we believe merit consideration in such a thorough assessment.

As an industry, we stand ready to continue contributing to ensure the creation of a well-designed FiDA framework that can effectively support the sound development of Open Finance in the EU/EEA.

Thanking you for your attention, we remain available to discuss these matters further.

² At a minimum, we recommend that a "FiDA readiness" assessment is carried out for each data category. Furthermore, the ability to exclude data categories without sufficient evidence of market demand should be maintained throughout scheme implementation.

Signing organisations:

	<p>Association for Financial Markets in Europe (AFME). Contact: Stefano Mazzocchi, Managing Director - stefano.mazzocchi@afme.eu</p>		<p>European Association of Co-operative Banks (EACB). Contact: Chiara Dell'Oro, Director - chiara.delloro@eacb.coop</p>
	<p>European Banking Federation (EBF). Contact: Alexandra Maniati, Senior Director, Innovation & Cybersecurity - a.maniati@ebf.eu</p>		<p>European Fund and Asset Management Association (EFAMA). Contact: Zuzanna Bogusz, Regulatory Policy Advisor - zuzanna.bogusz@efama.org</p>
	<p>European Savings and Retail Banking Group (ESBG). Contact: Ali-Ashraf Rajabli, Associate Advisor - ali-ashraf.rajabli@wsbi-esbg.org</p>		<p>Insurance Europe. Contacts: Danilo Gattullo, Senior Policy Advisor - Gattullo@insuranceeurope.eu; Arthur Hilliard, Senior policy advisor - Hilliard@insuranceeurope.eu</p>

Attachment:

Previous joint associations letter on “Ensuring the FiDA Regulation is Fit-For-Purpose and Considers Market Impact” – 27 September 2024

27 September 2024

To:

Hungarian Presidency of the Council of the EU

Financial Services Attachés of the EU Member States

Subject: Ensuring the FiDA Regulation is Fit-For-Purpose and Considers Market Impact

Dear Council members,

As representatives of the European financial services industry across different sectors, we are writing to reiterate¹ our **support for developing a strong data economy, promoting data-driven innovation in the EU/EEA financial sector** and establishing the EU/EEA as an important financial market in the world. The data economy will play a key role for that and, hence, the success of the proposed EU/EEA framework for financial data access (FiDA) is of utmost importance. However, we maintain **deep concerns about the lack of a comprehensive analysis** regarding the scale of the requirements under FiDA and their **significant** (potentially **systemic**) impact on the industry in terms of costs, implementation efforts, and possible distortion of competition, **without evidencing customers' demand for participation**.

We appreciate the progress that Member States have made towards finding a more proportionate and staggered approach to implementing FiDA, helping the EU/EEA data economy to evolve in a healthy, trustworthy, and sustainable way. However, for FiDA to successfully deliver benefits to customers and market actors, **continued discussions** and further fundamental improvements are required (please refer to details in the Annex), in particular:

- 1. Explicitly exclude confidential business data, trade secrets, and inferred and derived data from the definition of customer data**
- 2. Focus the scope of FiDA on retail customers, including SMEs, while excluding professional investors, institutional clients, large corporates, and customers who reside or are established outside the EU/EEA**
- 3. Mandatory data sharing under FiDA should only take place through Financial Data Sharing Schemes to incentivise scheme participation and ensure data security. At the same time, data sharing subject to bilateral contractual agreements should continue to be permitted on a voluntary basis**
- 4. Integrate customer demand into data sharing and scheme development**
- 5. Introduce adequate scheme implementation and operationalisation timelines**
- 6. Exclude gatekeepers from the scope of data users and FISPs**

¹ A previous letter (signed by EBF, EACB, ESBG, and AFME) was sent on 31 July to Council members addressing essential considerations for a balanced FiDA Regulation.

We are of the opinion that, without the above changes (which are further elaborated below) and continued discussions on the impact of the proposal on the industry, the design of FiDA would not be fit-for-purpose and would severely disincentivise financial institutions with operations in the EU/EEA and their ability to invest in innovation. It would therefore be **contrary to the broader EU aims towards strengthening its competitiveness and attractiveness to investments**. In the “Future of European Competitiveness Report” from Mario Draghi, closing the innovation gap in Europe is identified as one of the key action areas – as it currently stands, FiDA risks hindering instead of helping this goal². Given its wide-ranging implications, FiDA is not merely a technical regulation, but an impactful piece of legislation that will influence the broader financial ecosystem. Furthermore, permission under FiDA for third-country FISPs to access customer data not only risks distorting competition, but it will also undermine the development of a robust and secure EU/EEA data economy.

We remain highly concerned that, due to the complexity of the scope of the FiDA framework and the lack of comprehensive assessment and consideration of its impact on EU citizens, as well as Europe as a whole, FiDA will undermine the capabilities of the financial sector to efficiently contribute to making the EU/EEA more competitive.

We thank you for your attention and remain available to discuss these issues further.

² Report on *The future of European competitiveness: a competitiveness strategy for Europe*, September 2024

Annex: Improvements Required to FiDA

- 1. Explicitly exclude confidential business data, trade secrets, and inferred and derived data from the definition of customer data:** we welcome Member States' proposal to clarify that only raw data should be considered as customer data under the scope of FiDA, as well as the inclusion of additional safeguards to ensure that the risk of reverse engineering is mitigated. However, for the important purposes of ensuring legal certainty and incentives for competition, we view that it is imperative to further modify the definition of customer data under Art. 3(3) to clearly exclude any confidential business data and trade secrets, as well as data that is inferred or derived (e.g., any data generated by a financial institution by modifying or enriching data provided directly by the customer). For legal clarity, we also support – where applicable – to make direct references to existing EU legislation defining and governing specific financial products under the data categories in scope.
- 2. Focus the scope of FiDA on retail customers, including SMEs, and exclude professional and institutional clients, and large corporates, and exclude customers who reside or are established outside the EU/EEA:** as neither the *Report* of the Expert Group on European financial data space nor the *Commission Impact Assessment* accompanying the FiDA proposal evidenced any benefits of introducing data access for professional and institutional clients³, the industry continues to strongly support that the framework should concentrate on the needs of retail clients and small to medium enterprises (SMEs). Therefore, the data of professional investors, institutional customers, and data of large corporates should not be in scope of FiDA. Large corporates, as well as professional investors and institutional customers already receive highly bespoke financial services, are able to request dedicated and tailored access interfaces and arrangements on data access and interoperability, and are unlikely to choose standardised, permission dashboards under FiDA. Including the above-mentioned customers in the scope would require financial entities to put in place systems and processes that deal with much more complex sets of data, in comparison to retail clients, while those customers do not need them to streamline the sharing of their data. A lack of demand on their side would mean low usage, if any, of the schemes, APIs, dashboards etc. and, as such, unjustified costs borne by the financial industry, which at the same time will not burden its non-EU/EEA based competitors. Therefore, the definition of "customers" should clearly exclude professional clients, as defined under MiFID, and corporates beyond the definition of SMEs, as defined in the EU Recommendation⁴ 2003/361 of the European Commission. It should also be made clear that only customers residing in or established in the EU are able to make use of FiDA's possibilities.

³ Report of the Expert Group on European financial data space, *Report on Open Finance*, October 2022; and 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.

⁴ Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises

3. **Mandatory data sharing under FiDA should only take place through Financial Data Sharing Schemes to incentivise scheme participation and ensure data security. Data sharing subject to bilateral contractual agreements should continue to be permitted on a voluntary basis:** On the issue of the interplay between Title II (data access) and Title IV (schemes), we strongly view that schemes should be the only arrangements to facilitate mandatory data access under FiDA. Whilst data sharing subject to bilateral contractual agreements should continue to be permitted on a voluntary basis, FiDA should not oblige data holders to make available data to data users and FISPs in the absence of a relevant financial data sharing scheme. The contrary would not only severely undermine and disincentivise the creation of schemes and participation by relevant stakeholders, but it would also weaken the security of customer data (including sensitive financial data), by potentially exposing them to security and data protection risks, and an increased risk of fraud. It would also hinder customers' ability to seek redress in case of breaches and disputes and make efficient supervision practically impossible. This would, as a result, lead to an adverse outcome for the financial system, supervisors, and customers. Accordingly, FiDA must include clear liability provisions for the inappropriate use of personal and non-personal data by the data user. Additionally, data holders must be exempt from any responsibility for the inappropriate use of customer data by data users.
4. **Integrate customer demand into data sharing and scheme development:** we remain highly concerned that the FiDA framework lacks a comprehensive, quantitative assessment on the FiDA-readiness of the individual data categories in scope. It is therefore imperative that customer demand is explicitly reflected in the text of the proposed Regulation, including throughout the scheme development and implementation phase, so that scheme participants can focus data sharing (and the necessary investments) on the most relevant use cases, and that data categories, or customer categories without continued demonstrated demand can be excluded from mandatory inclusion under FiDA. In light of the substantial implementation costs required to develop and maintain a panoply of product APIs (and the underlying infrastructure) and the implementation of common standards for customer data, scheme members should only be required to invest in use cases (and, based on that, the data points), where there is clear demand from customers. The Commission should have the power to intervene in the setting up of schemes only in the event of a market failure and where a scheme could not be established despite the presence of a clear demonstrated demand from customers.
5. **Introduce adequate scheme implementation and operationalisation timelines to reflect the complexity of the task:** the implementation timeline of schemes needs to take into account the many different requirements mandated under FiDA, including market participants agreeing on adequate governance and compensation arrangements, defining common and technical interface standards, and testing the technical solutions for data sharing so that they are secure for customers. Given the industry's experience with scheme development and implementation in other areas, we strongly urge that the gradual approach in the Regulation provides sufficient time for scheme set up on the one hand, and implementing the data sharing obligation on the other. This would allow stakeholders to find the optimal governance,

compensation, and technical arrangements, also for the purpose of ensuring data security and protection.

6. **Exclude gatekeepers from the scope of data users and FISPs:** we remain of the opinion that entities with advantages in technological capabilities and access to vast datasets (so called “gatekeepers”) should not be allowed to become data users or FISPs under FiDA. Through FiDA, these entities could access vast amounts of customer data from the financial industry at a disproportionate advantage. This will further consolidate market dominance of these entities, which is contradictory to the aims of the Digital Markets Act.