## GDV Suggestions and Comments on a framework for Financial Data Access (FiDA)

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| **Article 2**<br>**Scope**<br><br>1. This Regulation applies to the following categories of customer data on:<br><br>(e) non-life insurance products in accordance with Directive 2009/138/EC, with the exception of sickness and health insurance products; including data collected for the purposes of a demands and needs assessment in accordance with Article 20 of Directive (EU) 2016/97 of the European Parliament and Council, and data collected for the purposes of an appropriateness and suitability assessment in accordance with Article 30 of Directive (EU) 2016/97. | **Article 2**<br>**Scope**<br><br>1. This Regulation applies to the following categories of customer data on:<br><br>(e) non-life insurance products in accordance with Directive 2009/138/EC, with the exception of sickness and health insurance products ***and with the exception of accident insurance products***; including data collected for the purposes of a demands and needs assessment in accordance with Article 20 of Directive (EU) 2016/97 of the European Parliament and Council, and data collected for the purposes of an appropriateness and suitability assessment in accordance with Article 30 of Directive (EU) 2016/97. | **Article 2**<br>**Scope**<br><br>The exception to data sharing that applies to health - and in some cases life - insurance policies, should also apply to the (German) accident insurance, as this is a product in which sensitive personal data is typically processed to a considerable extent, especially in the event of a claim. The considerations that apply to health insurance and the parts of life insurance not covered by the FiDA draft (e.g. term life insurance, occupational disability insurance) are also valid here. This assessment is reflected, for example, in the fact that in Germany special confidentiality obligations apply to life, health and accident insurance in accordance with section 203 of the German Criminal Code (StGB). Recital 19 of the German FiDA translation also provides for equal treatment of accident insurance with health and life insurance. This should also be reflected in the wording of the law. |
| **Article 2**<br>**Scope**<br><br>**5. (new)** | **Article 2**<br>**Scope**<br><br>***5. This Regulation shall not apply special categories of personal data according to Art. 9 of Regulation (EU) 2016/679 and to personal data of natural persons other than the customer.*** | **Article 2**<br>**Scope**<br><br>Since the Commission sees special risks for customers in the sharing of health insurance and life insurance data, apart from IBIPs, PEPPs and occupational pension products, the FiDA proposal |

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| | | excludes these products from the scope of application. The exclusion makes sense because special categories of personal data within the meaning of Art. 9 GDPR are typically processed on a large scale within the scope of these products. However, special categories of personal data are also processed in other insurance branches which are covered by FiDA, e.g. in third party liability insurance and in legal expenses insurance. In all these cases a loss of this data during data sharing or a misuse by a recipient can lead to considerable disadvantages for the customers. To account for these risks, special categories of personal data should generally be excluded from the scope of FiDA.<br><br>Insurers do not only process the data of their own customers, but often also the data of third parties. For example, in liability insurance, the damage is never to the customer, i.e., the policyholder, but to a third person who was harmed by the policyholder. In legal expenses insurance, data of the litigant is stored. Consent to the transfer of data given by a customer via a FiDA permission dashboard cannot justify this data processing. In practice, it is hardly possible for insurance companies to verify whether there is a justification under data protection law for the transfer of personal data of the third party to the customer or even to another provider (data user). |

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| | | Furthermore, outside the scope of the GDPR, company data of third parties may also be affected. This can be business secrets or other information that the third party does not agree to be used by others.<br>Therefore, third party data should generally be excluded from the scope. |
| **Article 2**<br>**Scope**<br>**6. (new)** | **Article 2**<br>**Scope**<br>***6. This Regulation shall not apply for data that are classified as trade secrets and intellectual property rights and therefore protected.*** | **Article 2**<br>**Scope**<br>From GDV's point of view, there are two possible approaches to better protection of trade secrets. The variant shown here would generally exclude trade secrets from the scope of application (ex-ante). This takes account of the way in which data is transferred (immediately). A second conceivable variant is an ex-post review based on the EU Data Act. However, the question arises as to how practicable this approach would be.<br><br>The sharing of internal company data on pricing as well as claims history or claims settlement, for example, affects the business interests of the companies. Claims settlement data are the basis for calculating tariffs and are thus particularly relevant to competition. Price differences result precisely from the different data, so that aspects of antitrust law must also be taken into account. The disclosure of this data would also have a negative impact with regard to fraud detection and prevention as well as money laundering |

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| | | detection/prevention. Such data should be exempted from the scope of the regulation. |
| **Article 2**<br>**Scope**<br><br>**7. (new)** | **Article 2**<br>**Scope**<br><br>***7. This Regulation shall not apply for insurance-based investment products, pension rights in occupational pension schemes, pension rights on the provision of pan-European personal pension products and non-life insurance products in accordance with Directive 2009/138/EC that are subject of contracts concluded before [entry into force of this Regulation]*** | **Article 2**<br>**Scope**<br><br>FiDA does currently not distinguish between new and existing insurance policies.<br><br>However, due to the long-term nature of the insurance business, policies are often spread across different inventory management systems and company archives. These systems are not designed to make the data available in a standardised format or via a uniform interface.<br><br>A retrospective adjustment of all existing contracts affected by FiDA to the new requirements would therefore mean disproportionate burdens and great technical effort for the companies and would be in no proportion to the expected benefits of FiDA. |
| **Article 3**<br>**Definitions**<br><br>(2) 'customer' means a natural or a legal person who makes use of financial products and services;<br><br>(3) 'customer data' means personal and non-personal data that is ***collected, stored and otherwise processed by a financial institution as part of their normal course of business with customers which covers both data provided by a customer and data generated as a result of*** | **Article 3**<br>**Definitions**<br><br>(2) 'customer' means a natural or a legal person who makes use of financial products and services ***and who is for the purposes of the insurance products listed under Art. 2 (1) the policyholder***;<br><br>(3) 'customer data' means personal and non-personal data that is ***provided by the customer*** | **Article 3**<br>**Definitions**<br><br>The term "customer" should be more clearly defined for the insurance sector to demonstrate that only the policyholder is "customer" in the meaning of the FiDA regulation.<br><br>From the perspective of a company, data is an important competitive factor and innovation driver that is closely linked to the respective individual strategy and portfolio. The risk that |

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| ***customer interaction with the financial institution;*** | | third parties use the shared data to draw conclusions about the insurers' proprietary models through reverse engineering is therefore high.<br><br>Providing this data to competitors and other market participants is therefore not warranted, as it would adversely affect the data holder. In our view, it should be recommended that the term "customer data" only includes raw customer data and excludes all data resulting from further processing by data holders. |
| **Article 3**<br>**Definitions**<br><br>For the purposes of this Regulation, the following definitions apply:<br><br>…<br><br>(5) 'data holder' means a financial institution ***other than*** an ***account*** information service provider that collects, stores and otherwise processes the data listed in Article 2(1) ;<br><br>**…**<br><br>**(30) (new)** | **Article 3**<br>**Definitions**<br><br>For the purposes of this Regulation, the following definitions apply:<br><br>…<br><br>(5) 'data holder' means a financial institution ***or*** an ***financial*** information service provider that collects, stores and otherwise processes the data listed in Article 2(1);<br><br>…<br><br>***(30) 'trade secret' means information which meets all requirements of Article 2, point (1) of Directive (EU) 2016/943*** | **Article 3**<br>**Definitions**<br><br>Due to reciprocity concerns, financial information service providers should also be obliged to participate in data sharing.<br><br>We propose adding a definition for trade secrets to increase legal clarity. |
| **Article 4**<br>**Obligation to make available data to the customer** | **Article 4**<br>**Obligation to make available data to the customer** | **Article 4**<br>**Obligation to make available data to the customer** |

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| The data holder shall, upon request from a customer submitted by electronic means, make the data listed in Article 2(1) available to the customer without undue delay, free of charge, continuously and in real-time. | The data holder shall, upon request from a customer submitted by electronic means, make the data listed in Article 2(1) available to the customer without undue delay, free of charge, ***and where relevant and feasible*** continuously and in real-time. | Since the continuous data provision in real-time is not always relevant or feasible, we propose changing the wording in accordance with Art. 5 (1) EU Data Act. |
| **Article 5**<br>**Obligations on a data holder to make customer data available to a data user**<br><br>1. The data holder shall, upon request from a customer submitted by electronic means, make available to a data user the customer data listed in Article 2(1) for the purposes for which the customer has granted permission to the data user. The customer data shall be made available to the data user without undue delay, continuously and in real-time. | **Article 5**<br>**Obligations on a data holder to make customer data available to a data user**<br><br>1. The data holder shall, upon request from a customer submitted by electronic means, make available to a data user the customer data listed in Article 2(1) for the purposes for which the customer has granted permission to the data user. The customer data shall be made available to the data user without undue delay ***and where relevant and feasible***, continuously and in real-time. | **Article 5**<br>**Obligations on a data holder to make customer data available to a data user**<br><br>Since the continuous data provision in real-time is not always relevant or feasible, we propose changing the wording in accordance with Art. 5 (1) EU Data Act. |
| **Article 5**<br>**Obligations on a data holder to make customer data available to a data user**<br><br>3. When making data available pursuant to paragraph 1, the data holder shall:<br><br>…<br><br>(e) respect the confidentiality of trade secrets and intellectual property rights when ***customer*** data is accessed in accordance with Article 5(***1***). | **Article 5**<br>**Obligations on a data holder to make customer data available to a data user**<br><br>3. When making data available pursuant to paragraph 1, the data holder shall:<br><br>…<br><br>(e) respect the confidentiality of trade secrets and intellectual property rights when data is accessed in accordance with Article 5(***4***). | **Article 5**<br>**Obligations on a data holder to make customer data available to a data user**<br><br>Trade secrets might also be found outside of customer data, for instance when data from the data holder is accessed and shared. |
| **Article 5**<br>**Obligations on a data holder to make customer data available to a data user** | **Article 5**<br>**Obligations on a data holder to make customer data available to a data user** | **Article 5**<br>**Obligations on a data holder to make customer data available to a data user** |

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| **4. (new)** | ***4. Trade secrets shall be preserved and shall only be disclosed to third parties to the extent that they are strictly necessary to fulfil the purpose agreed between the user and the third party. The data holder or the trade secret holder when it is not the data holder shall identify the data which are protected as trade secrets, , and shall agree with the data user all proportionate technical and organisational measures necessary to preserve the confidentiality of the shared data, such as model contractual terms, confidentiality agreements, strict access protocols, technical standards and the application of codes of conduct.***<br><br>***4a. Where there is no agreement on the necessary measures or if the user fails to implement the agreed measures or undermines the confidentiality of the trade secrets, the data holder may withhold or, as the case may be, suspend the sharing of data identified as trade secrets. The decision of the data holder shall be duly substantiated and provided in writing without undue delay to the data user. In such cases, the data holder shall notify the national competent authority designated in accordance with Article 17 that it has withheld or suspended the sharing of data and identify which measures have not been agreed or implemented and,*** | From GDV's point of view, there are two possible approaches to better protection of trade secrets. The variant shown here would align FiDA with the provisions of the EU Data Act. However, the ex-post review as envisioned by the Data Act might be unfeasible for the immediate data exchange required by FiDA. Therefore, we propose an alternative approach via amendments to Article 2 (6). |

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| | ***where relevant, which trade secrets have had their confidentiality compromised.***<br><br>***4b. In exceptional circumstances, when the data holder who is a trade secret holder can demonstrate that it is highly likely to suffer serious economic damage from the disclosure of trade secrets, despite the technical and organisational measures taken by the data user, that data holder may refuse on a case-by-case basis the request for access to the specific data in question. Such demonstration shall be duly substantiated, based on objective elements, in particular the enforceability of trade secrets protection in third countries, the nature and level of confidentiality of the data requested, the uniqueness and novelty of the product, and provided in writing and without undue delay. When the data holder refuses to share data pursuant to this Article, it shall notify the national competent authority designated in accordance with Article 17.*** | |
| **Article 6**<br>**Obligations on a data user receiving customer data**<br><br>1. A data user shall only access customer data made available under Article 5(1) for the purposes and under the conditions for which the customer has granted its permission. A data user shall delete customer data when it is no longer | **Article 6**<br>**Obligations on a data user receiving customer data**<br><br>1. A data user shall only access customer data made available under Article 5(1) for the purposes and under the conditions for which the customer has granted its permission. A data user shall delete customer data when it is no longer | **Article 6**<br>**Obligations on a data user receiving customer data** |

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| necessary for the purposes for which the permission has been granted by a customer. | necessary for the purposes for which the permission has been granted by a customer. ***Art. 17 of Regulation (EU) 2016/679 shall remain unaffected.*** | In the event that personal data are processed, consistency should be created here with the GDPR, which provides for exceptions to the obligation to delete in Art. 17. |
| **Article 6**<br>**Obligations on a data user receiving customer data**<br><br>4. To ensure the effective management of customer data, a data user shall:<br><br>(b) respect the confidentiality of trade secrets and intellectual property rights when ***customer*** data is accessed in accordance with Article 5(1); | **Article 6**<br>**Obligations on a data user receiving customer data**<br><br>4. To ensure the effective management of customer data, a data user shall:<br><br>(b) respect the confidentiality of trade secrets and intellectual property rights when data is accessed in accordance with Article 5(1) ***and 5(4);*** | **Article 6**<br>**Obligations on a data user receiving customer data**<br><br>Trade secrets might also be found outside of customer data, for instance when data from the data holder is accessed and shared. |
| **Article 10**<br>**Financial data sharing scheme governance and content**<br><br>(h) a financial data sharing scheme shall establish a model to determine the maximum compensation that a data holder is entitled to charge for making data available through an appropriate technical interface for data sharing with data users in line with the common standards developed under point (g). The model shall be based on the following principles:<br><br>(i) it should be limited to reasonable compensation ***directly related to*** making the data available to the data user ***and which is attributable to the request***; | **Article 10**<br>**Financial data sharing scheme governance and content**<br><br>(h) a financial data sharing scheme shall establish a model to determine the maximum compensation that a data holder is entitled to charge for making data available through an appropriate technical interface for data sharing with data users in line with the common standards developed under point (g). The model shall be based on the following principles:<br><br>(i) it should be limited to reasonable compensation ***for*** making the data available to the data user ***and may include a margin.***<br><br>***(a) the costs incurred for making the data available, including, in particular, the costs necessary for the formatting of*** | **Article 10**<br>**Financial data sharing scheme governance and content**<br><br>The FiDA proposal imposes a heavy burden on data holders. These entities will have to participate in the standardisation, implement interfaces, provide dashboards, and prepare the data to make it shareable. |

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| | ***data, dissemination via electronic means and storage;*** | It is crucial that any compensation reflects the broad range of necessary measures and prior investments in data preparation. The development of a model that determines the maximum compensation would by itself not suffice. In GDV's view, explicit reference should therefore be made to the provisions in the EU Data Act on compensation for data (Art. 9 2022/0047 COD) as well as other relevant regulations. This approach would be in line with recital 47, which refers to the horizontal provisions from the EU Data Act. |
| | ***(b) the investment in the collection and production of data, where applicable, taking into account whether other parties contributed to the obtaining, generating or collecting the data in question;*** | |
| (ii) it should be based on an objective, transparent and non-discriminatory methodology agreed by the scheme members; | (ii) it should be based on an objective, transparent and non-discriminatory methodology agreed by the scheme members; | |
| (iii) it should be based on comprehensive market data collected from data users and data holders on each of the cost elements to be considered, clearly identified in line with the model; | (iii) it should be based on comprehensive market data collected from data users and data holders on each of the cost elements to be considered, clearly identified in line with the model; | |
| (iv) it should be periodically reviewed and monitored to take account of technological progress; | (iv) it should be periodically reviewed and monitored to take account of technological progress; ***and*** | |
| ***(v) it should be devised to gear compensation towards the lowest levels prevalent on the market; and*** | ***Deleted*** | The regulation should not prejudice the amount of compensation which is to be determined by the FDSS and supply and demand. |
| (vi) it should be limited to the requests for customer data under Article 2(1) or proportionate to the related datasets in the scope of that Article in the case of combined data requests. Where the data user is a micro, small or medium enterprise, as defined in Article 2 of the Annex to Commission Recommendation 2003/361/EC of 6 May 200342, any compensation agreed shall not exceed the costs directly related to making the data available | (***v***) it should be limited to the requests for customer data under Article 2(1) or proportionate to the related datasets in the scope of that Article in the case of combined data requests. Where the data user is a micro, small or medium enterprise, as defined in Article 2 of the Annex to Commission Recommendation 2003/361/EC of 6 May 200342, any compensation agreed shall not exceed the costs directly related to making the data available | |

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| to the data recipient and which are attributable to the request. | to the data recipient and which are attributable to the request. | |
| **Article 10**<br>**Financial data sharing scheme governance and content**<br><br>Upon completion of its assessment, the competent authority shall inform EBA of a notified financial data sharing scheme that satisfies the provisions of paragraph 1. A scheme notified to EBA in accordance with this paragraph shall be recognised in all the Member States for the purpose of accessing data pursuant to Article 5(1) and shall not require further notification in any other Member State. | **Article 10**<br>**Financial data sharing scheme governance and content**<br><br>Upon completion of its assessment, the competent authority shall inform EBA of a notified financial data sharing scheme that satisfies the provisions of paragraph 1. A scheme notified to EBA ***or EIOPA*** in accordance with this paragraph shall be recognised in all the Member States for the purpose of accessing data pursuant to Article 5(1) and shall not require further notification in any other Member State. | **Article 10**<br>**Financial data sharing scheme governance and content**<br><br>FiDA has a major impact on the insurance industry. It is therefore only logical to consistently involve the European Insurance and Occupational Pensions Authority (EIOPA), as only it has the necessary competence for the industry. Furthermore, EIOPA can draw on many years of expertise and a deep understanding of the functioning and specifics of the industry. |
| **Article 12**<br>**Application for authorisation of financial information service providers**<br><br>**5. (new)** | **Article 12**<br>**Application for authorisation of financial information service providers**<br><br>***5. Any undertaking designated as a gatekeeper, pursuant to Article 3 of Regulation (EU) 2022/1925 on contestable and fair markets in the digital sector (Digital Markets Act), shall not be eligible for authorisation as a financial information service provider*** | **Article 12**<br>**Application for authorisation of financial information service providers**<br><br>BigTech companies pose a particular challenge due to their market dominance. For example, the PSD2 study points out that access to payment accounts has led to a competitive imbalance between banks and PSD2-licensed BigTechs. Against this background, there should be a restriction for FiDA in line with the EU Data Act (Art. 5(2)) which limits gatekeeper access to the data sharing framework. |
| **Article 15 Register**<br><br>1. EBA shall develop, operate and maintain an electronic central register which contains the following information: | **Article 15 Register**<br><br>1. EBA ***and EIOPA*** shall develop, operate and maintain an electronic central register which contains the following information: | **Article 15 Register**<br><br>FiDA has a major impact on the insurance industry. It is therefore only logical to consistently involve the European Insurance and Occupational Pensions Authority (EIOPA), as only it has the |

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| 2. The register referred to in paragraph 1 shall only contain anonymised data.<br><br>3. The register shall be publicly available on EBA's website and shall allow for easy searching and accessing the information listed.<br><br>4. EBA shall enter in the register referred to in paragraph 1 any withdrawal of authorisation of financial information service providers or termination of a financial data sharing scheme.<br><br>5. The competent authorities of Member States shall communicate without delay to EBA the information necessary to fulfil its tasks pursuant to paragraphs 1 and 3. Competent authorities shall be responsible for the accuracy of the information specified in paragraphs 1 and 3 and for keeping that information up to date. They shall, where technically possible, transmit this information to EBA in an automated way. | 2. The register referred to in paragraph 1 shall only contain anonymised data.<br><br>3. The register shall be publicly available on EBA's ***and EIOPA's*** website and shall allow for easy searching and accessing the information listed.<br><br>4. EBA ***and EIOPA*** shall enter in the register referred to in paragraph 1 any withdrawal of authorisation of financial information service providers or termination of a financial data sharing scheme.<br><br>5. The competent authorities of Member States shall communicate without delay to EBA ***and EIOPA*** the information necessary to fulfil its tasks pursuant to paragraphs 1 and 3. Competent authorities shall be responsible for the accuracy of the information specified in paragraphs 1 and 3 and for keeping that information up to date. They shall, where technically possible, transmit this information to EBA in an automated way. | necessary competence for the industry. Furthermore, EIOPA can draw on many years of expertise and a deep understanding of the functioning and specifics of the industry. |
| **Article 20**<br>**Administrative penalties and other administrative measures**<br><br>***(a) a public statement indicating the natural or legal person responsible and the nature of the infringement;*** | **Article 20**<br>**Administrative penalties and other administrative measures**<br><br>***Deleted*** | **Article 20**<br>**Administrative penalties and other administrative measures**<br><br>In our view, the legislative purpose of publishing decisions is debatable, especially concerning the data holders affected by them. Such publication can lead to reputation damage, which can also have an impact on the core activities of the companies. This provision should therefore be deleted. |

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| **Article 21**<br>**Periodic penalty payments** | ***Deleted*** | **Article 21**<br>**Periodic penalty payments**<br><br>While it is undisputed that the broad access to and exchange of data require a sanction mechanism, the measures planned in the draft proposal are disproportionately strict in their scope, severity, and extent. The recurring fines under Art. 21 are likely to lead to risk aversion rather than a willingness to innovate on the part of companies. |
| **Article 36**<br>**Entry into force and application**<br><br>This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.<br><br>It shall apply from [OP please insert the date = ***24*** months after the date of entry into force of this Regulation]. However, Articles 9 to 13 shall apply from [OP please insert the date = ***18*** months after the date of entry into force of this Regulation]. | **Article 36**<br>**Entry into force and application**<br><br>This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.<br><br>It shall apply from [OP please insert the date = ***36*** months after the date of entry into force of this Regulation]. However, Articles 9 to 13 shall apply from [OP please insert the date = ***24*** months after the date of entry into force of this Regulation]. | **Article 36**<br>**Entry into force and application**<br><br>Due to the far-reaching application of FiDA to the insurance industry, companies will in any case need sufficient lead time for implementing the new requirements. The periods provided for in Art. 36 should therefore be extended |