



Council of the  
European Union

Brussels, 15 December 2023  
(OR. en)

16665/23

LIMITE

EF 394  
ECOFIN 1357  
CODEC 2468

---

---

Interinstitutional File:  
2023/0205 (COD)

---

---

## REPORT

---

From: Presidency

To: Permanent Representatives Committee (Part 2)

---

Subject: 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

- Progress report

---

### I. GENERAL REMARKS

1. **On the 28<sup>th</sup> of June 2023, the European Commission put forward 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 (hereinafter, “the FIDA Regulation Proposal” or simply, “the Proposal”).
2. **The objectives of the Proposal are to foster innovation in the financial sector that is currently being hindered by the limited access to financial data and to set out rules for secure data sharing within the financial sector.** The limited access is mainly due to three elements. First, the lack of clear rules to manage data permissions by the customers who own the data, which negatively affects customers’ trust to accept the sharing of their data. Second, the lack of rules to share data, that deepens the problem because, even if certain customers want to share their data, the absence of these rules facilitates holders not to allow it. Third, the heterogeneity of the data and of the infrastructure used to share it, which increases the complexity.

3. **After the introduction of the open banking regime in Directive (EU) 2015/2366 in payments services in the internal market (hereinafter, “PSD2”), the FIDA Regulation Proposal intends to broaden its scope from payment accounts to other financial information, contributing to the development of a more holistic open finance.** The idea is that facilitating this flow of financial data could encourage the entrance of new competitors in the market, fostering the development of new data-driven and more cost-efficient business models in the financial sector that better serve customers’ needs. In the future, payment accounts could be included in the FIDA Regulation integrating the open banking in the open finance regime.
4. **The Spanish Presidency of the Council of the EU, that started on the 1<sup>st</sup> of July 2023, immediately started the legislative work on this file.** The Presidency organized an introductory Working Party on July 23<sup>rd</sup>, treating together the FIDA Proposal and the PSD2 review given the connections that exist between both files. From then on, the Presidency has been holding monthly meetings treating the files separately (in the case of FIDA, on September 27<sup>th</sup>, October 19<sup>th</sup>, and November 28<sup>th</sup>). However, to ensure coherence, some of the elements discussed on the FIDA Regulation that could have an impact on the open banking regime, were presented as well in the November 29<sup>th</sup> PSD2 review Working Party.

5. **This report highlights the progress undertaken during the Spanish Presidency of the Council on the FIDA Regulation file.** It does not preclude any future decision by the Council regarding the content of the Proposal. The Presidency identified the most controversial issues of the Proposal and from then on organized the meetings to enable a fruitful debate among Member States on those key aspects: the scope of the Proposal, the permission dashboards that allow customers to control the data they share, the financial data sharing schemes that contain the rules that govern the data sharing between the data holder and the data user (including compensation for the data holder), and the rules applicable to the newly regulated entities to access data (the Financial Information Service Providers, 'FISPs'), including third country FISPs. During the Spanish Presidency, the Working Party has been able to make important progress on the Proposal and draw some preliminary conclusions regarding the direction the Regulation should take and the main principles that want to be achieved. However, there are still crucial elements in the Proposal that need to be agreed upon.
6. **The work under the Spanish Presidency has set the basis for future discussions at the Council on the FIDA Proposal.** The Presidency will share with the incoming Belgian Presidency the technical work and drafting suggestions that have been prepared during the Spanish semester. The Presidency considers that those materials constitute a good starting point for the work ahead.

## II. CONTENT OF THE DISCUSSIONS

### *Prudent approach on the scope and clear definitions for an effective consumer data protection*

7. **A majority of Member States call for a cautious approach when going forward with the discussions.** The activity that wants to be regulated is still at a very early stage, Member States are still assessing the implications that the opening of data could have in certain sectors and on financial inclusion, and learning from the experience from open banking is deemed crucial to improve the experience.
8. **Member States agree that two key elements for the Proposal to be successful are: First, that sensitive data is protected to avoid financial exclusion risks, and second, that customers are in control of their data, so that trust is built, and information can flow.** At the same time, this new piece of legislation should not create unnecessary administrative burdens and costs for the parties involved. To ensure all this, the definition of the scope together with the data use perimeter, the permission dashboards and the financial data sharing schemes are of utmost importance.

9. **Regarding the scope of the Proposal, most Member States are open to consider a gradual step-by-step approach**, starting with data sets where the cost-benefit ratio is clearer and including, at a later stage the rest of the data. Some Member States, however, are more aligned with the Proposal and believe that a step-by-step approach could increase the cost of implementation and could hinder innovation. They are therefore cautious to support such an approach until a specific implementation option is on the table. An alternative, to be discussed, that could address the concern of those Member States calling for a cautious staggered approach, could be to make more explicit that the financial data sharing schemes could be introduced gradually for different data sets instead of introducing this approach in the scope, starting, for instance, with those data sets where there is a higher demand from data users. In the end, both scope and schemes are related. This would safeguard the innovation benefits of maintaining a broad scope while strengthening proportionality and mitigating the burden of stakeholders when implementing the provisions of the Proposal, especially regarding standardisation.

10. **The Presidency has been able to clarify some of the data types included in the scope contributing to better frame the Proposal, however further efforts are needed to refine the scope and assess how to best protect sensitive data.** Whereas Member States agree that processed and enriched data should be out of the scope, the definition of customer data still needs some finetuning. Regarding the protection of sensitive data, the discussions point out two possible ways forward. On the one hand, the exclusion from the scope of more entities and types of data that could be sensitive. The identified problem of this approach is that, many times, the excluded data can also be inferred from other data types and being too broad in the exemptions can significantly decrease the benefits of the Proposal without necessarily ensuring a higher degree of protection. On the other hand, another alternative to move forward could be not to broaden too much the exemptions and ensure the protection and correct use of the data via an enlarged perimeter that secures an adequate use of the sensitive data with European Supervisory Authorities' guidelines and a thorough supervision by these entities.

11. **Member States agree that the Regulation should be clearer in the obligations it establishes for data holders and users.** In this respect, the Presidency has put forward some clarifications regarding the manner in which data should be shared and to emphasize the protection of customer data and trade secrets, which have had a positive reception from Member States. Nonetheless, some Member States are still wary about how to best ensure reciprocity.

*Permission dashboards are the best tool to guarantee data protection.*

12. **There is a common understanding among Member States that the development of comprehensive and user-friendly permission dashboards is crucial to foster customer trust.** Furthermore, several Member States believe that it would be beneficial for the provisions on permission dashboards in the FIDA Regulation to be coherent with the PSD2 review to avoid an excessive burden for institutions and ensure an alignment between the open banking and the open finance regime. Data permission dashboards allow customers to monitor and manage the permissions they grant and withdraw to access their data, which increases their control and therefore their trust to share data.

- **Most Member States believe that the data holder should be responsible for providing these dashboards,** as is established in the Proposal, and that the costs for doing so should be duly taken into account when calculating the compensation in the scheme.

- **Most Member States call for a higher degree of centralization of the dashboards**, since, from a customer experience perspective, it is more useful to have a comprehensive overview of all the permissions, or at least to have a dashboard for each data type. The reference that the Proposal makes to electronic identification like eIDAS to enable a more centralized solution still raises questions among Member States, given the time it could take to be in place.
- **Another element that has been raised by many Member States is the need to introduce strong customer authentication (SCA) so that the holder can verify that the user has obtained permission from the client to access the data.** The rationale behind not including such an authentication in the Proposal is that FIDA does not encompass payments initiation, making the risk of fraud lower. However, Member States believe that the inclusion could be helpful to ensure a higher level of protection of the customer and to further align with the Payments Services Regulation Proposal (PSR).

*Further work is needed to find a common ground to regulate the schemes and the compensation regime.*

13. **Member States are still uncertain on the best approach to go forward with the Financial Data Sharing Schemes (FDSS).** Being a member of a FDSS is a condition for data holders and data users to share data under FIDA. The schemes should establish the rules governing the access of customer data including the rules on standardization, the reasonable compensation to be paid to the holder and the rules on liability. In any case, most Member States agree that the time frame established to set up and become member of a FDSS should be extended.



- **Some Member States support the Proposal, that opts for a market-led approach making the different parties cooperate to determine the rules.** This low degree of regulatory intervention, subject to principles and rules set out in FIDA, aims to let the market develop different standards and that the best standards are ultimately adopted by the parties. The Proposal also foresees as a fall-back option the possibility for the Commission to adopt schemes if they are not developed by the market.
- **However, some other Member States believe that a common standard should be established.** Based on the experience of open banking, where the lack of an EU-wide interface standard has been an important obstacle, creating excessive costs for users having to connect to different interfaces, these Member States ask for a high degree of standardisation in FIDA. This is deemed even more important in FIDA than it was in open banking given that the categories of customer data are more extensive and less standardized than payments data, increasing the technical complexities and implementation costs.

*Alignment with the Payment Services Directive legal regime is needed, also requiring the establishment in the EU to carry out these activities.*

14. **Regarding financial information service providers (FISPs), Member States agree that further alignment with PSD2 is needed and there are strong concerns towards allowing FISPs established outside the EU to access data exchanged through FIDA schemes.** FISPs are a new financial entity created by and regulated under the FIDA Proposal, aiming to facilitate the entry of new competitors to offer value added financial services targeted to customers.

- **The Presidency has offered a definition to nail down the activities that FISPs shall be able to carry out**, limited to the collection, consolidation and comparison of data, that has gathered a high level of consensus among Member States. However, some modifications might still be needed to ensure that innovation is not being hampered.
- **Member States broadly support a higher level of alignment with the PSD2 review regarding the authorization or registration regime for these entities**, so that the entities that carry out these activities for payments data (AISPs under PSD2) are subject to the same requirements as FISPs. This would make the inclusion of payments data in the FIDA Regulation smoother.
- **Most Member States believe that allowing third country FISPs access data in the Union jeopardizes the level of protection of customer data and generates an unlevel playing field regarding the European players**. Given that the activity of FISPs is limited to financial information services, such as data consolidation, the prudential risks are lower than for other financial institutions and therefore the Commission, supported by some Member States, considers that an establishment requirement, as provided also for AISPs under PSD2, is less justified than for financial services, also in light of international trade obligations. However, most Member States consider that an establishment requirement enhances customer protection by facilitating supervision, which is of upmost importance to build trust, which is at the core of the Proposal. Also, liability issues could be complicated if only a legal representative is involved, especially if natural persons are allowed to act as such.

### III. CONCLUSIONS

15. **The objectives of the Proposal have had a warm reception among Member States.** Building customer trust and fostering the flow of financial data to encourage the entry of competitors and the development of new customer centred business products contributing to build a data driven finance is considered of utmost importance by all Member States.
16. **During the Spanish Presidency good progress has been made in tackling the main controversial aspects of the Proposal.** The discussions in the Working Parties together with the enriching explanations of the Commission and of the ESAs, together with the non-papers provided by the Presidency have helped clarifying important elements of the Proposal including scope, definitions, or the protection of sensitive data through the data use perimeter. At the same time, they have contributed to align the opinions of Member States in some of these aspects.
17. **In any case, there is a general desire in the Council to proceed with caution.** The innovative nature of the data sharing activity, the sensitivity of some of the data in scope and the implications it could have on the financial sector and on financial inclusion call for a calm, thorough and well-thought approach when reviewing the Proposal.
18. **The Proposal's scope needs further refinement.** Given the broad range of financial data included in the Proposal, further discussions are needed, including a possible gradual approach.

19. **The most suitable way to protect sensitive data must be achieved**, ensuring that customers have entire control of the data they disclose, and that non-disclosure of data does not hinder access to financial products and services.
20. **Dashboards are a central part of the Proposal**. Many Member States have expressed their desire to guarantee that these dashboards are more centralized, consumer centric and aligned with the PSD2 review.
21. **The best way to achieve standardization by means of schemes is still to be assessed**. The choice between a market-led or a public-led approach is still on the table.
22. **To guarantee a high degree of protection of customer data and level playing field, Member States support the approach of introducing an establishment requirement for all entities under the scope of FIDA**.
23. **Alignment between FIDA and the PSD2 review regarding the provisions on dashboards and the FISP/AISP licensing requirements, is a priority for Member States**, to ensure a coherent Regulation that facilitates the extension of open banking to other areas in finance.