



Council of the European Union
General Secretariat

**Interinstitutional files:
2023/0205 (COD)**

Brussels, 12 May 2025

WK 6214/2025 INIT

LIMITE

**EF
ECOFIN
CODEC**

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

WORKING DOCUMENT

From:	Presidency
To:	Working Party on Financial Services and the Banking Union (Open Finance/FIDA) Financial Services Attachés
N° Cion doc.:	ST 11220 2023 INIT
Subject:	FIDA: Non-paper by BE CZ ES FR LV on burden reduction and a demand-driven implementation

WK 6214/2025 INIT

LIMITE

EN

Non-paper (Belgium, Czechia, France, Latvia, Spain) on reducing cost and administrative burden by a demand-driven implementation of FDSS in FIDA.

- This Non-Paper does not intend to reopen the Council mandate agreed in COREPER last December 2024.
- This Non-paper introduces some drafting suggestions, which may be considered during the trialogues, aiming at reducing implementing cost and administrative burden for FIDA implementation.

Introduction: Cost efficiency of the demand-driven approach

Some member states have expressed concerns regarding the technical complexity and the administrative costs that the application of FIDA may have on the financial sector. In this regard, SE and ES presented on May 16th 2024 a non-paper in which, among other issues, a demand-driven implementation of the Financial Data Sharing Scheme (FDSS) was proposed.

This approach would reduce administrative costs and improve efficiency, since it would guarantee that resources are put in place to make specific data points accessible only when there is a demonstrated market demand, avoiding unnecessary investment in sharing data for which there is not a specific use case. Even though the approach was not included in the Council mandate, it might help reducing significantly the investment needed by data holders for sharing data under FIDA and improving the quality of the data shared under the regulation.

a) How to measure the existing demand

There are different elements to consider for measuring the existing market demand for sharing certain data categories within an FDSS.

As preliminarily proposed in the SE – ES non-paper, one option could be to consider the number of data users of an FDSS that ask for sharing certain data points (i.e. 25%). The issue here would be to establish a reasonable number to consider that there is sufficient market demand. Once this threshold is reached, data holders shall make available these data within a maximum period of 12 months. However, it might be impractical to try and define what constitutes a sufficient proportion of market participants in the legislation, as this will be very dependent on the internal organization of each FDSS, the type of activity covered and the characteristics of the sector. Also, developing a more elaborate indicator would be complex and prone to drawbacks. Therefore, we consider that an alternative approach should be considered.

Another option would be to leave it up to schemes to define, within their own governance frameworks, how a decision on market demand would be taken, with

the definition of data points to be shared to be included in the tasks of the scheme. This would be consistent with the overall approach in FIDA to rely on the market for the operation and organization of schemes, and also with the objective of simplification of the EU legislation. We consider that this option should be pursued.

b) How to implement a demand-driven approach

The obligation for data holders and data users to join at least an FDSS in accordance with article 9 would remain as such (with the clarification that data users have to be already authorized to join, either as financial institution or as FISP). These FDSS would have to be set up along the timeline set out in article 36, according to the staggered approach envisaged in the Council General Approach and possibly taking into account a longer delay as specified below (part c). **In order to limit the cost of establishing FDSS, this initial set up would be limited to the governance framework of the scheme** (i.e. article 10 (1) (a) to (f)), as already provided in paragraph 5 of article 10 which only refers to governance at the time of notification of the FDSS.

In the absence of FDSS for one or more categories of customer data, the Commission would remain empowered to adopt a delegated act according to article 11 for that category of data, but this would be limited to setting out the modalities for data holders and data users to determine in common agreement the data points to be shared under article 11.

Once FDSS are set up and notified, each FDSS would determine, along its own timeline and governance, which specific data points, if any, are eligible for sharing between its data holders and data users. The FDSS would then have 12 months, once that decision is taken, to set up the other elements of the scheme as set out in article 10 (g) to (j) (technical standards, compensation model, liability regime, etc.). This would ensure that the data to be shared is consistent with the effective demand and operational constraints for a specific market.

c) Finetuning of the phasing-in for the setting-up of the FDSS

Regarding the setting-up phase of the FDSS, it could also be proposed to extend the timeframe included in the Council mandate, along with other regulation requirements. This extension would help to ensure sufficient time for schemes to be put in place. FDSS could be set up in [24 or 30], [36 or 39] and [48] months for the different data categories, according to article 36.

d) Drafting suggestions. Demand-driven implementation of FDSS.

The demand-driven implementation of the FDSS, as outlined in sections a) to c), could be included in articles 4,5, 9, 10, 11 and 36 (the baseline version here is the Council General Approach). This drafting would have to be complemented with recitals to explain the intention underlying these changes, as set out in this note.

Article 4 : Obligation to make available data to the customer

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, **only for the data points of customer data determined by financial data sharing schemes the data holder belongs to, in accordance with article 10 (1 bis), and starting twelve months after that decision as set out in article 10 (1 ter).**

Article 5.: Obligations on a data holder to make customer data available to a data user

1. The data holder shall, upon request submitted by electronic means from a customer or a data user acting on behalf of the customer, make available to a data user the customer data listed in Article 2(1) **only for the data points of customer data determined by financial data sharing schemes the data holder belongs to, in accordance with article 10 (1 bis), and starting twelve months after that decision as set out in article 10 (1 ter), and** only for the purposes and under the conditions 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 9 : FDSS membership

1. Data holders and data users, **once they are authorized as financial institution or as financial information service provider,** shall become members of a financial data sharing scheme governing access to the customer data in compliance with Article 10.

(...)

Article 10 : FDSS governance and content :

1. A financial data sharing scheme shall include the following elements:

(a)

(...)

(f) a financial data sharing scheme shall include rules on transparency and where necessary, reporting to its members;

1 bis. A financial data sharing scheme shall determine, in accordance with its own timeline and its rules as set out in paragraph 1, whether data points of

customer data shall be deemed eligible for sharing and, if any, which specific data points of customer data are concerned.

1 ter. Once a decision on eligible data points has been taken by the financial data sharing scheme according to paragraph 1 bis and if this decision provides for data points of customer data to be eligible for sharing, the financial data sharing scheme shall, within twelve months of that decision, include the following elements :

(g) *[current lettering – to be changed to (a) in a new paragraph 1ter]*

(...)

(j) (...) in accordance with the quality requirements laid down by Directive 2013/11/EU of the European Parliament and of the Council.

(...)

Article 11: Empowerment for Delegated Act in the event of absence of a FDSS

In the event that, ~~6~~ **12** months after the respective dates in accordance with Article 36(2), **(3) and (4)**, a financial data sharing scheme has not been notified to the EBA in accordance with Article 10(6) for one or more categories of customer data listed in Article 2(1) and there is no realistic prospect of such a scheme being set up within a reasonable amount of time, the Commission is empowered to adopt a delegated act in accordance with Article 30 to supplement this Regulation by specifying the following modalities governance arrangements for data holders and data users to determine in a common agreement the specific data points of customer data eligible for sharing under which a data holder shall make available customer data pursuant to Article 5(1) for that category of data.

~~(a) common standards for the data and, where appropriate, the technical interfaces to allow customers to request data sharing under Article 5(1);~~

~~(b) a model to determine the maximum compensation that a data holder is entitled to charge for making data available;~~

~~(c) the liability of the entities involved in making the customer data available.~~

Article 36 :. Entry into force of the regulation

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

2. For the customer data listed in:

(i) Article 2(1)(a) with regard to data on credit agreements for consumers;

- (ii) Article 2(1)(a) with regard to data on accounts;
- (iii) Article 2(1)(b) with regard to data on savings;
- (iv) Article 2(1)(e) with regard to data on motor insurance, including data collected for the purposes of a demands and needs assessment in accordance with Article 20 of Directive (EU) 2016/97;

it shall apply from [OP please insert the date = **24 or 30** months after the date of entry into force of this Regulation]. ~~However, Articles 9 to 11 shall apply from [OP please insert the date 18 months after the date of entry into force of this Regulation].~~

3. For the customer data listed in:

- (i) Article 2(1)(a) with regard to data on credit agreements for consumers relating to residential immovable property mortgage credit agreements;
- (ii) Article 2(1)(b) with regard to data on investments in financial instruments, including data related to customers' sustainability preferences and other data collected for the purposes of carrying out an assessment of suitability and appropriateness in accordance with Article 25 of Directive 2014/65/EU;
- (iii) Article 2(1)(b) with regard to data on crypto assets, including data collected for the purposes of carrying out an assessment of suitability and appropriateness in accordance with Article 81(1) of Regulation (EU) 2023/1114;
- (iv) Article 2(1)(d),
- (v) Article 2(1)(b) with regard to data on entry knowledge test in accordance with Article 21 of Regulation (EU) 2020/1503,

it shall apply from ~~from~~ [OP please insert the date = **36 or 39** months after the date of entry into force of this Regulation]. ~~However, Articles 9 to 11 shall apply from [OP please insert the date = 30 months after the date of entry into force of this Regulation].~~

4. For the customer data listed in:

- (i) Article 2(1)(a) with regard to data on credit agreements except for data on credit agreements for consumers and data for credit agreements for consumers relating to residential immovable property;
- (ii) Article 2(1)(a) with regard to data which forms part of a creditworthiness assessment of a firm, and which is collected as part of a credit agreement application process or a request for a credit rating;
- (iii) Article 2(1)(e) other than data on motor insurance, including data collected for the purposes of a demands and needs assessment in accordance with Article 20 of Directive (EU) 2016/9,

(iv) Article 2(1)(b) with regard to data on insurance-based investment products, including data related to customers' sustainability preferences and other data collected for the purposes of carrying out an assessment of suitability and appropriateness in accordance with Article 30 of Directive (EU) 2016/97 and insurance-based individual pension products.

it shall apply from [OP please insert the date = 48 months after the date of entry into force of this Regulation]. ~~However, Articles 9 to 11 shall apply from [OP please insert the date = 42 months after the date of entry into force of this Regulation].~~

(...)