

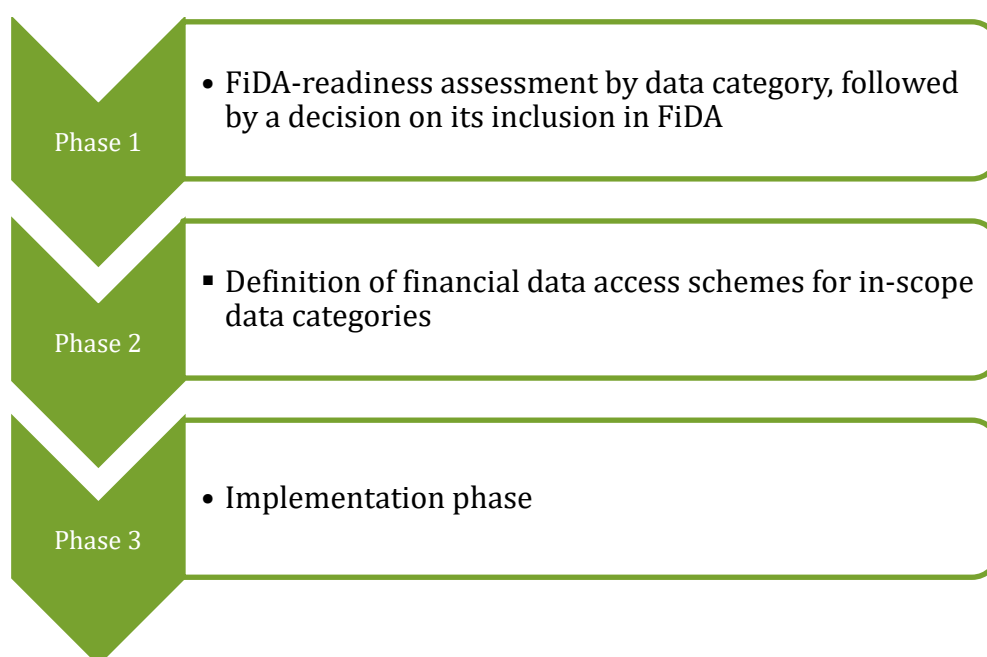
EU proposed Financial Data Access framework (FiDA)

Additional Position Paper on a step-by-step implementation

July 2024

Executive Summary

AFME's previous position paper "*FiDA and PSR: Key Issues for Developing the EU Data Economy*"¹ identified the need for 1) a comprehensive market demand/impact assessment and 2) a staggered implementation period beginning with targeted use cases that deliver the most significant benefits and requiring limited development. This paper elaborates on how to achieve a step-by-step implementation of FiDA, beginning with a thorough analysis of each of the financial data categories (at product/service)², following three phases:



Overview

The financial services industry is highly supportive of creating an innovative and integrated data economy. However, the breadth of the proposed EU Financial Data Access (FiDA) Framework poses unprecedented implementation and investment challenges for financial institutions operating in the EU, without thorough and robust analysis of estimated market demand for data sharing and foreseeable benefits to customers for each included product and service.³ It is therefore imperative that a proper consultation with participation of all FiDA stakeholders is performed for each data category. We welcome discussions by policymakers on a staggered implementation based on the 'FiDA-readiness' of data, however we note there has not been sufficient analysis on determining such readiness.

¹ <https://www.afme.eu/Portals/0/DispatchFeaturedImages/231020%20Position%20Paper%20on%20FiDA-PSR%20vF.pdf>

² We refer to 'data category' as each data category of customer data listed under proposed FiDA Art. 2(1), for example: loans, accounts, investments in financial instruments, inter alia.

³ Market demand for Open Finance needs to be sufficiently evidenced: the existing impact assessment conducted by the European Commission (2023) not only identified low consumer confidence in data sharing and low usage of 'open banking' products and services among customers, but also did not examine in-depth the market demand, costs, or benefits associated with introducing data sharing arrangements for each proposed FiDA data category. For example, the assessment found that less than half of surveyed consumers (49%) supported introducing new data access rights to securities accounts and financial instruments holdings.

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Without design changes to embed market demand in data access arrangements, FiDA would necessarily impact the competitiveness of financial institutions operating in the EU, especially taking into account the current lack of equivalent and reciprocal frameworks in third-country jurisdictions. Given the substantial investment required for the establishment and maintenance of data access, FiDA would also hinder these financial institutions' ability to invest in innovation.

At a high level, we believe there are a number of important principles that should be followed:

- **Data security for customers:** any data sharing or access arrangements should protect the security of customer data. To avoid data leakage and mitigate cybersecurity risks, data access schemes and arrangements need to be carefully designed with appropriate governance. This also confirms the need for allowing sufficient time for the creation and implementation of data access schemes.
- **Evidencing values for customers and market demand *prior to implementation*:** a consultation by data category is a necessary first step towards introducing FiDA in the EU, otherwise there is a significant risk of the industry building data-sharing arrangements that do not cater to any customer appetite or usage. In addition, in the implementation phase, operationalising data access for specific data access use cases should continuously take into account market demand.
- **Excluding wholesale and corporate clients from customer data access:** there is currently limited evidence of the benefits of FiDA for wholesale and institutional clients (including financial institutions and buy-side investors), which typically have bespoke relationships with banks and access specialised products/services.⁴ AFME continues to support the exclusion of wholesale and corporate clients from customer data access, unless the benefits are strongly evidenced by market demand / impact assessments.
- **Ability to exclude data categories without sufficient evidence of market demand:** while we acknowledge the ambition to achieve data sharing across a wide spectrum of financial services, a flaw in the design of the FiDA proposal is that it does not allow for excluding products and services for which there is limited market appetite, use cases, and benefits associated with data sharing for end customers prior to implementation. The final design and implementation of the Open Finance framework should allow for excluding such products and services and client segments for which there is limited demand or benefits.
- **Sufficient time allowed for the definition and operationalisation of schemes based on use cases:** by specifying that data access schemes need to be created within 18 months of the Regulation's entry into force, the FiDA proposal does not duly consider the time needed to allow for the practical implementation of data access schemes. Based on the industry's previous experience⁵, the creation of data access schemes requires a multitude of steps, each of which takes a significant period of time to reach agreement.⁶ A staggered implementation approach to FiDA, therefore, needs to embed considerations for practical implementation.

⁴ The existing impact assessment conducted by the European Commission (2023) included some use cases of how data sharing can help broaden the range of financial services and products offered to SMEs, but not for large wholesale or corporate clients.

⁵ On Open Banking (PSD2) and existing schemes for the payment industry

⁶ The steps, at a high level, include: the definition of schemes and membership, creation of governance structure, agreement on access arrangements and compensation, standardisation of data points, inter alia

AFME's Proposal for an Impact-Led Staggered Approach:

Step 1: FiDA-readiness assessment by each data category (within 12 months after entry into force of the Regulation)

- The European Supervisory Authorities (ESAs) should conduct a thorough analysis, with input from FiDA stakeholders (covering data holders, data users, customers, and prospective financial information service providers (FISPs)). to determine:
 - **Market demand**, including customer appetite and requests for data sharing anticipated by data holders, potential use cases at product and service level (based on single category, and not mixed/multiple data categories, at this stage), and the number and diversity of interested data holders, data users, potential FISPs and customers
 - **Benefits by customer category** (natural persons, SMEs⁷, and non-SME legal persons)
 - **Definition of data category and data quality**, covering: availability of data, specific relevant data points / fields, associated technical complexity of access, and technical adjustments / infrastructure build (e.g. to APIs) needed from existing data sharing arrangements (e.g. PSD2)
 - **Implementation costs** per data category and per customer category
 - **Ability and effectiveness of supervision**
 - **Relevance for each data category of establishing a single EU-level data access scheme, national level data access scheme, or a combination of both**
- The assessment will serve as guidance on the use cases and potential data points, with an estimate of the market demand for data sharing at the level of a single category of data.
- Based on the assessment submitted by the relevant ESA(s), the European Commission (EC) should, in consultation with the ESAs, and industry stakeholders, make an initial determination on which data categories are appropriate for scheme definition under FiDA (and thus proceed to Step 2). The timeline to proceed to financial data scheme definition for each data category should be informed by the outcome of the market demand / impact assessment.
- In addition, if the EC decides to launch financial data access scheme definitions for multiple data categories simultaneously under FiDA, regard should be given to data accessibility as well as the operational burden of in-scope firms that would be captured by more than one data category.

Step 2: Definition of financial data access schemes

For specific financial services and products that have demonstrated appropriate potential for customer data access, the first phase of implementation should begin with the definition of data access schemes. This phase would entail the initial negotiation and agreement among scheme participants (data holders, data users, customers, and prospective FISPs) on the key general criteria of the scheme, including:

- Data category and the definition of services at the functional level
- Compensation methodology
- Governance, data protection, and liability framework, and resources for its operationalisation
- Dispute management system (including the appointment of an independent third party)
- Any testing for additional use cases that would benefit from scheme-level expertise and participation

A phased approach should be envisaged for the different categories of data. These different periods of time are necessary because of:

- The current heterogeneity and availability of the data by the data holders (different “data readiness”)
- The number and diversity of participants in the schemes, encompassing both data holders and data users, as well as resourcing challenges arising as a result from stakeholders’ involvement in multiple schemes

⁷ According to the EC Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises

A phased approach for the definition of financial data access schemes could follow three broad tranches of data categories (subject to confirmation by the FiDA-readiness assessment), for example:

- Level 1 (high FiDA readiness): accounts except payment accounts as defined in the Payment Services Directive (EU) 2015/2366, savings (except structured deposits).
- Level 2 (medium FiDA-readiness): credit agreements for customers (with reference to the revised Consumer Credit Directive), mortgage credit agreements as defined in Directive (EU)2014/17
- Level 3 (low FiDA-readiness): investments in financial instruments, insurance based investment products, structured deposits, crypto assets (provided that the bank knowingly holds the assets in custody on behalf of the customer), non-life insurance products, occupational pension schemes, pan European private pension schemes

Step 3: Implementation phase

Subsequent to the finalisation of the constitution of schemes, the next step involves the implementation of the schemes. Due to the significant investments required to operationalise data access and potential changes in the data economy (from both within and outside the financial services industry), scheme members should be granted mechanisms to provide feedback to policymakers and supervisors (incl. ESAs and National Competent Authorities (NCAs)) on specific use cases and any observed changes in market demand for data access, so that resources are allocated to make specific categories of data accessible only if there continues to be demonstrated demand.

Scheme members will also need to agree on key granular criteria of the scheme for operationalisation, including:

- Specific use cases, data points and fields, as identified by technical working groups within schemes
- Implementation plan, as agreed by scheme members with input from the relevant ESAs and NCAs
- Technical solutions, including how to leverage existing standards and any additional data access standards required

In relation to operationalising data access, there are a number of considerations for scheme members that need to be taken into account for the implementation timeline, including infrastructure adaptation, implementation of application programming interfaces (APIs), and third-party service onboarding. Therefore, it should be ensured that scheme members are allowed an adequate period of time to embed such features in their business models and operations.

Relevant ESAs and NCAs can express opinions and formulate recommendations to steer the work. The ESAs should also be empowered with the responsibility to report to the European Commission regarding the activity and progress of the schemes and their compliance with the definition or intent of such schemes, as well as on the obstacles encountered in the development of certain use cases. The frequency of reporting may depend on type of scheme concerned (e.g. some schemes may require closer/more active monitoring than others).

Conclusion

The creation of an innovative financial data access ecosystem needs to be underpinned by strong market and customer demand throughout its design and implementation and a pragmatic approach to subsequent operationalisation and go-live, otherwise there are significant risks to the safety and security of customer data, incentives for firms active in the EU towards further market innovation, and ultimately competition and competitiveness. Therefore, AFME strongly encourages EU co-legislators to consider the 3-step plan above, beginning with a thorough assessment of each in-scope financial service, to ensure that the design of the Open Finance framework remains in line with broader EU objectives.

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