

# Open Finance: objectives of the Financial Data Access (FiDA) proposal

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## 1. Opportunities and challenges associated with open finance

### 1.1 Objectives and potential benefits of open finance

Open Finance (OF) refers to the sharing of personal and non-personal customer data held by financial sector intermediaries and other data holders with third-party providers, mainly through application programming interfaces (APIs). It is an extension to a broader range of data (credit, savings, investment, insurance, pensions) of the Open Banking (OB) concept which focuses on payments and the sharing of bank account data.

The main objectives of OF are to facilitate the provision of more tailored financial products and services (building on data combination and aggregation in areas such as financial advice, pension preparation and insurance); enhance customer experience (e.g. with a more seamless integration of different financial services and processes) and empower customers (e.g. with services allowing them to make more informed financial decisions). OF services can be developed both for retail and corporate customers. Examples of use cases of OF include: financial dashboards, financial management and wealth management tools consolidating information on different accounts and products; product and supplier comparison tools; more customized insurance policies based on in-vehicle data sharing; optimized handling of insurance claims; financial services embedded in e-commerce platforms<sup>1</sup>...

OF may also contribute to increasing choice and competition in the provision of financial services provision: first by stimulating the creation by fintechs of new financial services based on data sharing and aggregation and secondly by allowing traditional financial players to offer new services including third party services or to embed financial services in online sales and information platforms. OF set ups may also help to improve the effectiveness of existing financial processes. For example OF may support

credit-worthiness and insurability assessments by facilitating the access of financial institutions to a wider range of data in a shorter time or onboarding processes and loan, mortgage or insurance applications with a more effective data collection from multiple sources.

OF can also potentially contribute to enhancing supervision, for example with supotech solutions offering supervisors direct access to prudential, product or consumer information from different sources on a real time basis.

### 1.2 Possible risks and challenges associated with open finance

OF raises new customer protection risks that need tackling. First, the privacy and security risks traditionally associated with customer data use may be amplified by an increasing sharing of personal data with third party providers in the context of OF. Consumer protection issues may also emerge as a result of a higher level of disintermediation in OF ecosystems that connect consumers directly to different suppliers of financial services and financial information. The highly data-driven nature of OF also exposes customers to new risks of bias, discrimination and error, possibly related to the data sets used or to the way they are handled.

The development of OF also creates new operational and implementation challenges for financial firms related to the setting up and running of the OF infrastructure, API use, the quality and standardisation of data and the interoperability between different systems (between legacy and new IT systems, between data holder and third-party systems). OF may also lead to a higher exposure of financial institutions to ICT risks such as cyber-risk.

OF moreover raises new challenges at sector-level in terms of business model and supervision. A first issue is ensuring a fair allocation of the costs related to the provision of data access along the value chain, notably between data holders and data users. This allocation should allow new OF service providers to emerge, while providing data holders with sufficient incentives to implement and maintain

1. See Eurofi Regulatory Update April 2023 "Open finance: opportunities, challenges and policy implications" in the for further detail.

effective access to the data and preserving a level playing field in the market. A second issue are the potential supervisory implications of the development of new cross-sectoral and cross-border OF business models that may require an evolution of current approaches. OF may also impact the structure of the market with the emergence of specialised OF providers, leading to more fragmentation, and the possible emergence of new platforms combining a variety of financial services.

## 2. Review of the open banking provisions of PSD2

In the EU, open finance concepts were first implemented through open banking measures in the Payment Services Directive (PSD2) framework. These measures provided a regulatory framework for the access by account information service providers (AISPs<sup>2</sup>) and payment initiation service providers (PISPs<sup>3</sup>) to bank account data upon user request, in order to facilitate the development of new electronic and online payment services and the emergence of value added account information services. PSD2 rules notably include an obligation on banks to facilitate access to payment data for AISPs and PISPs via a secure interface.

### 2.1 Lessons from the implementation of PSD2 open banking provisions

According to the Commission's impact assessment accompanying the FiDA (Financial Data Access) proposal<sup>4</sup>, the Open Banking (OB) framework under PSD2 has had several positive effects.

First, the OB provisions of PSD2 have enabled a significant number of customers to access new types of financial services offered by banks and fintechs. The development of OB solutions in the EU has indeed been significant with more than 350 AISPs and PISPs authorised<sup>5</sup> following the implementation of PSD2. Market penetration remained fairly low at the end of 2021, with OB touching around 17 million

users in the EU (less than 5% of EU banking customers)<sup>6</sup>, but it is estimated that the number of OB users will triple by the end of 2024. This positive trend is confirmed, according to the impact assessment, by surveys showing that customers consider that the choice of payment services has increased over the last 5 years. The number of monthly API calls also more than tripled between 2019 and 2021. The OB provisions of PSD2 moreover resulted in APIs being able to provide much richer data sources and facilitated the combination of analytics and machine learning techniques to better understand payment patterns.

In addition, it is considered that PSD2 requirements have brought more safety to financial services based on data sharing, with the establishment of standards for data sharing and API standards, although these standards remain optional in certain aspects and differ across Europe. PSD2 has also brought AISP and PISP providers under supervision, ensuring that they comply with minimum security and internal control standards<sup>7</sup>.

However, the implementation of PSD2 has also brought to light significant limitations within the OB provisions of the framework. As a result, it is widely acknowledged that the impact on innovation has been below the initial expectations. This is due notably to the fact that PSD2 provisions did not create a valid business model for OB or provide data holders (financial institutions) with sufficient incentives to implement data sharing interfaces.

PSD2 leaves standardization to the market, permitting third-party providers (TPPs) to employ various APIs for accessing payment account data. Consequently, several API standards have surfaced<sup>8</sup>, accompanied by disparities in how these standards are adopted among member states and banks. The discretion granted to each bank for implementation has resulted in substantial discrepancies in the quality and capabilities of these APIs. This variation, in turn, imposes supplementary expenses on TPPs seeking to establish connections with multiple Account Servicing Payment Service Providers (ASPSPs), such as banks<sup>9</sup>.

2. Account Information Services (AIS) facilitate in particular the collection and storage of information from customers' different bank accounts in a single place, allowing them to have a global view of their financial situation and easily analyse their spending patterns, expenses and financial needs.

3. Payment Initiation Services (PIS) facilitate the use of online banking to make payments online. These services help to initiate a payment from the consumer's account to the merchant's account by creating an interface to bridge both accounts, filling in the information needed for the bank transfer (amount of the transaction, account number, message) and informing the store of the transaction. PSD2 also allows clients to make payments to a third party from a bank's app using any of the client's accounts (whether they belong to this entity or not) – See BBVA Everything you need to know about PSD2 February 2023.

4. Impact assessment report accompanying the FiDA proposal 28 June 2023.

5. See EBA chairperson keynote speech at the Money Live Summit, 8 March 2023.

6. See Com. McGuinness keynote speech at event in European Parliament "From open banking to open finance" 21 March 2023.

7. See Eurofi Views Magazine April 2023 Open Finance G. Goffinet, ACPR.

8. There are at present two main API standards in Europe (Berlin Group and STET API standards) and a number of other more limited ones and the implementation of these standards is left at the discretion of each bank. Progress is being made with the development by the European Payment Council of a scheme for premium APIs that allows the exchange of data outside of payments data – See Eurofi Summary – Stockholm Seminar April 2023 – Open Finance.

9. By way of comparison in the UK a single standard has been enforced for the largest ASPSPs, resulting in a higher market penetration of OB services (around 10-11%) – see Eurofi Regulatory Update April 2023 Open finance.

In addition, while financial institutions are required under PSD2 to share their customers' data upon their request and to provide APIs there is no mandatory remuneration for providing this service and no obligation of reciprocity for the TPPs using this data. Consequently, banks have ended up supporting most of the costs related to the setting up and running of the infrastructure needed to share payment data with TPPs and this has eventually resulted in the setting up of interfaces offering only a limited access to the minimum data required by the PSD2 regulation<sup>10</sup>. This lack of incentives for data holders to provide appropriate access to TPPs and maintain effective dedicated data interfaces has been a significant obstacle to the wider development of OB solutions so far, according to many market observers.

Difficulties in terms of enforcement and supervision have also been pointed out with a variable implementation of the same OB standards observed across banks at European level and also at the domestic level in some cases. A further observation from the implementation of OB is the need for policy makers to encourage the development of common standards at EU level for APIs in particular. Some observers add that regulation is potentially more effective in supporting the implementation of standards designed by the industry, than in imposing standards, due to the difficulty for regulation of keeping pace with the evolution of technology<sup>11</sup>.

## 2.2 PSD3 review of open banking provisions

In the context of the PSD3 proposal published in June 2023, the Commission set out amendments to improve the functioning of OB in Europe.

The proposed measures include new requirements for the implementation by ASPSPs (such as banks) of dedicated data access interfaces and the introduction of a list of prohibited obstacles to data access in order to remove obstacles to the provision of OB services.

PSD3 also proposes requirements to enhance the business continuity of OB providers. If a bank's OB interface is down, causing OB providers potential harmful data access disruption, and if the bank cannot rapidly offer an effective alternative solution to the OB providers, the latter providers would then be able to request from their National Competent Authority (NCA) the authorisation to use another interface (such as the ones that banks use for their customers) until the bank's dedicated interface is restored to normal functioning. In addition, a deadline may be set by the NCA for the restoration of

the dedicated interface by the bank, with the possibility of penalties.

The PSD3 measures also aim to further level the playing field between banks and non-bank OB service providers (PISPs) in terms of access, by allowing the latter providers access to all EU payment systems, with appropriate safeguards and securing those providers' rights to a bank account. Requirements on banks regarding bank account services to non-bank PISPs will be toughened, with a stronger requirement on banks to explain access refusal or the possible withdrawal of service. In addition to commercial banks, central banks will also be allowed to provide account services to non-bank PISPs at their discretion. There will moreover be reinforced rules on the admission of PISPs as participants in payment systems, with an obligation on payment system operators to carry out appropriate risk assessments.

In addition, customers' control over their payment data will be improved with the requirement for banks and other payment account providers to set up a dashboard allowing consumers to easily see which data access rights they have granted and to whom and to be able to withdraw access via this tool.

However, no changes are proposed in the PSD3 proposal in terms of compensation of data holders (ASPSPs) for providing third-parties with access to account information. This will remain based on non-contractual access at no cost in PSD3, unlike the FiDA proposal which proposes the introduction of a fair compensation for data holders (*see below*).

## 3. The EU Financial Data Access (FiDA) framework proposals

### 3.1 Current obstacles and challenges to the provision of Open Finance services

At present, data sharing for the provision of OF services beyond the OB services covered by PSD2, is not prohibited and is technically feasible in some cases with APIs or web scraping, but it happens in a way that is not appropriately regulated and without the support of the tools and incentives needed to support its development.

GDPR sets general rules that may facilitate the processing and sharing of personal data with third-parties, giving consumers control rights over their personal data and imposing requirements on

10. PSD2 relied on the assumption that the costs of building interfaces for accessing payment data would be exclusively supported by the ASPSP, in the absence of a dialogue between ASPSP, AIS and PIS. See Eurofi Views Magazine April 2023 Open Finance G. Goffinet, ACPR and J. Beyssade, BPCE.

11. See Eurofi Views Magazine April 2023 Open Finance G. Goffinet, ACPR.

data holders to ensure the protection of personal data and the right to data portability. The EU data strategy rules (EU Data Governance Act, Digital Markets Act, Data Act) also set out key principles for data access and processing in different areas.

However these data frameworks do not provide customers with adequate means or tools to maintain control over their data (e.g. to control how their data is being used or managed and to verify data sharing permissions) and there are no specific requirements for service providers to take adequate security measures regarding this data and how it is shared. Consequently, most customers do not trust that potential risks of sharing data are appropriately addressed in an OF environment at present and thus are reluctant to engage in data sharing, according to the assessments of the European Commission<sup>12</sup>. In addition GDPR rules do not apply to the non-personal data of business customers.

Moreover GDPR data portability rules do not provide a full obligation for data holders to make customer data available to data users upon customer request, since they are only applicable 'where technically feasible' and the EU data strategy does not establish enforceable data access rights and obligations in the specific context of OF.

In addition, potential OF service providers currently face the same issues as OB service providers in terms of access to data, since, at present, only a minority of financial data holders (financial institutions) have made data available to TPPs through technical interfaces like APIs, and where interfaces exist, the lack of standardisation of customer data and APIs impedes interoperability and increases the cost of using ported data.

### 3.2 Overall objectives of FiDA

The Commission published in June 2023 a proposed framework for Financial Data Access (FiDA) aiming to promote the development of OF and more broadly of data-driven finance in Europe, beyond the payment and account information services covered by PSD2. These measures build on the data sharing requirements of GDPR and the EU data strategy framework and also take into account the lessons learned from the PSD2 OB provisions.

The FiDA framework establishes requirements and incentives for data holders to share data in an efficient, standardised and safe way and rules and tools that will allow customers to retain control on

their data and manage data sharing permissions, in order to preserve data privacy and safety.

In terms of scope, FiDA covers all financial customer data except payment data, which is subject to PSD2 (i.e. data related to mortgages, loans, savings, investments, cryptoassets, pensions and non-life insurance products), and excludes sensitive data such as creditworthiness and life and health insurance data. This includes the data that financial institutions typically collect, store and process as part of their normal interaction with customers such as: the personal data supplied by customers, data stemming from interactions between customers and financial institutions and also data related to the terms and conditions of specific products and services.

FiDA adopts a customer-centric approach, allowing customers to control how their data is being shared and also introducing measures to mitigate the risks of financial exclusion of customers with an unfavourable risk profile.

FiDA also has a market-led dimension since major aspects of OF arrangements such as data sharing and technical interface standards, liability rules and compensation principles are due to be established in the context of financial data sharing schemes (FDSS) involving data holders and users. In addition these rules will not be uniform but defined for each category of customer data covered by FiDA.

### 3.3 Overview of the FiDA requirements

**Data holders** (e.g. financial institutions) will be required under FiDA to make customer data available to data users (e.g. other financial institutions or fintech firms providing OF solutions) upon their customers' request, by putting in place the necessary technical infrastructure including APIs. Data will need to be provided securely without undue delay, continuously and in real time, in a format based on generally recognised standards.

A framework based on voluntary measures and voluntary data sharing<sup>13</sup>, which had been advocated by some trade associations before the publication of FiDA, was ruled out by the Commission in its impact assessment on the basis that such an approach would be unlikely to result in the implementation of uniform tools and would not provide sufficient incentives for data holders and users to develop common standards.

Data holders will have the right to ask for a reasonable compensation from data users for

12. See Proposal for a regulation on a framework for Financial Data Access – 28 June 2023.

13. Voluntary measures consisting in the Commission encouraging stakeholders to develop standards and schemes, to put in place open finance dashboards and promote the implementation of common interfaces with no mandatory regulatory requirements. See for example EBF "Open finance towards a fit-for-market approach" March 2023.

putting in place high-quality interfaces for data user access, in line with the general principles of business-to-business (B2B) data sharing laid down in the Data Act proposal (and smaller firms using data will only have to pay compensation at cost). This is one of the major differences with PSD2 / PSD3, the aim being to provide incentives for data holders to put in place and maintain appropriate technical interfaces<sup>14</sup>.

Data holders will moreover need to provide their customers with a permission dashboard to enable them to monitor and renew permissions for data users easily and potentially remove some of them. They will also be required to make data available directly to their customers free of charge and in real time upon request (mirroring similar provisions in the Data Act).

**Data users** (providers of OF services) will need to be authorized by a NCA based in the EU, either as a financial institution or as a financial information service provider (FISP). They will only be able to access data with their customers' permission and only for purposes and under the conditions specifically agreed by the customers.

In order to avoid increasing the risk of financial exclusion of customers with unfavourable risk profiles with the development of OF, the ESAs are asked to develop appropriate consumer safeguards outlining how data users can use FiDA data to calculate e.g. credit scores, risk assessments and pricing related to life, health and sickness insurance products. The objective is to mitigate the risks of OF providers focusing for example solely on the most profitable or creditworthy customers, with the use of improved data analysis capacity to determine customer profiles.

In addition, if a data user is part of a larger group, only the entity authorised as a data user will be able to access and use the customer data, in order to contribute to ensuring a level playing field between financial institutions and multi-activity groups<sup>15</sup>.

**Financial data sharing schemes** (FDSS) governing access to customer data will be established for the main categories of customer data covered by the FiDA framework i.e. mortgages / loans; savings / investments; pension rights; non-life-insurance products... These schemes will comprise data holders and users representing a significant proportion of the market of the product or service

concerned, and will be in charge of developing customer data sharing and technical interface standards and a liability regime for data breaches and also implementing dispute resolution mechanisms. The FDSS will also establish the model to determine the maximum compensation that data holders may charge users, as well as the contractual terms for sharing data.

Data holder and data users are required to become members of a FDSS within 18 months from the entry into force of the FiDA regulation and may become members of several FDSS. In the event that no FDSS has been established for one or more categories of customer data within 'a reasonable amount of time', the Commission will be empowered to adopt a delegated act for the category of data concerned, defining the elements mentioned above.

**Customers** will have the possibility but not the obligation, to share their data with data users in order to obtain new OF services. In all cases, customers will retain full control over who accesses their data and for what purpose, using dedicated permission dashboards due to be put in place by data holders, in order to enhance trust in data sharing. A strengthened protection of customers' personal data will also be put in place in line with the General Data Protection Regulation (GDPR).

As regards to security requirements, FiDA moreover requires data holders and users to comply with the new DORA (Digital Operational Resilience Act) requirements, but unlike PSD2, does not mandate any specific security requirements for the authentication of customers.

### 3.4. Implementation timeline

In terms of implementation, the FiDA proposal is quite ambitious, according to many market observers, with provisions relating to FDSSs and authorisation requirements for FISPs due to apply 18 months after FiDA enters into force and other requirements starting to apply after 24 months.

The possible date of adoption of FiDA remains uncertain however. While it is possible that a negotiating position could be reached by the Parliament and the Council before the upcoming European elections (June 2024), the final adoption of the legislation following the trilogue process will most likely not be possible until mid-2025.

14. See Deloitte "The new EU Financial Data Access framework: opening up data across financial services" 11 July 2023.

15. See AFME "Open finance and data sharing" September 2022. This paper points out the potential issues and risks associated with data sharing with market participants in other sectors, who may already have a dominant share of both individual and corporate data (e.g. big techs, social media...). This may lead, according to this paper, to monopolies in the exploitation of data, given the network externalities stemming from the combination of services within such multi-activity groups and the ability to leverage widescale data collection and use in different sectors. The paper also cites a document published by the BIS that suggests that proper limits may need to be imposed on the collection and use of data across bigtechs' multiple services to attain public policy objectives, including financial stability ones. The AFME paper moreover points out potential issues associated with the oversight of data sharing, when customer data is transferred from the financial services sector to other sectors subject to less stringent data regulation.

## Conclusion

FiDA addresses many issues that have been identified by the expert groups and market stakeholders during the assessments conducted in preparation for the legislative proposal and also some key lessons from the implementation of the OB provisions of PSD2, notably in terms of customer control over data, sharing of costs along the value chain and API standardisation.

At the time this paper is written, detailed feedback from the market and from supervisory authorities is not yet available, but preliminary statements and reactions show that while the FiDA proposal is welcomed as an important step in the right direction to support the development of OF, a certain number of issues remain to be further clarified or fine-tuned.

Some key elements of the proposal remain to be further clarified, in particular how the permission dashboards proposed to ensure the empowerment of consumers over data sharing consent will work in practice, and whether the proposed FDSS schemes will allow an agreement on appropriate compensation and governance principles and on data and interface standards. FDSSs indeed potentially raise different implementation challenges. For example, the possibility for several FDSSs to emerge for a given category of data may hinder standardisation and it is unclear how an agreement on fair and sustainable compensation practices will be found within FDSSs in case the views of the different stakeholders concerned differ significantly. The allocation of responsibilities between data holders and users may also need clarifying, in addition to the definition of liabilities already foreseen in the context of the FDSS.

In addition, whether FiDA will allow the achievement of a sufficiently fair and equitable data sharing process likely to leverage the benefits of data-driven innovation in finance for all market stakeholders needs to be further assessed.

Requests for offering data holders a fair compensation for providing access to data have been taken into account and measures have been proposed in FiDA for levelling the playing field between data holders and TPPs and giving consumers control over their data (with authorisation requirements for data users, requirements limiting data sharing within mixed-activity groups beyond the authorised data user and permission dashboards). Bank

industry representatives however continue to underline the remaining competitive asymmetry between banks and other participants in the data economy, since the latter players will not be subject to equivalent data sharing obligations under FiDA or other data frameworks<sup>16</sup>. They moreover emphasize the opportunities of a wider cross-sectoral data sharing that an extension of data sharing requirements to other data spaces (*e.g.* energy, mobility, telecom...) would allow, building on the horizontal principles of the Data Act. Potential benefits of cross-sectoral data sharing exist for example in the sustainability area with the sharing of data between the energy and financial sector<sup>17</sup>.

As regards customers, beyond putting them in control of their data, there is an objective in FiDA of finding an appropriate balance between promoting data-driven innovation and protecting customers, particularly the more vulnerable ones<sup>18</sup>. The proposed development by the ESAs of guidelines on how data may be used to assess credit scores and risk assessments fairly should contribute to this objective, but the adequate tools and measures needed to achieve this objective still need specifying. In addition, measures may be needed to ensure that customers fully understand what the sharing of their data with third-parties entails and the risks it may pose<sup>19</sup>.

A further question is whether the implementation approach proposed for FiDA covering at once all non-payment financial activities and data is the right way forward or if a more staggered and progressive approach – starting *e.g.* with the activities where the added value of OF solutions would be highest, based on a cost-benefit analysis, or where consumer needs are the highest – would be preferable to ensure the success of this initiative, given the challenges to overcome and the resources to mobilize to achieve sustainable OF business cases<sup>20</sup>.

16. See AFME and EBF comments on the FiDA proposal (28 June 2023).

17. See Eurofi Views Magazine September 2023 Open Finance E. Ljungberg.

18. See Eurofi Views Magazine September 2023 Open Finance F.L. Michaud, EBA.

19. See Eurofi Views Magazine September 2023 Open Finance E. Ljungberg.

20. See EACB comments (28 June 2023 and 31 March 2023).