

## EPIF Position Paper on the Financial Data Access proposal

On 28 June 2023, the European Commission adopted a legislative proposal for a regulation on a new framework for Financial Data Access (FIDA) commonly referred to as Open Finance.

EPIF members very much welcome the ambition of the European Commission to leverage data-driven initiatives to boost digital transformation in all sectors of the economy. The **market-driven approach** of Open Finance taken by the European Commission is an important element towards innovation and growth in the European financial services sector.

At the same time, EPIF sees scope for further clarification and improvement on a number of elements in the proposal, notably, clarifying the scope of the proposal, leveraging the learning from Open Banking, ensuring a **fair remuneration for all market participants** and clarifying **the relationship and potential overlap** between Financial Information Service Providers (FISPs) and Account Information Service Providers (AISPs).

EPIF stands ready to collaborate with the co-legislators and the broader financial services industry to deliver on the full potential of Open Finance.

Please find below our more detailed comments on the Open Finance proposal.

### Scope

The scope of FIDA is undefined. When developing our concrete comments on the FIDA proposal, it became unclear to our members whether the scope of the proposal refers to the right to passively download customer data and therefore financial information services should be considered as providing consolidated information or if it refers to the possibility of not only having access to customer data but also to be able to provide more services on the back of the accessed data. EPIF would welcome legal clarity on to what extent intermediaries can leverage this new framework to promote their services.

- If the proposal foresees only the right to download customer data, EPIF members consider that this would bring many benefits to the better delivery of their existing offering of services. This would come as part of the existing offering by incumbent financial institutions related to payment initiation services, such as regular payment of insurance premiums.
- If the proposal implies the possibility to offer services on the back of the accessed data, which would be our preferred option, members of EPIF would advocate to keep the scope as open as possible as a way to not limit the potential benefits of the new data sharing framework to the market. Intermediaries would be able to provide new and innovative services to customers such as switching services and wealth management. This option would leave much more scope for intermediaries to innovate and provide better services for consumers while fostering healthy competition and growth in the financial services sector.

The members of EPIF would find it extremely helpful if the FIDA was to include an Annex setting out the initial use cases and consequent data sharing schemes that the financial services industry would be expected to develop on the legal basis of FIDA. In the spirit of the proposed scope of FIDA, this list could be added to over time. The proposed approach would bring legal certainty to the industry and help manage expectations in the market. Each identified use case could be made subject to a market

impact assessment and a public consultation. Such a process would help identify gaps in the market, build consensus and acceptance in the market. It would ensure that any new use case has sufficient uptake to justify the development of a scheme and the associated industry investments.

EPIF welcomes the opportunity for FIDA to clarify any potential links or overlaps with existing information-sharing schemes in EU financial services legislation. In particular, this relates to the open banking provisions in the Payment Services Directive. Nonetheless, EPIF is also a strong supporter of other data-sharing frameworks, such as the new provisions in DORA on cyber incident reporting, in the EU's anti-money laundering framework on the sharing of KYC data, as well as the provisions in the PSD on the sharing of fraud data.

Finally, EPIF would welcome if FIDA were to more clearly recognize the role of the **EU Digital Identity Wallets**, implemented through the eIDAS Regulation, for the facilitation of identification and access to personal data, for example by linking it to the proposed dashboard. For this reason, EPIF would welcome the inclusion of a specific article in FIDA making clear that eID solutions can be used as part of the technical solutions in developing the relevant data-sharing arrangements under FIDA. This inclusion should make clear that the use of eID solutions should be optional under FIDA.

## Move from Open Banking to Open Finance & the Role of Schemes

In an increasingly data-driven economy, data sharing has the potential to bring innovation, competition, new services and growth to the economy. In the payments space, the Open Banking provisions in the PSD have led to the emergence of new payment solutions for consumers. It is therefore only natural that EPIF sees benefit in extending this approach to the entire financial services sector for the benefit of consumers. EPIF believes Open Finance can bring choice and competition to consumers in a range of retail financial services applications. It could promote the cross-border provision of financial services bringing tangible benefits to the EU Single Market.

However, it is important to consider the lessons learnt in the development of Open Banking under the PSD2. One of the main shortcomings that has been holding back the potential of Open Banking has been the persistent **fragmentation** of application programming interfaces (APIs).

EPIF has been closely involved in the creation and development of the **SEPA Payment Account Access (SPAA) Scheme** which sets out the rules, practices and standards for the exchange of payment accounts related data. This can help to unlock the value of data sharing for scheme participants. The development of the SPAA Scheme has been smooth and relatively consensual between the industry. There has been one exception to this. This exception relates to the **compensation** model, where all sides of the industry have so far failed to reach a compromise.

Compared to the scope of FIDA, the access to customer data under the PSD remains very limited and is focussed solely on a subset of a customer's payment data. Moving to Open Finance and the sharing of more complex datasets, EPIF welcomes the introduction of Financial Data Sharing Schemes as a means to facilitate the relationship between data holders and data users.

EPIF believes that FIDA should, at a minimum, **bring clarity to the compensation model in the SPAA scheme and promote its adoption.**

What we have learned from the experience with the SEPA Payment Account Access (SPAA) Scheme is the following:

- In developing these Schemes, it is important that all parties and interests are equally represented and abide by objective governance rules. This also applies to the ongoing scheme management and not just the creation phase of the scheme.

- FIDA should establish the general design elements of the scheme, from governance, non-discriminatory access, treatment of data, dispute resolution etc. The details of these design elements should be determined by the scheme members themselves.
- The principles of the compensation model should be set out by law, leaving scope for the market to set out the specific methodology for the compensation.

Turning more specifically to the question of compensation, the detailed rules on compensation for data sharing should be established by each Financial Data Sharing Scheme based on the principles established by FIDA itself. The provisions should ensure that the compensation model is based on a clear and commonly agreed methodology. This should take into account the **reasonability of the compensation, objectiveness and non-discriminatory elements** agreed by scheme members. EPIF advocates for market participants to be granted a **fair remuneration for sharing customer data**.

EPIF welcomes the need to ensure **proportionality** on the compensation model and in particular the safeguard that the **end customer should not bear any costs for the access of their data**. Otherwise, this will disincentive customers from sharing their data and filling the scheme with commercial activity. However, a certain level of flexibility should be kept for the remuneration of data holders to cover the costs beyond making data available as a way to create the necessary incentives for actors to provide a sustainable model while also enabling investment and innovation in this area.

Finally, FIDA does not comment on whether there could be more than one scheme for a particular use case under FIDA. EPIF welcomes a degree of competition but this should not lead to fragmentation in the Single Market, in particular through the emergence of a multitude of national, rather than cross-border schemes. EPIF therefore considers that schemes should be pan-European while ensuring interoperability between the different schemes.

## Intervention power of the European Commission

EPIF supports the provision of a fall-back solution in the event that a financial data sharing scheme is not developed for one or more categories of customer data, as set out in Article 11 of the Regulation. We understand the necessity to incentivize the market to develop a data sharing framework in order to materialize the benefits of such an ecosystem sooner rather than later.

FIDA foresees that scheme participants will have 18 months to develop and implement schemes for each identified use case. Drawing again on the experience of the SEPA Payment Account Access (SPAA) Scheme a degree of external discipline in the form of a timetable is extremely helpful. Nonetheless, it is important that this timetable remains realistic and that all involved parties have the time for implementation, including as regards the technical standards that might be required. Given the expected complexity of creating data sharing schemes for such a broad scope, EPIF calls on co-legislators to **extend the timeline of 18 months** to allow the market to create data sharing schemes.

EPIF would also welcome more clarity on the implications of the European Commission's intervention. Importantly, EPIF members would like to avoid a re-run of the PSD experience and call on the European Commission to not replicate the application of the current Open Banking rules.

## Financial Information Service Providers

FIDA introduces a new category of licensed entities – Financial Information Service Providers (FISPs) – which will be data users authorized to access customer data for the provision of financial information services. We understand and very much support the **pragmatism of the European Commission** in creating a new regime of licensed entities under FIDA. This approach avoids creating legal uncertainty and disruption to the existing PSD regime. EPIF would however see value if the European Commission

was to provide more clarity on the specificities of FISPs. In particular, EPIF has some questions regarding data reciprocity, notably whether FISP, which are data users, are also considered data holders once they obtain access to the requested data.

EPIF recognizes the similarities of these new entities with those created under Open Banking – the Account Information Service Providers (AISPs). This distinction should continue at least until the market has gained experience with the new Open Finance framework under FIDA. At the same time EPIF strongly supports the concept of the proposal to avoid multiple licenses. EPIF therefore agrees that all existing regulated financial institutions should be eligible for access to customer data in line with FIDA under their existing licenses, including Account Information Service Providers (AISPs) and no additional FIDA license should therefore be required.

Looking at the details of the FIDA and AISP licensing regimes, EPIF supports a close alignment between the two regulatory regimes. This could facilitate the possibility of **merging** the two regimes at a later stage, as set out in the review clause of the FIDA proposal.

## Common Technical Standards

Building upon the lessons learnt from Open Banking, EPIF advocates for the **standardization of APIs** and data interoperability. FIDA should provide further **legal certainty on the use of common technical standards** which does not need to materialize in common APIs. European rules should foster standardization while leaving room for some flexibility for the scheme participants to adapt the technical standards, in particular when it comes to technological developments. It should be for the industry to decide on the most fit-for-purpose technical standards that meet regulatory requirements under FIDA for the particular scheme.

## Interplay with other legislation

EPIF members believe that the FIDA proposal should be closely aligned with related provisions of relevant legislative pieces such as payment services, anti-money laundering, and data protection regulations to ensure consistency and legal certainty while avoiding data breaches and compliance risks for the members of the schemes.

Specifically on the interplay between FIDA and the GDPR, EPIF welcomes the reference in the FIDA proposal that the GDPR rules apply when personal data is processed. EPIF members would like to avoid that legal uncertainty already observed between the GDPR and the Open Banking provisions under PSD2. EPIF would like to see any residual **legal ambiguity** removed between the two Regulations. This relates in particular to the current use of definitions, such as the terms of “permission” and “consent”. In particular, the FIDA text should ensure that the term “permission” should not be construed as “consent” or “explicit consent” as defined in the GDPR.

## ABOUT EPIF (EUROPEAN PAYMENT INSTITUTIONS FEDERATION)

**EPIF**, founded in 2011, represents the interests of the non-bank payment sector at the European level. We currently have over 190 authorised payment institutions and other non-bank payment providers as our members offering services in every part of Europe. **EPIF** thus represents roughly one third of all authorized Payment Institutions (“PI”) in Europe. All of our members operate online. Our diverse membership includes a broad range of business models, including:

- Three-party Card Network Schemes
- E-Money Providers
- E-Payment Service Providers and Gateways
- Money Transfer Operators
- Acquirers
- Digital Wallets
- FX Payment Providers and Operators
- Payment Processing Services
- Card Issuers
- Independent Card Processors
- Third Party Providers
- Payment Collectors

**EPIF** seeks to represent the voice of the PI industry and the non-bank payment sector with EU institutions, policy-makers and stakeholders. We aim to play a constructive role in shaping and developing market conditions for payments in a modern and constantly evolving environment. It is our desire to promote a single EU payments market via the removal of excessive regulatory obstacles.

We wish to be seen as a provider for efficient payments in that single market and it is our aim to increase payment product diversification and innovation tailored to the needs of payment users (e.g. via mobile and internet).