

Key Messages on FiDA

Data Working Group Position Paper

June 2024

Paris Europlace is the organization in charge of promoting and developing the Paris financial center. We are a privileged intermediary of European and French authorities, with which we maintain a continuous and constructive dialogue. Our aim is to promote financial markets to international investors, issuers and financial intermediaries to better finance the real economy and the energy transition. Paris Europlace gathers more than 600 members, including investors, sustainable finance entities, banks, financial market authorities, corporates, consulting firms.

While supporting more innovative financial markets and access to digital services for clients of the EU financial sector, Paris Europlace has strong concerns regarding the Financial Data Access (FiDA)¹ regulation proposal.

We welcome FiDA's aspiration to enable customers to better control the access to their financial data, and to put in place clearer governance structures for data sharing, with the ultimate goal of allowing them to benefit from financial products and services that are tailored to their needs.

Nonetheless, FiDA regulation proposal is too wide and too vague to strike the desired balance between benefits and inherent risks, especially as it would impose from scratch that European Union clients' financial data be shared with third jurisdictions' entities without proper insight and understanding of key use cases (e.g. all financial institutions and all clients, all "data generated by interaction with clients", creation of new "financial information services" loosely defined). Indeed, its feasibility, risks and ultimate utility for Europe's financial markets need to be studied in depth, with due care.

In this respect, and in a context where the EU is focusing on building its Savings and Investments Union, **it is paramount that FiDA be coherent with and contributes to EU's financial strategic autonomy stakes, and in particular regarding non-EU data-advanced giants (gatekeepers).**

Therefore, we welcome the numerous improvements included in the European Parliament's (EP) compromise, and in particular (i) large clients' exclusion, (ii) the requirement for Financial Information Services Providers (FISPs) to be established in the EU and their restriction from offering financial services, as well as (iii) banning gatekeepers from being FISPs and (iv) framing EU Commission's mandates to issue delegated acts in case of market disagreement

¹ 2023/0205 (COD) 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.

in establishing implementation schemes. Nonetheless, certain points remain to be adequately tackled: in particular, **we strongly oppose the proposal on gatekeepers' access to FiDA data, on transfers of FiDA data and on transactions data**. In addition, the timeline proposed, though extended, remains unrealistic (only 32 months vs. 24 months proposed by the EC).

Against this background, Paris Europlace would like to formulate the following recommendations:

1. **Data users should be established in the EU and gatekeepers should be forbidden to access FiDA data.** Transferring / reselling of data accessed through FiDA should not be made possible.

These points are paramount for strategic autonomy stakes and avoiding unfair competition from non-EU data-advanced players and in particular Internet giants (GAFAM or "gatekeepers"), which hold huge volumes of data collected via the Internet on European citizens. Constraining EU financial entities to share client data with much more data-savvy non-EU players, which would all the more escape EU financial regulation and proper supervision, would inevitably end in non-EU jurisdictions accessing and controlling EU investors data.

In order to encourage more data-based EU financial products and markets, for the benefit of the European economy, we strongly insist that **all FiDA data users be established and supervised in the EU, and gatekeepers completely banned from accessing European clients' data through FiDA.**

As already stated, we welcome the EP's concurring views on several problematic aspects of the FiDA initial proposal, e.g. excluding enhanced data and protecting both clients' and data holders' trade secrets, clearly defining FISPs and requiring that data users be established in the EU. Nonetheless, **we are highly concerned by the EP proposal to allow transfers of data accessed through FiDA, even with clients' permission.** This possibility would jeopardise the efforts to frame the scope of FiDA data users and holders, and would create a very high risk of by-passing FiDA through multiple layers of data transfers to third-parties. Clients would lose clear visibility over their data users, contrary to the very purpose of FiDA, and permission dashboards would become operationally impossible to manage. For example, how and in which dashboards would 2nd, 3rd, 4th... transfers permissions be registered? Who would be responsible for the client's view on the users and purposes of its data transfers? How would permissions modifications/withdrawals be managed all along the transfer chain?

Finally, we strongly support that FiDA regulation clearly requires that **customer data be deleted by the data user after the purpose of its data access has been completed.**

2. **Reduce client scope ideally to natural persons, or at the very least to retail clients in the larger sense (including smaller enterprises).**

Companies already widely share financial information within periodic reports and publications (e.g. annual report), which are easily accessible. Indeed, they generally manage their data in a proactive way as they are very conscious of the added value they can extract from their data. As such, FiDA would target companies' data that they ordinarily choose not to share, and hence it would be counterproductive and could even endanger their business

development, especially regarding third-country data users. At the same time, this would put EU financial institutions (data holders) in a very problematic position, all the more so as companies' data are significantly more complex than retail investors' ones.

Moreover, companies are typically clients of multiple financial institutions and already have access to tailored financial products and services.

As such, FiDA would not have the positive material impact it seeks for companies (i.e. customised financial products/services, control and global overview of data access that most companies already have), but – because of companies' data complexity – would instead generate unwarranted huge implementation costs for EU financial institutions, as well as risks for the EU economy and its competitiveness.

3. Reduce data scope to the latest data directly provided by the client (no historical and enhanced data).

In order to protect business secrecy and innovation efforts, **any enhanced data, e.g. with in-house analysis, should be clearly excluded from the FiDA scope.** This type of data is also excluded from data portability provisions of the General Data Protection Regulation (GDPR).

As such, **we thus welcome the European Parliament's concurring views on excluding enhanced data, protecting both clients' and data holders' trade secrets, and sharing data as held when the request and permission to do so are received/processed.** We particularly appreciate removing the very vague and dangerous mention of "data generated as a result of customer interaction" from the FiDA's customer data definition. **Nonetheless, we strongly oppose the EP's proposal to include "transaction data related to a customer" in FiDA's scope.** Indeed, transaction data is still too vague as it has not been defined, and could raise significant issues that have not been properly analysed and need to be framed with extreme caution. For instance, it should not entail any obligation to share historical clients' data.

Given the lack of insight into FiDA implementation, and the very high risks it could occasion, we strongly insist on proceeding with due caution and keeping FiDA data scope limited to the unaltered data provided by the customer. FiDA should not bring any further obligations than to share this data (e.g. no responsibility to update the data, and no liability for its approval or adequacy verification).

More specifically for asset managers, it is worth clarifying that French employee savings and retirement (ESR) products are out of the FiDA proposal scope, due to their specificities and complex nature that appear incompatible with the FiDA's provisions and goals. These are French-specific products that are subscribed by the employer for its employees (no contractual choice or even contractual participation of the employee). As such, even if another financial institution would be given access to an individual client's financial holdings within its employee savings/retirement account, the third-party financial institution would not be able to propose alternative products to the client, as the contracting party is the client's employer. Moreover, sharing ESR data could even be detrimental to understanding an individuals' investment behaviour or needs, for instance when the asset allocation is made by default, without his/her active intervention (which is a contractual possibility). Furthermore, ESR products appear incompatible with FiDA permission requirements and related dashboards: given that the employer is the direct client, while the employee is the

end-beneficiary, it is unclear who must provide and subsequently decide on the permission to access the individuals' ESR data under FiDA.

4. FiDA should ideally be voluntary, or at the very least market-led, realistically phased-in, and be based on all necessary consultations of professional stakeholders.

Rather than imposing a regulation of such a wide span without having the necessary proper assessment of its impacts (both negative and positive, i.e. opportunities for new activities), it appears obvious that it is far more suitable to take the necessary time to consider the stakes and constraints of market players such as data standardisation, cybersecurity risks, and render it voluntary during its initial stage. In particular it is paramount that the EU adequately grasp the cybersecurity risks that would be brought by massively opening financial data, in a context of rapidly increasing cyberattacks, to safeguard the security of European financial data and the European economic sovereignty.

We believe that the market will move naturally towards open finance activities if they prove useful to customers in practice, while imposing new mandatory regulations which fail to convince would mostly bring a waste of scarce, human and financial resources.

At a minimum, legislators should have a **cautious approach, and proceed gradually, starting with a basic scope, with enough time to adequately start implementing this completely new regulation, i.e. at a minimum 48 months.** Only after an observation period of this first step, after having analysed and managed the degree of control of the risks generated and the usefulness of FiDA for customers, legislators could potentially and consequently broaden FiDA's scope, considering financial services and instruments in the last phase.

In any case, **implementation details (schemes) must be industry-driven to be fully operational, rely on a realistic approach,** and be as much as possible based on market demand and constraints. In this respect, we welcome the flexibility introduced by the EP compromise in the issuance of delegated acts by the Commission, by subjecting them to rightful consultations of stakeholders. This approach should be deepened.

Of course, as clearly stated by the EP, **FiDA should not impede the possibility for data holders to share client data that has not been obtained through FiDA, based on bilateral contractual basis.**

5. Clarify the new terms of “Financial Information Service” and “Financial Information Service Providers” (FISPs) as referring to collecting and consolidating data, and clearly excluding regulated activities such as providing financial products/services.

The FiDA proposal creates a new category of data users: the FISPs, yet without defining their activity. Indeed, while the proposal specifies that FISPs would provide financial information services, it does not define what a Financial Information Service actually is. In the absence of this definition, these new activities not only are too wide and hence too risky for European clients' financial data security, but also could open a dangerous window for FISPs to provide financial advices to customers or alternatives for regulated products/services, without the proper EU regulatory license and supervision.

As such, we welcome the EP's initiative to **define a Financial Information Service as the collection and consolidation of customer data, and clearly specifying that it does not include the provision of regulated services reserved for financial institutions.**