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Eric Ducoulombier
Head of Unit, Retail Financial Services
European Commission, DG FISMA B.3
Rue de Spa 2
Brussels, Belgium

1 November 2023

Dear Eric

Re: EMA response to European Commission Proposal for a Regulation on [an Open finance framework – enabling data sharing and third party access in the financial sector](#); COM(2023)360

The EMA is the EU trade body representing electronic money issuers and alternative payment service providers. Our members include leading payments and e-commerce businesses worldwide, providing online payments, card-based products, electronic vouchers, and mobile payment instruments. Most members operate across the EU, most frequently on a cross-border basis. A list of current EMA members is provided at the end of this document.

I would be grateful for your consideration of our comments and proposals.

Yours sincerely,

A handwritten signature in black ink, reading 'Thaer Sabri', with a long horizontal flourish extending to the right.

Dr Thaer Sabri
Chief Executive Officer
Electronic Money Association

EMA response

The [Electronic Money Association \(EMA\)](#), established in 2001, is the trade body for European and UK E-Money Institutions (EMIs), Payment Institutions (PIs), Crypto Assets Providers (CASPs), and Credit Institutions (CIs) providing innovative payments solutions.

The EMA welcomes the European Commission's proposal for the Financial Data Access Regulation which takes an important step towards unlocking secure and authorised access to customer's financial data.

We support that the proposal establishes customers' right to access a wide range of financial data and the principles for how that data can be shared amongst market participants. In particular, we welcome that the proposal provides for market driven data-sharing schemes, which are anticipated to drive harmonised data-access rules that are open and transparent, and that the schemes can address reasonable and fair compensation models between participants. We also welcome the intended level playing field between the requirements placed on Financial Information Service Providers (FISPs) and Account Information Providers (AISPs) in PSD2 (and PSD3 and PSR proposals).

However for open finance to flourish there needs to be a clear set of genuine market and customer demands for open finance-based solutions. We note some challenges with the wide scope of data sets that must be made available within relatively short timescales, gaps in interoperability requirements for cross-sector data-sharing, complexity for customers in managing the permissions they give to access their data, and some misalignment with the PSD3 and PSR proposals. All of which, if not addressed, may undermine the market's ability to feasibly deliver the anticipated outcomes of increased innovation and choice for consumers and businesses.

We strongly support the underlying principles that have driven the development of the FIDA regulation, but we recognise that its implementation will be complex. As such we welcome your support throughout the process to clarify and finalise the regulation so that it will support the emergence of compelling products based on financial data.

Further discussion of our preliminary views on the proposed regulation on financial data access (FIDA) is below.

TITLE I: SUBJECT MATTER, SCOPE, AND DEFINITIONS

1. Scope of data to be made available

Article reference: Art 2(1), and 3

EMA comment:

The proposal covers an extensive range of ‘customer data’ sets across a broad range of financial industry sectors from mortgage, credit, savings account, investment services, pensions, non-life insurance and more. Customer data is defined as personal and non-personal data that is collected, stored, and otherwise processed by a financial institution (Art 3(3)).

We note that all categories of customer data sets in scope of the regulation have been given equal weight, and providing access to any given data set has not been prioritised. We recognise that the data-sets have been selected based on stakeholder feedback to the targeted consultation on open finance¹ and the priority use cases identified by the Expert Group on Financial Data Space². Given the heterogeneous nature of the data-sets, we consider that FIDA is very ambitious and it seems impractical for all sectors to begin to provide all of the identified data-sets to the same timescales. This could risk rendering target use-cases unachievable, and ultimately undermine end-user confidence in open finance.

Definitions (Article 3)

The definition of ‘customer data’ is broad, leaving open the exact information that must be provided by data-holders, and furthermore includes data that is “*generated as a result of customer interaction with the financial institution*” (Art 3(3)). The lack of further clarification on the information to be provided in each data-set risks wide interpretation, even within a given data-set. Additionally, inferred and derived data may represent a business asset of the data holder, and without further definition or guidance on the perimeter of such data in each data set, differing interpretations by data-sharing schemes and data holders in any given community will arise. This will lead to a fragmented end-user experience of any open finance solutions, and may even limit the ability for solutions to develop within the same financial sector.

The FIDA proposal also lacks a definition of ‘*financial information service*’. In comparison, PSD2 as well as the PSD3 and the PSR proposals, contain a definition of ‘*account information service*’. It is important that the PSD3/PSR and FIDA frameworks are aligned to provide the

¹ https://finance.ec.europa.eu/regulation-and-supervision/consultations/finance-2022-open-finance_en#:~:text=Objective%20of%20the%20consultation,-The%20digital%20finance&text=The%20present%20consultation%20will%20inform,the%20need%20for%20possible%20amendments.

² Part C of Report on Open Finance by Expert Group on European Financial Data Space (2022)

market with clarity. FIDA does set out that FIS relates to access to data and subsequent processing, and not about collecting and/or consolidating information as it is in PSD2 (PSD3/PSR). We consider the FIDA concept to be clearer, potentially placing less constraint on the types of services that may evolve on the basis of greater access to financial information.

Finally, we note that a 'Permission Dashboard', a key concept of the framework, is not defined under Article 3. We discuss this under our Title III response below.

Recommendation:

We suggest that the definition of customer data that should be provided by data-holders is clarified.

With a view to customer acceptance, we also suggest that access to data sets is granted under a phased prioritised roadmap that targets data-sets that will respond to the market and customer demand (see our discussion under section 4 - Data sharing schemes). In developing a phased approach, we strongly advocate for the involvement and expertise of market participants in the different financial sectors.

2. Entities in scope

Article reference: Art 2(2)

EMA comment:

FIDA will apply to financial institutions as listed in Article 2(2) when they act as "data users" or "data holders", which are defined as:

- Data holder is a financial institution other than an account information service provider that collects, stores and otherwise processes the data listed in Article 2(1).
- Data user is any of the entities listed in Article 2(2) who, following the permission of a customer, has lawful access to customer data listed in Article 2(1).

We note that the list of data-holding entities that provide the data-sets in Art 2(1) may be wider than currently proposed. For instance, in some Member States providers of consumer credit, SME loans, or mortgage products may not be credit institutions. In order to create meaningful data-sharing propositions, and a level playing field amongst data-holders, sources of a given data-set should be clearly identified in the regulation.

However, FIDA does not currently contain provisions for small (or niche) data holders to be exempt from the obligation to provide access to data. Experience from PSD2 has demonstrated that where smaller payment account service providers have been mandated to provide third party access to payment account data, they have incurred a substantial cost when developing compliant account access interfaces, yet have not seen significant demand for account data from the data user (AISP) ecosystem. This could be of particular importance

for crypto-asset service providers (CASPs), issuers of e-money tokens (EMTs) and issuers of asset-referenced tokens (ARTs) who are listed amongst the entities in scope in Art 2(2), and at the same time will be facing authorisation and compliance with the Markets in Crypto-Assets (MiCA) Regulation. FIDA compliance could be a significant barrier to market entry for some firms.

Recognising the disproportionate burden that providing data access can place on some data-holders, in particular SMEs, we suggest that FIDA is aligned with the proposals in the PSR (Article 39) whereby competent authorities will be able to provide exemptions from providing data access.

Reciprocity

As the Commission has envisaged, the creation of a single market for data can only be achieved when it is possible to combine data sets across the economy, thus expanding the possible use cases and potential benefits to consumers and businesses. In the long term, this may mean that financial data will be accessible to third parties across the economy.

As proposed, FIDA establishes the right for consumers to share their financial data. However, reciprocal provisions that would facilitate the sharing of non-financial data with the financial sector have not yet been comprehensively established. We recognise that this is outside the scope of FIDA, but the interplay between FIDA and other elements of the European Data Strategy's legislative framework should be clarified. In particular, the role of the European Data Innovation Board (as established by the Data Governance Act) - in establishing cross sector interoperability and standards should be made clear.

Recommendation: we suggest that FIDA is aligned with the Payment Services Regulation proposals by providing for some data holders to be excluded from the obligation to provide data access where little or no market demand for data is likely. However, proportionate inclusion of all data holding entities for the target data-sets should be sought. Furthermore, links to the wider European Data Strategy, and in particular, the European Innovation Board should be clarified to support the sharing of data across the economy.

TITLE II: DATA ACCESS

3. Obligations under the FIDA proposal

Article reference: 4, 5, 6

EMA comment:

Upon a customer's electronic request, "data holders" will have to make customer data available to the customer without "*undue delay, free of charge, continuously, and in real-time*" (Article 4), or to a data user without "*undue delay, continuously and in real-time*" (Article 5).

The EMA welcomes that the proposal establishes the customer's right to access their financial data (as set out in Art 2) directly, or through a data user. However, we note the limitation in the regulation that only allows for data access, and that the data user is unable to take action (or 'write-access') on behalf of the customer. Ultimately, as PSD2 implementation has illustrated, real innovation emerges when customers can seamlessly take action based on the insights that analysis of their data affords – applying for new products, switching products, closing old products etc.

We understand the intention in referring to '*continuous and in real-time*' access to data is to indicate that, technically, access should be facilitated via an API. But providing data in "real-time" could indicate that data-holders are under an obligation to "push" data to customers, or data users, when there are changes in the data. This could result in significant change in the way data holders interact with their customer in a normal context as well as towards financial data users. It would be beneficial if the definition of 'real-time' could be clarified.

The data access rights of former customers is not addressed in the proposal, and therefore, it is not clear when the data holder's obligation to share customer data ends. Further clarification in this regard would be beneficial to avoid inconsistent interpretation. Especially in the case where a financial data-set may be relevant for multiple data-sharing schemes (as indicated by Art 9 (2)): each scheme must be based on common reading of the legislation in order to achieve a consistent customer experience.

Furthermore, the proposed PSD3/PSR framework envisages³ the onward-sharing of payment account data by account information service providers to support other services based on that data. It is unclear if the FIDA proposal contains similar provisions. Art 6(4)(f) states that if the data user is part of a Group, only the data user can access and process the data. This could imply that onward sharing of financial data within the scope of FIDA to other non-FIDA authorised entities is not foreseen. We suggest that FIDA is aligned with the PSD3/PSR framework to remove ambiguity, and enable FISPs to transmit data to other parties, with the customer's permission, to provide other services.

Recommendation: we propose clarifying when the obligation to share customer data ends, and setting out the definition of 'real-time' data access to ensure common interpretation of data holder obligations. Moreover, we suggest FIDA is aligned with the proposed PSD3/PSR framework to support the onward sharing of data by FISPs.

TITLE III: RESPONSIBLE DATA USE AND PERMISSION DASHBOARDS

³ Recital 26, proposed Payment Services Regulation

4. Permission Dashboards

Article reference: Art 5 (3)(d) and 8

EMA comment:

Under the proposed regulation, customers are given control over their financial data by way of managing permissions they give to data users. The data holder must provide their customers with a financial data access dashboard which will allow them to grant and withdraw permissions in accordance with the requirements of Article 8.

The EMA agrees with the assessment that permission dashboards will likely help customers understand and manage access to their data. We also appreciate the proposal in Art 8(3) that ensures that data holders have to consider the positioning and ease of use of the dashboard. Experience in markets where permission dashboards are already in use for PSD2 data access suggest this functionality is important for customer experience and trust in services.

However, we note that despite being a central concept, the permission dashboard is not given a detailed definition within Article 3 of the proposal. Inclusion of a definition would establish the broad principle of a permission dashboard which could form the foundation of a standardised approach.

Further, the proposed provisions of Article 8 will require a real-time exchange of information between data holder and data user on the status of permissions granted by the customer, and must include the ability for the customer to withdraw or re-establish access. We question the practicality of being able to re-establish a connection with a data user after a permission has been withdrawn in all cases, as this will depend on the contractual relationship between the data user and the customer. These requirements would appear to go beyond the current features of permission dashboards in the market.

Given the extensive range of data sets set out in Art 2, and the fact that data holders may be providing access to multiple data sets, we consider there is a risk that permission dashboards become complex and implemented in a wide range of formats. We also believe that by requiring each data holder to provide a permission dashboard, customers may find it difficult to find a single view of all permissions they have granted for access to data across a particular financial data set, particularly where they use services of multiple data holders such as insurance or pension providers.

In order to build customer trust in open finance, permission dashboards should be developed within a clear standardised framework around the giving and withdrawing of permission, including the duration of, and the information needed to provide informed permission. This will lead to simple transparent methods for customers to give, track and withdraw permission regardless of which data holder is providing the permission management tool.

Furthermore, we suggest that Article 8 should be amended to ensure that data users are not precluded from providing permission dashboards to customers with an overview of all the data sources being used to provide their services.

Recommendation:

The provision of permission dashboards for customers is supported. We suggest that a definition of '*permission dashboard*' is included in Article 3 to ensure a consistent approach is developed and supports ease of use by customers in all jurisdictions, across all financial data sectors. In addition, the provisions should be amended to allow data users to provide permission dashboards as necessary within their online interfaces.

TITLE IV: FINANCIAL DATA SHARING SCHEMES**5. Financial Data Sharing Schemes**

Article reference: 9, 10, 11

EMA comment:

Data holders and data users will be required to join one or more financial data sharing schemes in order to provide and gain access to the data sets within the scope of the regulation (Art 9), thus making the existence and membership of such schemes mandatory. Article 10 sets out the requirements for the governance and activities of data sharing schemes. The schemes will be responsible for developing common standards for data sharing and technical interfaces, determining the compensation model for data holders, the contractual liability of its members, and providing for a dispute resolution system. (Art 10). The Commission can intervene to mandate a data-sharing scheme for a given data-set should the market not develop one within a reasonable time frame (Art 11).

The EMA endorses the requirement for data-sharing schemes because such frameworks will improve incentives and functioning of an Open Finance ecosystem. Harmonised requirements for various elements of financial data access across sectors is needed to ensure commonality in data access.

Governance of data-sharing schemes

The EMA welcomes the proposal for fair and equitable representation of both data holders and data users within data sharing schemes (Article 10 (1)(a)). This will mitigate against the risk that one side of the market (data holders or data users) unduly influences any scheme towards their interests thus possibly erecting legal and technological barriers to wider market participation in the scheme.

Nonetheless, we consider that the proposal does not fully address the oversight of data sharing schemes, which will be essential to ensuring a balanced market structure and non-discriminatory access to the scheme. The proposal does not prescribe a single entity

responsible for the oversight of data sharing schemes. At a national level, the responsible authority could be responsible for supervision, but where a scheme operates across borders the supervisory authority is unclear.

Implementation timescales

The EMA also welcomes the Commission's position that data-sharing schemes are market led, but that regulatory intervention is possible should the market not develop sufficiently. However, we note that the regulation takes a 'big bang' approach to establishing the data schemes for all data-sets within the scope of regulation within 18 months, with data access commencing 24 months after the regulation comes into force. We suggest that coordinating the definition of data standards, technical access interfaces, and compensation models for all data-sets, and then allowing sufficient time for market implementation within these timeframes is unachievable.

Interoperability of data-sharing schemes

We welcome that the proposed FIDA Regulation makes it mandatory to use generally recognised standards for data access by data users (Art 5 (3)(a)). Yet we note gaps in the proposed parameters for data-sharing schemes, which may hamper the market's ability to move forward cohesively, and could result in unintended fragmentation of data-sharing frameworks between schemes, and Member States.

For instance, the proposals do not promote or require alignment and interoperability of data-sets and technical standards developed by data-sharing schemes. This could result in extreme fragmentation among data sharing scheme requirements and their implementation across sectors, data-sets, and Member States, which would increase the complexity of the ecosystem whilst simultaneously raising barriers to cross-border data sharing, and reducing the incentive to invest in open finance.

Furthermore, principles of common data-sets and interoperability will also become vital if financial data-sets are to be part of a wider horizontal data-sharing economy.

We note that the Data Governance Act (COM 2020/0340) and the Data Act Proposal (COM/2022/68 final) both include essential requirements in terms of interoperability for operators of data spaces, and suggest similar principles should be introduced in the regulation covering the financial data space.

In order to achieve interoperability and standardisation it may become necessary to require an oversight body for all data-sharing schemes. As mentioned above, clarity on the role of the Data Innovation Board in this regard would be welcome.

Compensation model

The EMA welcomes the inclusion of provisions for schemes to determine reasonable compensation for data holders providing data access. For Open Finance to fully develop, it is important that compelling customer-driven commercial propositions can emerge, which

encourage data holders to facilitate standardised access to data. The ability to recover the costs of providing access to data will help to ensure sufficient quality of both data and the technical infrastructure to access it. We acknowledge that costs for data holders will vary by financial sector, scale, and levels of legacy technology.

However, it is imperative that a ‘two-tier’ open finance technical ecosystem does not emerge where the performance or functionality of interfaces to provide access to data without compensation (such as payment account data under PSD2) become sub-optimal in comparison with interfaces provided for accessing data with commercial arrangements in place between parties. Please note, we are not advocating for a compensation model to be introduced within PSD3, as we agree with the Commission’s position⁴ that this would be disproportionate for AIS and PIS providers whose business propositions are based on a non-contractual basis with payment account providers. However, we acknowledge the learnings from implementing PSD2 and the role that adequate compensation to data holders provides in supporting innovative solutions to emerge.

Recommendation: we propose that the data sets to be provided by data holders are prioritised in order to allow for appropriate timescales for developing data-sharing schemes to support propositions where there is clear market and customer demand. We also suggest that the regulation contains specific measures to require that data-sharing schemes design and develop data and technical standards for data access that are interoperable across financial data sectors and the wider open data economy. And finally, that the oversight and supervision of data sharing schemes is clarified, both nationally and pan-European.

TITLE V: ELIGIBILITY FOR DATA ACCESS AND ORGANISATION

6. Application for Authorisation

Article reference: 12, 13, 16

EMA comment:

FIDA sets out the authorisation requirements for Financial Information Service Providers (FISPs), including information required to be provided as part of the authorisation application. (Article 12(2)). The authorisation requirements mirror those set out in the proposals for PSD3 for account information providers (AISPs).

Third country data users

To access financial data in the EU, FISPs established outside the EU shall designate a legal or natural person as their legal representative in one of the Member States from where the

⁴ Recital 55, proposed Payment Services Regulation

FISP intends to access financial data. (*Article 13*); the third country FISP must comply with authorisation and prudential requirements (*Article 12 and 16*).

The EMA welcomes the level playing field established in the FIDA proposal between the authorisation requirements for FISPs and providers already registered to access payment account data under PSD2 (account information providers (AISPs)). Additionally, we support the proposal that registered AISPs under PSD2 could benefit from the same data access rights provided by FIDA as other data users (*Article (2)(2)(b)*) because to require authorisation under both regimes would be disproportionate.

We note that third country AISPs are not afforded the same data access rights under PSD3 proposals. To align the PSD3/PSR framework with FIDA, AISPs without an EU establishment should also be able to appoint a legal representative.

Recommendation: maintain the alignment between PSD3 and FIDA proposals for authorisation requirements for data users, this would include enabling third country AISPs to be able to appoint a legal representative to access payment account data, and the wider financial data-sets under FIDA.

TITLE VII: CROSS BORDER ACCESS TO DATA

7. Passporting

Article reference: 28

EMA comment:

Article 28 (1) provides the mechanism for Financial Information Service Providers (FISPs) and financial institutions to have access to data held by a data holder in another Member State pursuant to the freedom to provide services or the freedom of establishment.

We notice that the article sets out the requirements for FISPs to be able to passport their services, but does not clarify how financial institutions (as listed in Article 2) should notify competent authorities of their intention to access financial data outside their home member state (when acting as a data user).

Recommendation:

Clarify the process for financial institutions, when acting as data users, to notify their home member state of cross border access to data.

Members of the EMA, as of November 2023

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