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Our position

Framework for Financial Data Access

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Executive summary

In June 2023, the European Commission proposed a legislative package on a framework for financial data access. While we welcome the market-driven approach of the proposal, allowing the market itself to determine many key aspects for a secure and trusted data sharing ecosystem, a number of **elements should be clarified**. This includes some of the key definitions (eg 'customer data' and 'customer') as well as the categories of customer data in scope. Furthermore, in order to maintain trust in the broader data economy and data sharing ecosystem, it is important to **ensure the implementation provisions reflect the important operational and security challenges** the creation of data sharing schemes will face. Additionally, while the recognition of compensation as an important incentive for high level of quality and high functioning data sharing mechanisms is a positive development, a **more proportionate approach** should be adopted.

For permission dashboards to be a useful tool to build consumer trust, further **clarity on the responsibilities** of 'data holders' and 'data users' is needed. Moreover, for a data sharing ecosystem to flourish, there must be consistent and appropriate regulatory oversight, including for the new 'Financial Information Service Provider' category. Finally, the interplay of the proposed regulation on a framework for financial data access (FiDA) with other relevant EU legislations, such as the General Data Protection Regulation (GDPR), the Data Act, the Digital Markets Act and the Payment Services Regulation (PSR), should be clarified.

Introduction

A responsible data economy, driven by a competitive, innovative and secure framework for data sharing, is an integral part of modernising the Union's internal market by enabling consumers to better control access to their financial data. Emerging data sharing frameworks, including in particular the Commission's proposal on a framework for Financial Data Access, have complementary objectives and benefits such as improving financial products and services, fostering consumer empowerment and choice, promoting innovation and encouraging innovation. However, the potential benefits of Open Finance frameworks can only be achieved through building trust and building the right incentives.

Scope for mandatory data access

A well-defined scope, supported by clear definitions, is of paramount importance to ensure the data access framework achieves the right balance between innovation, competition and trust in the market. For instance, a number of concepts and definitions which are ill-defined create legal uncertainty about the scope of data captured.

Definitions

Customer data

The definition of 'customer data' should be refined and the meaning of 'generated' should be clarified. Article 3(3) states that 'customer data' is 'data provided by a customer' as well as 'data generated as a as a result of user interaction with the financial institutions'. While the meaning of 'provided by a customer' is clear, 'generated' would benefit from being further refined, notably as it relates to the

provisions of article 5(3)(e), on the respect of the confidentiality of trade secrets and intellectual property rights.

Furthermore, the current definition of 'customer data' includes personal and non-personal data. However, 'non personal' data can be understood as 'anonymised' data under data protection terminology. We do not believe this is the intention of the text and therefore it would be more appropriate to align the definition with GDPR – by ensuring the restrictions on the use of 'customer data' are limited to personal data.

Customer

The definition of 'customer' (article 3[2]) is particularly broad. As currently drafted, all clients groups seem to be included in the definition of a 'customer': retail, micro-, small- and medium-sized enterprises, as well as wholesale customers. There is little use for other financial institutions (as clients), institutional clients or multinational corporates to be included. Not only wholesale customer data is the hardest to standardise, such 'customers' make use of very specific products of services, have dedicated data access interfaces, and have risk management policies which would prevent the use of a third-party provider for this purpose. Therefore, the definition of 'customer' should exclude other financial institutions, institutional clients or multinational corporates, which use specific institutional and corporate banking services.

Scope of the categories of customer data

The scope of application of the proposed legal framework is unclear. The categories of data in scope should be proportionate, keeping in mind a well-defined objective. It is important to assess which data is suitable for sharing, for what purpose and use-case. In particular, there are a number of terms used in article 2 which should be further clarified in order to avoid any interpretation issues (eg 'loan', 'mortgage credit agreements', 'accounts', 'insurance-based investment products', 'conditions', 'investment account' – which is defined in article 3 but not use in the scope or anywhere else, etc). Policy makers should carefully assess article 2 and clarify each customer data in scope, notably by referencing existing EU legislation.

Additionally, specific use cases remain unclear, as well as whether there is even a sufficient level of consumer demand for open finance services. Therefore, policymakers should consider starting with a step-by-step approach by looking at specific use-cases to see where there could be a clear benefit for consumers in having a framework in place and to identify the required data sets accordingly.

In addition, the text should clarify that FiDA is without prejudice to the freedom of data holders to establish voluntary agreements or contracts for data sharing, and particularly that data holders can share customer data with entities that are not data users under FIDA, either based on exiting voluntary agreements or in case of voluntary agreements which go beyond the scope of FiDA (eg cross-sectoral).

Further refine data sharing schemes

Longer implementation timelines

The proposed implementation timeline for FiDA is unrealistic and will face many challenges. Things such as data standardisation, updating of legacy systems, creating of data sharing schemes, ensuring

their governance structures are robust and reaching agreements on the design of data access schemes and their implementation will take time. The resources needed to make FiDA a reality should not be underestimated. The current proposed timeline of 18 months from entry into force for the provisions on financial data sharing schemes and Financial Information Service Provider (FISP) authorisation is extremely short.

Policy-makers should consider the novelty and complexity of FiDA when defining the implementation period. Based on previous experiences, for instance with the European Payments Council's SEPA Payment Account Access (SPAA) scheme (which has taken years to develop and has yet to be finalised), 18 months is insufficient to allow for a proper dialogue between industry stakeholders.

It will also be important to clarify the provisions of article 11 (Empowerment for Delegated Act in the event of absence of a financial data sharing scheme) to better understand both the Commission's timeline for assessing the need to invoke article 11, as well as how the technical expertise required would be set up should article 11 be invoked.

Strong incentives for participation and investment

Incentives play an important role in the success of data sharing frameworks. As noted in Recital 29, compensation is essential to 'ensure that data holders have an interest in providing high quality interfaces for making data available to data users', as well as to 'ensure a fair distribution of the related costs between data holders and data users in the data value chain'. Compensation for infrastructure and data services provided is also important to incentivise data holders to maintain a high level of quality and high functioning data sharing mechanisms.

Therefore, the inclusion of provisions for reasonable compensation within FiDA is a positive development. However, it is crucial to strike the right balance between fair compensation for data holders and affordability for data users to nurture and support the development of a nascent ecosystem. Thus, a more proportionate approach should be adopted around the following guiding principles: transparency, non-discrimination, proportionality and reasonableness.

Furthermore, the provisions of article 10(1)(h)(i) seem to mandate the schemes to establish a maximum compensation and a *de facto* price cap. This *ex ante* price intervention is not only unnecessary at this stage, but can also cause potential unintended consequences of indirect price fixing, which may result in distortion of competition and impede innovation.

Finally, while we support the objective of a level playing field for participants in the EU data economy, the SME cap provided in article 10(1)(h) runs the risk of creating fragmentation in the data market. SMEs make up a significant portion of businesses within the EU and many mid-size companies are strategic participants in the data economy. It would be more appropriate to focus the compensation cap to micro and small enterprises. This will ensure a proportionate and targeted support towards the entities that most require it, while maintaining a level playing field.

Clarifications for permission dashboards

Permission dashboards can be useful tools to help consumers keep better control of their data and to foster trust in data sharing. However, the development of permissions dashboards is a complex endeavour and believe that the requirements and provisions under article 8 need to be further clarified.

Particularly, there needs to be further clarity on the responsibilities of 'data holders' and 'data users'. There are significant responsibilities imposed on data holders to keep up to date, real time, and accurate information for the customer. However, it should be stated that the data holder is not responsible for the accuracy of the data provided to them by data users, and that data holders are not required to check the data they receive from FISPs for inclusion in the dashboard, as data holders should not be responsible for data that exist between the customer and the third party. The requirements in article 8(2)(a) should also clarify that the data holders can only provide this information if it was provided by the data users.

Related to the above, the relationship between the definitions of 'data holders' and 'data users' is unclear. For instance, would a data user, by accessing (ie 'collecting') customer data, also automatically become a data holder or would the data user remain a user, even if it processes the accessed data?

Furthermore, it is important to ensure consistency between the permissions dashboard obligation under FiDA and the obligations under the Payment Services Regulation (article 43 – Data access management by payment services users).

Additionally, there are several technical challenges in the provisions in article 8, particularly on the re-establishment of withdrawn permissions as well as with 'real-time provisions of data'. On the latter, data in scope should not be made available in 'real-time', both given the technical and operational challenges associated with this provision, but also given the limited value that real time data sharing would provide.

Regulation of Financial Information Service Providers

In order for a data sharing framework to flourish, there must be consistent and appropriate regulatory oversight. This is key to support innovation and competition, while also mitigate the risks of monopolies and the creation of an un-level playing field.

We have several concerns around the 'Financial Information Service Provider' (FISP) category. In particular, the definition in article 3(7) ('"financial information service provider" means a data user that is authorised under article 14 to access the customer data listed in article 2(1) for the provision of financial information services') does not define what a 'financial information service' is.

Furthermore, and considering that FISPs will likely be in possession of large quantities of consumer data (some of them highly sensitive) from the data in scope of FiDA, strong regulation and effective supervision of FISPs is needed and the provisions of article 12 (Authorisation*)* and article 6 (Obligation on a data user receiving customer data) are welcome. However, a few other elements should be taken into consideration, such as: onwards sharing of the data received, purposes (both legitimate and illegitimate) for which the data received can be used (eg use of the data received by FISPs [or affiliated entities] to offer in-scope financial services under article 2[1]).

Alignment with other regulations

The interplay of the FiDA proposal with other relevant EU legislations, such as the GDRP, the Data Act, the Digital Markets Act, the PSR, the third Payment Services Directive and the Open Banking provisions, need to be clarified. For instance, further clarity should be provided on the obligations

provided in article 4 FiDA (Obligation to make available data to the customer) with article 15 GDPR (right of access).

Ensuring coherence between new and existing regulation is fundamental to ensure legal clarity and fairness, while achieving a responsible data economy, driven by a competitive, innovative and secure framework for data sharing and effectively by enabling consumers to better control access to their financial data. Furthermore, clarity on the supervisory authorities, as well as their respective responsibilities, would be welcome to ensure that there are no duplications or conflict within the EU single market for data.

Conclusion

While we welcome the market-driven approach of the proposal, the scope is too broad and unclear to ensure the development of a competitive, innovative, and secure data sharing ecosystem in the European Union. The proposal should further clarify the roles and responsibilities across the data value chain, while building the right incentives and mitigating risks by establishing appropriate safeguards to protect consumers, financial services providers and the market.