



Digitalisation - Open finance/insurance - Financial Data Access (FIDA)

■ Why does it matter to intermediaries?

Data and technology are increasingly driving changes in the insurance sector, producing new business models, insurance products and ways for firms, and in particular insurance intermediaries, to engage with their clients.

■ State of play

Open Insurance - EIOPA use case

In July 2023, EIOPA published a discussion paper on open insurance which concerns, amongst others, insurance intermediaries. This paper contains a use case on the potential development of an insurance dashboard under the open finance (FIDA) framework. The insurance dashboard presented in the use case would collect and display all of a consumer's insurance policies in one place, in a user-friendly manner. To do so, it would aggregate and combine information from the different insurance companies and intermediaries with which the consumer has a relationship. The dashboard would also allow other insurance companies and intermediaries to include information on their own products, allowing consumers to compare coverage and prices. The use case is limited in scope and focuses on non-life insurance and specifically on motor and household insurance. EIOPA specifies that the dashboard itself might not offer financial advice, but that it might do so if it is run by a regulated insurance intermediary. This would depend on the concrete model used.

FIDA

In June 2023, together with one set of measures concerning the banking sector and dealing with the revision of the Payment Services Directive (open banking), the Commission published a proposed Regulation for a framework for Financial Data Access (FIDA). It concerns the insurance distribution sector directly.

As in DORA, micro and SME (re) insurance intermediaries and ancillary intermediaries are excluded from the scope of the FIDA proposal *"to ensure proportionality (...) for reasons associated with their size or the services they provide, which would make it too difficult to comply with"*. The data users (see below) within the scope of the Regulation should indeed be subject to the DORA requirements and therefore be obliged to have strong cyber resilience standards in place to carry out their activities.

The proposal establishes a framework governing access to and use of customer data in finance, including insurance. Financial data access refers to the access to and processing of business-to-business and business-to-customers (including consumers) data upon customer request across a wide range of financial services. It builds on the already existing "open banking" provisions introduced by the Payment Services Directive (PSD2) that regulate access to customer data held by account-servicing payment service providers.

Regarding the type of data that is in the scope of the proposed FIDA, it is both personal data that relates to identified or identifiable individuals and non-personal data that relates to business entities or financial product (contract) features. In terms of specific types of customer data, the initiative covers loans, savings, investments (including IBIPs), occupational and personal pensions, and non-life insurance. Input data collected for the purposes of carrying out an assessment of suitability and appropriateness as defined in Article 25(2) and Article 25(3) of MIFID II and input data collected for the purposes of creditworthiness assessment of firms are also covered.

The proposal does not cover some customer data where an overall cost benefits analysis found that risks of financial exclusion may outweigh potential benefits. This concerns, in particular, creditworthiness assessments of natural persons; and life, sickness and health insurance.



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Key provisions of the proposed Regulation on Open Finance (FIDA)

The proposal establishes rights and obligations to manage **customer data sharing in the financial sector**:

- **Possibility but no obligation for customers to share their data with data users** (e.g. financial institutions (including large intermediaries) or fintech firms) in secure machine-readable format to receive data-driven financial and information products and services (i.e. such as financial product comparison tools, personalised online advice)
- **Obligation for customer data holders** (e.g. financial institutions (including large intermediaries) to make this data available to data users (e.g. other financial institutions (including large intermediaries) or fintech firms) by putting in place the required technical infrastructure and subject to customer permission.
- **Data users** can be licensed financial institutions such as insurance intermediaries or fintech firms, and in this case, they are defined as financial information service providers (FISP). They will have to submit an application to their competent authority to be authorised to access data and comply with other requirements. EBA will also develop an electronic central register on those FISP. This is an important article for BIPAR and its members to study.
- **Full control by customers over who accesses their data and for what purpose**, facilitated by a requirement for dedicated permission dashboards and strengthened protection of customers' personal data in line with the GDPR.
- **Standardisation of customer data and the required technical interfaces** as part of financial data sharing schemes, of which both data holders and data users must become members.
- **Liability regimes for data breaches and dispute resolution mechanisms** as part of financial data sharing schemes so that liability risks do not act as a disincentive for data holders to make data available.
- **Additional incentives for data holders to put in place high-quality interfaces for data users** through compensation from data users in line with the general principles of business-to-business (B2B) data sharing laid down in the Data Act.

EP and Council readings

The proposal is being discussed by the two EU legislators, i.e. the European Parliament and the Council.

At EP level

The EP Committee in charge of the file is the ECON Committee. The EP rapporteur is Michiel Hogeveen (The Netherlands, ECR), the shadow rapporteurs are Frances Fitzgerald (Ireland, EPP) Ondřej KOVÁŘÍK (Czech Republic, Renew) and Eero Heinäluoma (Finland, S&D).

On 18 April, during its last meeting of the current EP mandate, the ECON Committee adopted its draft report on the proposal with 43 votes to 1 and 5 abstentions.

The ECON Report contains some of the following important points, amongst others, that **BIPAR supported** and proposed in its suggestions for amendments to ECON MEPs:

- "Opt-in" clause for micro/SME insurance intermediaries (Article 2): if they so wish, micro and SME intermediaries could fall in the scope of FIDA, provided that they prove their compliance with its relevant provisions.
- The possible inclusion of other types of entities (such as credit intermediaries) in the scope of FIDA being assessed by the Commission in its evaluation report to be published 4 years after the application of FIDA (Article 31)
- Exclusion of small and non-interconnected investment firms: FIDA shall not apply to entities referred to in Article 12 of the Regulation 2019/2033.

- Definition of "financial information service" (FIS): Very importantly, the Report expressly states that FIS shall not include the provision of services regulated under existing Union financial services legislation and reserved for financial institutions authorised under union law (such as insurance intermediation for example).
- Recital stating that FISPs should not use their license as financial information service providers to conduct activities regulated by existing sector-specific legislation, for example they should not be authorised to carry out insurance distribution activities regulated under the IDD.

The ECON Committee Report does include some of the following points, amongst others, that **are not in line with BIPAR's position**:

- A reduced scope of data: IBIPs and non-life insurance data (except for health and sickness insurance) are still within the scope, including data collected for the purpose of a demands and needs assessment in accordance with the IDD (non-life and life) and for the purpose of an appropriateness assessment in accordance with the IDD (IBIPs). However, on that last point, the ECON Report specifies that that data only includes input data provided by the customer and not the result of the assessment performed by an intermediary.
- No possibility for relevant professional organisations to become members of Financial Data Sharing Schemes (FDSS). Under the ECON Report only data users/holders and relevant customer and consumer associations are authorised.



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At Council level

The Council is discussing the proposal. It is unlikely to reach its position on the text under the Belgian Presidency (January – June 2024). Based on the discussions it has had so far, the Council seems to be open to adopting a more gradual approach to the inclusion of certain categories of data within the scope (without, however, completely excluding categories of products).

Regarding FDSS, Member States seem to agree about having a market-led- scheme-based approach to standardization, reasonable compensation and liability rules (with different stages in the deployment of the FDSS, such as agreement on general governance rules, on standardisation and compensation and operationalisation). Details on the functioning of the schemes should be provided at level 1 or 2 (example: model to determine compensation, liability of entities etc.). A longer time period than 18 months is needed to develop the schemes.

It is interesting to note that Member States seem to agree that it should still be possible to share data outside of FIDA. The Belgian presidency explains that contractual freedom will thus always allow entities to agree sharing contracts outside the scope of FIDA. However, scheme membership would still be a prerequisite for data holders and data users to benefit from FIDA rights (example: compensation for the data holders and access right for data users).

Some Member States have called for strong safeguards beyond those included in FIDA as regards big techs and their considerable economic power in the digital economy. In this context, some MS have suggested looking into the option of preventing entities designated as gatekeepers under the Digital Markets Act from becoming FISPs and thus gaining access to financial data. Under the Digital Markets Act, the Commission can designate a provider as a “gatekeeper” and impose a number of obligations on these designated gatekeepers. These obligations include, for instance, the prohibition on combining certain data without consent of the end user, or the obligation to guarantee effective data portability rights.

■ BIPAR’s position / key messages

Open insurance – EIOPA use case

In its response to the EIOPA consultation, BIPAR outlined the following points:

- **Insurance is not banking.** The products in these two sectors are not comparable as insurance products are much more complex and varied and not just purely transactional. Any framework applicable to data exchange in the insurance sector needs to take into account the specificities of that sector.
- **A dashboard**, as described by EIOPA would not be the most effective way to allow for better comparison of insurance products. Professional advice provided by an intermediary is more effective in recommending products suited to a client’s demands and needs. The creation of insurance dashboards might lead to information overload for clients who might be led to make bad choices based on one criterion (most likely costs) rather than on an overview of their needs.
- **Standardisation** of product data, in the insurance sector, would be very difficult to implement as the products are very varied and complex. In addition, it should not lead to excessive product homogeneity.
- **Sharing relevant data** with currently unregulated third parties could present both competition and data protection issues.
- **The whole framework** presents risks of customer exclusion based either on refusal to share personal data, on misuse of data acquired through the framework or on lack of financial/technical literacy.
- **The costs incurred by intermediaries** in such a model are unclear.

FIDA proposal

Like all legislative proposals published by the European Commission, **the FIDA proposal was open for feedback.** These automatic “better regulation” consultations aim at involving citizens and businesses on new EU policies and existing laws.

In preparation of its response to the Commission consultation, on Friday 29 September 2023, BIPAR organized a one-hour Webinar with DG FISMA on the proposal for a Regulation on a framework for FIDA.

In its response to the Commission’s consultation submitted in November 2023, BIPAR outlines the following points amongst others. Together with its members, and in the context of the EP and Council readings of the FIDA proposal, BIPAR also informed the ECON MEPs and the Council’s representatives of its position:



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- The possible consequences of the **exclusion of micro and SME insurance intermediaries** from the scope of FIDA and the possibility to **include an “opt-in” clause** in the proposal that would allow certain of these intermediaries to voluntarily participate in the framework;
- The possibility to **limit the categories of investment firms included in the scope** as some smaller and non-interconnected structures might not have the necessary means and capacities to comply;
- **The lack of clarity regarding credit intermediaries;**
- **The necessity to limit the scope of the data to be shared** under the proposal;
- **The risk of high added costs and burden** for entities in scope;
- **The necessity for FDSSs to respect competition rules;**
- **The necessity to allow relevant professional associations** (such as national associations of intermediaries) **to participate in FDSSs** in the same way that consumer and customer organisations are allowed to;
- **The lack of definition** of FISPs that, if it is not addressed, could lead currently unregulated third parties (most likely FinTechs) to possibly take on some activities that are currently reserved to entities regulated under the IDD or MiFID II;
- **The lack of reciprocity in data sharing.** The FIDA proposal as it stands allows FISPs to require access (upon customer request) to data held by data holders (financial institutions) but does not allow data holders to request access to data held by FISPs;
- **The unrealistic timeline for implementation** of the framework.

■ Next steps

Open insurance – EIOPA use case

EIOPA explained that the use case is not a consultation regarding a legislative proposal. It is exploratory and aimed at receiving stakeholder feedback on the issues and challenges that would arise from such an initiative under the open insurance framework.

FIDA proposal

The ECON Report was not voted in EP plenary. This means that the entire file will need to go through ECON again in the next EP mandate, including another vote in ECON to give a mandate to the Rapporteur to start the trilogue negotiations. That also means that MEPs can reopen the file under the next parliamentary term after the EU election in June if they want to.

The Council is still developing its position. Once this is done, and assuming MEPs don't reopen the file, the trilogue will start to agree on a final text.

Because of the EP election and the appointment of the new European Commission in June next year, the proposal is unlikely to be adopted before 2025.

It seems that the Belgian Council's Presidency would apparently leave it to the Hungarian Presidency (starting in July 2024) to reach a Council's position on the FIDA proposal. It is therefore likely that the trilogue on the FIDA proposal will start at the end of the Hungarian Presidency or under the Polish Presidency.

■ Links

- [EIOPA's discussion paper on open insurance](#)
- [Commission's 2020 Digital Finance Strategy](#)
- [Payment Services Directive 2](#)
- [Expert Group's report on open finance](#)
- [FIDA proposal](#)