

Position Paper

From Open Banking to Open Finance: On the Proposal for a Regulation on a framework for Financial Data Access
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Introduction

In the midst of the digital revolution, one must recognize the pivotal role of the data economy and its impact in shaping the future of the financial landscape. For this reason, **Bitkom and its members express their general support for the proposed Regulation on Financial Data Access (FIDA)** and are pleased to have the chance to offer their feedback. Having embraced early on an ecosystemic approach toward finance, **Bitkom – from a finance point of view – voices the industry perspectives of banks, exchanges, insurers, and other financial entities as well as FinTechs, third party providers, and tech companies.**

We are firm believers in the transformative power of an open and interconnected ecosystem, built on authorized and secure data sharing. This vision holds tremendous promise for consumers, businesses, and the overall economy. By expanding the scope of data sharing beyond the confines of data sharing with third parties under the revised Payment Services Directive (PSD2), Bitkom urges to take into consideration the experiences and many lessons learned from its introduction. **Bitkom highlights the following considerations:**

- **Clarifying scope & providing legal certainty:** It remains imperative to establish specific criteria to determine the scope of the data in question whilst providing legal certainty for many general provision and undefined legal terms prevalent in FIDA.
- **Fostering consumer control via centralized dashboards:** Expanding upon FIDA's customer-centric approach a clarification is needed, that the provision of permission dashboards can be outsourced to (non-regulated) technical service providers and that such a technical service provider can maintain centralized dashboards.
- **Greater clarity regarding Financial Data Sharing Schemes (FDSS):** Bitkom stresses the importance of preventing regulatory arbitrage as to the binding requirements to what conditions a scheme must meet. Greater clarity must be provided through changes in the FIDA or by enabling the definition with level 2 measures. Furthermore, the proposed implementation timeline is extremely ambitious. Bitkom recommends expanding upon the 18 months.

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Suggested measures in greater detail

Clarifying scope & providing legal certainty:

- **Establish criteria for data in scope:** The lack of clear definitions for the data in question results in uncertainty regarding the extent of the data access obligation. **To resolve this, it is imperative to establish specific criteria to determine the affected data.** This should encompass data that meets the following conditions: i) has not undergone any refinement, ii) does not necessitate new or additional collection or creation solely for the purpose of sharing, and iii) is collected in a standardized manner. However, the third condition should not be universally applicable. Data where financial institutions have diverging standardized methodologies or internal models, e.g. sustainability assessments or outcomes of a credit assessment, should be excluded from the scope as they are susceptible to misinterpretation if shared without proper context.
- **Clear responsibilities:** The proposal's allocation of responsibilities to data holders and data users, particularly concerning data limitation, is generally positive. However, it becomes challenging for the data holder to verify or ensure if the data use by the Financial Initiation Service Provider (FISP) aligns with the stated purpose. It is essential that the information regarding the purpose of data access by Third-Party Providers is presented in a clear and comprehensible manner. Under PSD2, banks and financial institutions were not always aware of who had been granted consent for what specific purposes. Hence, it should not be the data owner's responsibility to impose restrictions or categorizations (e.g., for the dashboard) in such cases.
- **Providing Legal certainty:** FIDA works with many general provisions and many undefined legal terms. While the Payment Service Regulation (PSR) foresees many enabling bases for the ESAs and EC to define legal concepts of level 1 regulation, FIDA provides little regulatory density in this regard. This ranges a lack of the definition of "financial information services" to the specifications for FDDS (see below for further info). To avoid legal uncertainties, Bitkom calls for legal definitions and specific provisions either at FIDA level or at least at level 2.
- **Ensuring regulatory coherence with existing vertical and horizontal frameworks such as PSD or the Data Act:** FIDA will build upon the Data Act, which will serve as a comprehensive framework for horizontal data sharing. Given, that FIDA will work as a sector-specific vertical framework, it becomes evident that regulatory coherence must be maintained across these legislative components. **As the Data Act must now be formally confirmed by the EP and the Council, it is of utmost importance to establish it correctly as a foundation.** This will ensure that future sector-specific legislation effectively enables the financial sector to leverage the advantages of data sharing whilst providing regulatory certainty.
- **As regulatory vagueness persists, there must be a debate about questions linked to liability and compensation, regarding the provision of data sharing infrastructures, to allow for sustainable business models across the value chain.** Currently we anticipate an unlevel playing field regarding data access under the PSR and data

access under FIDA. Bitkom understands the Commission's approach to not replace a working model (PSD/PSR) with a model which still needs to be set up (FIDA). In the long run, we suggest to fully merge existing PSD schemes with future FDSS. Depending on the actual time frame and potential steps taken by the Commission with regards to the setup of FDSSs, potential short-term adaptations to PSR/XS2A rules may be needed (e.g. compensation, liability). Our detailed view on the setup of FDSS can be found below in the respective Chapter.

Fostering consumer control via centralized dashboards:

- **Allowing for centralized delegated Dashboard solutions:** Bitkom strongly welcomes the introduction of Dashboard solutions. Allowing consumers, the currently lacking option to centrally manage their granted permission provides transparency for all involved parties of when and why they provided consent. **In order to avoid fragmentation at the cost of transparency Bitkom recommends the possibility of centralized dashboards that bundle the granted permissions across data holders possibly outsourced to (non-regulated) technical service providers.** This should include dashboards for both, the PSR and the FIDA. By centralizing these settings, consumers can easily review and manage their data-sharing preferences in one location, improving transparency and control. For this reason, it should be clarified, possibly in the recitals of FIDA, that the provision of permission dashboards can be outsourced to (non-regulated) technical service providers and that such a technical service provider can also maintain "cross-institutional" or "centralized" dashboards for customers, through which the respective customer can centrally manage his consents for third party access to his financial data at different financial institutions.
- **Digital identities as key to resolve SCA:** In order to become the spearhead of the digital economy – and this most definitely goes beyond financial services – Europe and its member states must intensify their focus on digital identities. Bitkom strongly highlights that digital identity solutions, such as European Digital Identity Wallets will help identify a customer online and authenticate consent. A more detailed position on how digital identities will help achieve a state of frictionless, intra-European financial services can be found in our PSD position paper.

Greater clarity for Financial Data Sharing Schemes

- **On Financial Data Sharing Schemes:** Bitkom welcomes the market-driven approach using schemes in order to overcome the well-documented technical challenges associated with data reuse. By encouraging the establishment of widely accepted standards, we can address these obstacles effectively and promote seamless data reuse, leading to enhanced benefits for both individuals and society as a whole. **We explicitly welcome, that the schemes shall require rules on transparency.** Drawing from the lessons learned from PSD2 implementation, promoting transparency in key areas such as API uptime, the percentage of API-accessible accounts, and the success rate of API calls, efforts to ensure proper implementation and maintenance of account access can be prioritized.

- **Bitkom and its members stress that the proposed implementation timeline is extremely ambitious;** especially when taking the timeframe for development of API-standards under PSD2 as reference. **Bitkom recommends expanding the 18 months** in which in-scope financial institutions must become members of one or more FDSS before the Commission is tasked with setting rules in case data sharing schemes have not successfully been set up. It is important that clear incentives are set to participate and agree in an FDSS and not workarounds are set-up in parallel. Moreover, there must be a cross-sectoral alignment on minimum standards to ensure needed cross-FDSS standards will be achieved. In that regard, a lack of agreement in an FDSS should not mean that data can be accessed in an ungoverned way.
- **Clarity for requirements of FDSS: Bitkom highlights the importance of preventing regulatory arbitrage as to the binding requirements of conditions a scheme must meet.** Currently, several requirements of FDSS suffer from vague definitions, such as the criteria for significant market coverage and the specific act of establishment necessary for an FDSS. Moreover, the allocation of initial costs for setting up an FDSS should be addressed, determining if only the initiator, founding members, or also later-joining members bear these costs.

Additionally, there should be clear regulations regarding who can initiate the establishment of an FDSS, considering whether it can be done by any market participant, associations, or other entities. The terms "customer organizations" and "customer associations" need to be precisely defined to avoid confusion and ensure consistent interpretation. To prevent potential conflicts and failures in self-regulation, stricter guidelines should be implemented concerning the content regulations of an FDSS. This can be achieved through delegated acts or guidelines.

There is a general risk of excessive fragmentation in FDSS if regulatory density remains insufficient. Bitkom emphasizes the need for greater clarity either by introducing changes in the FIDA or by enabling the competent authorities to define legal concepts using level 2 measures.

- **Fallback options:** Bitkom recommends **API's first, but not APIs only, meaning that a fallback is needed in case the API doesn't work.** Unlike the proposed PSR the FIDA proposal does not provide for the establishment of fallback options in its Level 1 regulation, which could lead to diverging implementation via the to be established schemes. Bitkom therefore calls for a clarification on fallback options similar to the PSR, which puts dedicated interface at its center but provides for contingency measures for an unavailable dedicated interface.