

European Mortgage Federation-European Covered Bond Council (EMF-ECBC)

Response to the European Commission's Public Consultation on "Open Finance Framework – enabling data sharing and third-party access in the financial sector"

1 November 2023

The EMF-ECBC recognises the strategic importance of the Open Finance Framework and welcomes the opportunity to comment on the European Commission's Proposal for a Regulation on a Framework for Financial Data Access (FIDA), which is expected to have far-reaching implications for the banking industry and therefore the mortgage industry.

While recognising the intention of the Commission to promote data-driven innovation in the financial sector, we are concerned that the proposal covers such a wide range of financial services products and a broad scope of data without a proper assessment of the added value for customers and the entire EU economy. Indeed, as indicated by the Commission itself in its impact assessment report accompanying the Proposal: *"Given the limited data availability and the nature of the open finance initiative, it is inherently difficult to make quantitative predictions about how its benefits at the whole economy level.....This is why a qualitative assessment of benefits for the individual measures was mainly used."*

We are still assessing the full implications of the Proposal but would like to share the following reflections at this stage:

Competition Issues:

1. The Proposal could unfairly expose the European industry to competition from non-European providers whereas, in the absence of reciprocity, the EU industry would not be allowed to offer equivalent services outside Europe; this proposal could have the effect of opening up the EU financial services market to extra-EU players, such as for example GAFA/BigTech, which is currently not in possession of this data but would as a result be able to gain a complete overview of the European customers' profiles, and to other extra-EU financial entities, which would be the ultimate beneficiaries.

Definition of customer data:

2. Of primary importance is a clear definition of "customer data". We note that Article 3(3) includes *"data generated as a result of customer interaction with the financial institution"*. In our view, there is a risk that data enriched by a financial institution is captured in the scope and this reference should therefore be deleted. Only raw data should be considered, and the definition should be amended accordingly.

Scope: Type of product & service:

3. Article 2.1a refers to the terms *mortgage credit agreements* but does not provide a definition. It is important that any references to such agreements be aligned with Directive (EU) 2014/17 to avoid any confusion or misinterpretation. Furthermore, the term *"conditions"* is very far reaching, potentially also including general

terms and conditions, and the meaning varies significantly across different product types. Only still active loans provided by a data holder (e.g., the bank) and those closed by a certain date should be in scope, while those held by a family member or loans at other banks should be excluded. In line with the need to identify both the primary data holder and customer concerned.

4. Article 2(1b) refers to financial assets such as “*real estate*”. It is unclear whether the reference is made to real estate investments (which do not seem relevant to FIDA’s scope as they are not financial assets) or to financial instruments that invest in this asset class, in which case it would not be necessary to mention them specifically (because they would fall into the category of “financial instruments” anyway). In addition, there is no “natural data holder” among the financial institutions listed under Art. 2(2) related to real estate. This is due to the fact that customers’ physical real estate assets are neither a product or service of a financial institution, nor are they assets managed by a financial institution on behalf of the customer. Only data holders that are directly responsible for customer data in the sense of authentic source should be legally obliged to grant access to data.
5. Article 2(1f): The scope of data collected as part of a loan application process should not be in scope of the Regulation. The scope of this data is very broad and includes very sensitive commercial information, for instance, the different internal methodologies used by financial institutions for creditworthiness assessment purposes and the data linked to this activity (product data). Mandatory disclosure of this data could significantly impact competition, as other financial institutions active in the same field could make use of this data without making the required investments, leading to a “race to the bottom”.

Role of FISP:

6. A definition of “Financial Information Service” is missing. We believe one should be included.
7. The Proposal should clarify that FISP are authorised to provide only financial information services (see in this respect, recital 31, which should be amended accordingly);
8. We advocate for a strong regulation and supervision of FISP, especially when they are extra EU. In this case, there are questions as to how they would be supervised, especially when the extra EU FISP, is not subject to supervision, as per Article 14 (2c)

Interplay with other regulation:

9. It is very important to clarify in the Proposal the interplay of FIDA with other regulation such as the GDPR, Data Act and Digital Markets Act, as alluded to above.

Timeline implementation of scheme:

10. The timeline for implementing the scheme is very challenging: we recommend a meaningful extension of its implementation.