

Our position

Proposed amendments to the Regulation on a Framework for Financial Data Access

AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €3.7 trillion in 2022, directly supports more than 4.9 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

Introduction

A responsible data economy, driven by a competitive, innovative and secure framework for data access, 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 and access frameworks, including 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. In this spirit, the following recommendations to the ECON Committee welcome the clarity and progress towards a more proportionate approach made by Members of the European Parliament.

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.

Thus, the amendments aiming to clarify the meaning of 'data generated as a result of user interaction with the financial institutions' and emphasising the importance of the respect of the confidentiality of trade secrets and intellectual property rights (AMs 168, 301 to 304, 306, 307) are highly beneficial, including amendment 15, which provides clarity on the role of, and relationship between, data user and data holder.

Equally relevant are the amendments recognising the difficulties of harmonising wholesale customers data and instead focusing on the added-value and benefits of facilitating access to retail consumers and micro-, small- and medium-sized enterprises (AMs 295, 297, 298). However, there is a lack of clarity around the meaning of '[SME] that is a party to an agreement' in proposed amendments to article 3, paragraph 1, point 2. The definition of 'customer' should clarify that an existing contractual relationship should be in place with the SME to mandate access.

Furthermore, we welcome amendments clarifying that FIDA is without prejudice to the freedom of data holders to establish voluntary agreements or contracts for data sharing (AMs 357-360).

Recommendation to support: AMs 15, 168, 295, 297, 298, 301 to 304, 306, 307, 357 to 360.

Scope of the categories of customer data

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. Thus, customer data collected as part of MiFID suitability and appropriateness assessments (AM 233, 234) and as part of a 'loan application process or a request for a credit rating' (AMs 186, 250-254), should indeed be excluded from the scope.

We also continue to assess MEPs' proposals for a phased approach 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 (AMs 443, 444, 450, 452-454).

Recommendation to support: AMs 186, 233, 234, 250 to 254.

Implementation timeline

We welcome the acknowledgment of the complexity of the proposed framework and the importance of providing the industry with enough time to address the many challenges linked with the establishment of data sharing schemes. We therefore support amendments proposing a longer implementation timeline, including to between 24 to 36+ months for the developments of data sharing schemes (AMs 446, 447, 582 to 587) and between 36 to 48+ months for the rest of the framework (AMs 580, 582 to 587).

As mentioned above, we also continue to assess MEPs' proposals for a phased approach 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 (AMs 443, 444, 450, 452-454).

Recommendation to support: AMs 446, 447, 580, 582 to 587.

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'. Various amendments appropriately aim to ensure that a more proportionate approach is adopted, and that it is centred around the principles of transparency, non-discrimination, and reasonableness. Particularly, we support the proposals which allow for compensation to include a margin and to take into account investments in the production and collection of data (AMs 23, 102, 475, 478 and 481), as well as those suggesting that the compensation methodology take into account market-led initiatives (AM 473).

Recommendation to support: AMs 23, 102, 104, 473, 475, 478, 481, 484, 485.

Regulation of Financial Information Service Providers

We welcome the clarity provided by MEPs on the definition of 'financial information service' (AMs 46, 317, 318, 319, 320, 326, 327, 328, 329), which is a pre-requisite for the consistent application of the proposal.

However, some of the proposed amendments limit participation in data sharing and access schemes, notably those which may be interpreted as a differentiated treatment between domestic and non-domestic companies, potentially raising questions of compatibility with GATS agreement and trade implementations. The proposed amendments preventing gatekeepers designated under the DMA from being eligible data users are not properly justified, and the carryover of the gatekeeper concept in such a different context raises questions which are not answered, since it bears no relationship to the market position of designated companies in the financial services space.

Recommendation to oppose: AMs 170, 172, 271, 272, 354, 355, 356, 368, 322, 363, 382, 383, 385, 524.

It is concerning that some of the proposed amendments seem to go beyond the provisions and principles established in the GDPR (Regulation 2016/679) and in the Data Act (Regulation 2023/2854). Particularly, AMs 215-219, 366, 525, 526, 530, 531 mandate an establishment within the EU to be eligible for data access and sharing schemes, rather than the presence of a legal representative for

enforcement and supervision purposes. Alignment with existing legislation in the data space is needed to ensure legal certainty and avoid data localisation requirements which could negatively impact the financial services sector and consumers.

Clarifications for permission dashboards

Article 8 should further reflect the technical challenges, particularly in the provisions regarding the establishment of withdrawn permissions as well as with 'real-time provisions of data'. Regarding the latter, the logic provided in some amendments to article 4(1), where 'continuously and in real time' is qualified with 'where appropriate in the circumstances' (AM 344) or 'where relevant and technically feasible' (AMs 343) or where 'real time' is replaced by 'due time' (AM 346), should be extended to article 8.

Additional concerns

- **Penalties and administrative fines:** amendments 555 and 556 propose to increase administrative penalties and fines from 2% of total worldwide turnover to 10% of total worldwide turnover. This risks putting a disproportionate burden onto data holders and unduly penalise institutions' incentives to innovate and continue investing in their data infrastructure.
- **Delegated powers:** the proposed amendments 206, 501, 502 and 503 suggest deleting empowerment for the EC to adopt a delegated act in the event of the absence of data access sharing schemes being established. This is highly appropriate, as data sharing and access schemes creation need to be market driven and have demonstrable added-value and benefits for consumers.
- **Alignment with other regulations:** we support the proposals clarifying the interplay and alignment of FiDA with other EU legislations, including PSD2 (AMs 161 and 179), as well as with the GDPR (AMs 30, 221 to 224).