



Council of the European Union
General Secretariat

Brussels, 08 May 2024

**Interinstitutional files:
2023/0205 (COD)**

WK 6757/2024 ADD 1

LIMITE

**EF
ECOFIN
CODEC**

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

WORKING DOCUMENT

From:	French delegation
To:	Working Party on Financial Services and the Banking Union (Open Finance/FIDA) Financial Services Attachés
N° Cion doc.:	ST 11220 2023 INIT
Subject:	FIDA - ANNEX 1 - FR non-paper "How to tackle the risk of demutualization" - WP 16.05.2024



French non-paper FIDA: How to tackle the risk of demutualization

1. Context

France is supportive of FIDA as a trans-sector regulation which aims at facilitating a secure access to financial data in the EU as well as enabling the creation of more innovative and personalized financial products to the advantage of European customers. However, we have also pointed out that **the scope of data embedded in FIDA is too large and should be limited**. In this regard, there seems to be a consensus in the Council around **the exclusion of sensitive data as defined in the GDPR** – which we totally support. We would like to go further, especially considering **the exclusion of certain data in relation to mutualization of risks**.

Indeed, **several financial services activities such as insurance or credit rest upon the principle of mutualization of risks**, which allows consumers with various risk profiles to be offered services by joining these different types of risks in a common pool where they are offered similar conditions. Without this pooling system, the persons with a higher risk profile would be excluded from these financial services, or would face much higher cost. Therefore, **the mutualization system should not be undermined**.

Generalizing the sharing of certain type of data as designed in the current FIDA proposal could lead to a **much more targeted and heightened selection of risks**. It would lead to lower prices and better coverage for certain risk profiles, but higher risk customers would face higher prices or coverage reduction, thus leading to **increased financial exclusion**.

Thus, beyond the exclusion of sickness and health insurance products as highlighted in the Article 2(1)(e) of the draft proposal, **we propose several solutions that could help preventing the risk of demutualization and reinforce the protection of sensitive data**.

2. Way forward

The solutions presented here are meant to be cumulative.

- a) **First, we propose to exclude from the scope of FIDA the individual data related to natural risks and to damages caused by natural disasters**. This idea leans on one of the issues identified in the report on the insurability of climate risks in France ([Rapport final Mission-assurance climat.pdf \(ecologie.gouv.fr\)](#)¹) published in April 2024. It highlights that FIDA could allow new market players to cover only customers located in less risky areas in terms of climate disasters and thus to leave a large portion of the population without insurance protection against such risks or at a much higher cost. This reasoning could be extended to other financial services activities such as mortgages given the potential impact of climate risks on the value of collateral.

¹ Thierry LANGRENEY, Gonéri LE COZANNET, Myriam MERAD, *Adapter le système assurantiel français face à l'évolution des risques climatiques*, Décembre 2023, pp.54-55.

In order to avoid such side effects, our idea is to remove from the scope of FIDA individual and granular data related to natural disaster and climate risks that could lead to the exclusion of certain customers. This is of course without prejudice to the collection and sharing of data at an aggregate level to better understand climate risks and help face insurance gaps. It would not prevent financial institutions from collecting such data for their risk assessment, as they already do.

- **Recital 9:** *"The data included in the scope of this Regulation should demonstrate high value added for financial innovation as well as low financial exclusion risk for consumers. This Regulation should therefore not cover data related to the sickness and health insurance of a customer in accordance with Directive 2009/138/EC of the European Parliament and of the Council **nor the data related to natural disaster and climate risks, without prejudice to the sharing and collection of data aiming at improving the understanding of such risks or addressing protection gaps. This Regulation should not cover either** data on life insurance products of a consumer in accordance with Directive 2009/138/EC other than life insurance contracts covered by IBIPs. [...]"*
- **Recital 18:** *"[...] The potential for exclusion is increased in the provision of products and services that are priced according to the profile of a **consumer customer**, notably in credit scoring and the assessment of creditworthiness of natural persons as well for products and services related to the risk assessment and pricing of natural persons in the case of life and health insurance **and in relation to natural disaster and climate risks.** [...]"*
- **Recital 19:** *"[...] The data use perimeter ensures consistency between the scope of this Regulation, which excludes data that forms part of a creditworthiness assessment of a **consumer customer** as well as data related to life, health and sickness insurance of a consumer **and data related to natural disaster and climate risks** [...]"*
- **Article 2(1) :** *"This Regulation applies to the following categories of customer data on :*
 - (a) mortgage credit agreements, loans and accounts, except payment accounts as defined in the Payment Services Directive (EU) 2015/2366, including data on balance, conditions and transactions, **with the exception of data related to natural disaster and climate risks;**
[...]
 - (e) non-life insurance products in accordance with Directive 2009/138/EC, with the exception of sickness and health insurance products **and with the exception of data related to natural disaster and climate risks [...]"**

b) **In addition it seems necessary to give a clear mandate to EIOPA to elaborate RTS in order to frame the rules concerning the sharing, access and use of data for non-life insurance products**, and not just life, health and sickness insurance products as currently intended in the Commission proposal.

- **Recital 19:** *"[...] The **guidelines draft regulatory technical standards** developed by EIOPA should set out how data in scope of this Regulation can be used in products and services related to risk assessment and pricing in the case of life **and non-life health-and-sickness** insurance products. **To avoid certain consumers becoming unable to access insurance due to overly granular risk assessments, these regulatory technical standards shall include provisions on how data may be used to avoid excessive granularity that undermines the "risk sharing" principle of insurance.**"*

- **Article 7(3):** "~~In accordance with Article 16 of Regulation (EU) No 1094/2010,~~ *t*The European Insurance and Occupational Pensions Authority (EIOPA) shall develop **guidelines draft regulatory technical standards** on the implementation of paragraph 1 of this Article for products and services related to risk assessment and pricing of a consumer in the case of life and ~~non-life, health and sickness~~ insurance products. **EIOPA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by ... [XX]**".
- c) **In relation with the exclusion of sensitive data as defined in the GDPR, certain safeguards should also be included in FIDA to prevent data users from performing "reverse engineering"**. Indeed, one of the risks FIDA involves is that data users and FISPs could be able to collect, retain and aggregate data from a large number of customers of a single insurer and, thus, be able to infer its risk assessment and pricing models – in other words its business model. Besides, it would also lead to reconstruct customer profiles. In order to prevent such an issue, we propose to establish clear safeguards in the draft proposal:
- **Recital 9:** "[...] *The sharing, **access and use** of customer data in the scope of this Regulation should respect the protection of confidential business **data information** and trade secrets within the meaning of Directive (EU) 2016/943 of the European Parliament and of the Council, including but not limited to mathematical and methodological approaches. In particular, data users should not retain and aggregate customer data, in particular for the purpose of "reverse-engineering" practices.*"
 - **Article 6:** "[...] (4) *To ensure the effective management of customer data, a data user shall:*
[...]
(g) not retain nor aggregate customer data in relation to a given data holder or group of data holders."
- d) **Lastly, the accessibility of customer data should be limited to historical data from the last 5 years.** Indeed, as mentioned by Germany in its last non-paper, such limitation of accessibility to the last 5 years should not only **accelerate the FIDA readiness** of customer data for the implementation but also **protect European customers. A historical background does not appear necessary to comparison purposes and would lead to an increased risk of demutualisation.**
- **Recital 10:** "[...] *The legal obligation on data holders to share customer data should be triggered once the customer has requested their data to be shared with a data user. This request can be submitted by a data user acting on behalf of the customer. **In any case, only historical customer data from the last five years can be shared, accessed and used under this Regulation in order to better protect customers and to limit the risks of demutualization.** Where the processing of personal data is involved, a data user should have a valid lawful basis for processing under Regulation (EU) 2016/679. [...]*".
 - **Article 5(1):** "*The data holder shall, upon request from a customer submitted by electronic means, make available to a data user the customer data listed in Article 2(1) for the purposes for which the customer has granted permission to the data user. **The customer data that is shared should not originate more than 5 years before the data request.** The customer data shall be made available to the data user without undue delay, continuously and in real-time.*"