



**PensionsEurope Position Paper on the European
Commission's proposal for a framework for
Financial Data Access**

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General comments

We welcome the Commission's proposal for a framework for Financial Data access (FIDA) which is a key component of the Commission's digital finance strategy presented in September 2020. PensionsEurope recognizes that there is a technology-driven trend towards greater use of data and data sharing in finance and beyond.

We also would like to highlight that experiences from other financial services such as payment services cannot be simply applied to the Institutions for occupational retirement provision (IORPs) which are included in the scope of this proposal and under a minimum harmonisation framework (i.e IORP II directive). Second-pillar pension funds have characteristics different from other financial entities as occupational pensions are often managed amongst social partners and depend on the employer's affiliation.

It is therefore important to note that pension funds do not deal with customers and consumers but with members and beneficiaries. Nevertheless, to better capture the proposal, the Commission's terminology is used hereafter.

FIDA should build on existing pension tracking services (PTS), to allow European citizens to continue having a holistic overview of their pension benefits including public pension rights. We value Recital 15 that data sharing related to occupational and personal pension savings should contribute to "the development of pension tracking tools". Building on PTS would avoid undermining existing PTS and those currently being implemented, especially regarding information and governance requirements which would be unnecessarily costly for data holders.

Several aspects of the proposal remain to be clarified such as the definition of 'customer' and 'customer data'. To avoid financial exclusion risks, details on disability pension and accident insurance product data should be excluded from the scope. It should also be tailored for institutions for occupational retirement provision (IORPs) to have a flexible approach regarding the frequency of delivering data while preserving existing governance models.

Furthermore, the lack of reciprocity regarding Financial Information Service Providers (FISP) should also be addressed to ensure they have data holder requirements. Besides, gatekeepers under the Digital Markets Acts (DMA) must be restricted from accessing data under FIDA as we are concerned by the consequences it may have for customers.

Pension data sharing under FIDA must build on existing tracking services

PensionsEurope is concerned by the lack of first-pillar pension rights data within the scope of the proposal. While we fully understand the legal constraints preventing the Commission from including those data in the scope of the regulation as public pensions fall under national competence, we urge policymakers to consider how state pension data can be made available voluntarily, whilst ensuring a leading role of already existing or future pension tracking services.

There are several successful pension data-sharing initiatives in place, in the form of pension tracking services. A major benefit of pension tracking services over FIDA data sharing is the inclusion of public pension rights. Among EU member states, public pension benefits account for the biggest part of retirement income. Pension tracking services also allow for cost-pooling, reducing implementing costs for IORPs, often small-sized organizations. FIDA should build on these services. Pension tracking services operating across the EU offer a working solution for access to occupational pension data. In countries such as the Netherlands, Belgium, Denmark, Sweden, Italy, and France citizens can access their pension records including, at least, pillar one and two data. Germany is currently setting up a pension tracking system (*Digitale Rentenübersicht*) that provides an overview of statutory, occupational, and private pensions. The initial phase of merely voluntary membership for pension providers who are subject to at least annual information duties is expected to end at the end of 2024.

To take proper account of existing pension tracking services as indicated in the previous paragraph, we suggest adding the following addition: *“The sharing of data in the scope of this Regulation is without prejudice to collective occupational pensions where labour market partners secure sharing of data to pension savers”*.

Furthermore, it should be recognized that pension tracking services differ in their scope, financing, and governance approach, which has been outlined by EIOPA.¹ To contribute to the work of these services rather than undermine them, FIDA should give space to sub-sector stakeholders to align FIDA data sharing with existing practices. A situation should be avoided where FIDA leads to parallel data-sharing investments, which would give excessive administrative costs for pension funds and statutory pension providers.

We also suggest integrating the proposed “permission dashboard” for occupational pension data into a national pension tracking website. Thereby, IORPs could fulfil their obligation to grant data users access at an individual’s request through the pension tracking service.

The definition of customer data must be specified

PensionsEurope is worried that customer data is so vaguely defined, as highlighted² by the European Data Protection Supervisor, and includes customer-related data that result from the interaction with the financial company. It would be beneficial for customers if it is clarified that data sharing is limited to raw data.

Furthermore, the definition of customer used in the proposal is too ambiguous. In the context of insurance and pensions, this term is too ambiguous since different categories of individuals use the offered services. Many IORPs offer survivor’s pensions as part of the pension scheme. It provides a pension to the partner(s), ex-partner(s), and/or child(ren) of a deceased member of the pension fund. Once more, it is relevant to note that pension funds do not deal with consumers or customers, but with their members and beneficiaries. ‘Beneficiary’ is defined in the IORP II directive as: “a person

¹ [EIOPA Technical advice on the development of pension tracking systems \(December 2021\)](#)

² [European Data Protection Supervisor’s \(EDPS\) opinion on FIDA –Point 15- August 2023](#)

receiving retirement benefits". These survivors become beneficiaries/customers of pension funds only in such cases. It should be clarified in recital 15 that, during a pension fund member's lifetime, the partner(s), ex-partner(s), and/or child(ren) are not beneficiaries (i.e. customers) of the survivor's pension as the definition of retirement benefits³ under the IORP II directive also includes death and disability payments.

We appreciate that the proposal considers the risk of financial exclusion and does "not cover data related to the sickness and health insurance of a consumer" under Solvency II as recognized in Recital 9. While there are no financial exclusion risks to sharing information on the existence of the pension scheme offered, we do signal financial exclusion risks to share personal data on the use of such disability pension. If a customer gets disability pension benefits, that is a clear indicator that the person is disabled. Therefore, personal data regarding disability pension offered by IORPs should be exempted from the customer data scope. This risk is also flagged by the EDPS.⁴ Furthermore, accident insurance should be excluded from the customer data scope as sensitive health information is likewise processed.

The Commission indicates in its impact assessment that data sharing under FIDA "could facilitate targeted savings and pensions by facilitating a comprehensive overview of private and occupational pension entitlements as well as other savings for retirement"⁵. PensionsEurope wants to point out that the FiDA proposal contains discrepancies in the customer data scope between pension products provided by IORPs and PEPP providers on the one hand, and insurance undertakings on the other. Regarding pension products provided by insurers, life insurances are excluded from the customer data scope, and insurance-based investment products (IBIPs) are included.

Data users should not have a role in the functional design of data sharing

We appreciate the market-driven approach of financial data-sharing schemes which would give a certain flexibility for market participants to cooperate on data sharing. In principle, this would make it possible to consider the specificities of the pension sector and build on pension tracking services. This would lower the burden for data holders when implementing FIDA requirements such as information requirements.

We also think data holders are best placed to develop FIDA data standards and technical standards. Hence, they should be responsible and accountable. Data users should be consulted on the functional design of financial data sharing but should have no decision-making power over it.

The decision-making power of data users in the functional design of schemes is unnecessary. Cost compensation will incentivize data holders to provide high data quality, while the obligation for data holders to cooperate in a scheme will lead to uniformity of data standards and workable technical standards. It would be undesirable for data users to negotiate standards that deviate from existing standards in pension tracking services, as it would add data management costs, without clear benefits to pension fund members and beneficiaries. We stress that, as pension funds are non-profit

³ [IORP II directive – Article 6\(4\)](#)

⁴ [European Data Protection Supervisor's \(EDPS\) opinion on FIDA – Point 11c- August 2023](#)

⁵ [Commission staff working document – Impact assessment on FIDA – Page 66- June 2023](#)

organizations, any regulatory compliance costs made on behalf of an individual member will be borne by the collective, affecting pension adequacy. Moreover, data user involvement in decision-making would also undermine rather than contribute to the work of pension tracking services.

Data users should only participate in decision-making regarding the cost compensation model and contractual liability as we acknowledge the need for them to have a role in those two important matters while avoiding disproportionate results. This is why existing forms of participation of members in pension scheme governance must also be considered to avoid seeing pension funds be required to set up a parallel data-sharing scheme.

Offer flexibility for updating pension data

Article 5(1) of the EC proposal obliges data holders to make customer data available to the data user “without undue delay, continuously and in real-time”. It should be clarified that this applies to the response time of data holders, rather than how up to the data is. The latter should be a concern of data standards in the financial data sharing scheme.

Whereas many financial market participants have many transactions every day, pension administration follows a different cycle. Its periodicity should be considered. Pension premiums are collected monthly and pension benefits are paid once a month in the form of an annuity, a withdrawal plan, or as a lump-sum payment.

The design of a pension scheme (Defined benefits, Defined contribution, hybrid schemes) should be a key factor in determining requirements for time requirements. Annually updated data are generally sufficient for DB and hybrid schemes as there is little added value for more stringent time requirements due to the specific nature of retirement benefits which are not typical investment products.

Furthermore, PensionsEurope would advocate for granting flexibility and proportionality in financial data-sharing schemes for IORPs regarding the frequency of updating data. Preserving the different practices among Member States should be at the heart of the proposal. For example, some pension tracking services use central data storage and others use a live access model.

The proposed timeframe must be extended

We also believe that the proposal in Article 9 is too challenging by giving only 18 months from the entry into force of FIDA to data holders and data users to become members of financial data-sharing schemes. We are of the opinion that the timeframe is not realistic. The experience from the Danish pension tracking service, *Pensionsinfo* shows it takes 2 years to develop the scheme, standards, and interface. A similar amount of time was needed for setting up the German pension tracking service, *Digitale Rentenübersicht* technically. It is expected that its full coverage among all pension providers who are subject to regular information requirements will not be reached before early 2025, roughly four years after the passage of the law (*Rentenübersichtsgesetz*).

Finally, while we understand the rationale for empowering the Commission to deliver a Delegated Act if no financial data-sharing scheme is developed, we would like to point out that establishing level 2 measures applicable to IORPs would go against the minimum harmonisation framework of the IORP II Directive. Therefore, the meaning of “*reasonable amount of time*” in Article 11 to determine whether the Commission is allowed to adopt a delegated act if no scheme is being developed must not be abused to create level 2 measures.

The need for a notion of compensation aligned with other EU digital texts

Regarding the “reasonable compensation” introduced by the proposal, there is a need to ensure consistency across EU digital regulatory texts and as much alignment as possible with the guidance of the Data Act⁶. This would streamline the implementation process arising from new EU digital requirements and reduce the burden on companies, including IORPs.

We also want to highlight that the tax-exempt status of some IORPs might prevent them from receiving financial compensation for data access by third parties.

Ensuring equal treatment between financial actors

Additionally, there is a lack of reciprocity regarding FISPs, who under certain conditions are given access to customer data but are not required to make customer data available as data holders. Where a FISP offers services to consumers or other companies, the company should also be deemed a “data holder” with an obligation to pass on customer data in data sharing schemes, to ensure reciprocity in the requirements for data sharing. That should be made clear in Article 3(1)(5)(7).

We also believe that it is important to secure customer’s trust and therefore, it should be assured that any data access or processing by financial data service providers should be documented and that individuals are informed in due time about any data used by a financial data service provider, including public pension data.

Furthermore, it would be counterproductive to foster data monopolies through this new initiative while other regulations such as the Digital Markets Act (DMA) or the Digital Services Act aim to tackle Big Tech dominance located outside the EU. Consequently, “gatekeepers”⁷ designated under the DMA must be restricted from accessing data covered by FIDA, to ensure an alignment with the Data Act which restricts the use of acquired data to offer competing products.

Proportional sanctions must be established

The proposed regulation contains sanctions in Article 20. It is acknowledged that extensive data access and exchange requires a sanctioning mechanism.

⁶ [Data Act – Provisional political agreement- 7 July 2023](#)

⁷ [First gatekeepers’ designations - 6 September 2023](#)

However, the planned sanctions appear to be disproportionately severe, and the conditions for imposing sanctions are too strict. A better balance of interests is needed between the current contractual parties in financial arrangements and new third parties such as financial service data providers. The possibility of daily fines under Article 21 would create a risk aversion for financial actors, rather than a willingness to innovate on the part of the companies. Furthermore, as mentioned in point (g) of Article 20(3), the temporary ban on exercising a management function in a financial company, which can be increased to up to 10 years, seems very strict in relation to the nature of the violations. This proposed sanction should be softened to ensure the development of data-sharing applications.

In many cases, the data to be shared will be personal data that is already covered by the GDPR⁸ and its provisions on infringements. We therefore welcome Recital 36 and Article 5 which allow for cooperation between authorities. We would suggest assessing whether the extensive provisions on fines in FIDA are necessary and are not already sufficiently regulated by the GDPR.

⁸ [General Data Protection Regulation -May 2016](#)

About PensionsEurope

PensionsEurope represents national associations of pension funds and similar institutions for workplace and other funded pensions. Some members operate purely individual pension schemes. PensionsEurope has **24 member associations** in 17 EU Member States and 4 other European countries⁹.

PensionsEurope member organisations cover different types of workplace pensions for over **110 million people**. Through its Member Associations PensionsEurope represents more than **€ 4 trillion of assets** managed for future pension payments. In addition, many members of PensionsEurope also cover personal pensions, which are connected with an employment relation.

PensionsEurope also has **22 Corporate and Supporter Members** which are various service providers and stakeholders that work with IORPs.

PensionsEurope has established a **Central & Eastern European Countries Forum (CEEC Forum)** to discuss issues common to pension systems in that region.

PensionsEurope has established a **Multinational Advisory Group (MAG)** which delivers advice on pension issues to PensionsEurope. It provides a collective voice and information sharing for the expertise and opinions of multinationals.

What PensionsEurope stands for

- A regulatory environment encouraging workplace pension membership;
- Ensure that more and more Europeans can benefit from an adequate income in retirement;
- Policies which will enable sufficient contributions and good returns.

Our members offer

- Economies of scale in governance, administration and asset management;
- Risk pooling and often intergenerational risk-sharing;
- Often “not-for-profit” and some/all of the costs are borne by the employer;
- Members of workplace pension schemes often benefit from a contribution paid by the employer;
- Wide-scale coverage due to mandatory participation, sector-wide participation based on collective agreements and soft-compulsion elements such as auto-enrolment;
- Good governance and alignment of interest due to participation of the main stakeholders.

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⁹ EU Member States: Austria, Belgium, Bulgaria, Croatia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, Netherlands, Portugal, Romania, Spain, Sweden. Non-EU Member States: Iceland, Norway, Switzerland, UK.