

SFC Position on EU Financial Data Access Regulation (FIDA)

The Swiss Finance Council (SFC) engages in dialogue around policy developments in finance at a European level. Our members, including among the largest global asset and wealth management firms, have substantial activities within the EU.

We have an interest in the EU Financial Data Access Regulation (FIDA) given the potential for unlocking data access between wealth management firms, WealthTechs and other service providers within the EU. Switzerland is already developing global open Application Programming Interfaces (APIs) for wealth management use cases under the 'Open Wealth Association' alongside many other open banking and open finance initiatives. This paper outlines our initial views. As legislative discussions progress, we will follow up with detailed suggestions and proposals.

1. Clarify the scope of data access rights

It must be clarified as to what data falls in the data access rights to give certainty for data holders and to aid data access scheme development later on. Customers should have control over their provided and observed data, while the value creation carried out by the data holder is protected. Inferred or derived data which has been enriched by financial institutions, such as the results of the internal assessment of the risk or ESG alignment of a portfolio, should remain in the sole availability of the data holder in order to safeguard their intellectual property. Real-time data access should only occur where relevant and technically feasible.

We also support to limit the access rights to retail and SME customer categories and corresponding data. Only after the review of FIDA, this could potentially be expanded to data of corporate customers. A staggered approach to the client types for data access would also allow to manage implementation costs and focus on key use cases first.

We also welcome clarification that where credit institutions whose customers agree not to benefit from an electronic means of communication within the meaning of the proposed regulation, i.e. an online interface, shall not be considered as acting as data holders in accordance with Art. 4 and 5(1) FIDA akin to similar provisions under the second Payment Services Directive. This would be proportionate to the business model of certain wealth management firms whose clients do not want or seek online access to services or products provided.

2. Clearly define financial information service providers authorisation requirements

It is important to include a definition of 'financial information services' to ensure that the authorisation as a financial information service provider cannot be used to provide financial services and products. The data accessed under FIDA by a financial information service provider should also only be used to provide financial information services. Financial information service providers should also be subject to data access requirements.

3. Adopt a gradual approach to development of data access schemes based on customer demand

A gradual approach to the development of data access schemes focusing on key use cases would allow for greater consumer trust in, and demand for, open finance to grow. A gradual approach focusing on real added value use cases would also reduce the significant implementation costs for data holders, as they will not be compensated for building the necessary technical infrastructure, modalities and standards to share their data with data users when there is no real demand by customers.

We recommend to introduce a timeline of 48 months for establishing data access schemes. This would allow for sufficient time for the different stages of the process including scheme setup (e.g., gathering participants, designation of scheme owner and agreeing governance rules), scheme development (as focused on priority use-cases) and scheme implementation. However, the current requirement to represent a “significant proportion of the market of the product or service concerned” is too vague and risks leading to fragmentation, particularly if standards are not aligned, harming both data holders and users. A single scheme per product category (e.g., investment, insurance) would be preferred, as for example is the case for payments with the European Payment Council.

4. Ensure financial incentives and a level playing field for data holders

The data holder should have the possibility to receive reasonable compensation from the data user for making data available. Compensation should not only cover the creation and maintenance of the required infrastructure, but needs to cover the full spectrum of costs of making the data available including the collection, generation, structuring, preparing and sharing of the data. A reasonable margin is also needed to ensure buy in from all market participants and incentivise data holders to maintain a high level of data quality as well as high-quality APIs. Therefore, compensation should also have been introduced in the proposed review of the second Payment Services Directive and Payment Services Regulation.

For entities from outside the financial sector seeking a FISP authorisation, such as BigTech gatekeepers as designated under the EU Digital Markets Act, the inclusion of a reciprocity clause as a requirement for their participation in data access schemes could be considered. This would support cross-sectoral data access and ensure a level playing field between financial institutions (as data holders) and BigTech firms (as data users).

5. Minimum API standards and security requirements can help open finance scale

A key element for the operationalisation of data access is secure access and transfer mechanisms. Minimum API requirements for data availability, performance and functionalities of the API interface are needed to ensure pan-European harmonisation and interoperability and therefore scaling of open finance solutions.

Security must be at the foundation of any data access. Compliance with the EU Digital Operational Resilience Act (DORA) by all entities participating in FIDA, including financial information service providers, is key to ensure that a high standard of security applied by data holders and data users. Data users should also have to authenticate, via Strong Customer Authentication, and authorised to access the data shared.

6. Define a clear and fair liability regime

A clear and fair liability regime with respect to the access, processing, sharing and storage of data should be defined, together with a dispute resolution approach. This would guarantee legal certainty and help gain trust of customers to share their data with financial information service providers.

Each provider of services in the value chain must be directly liable for the services they provide. If it is not clear which party is liable, users should be able to turn to any party involved in the service but clear procedures should then be in place on how to assign liability to the responsible party. Data holders should not be obliged to compensate the customer by default. Dispute resolution mechanisms should also be available.

Annex – The Open Wealth Use Case

There is one area of open finance where Switzerland is relatively advanced, and that is open finance for wealth and asset management, or so-called ‘open wealth’. In this annex, we describe recent developments in this regard as we believe it can contribute to a well-informed debate and the sharing of experience in relation to the future of open finance in Europe and in particular the proposed Regulation for a Financial Data Access Regulation (FIDA) based on concrete use cases.

What is it about? - Major Swiss banks have joined forces with Fintech (WealthTech) companies and other service providers, among them the Swiss financial market infrastructure and one major cloud service provider, through an association, to promote the development of global open Application Programming Interfaces (APIs) standards for international wealth management. The *OpenWealth Association* defines, maintains, and operationalises global and secure API standards that enable market participants to roll out solutions in the area of wealth management globally, in a harmonised way across jurisdictions.

What concrete applications? – Open wealth APIs are being developed and tested in three main areas:

- Custody services: portfolio management and reconciliation to get position and transaction data, including valuations for reconciliation purposes.
- Customer management: customer onboarding and lifecycle management (e.g. automated KYC)
- Order placement: trading to place orders for listed instruments, OTC and treasury transactions and receive their status in near real-time as well as billing details with all costs.

How does it work? - The open wealth APIs allow banks to connect to external asset managers or family offices in a standardised and more efficient way compared to maintaining different proprietary interfaces. Indeed, some sophisticated clients like high-net-worth individuals have a well-established banking relationship, yet they want to benefit from an external, independent, advise. The open wealth APIs thus ensure the transmission of transactions and the exchange of data between the bank and the external asset manager acting as a third-party provider (or a ‘data user’ under the FIDA definition). The standards are based on the *Berlin Group*, a pan-European payments interoperability standards and harmonisation initiative, and they support industry-wide messages like ISO 20022.

What lessons to be learned? - The open wealth global APIs are interesting from an EU perspective where open banking is APIs-driven. They show that wealth management is a promising use case for open finance application. They also demonstrate the merit of a market-driven approach where the development of technical interfaces based on APIs or operational standards are developed by the industry for the industry in response to specific customers’ need. The rolling out of the APIs by some of the Swiss banks illustrates the interest and potential behind open wealth, and the importance to design standards that can be used globally.

Other Swiss open banking and finance initiatives –Switzerland has taken a market-based approach to the development of open banking and open finance. Besides the open wealth use case, there are also initiatives focusing on the enablement and implementation of multi-banking for retail customers and open pension. Through coordination by industry associations and based on openly available API recommendations as well as ready to use financial market infrastructure, the implementation is supported and accelerated, based on market needs.