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FIDA: Reaction to Council discussions on the gradual approach to schemes, compensation, alignment with the GDPR and definition of raw data

Schemes: A two-phased approach

DIGITALEUROPE welcomes the recent discussions in the Council regarding scheme governance and the introduction of a phased approach on the scope of the financial data sharing scheme(s), as this will benefit scheme participants and will ensure a successful implementation.

First, it is important to clarify that **the FIDA regulation should provide an overarching governance framework in the form of minimum horizontal principles, that are the same across all schemes.** This will help ensure consistency, setting the rules of the game whilst granting flexibility for the market to develop industry and scheme standards (in a subsequent phased approach). It will also help avoid a patchwork of different rules and modalities.

This would also help build interoperability across financial sub-sectors and would enable the delivery of seamless experiences, encouraging and reinforcing consumer adoption, and thus benefit delivery.

Secondly, **scheme participants would benefit from a gradual approach** on the different data categories that evolves based on two principles: **market demand/usefulness and availability/FIDA-readiness of the financial datasets.**

Successful schemes would require a two-phased approach:

1. **Phase 1 (24 – 36 - 48 months depending on the data set):** Definition and set up of scheme(s) (building on the FIDA horizontal scheme principles). In this phase, the market should collaborate to specify

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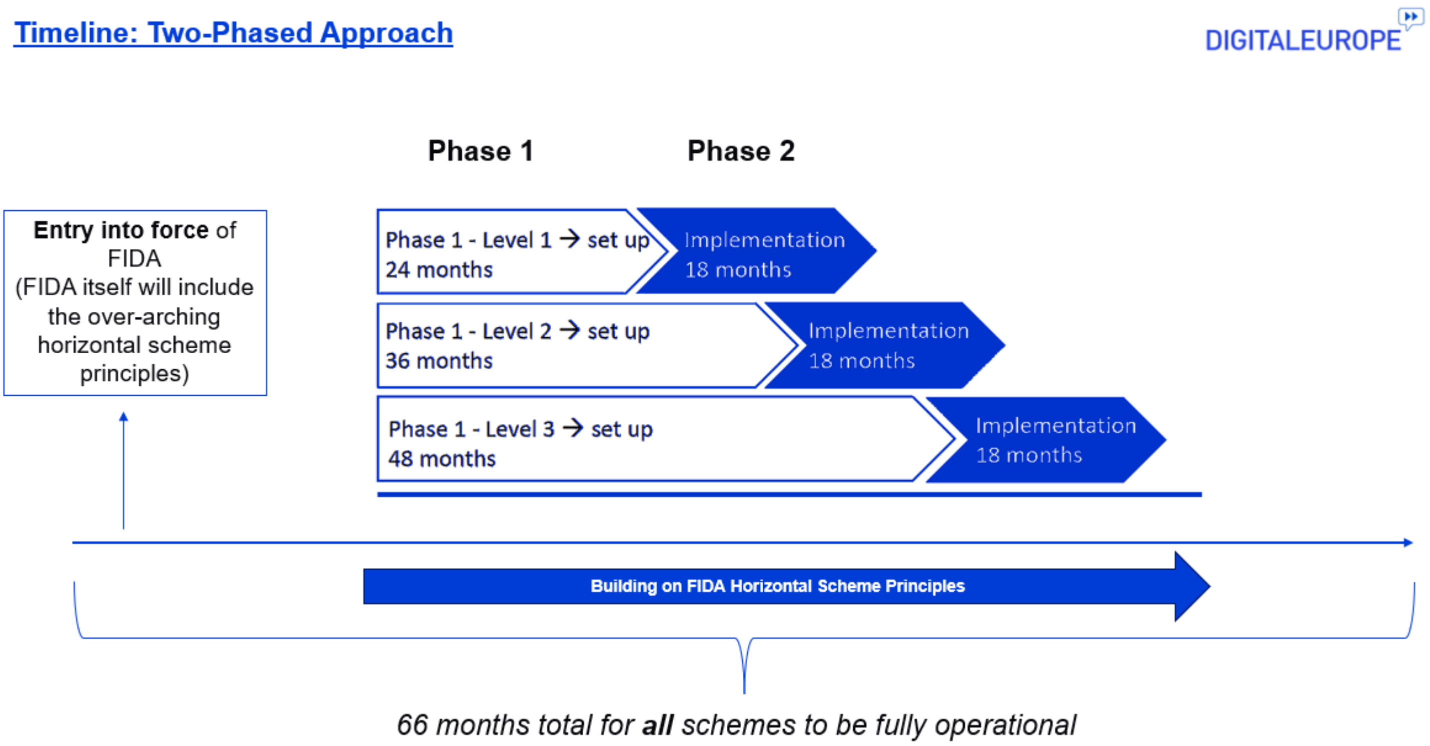
common technical standards where they do not already exist[1] (i.e. API, data, security, UX standards).

2. **Phase 2 (18 months):** Implementation of all schemes, focusing on high-demand use cases.The 18-month timeline will begin from the end-date of the timeslot for different data-sets. *See visual below.*

Please see here an illustration of what this two-phased approach could look like:



Phase 1: Set up of schemes (building on FIDA's horizontal minimum principles)

The over-arching horizontal scheme principles that are included in the FIDA Regulation will give individual schemes the flexibility, in Phase 1, to agree on scheme standards (compensation model, liability framework, dispute management system) and industry standards (API, security, UX standards) – **all whilst building on the minimum principles.**

Having flexibility on the development of industry and scheme standards is important as datasets will differ based on FIDA-readiness, availability and

[1] FIDA should rely on existing industry standards first, such as the ones developed by the Berline Group.

demand. In practice, scheme owners will rely on and leverage these industry standards but will also develop and implement their own scheme standards. This would ultimately enable the development of innovative solutions and would help enhance customer experience.

Phase 1 should include varying timelines for datasets because they will have different FIDA-readiness levels (availability of data in a standardised format by data holders) and different levels of demand. Our proposal is that datasets be divided into a phased timeline, as such:

1. **Within 24 months** from the entry into force of FIDA,: accounts except payment accounts as defined in the Payment Services Directive (EU) 2015/2366 and savings (represented by term deposits and savings accounts).
2. **Within 36 months** from the entry into force of FIDA: mortgage credit agreements as defined in Directive (EU) 2014/17, and data relating to loans with instalments provided by the data holder.
3. **Within 48 months** from the entry into force of FIDA: investments in financial instruments (in accordance with Section C of Annex I of Directive 2014/65/EU and excluding derivative transactions used for risk management purposes), insurance based investment products, other related financial assets, structured deposits, and crypto assets as defined under Article 3(1)(5) of Regulation 2023/1114/EU (provided that the bank knowingly holds the assets in custody on behalf of the customer), non-life insurance products, occupational pension schemes, pan European private pension schemes.

Phase 2: Implementation via high demand use cases

Once the schemes have been defined, and the groundwork has been prepared (standards, compensation model etc), **Phase 2 should subsequently focus on the implementation of schemes.** It should do this by defining an initial set of high-demand, commercially viable, use cases, to be expanded incrementally (again, based on demand).

The timeline for scheme implementation, of a given dataset, should be 18-months. The 18-month timeline will begin from the end-date of the timeslot for different data-sets to be set up. For example, savings data (Level 1) schemes should be defined (e.g. compensation, liability model etc) within 24 months from the entry into force of FIDA. After said 24 months, these schemes have 18-months to implement. *See visual for further clarity.*

The actual implementation will depend on these high-demand use cases. At this stage, it is premature to attempt to agree on said use cases. It is important to establish however that the high-level use cases – when agreed upon - take the dataset timeline into consideration, to know whether it is feasible to work with a certain category of financial data, after a certain period of time.

Once the roll-out of the first level of FIDA-ready data has taken place, scheme members should prepare for the implementation of other categories of data that have the potential to bring benefits to the market, prioritising "estimated market demand" and **building on a 'test and learn' approach.**

It is important to note that sharing given data points in a specific scheme would entail investing in, and constructing, the necessary technical infrastructure for data sharing. The standards for this technical infrastructure, again, should be laid out in Phase 1.

Overall, **giving more time and room for the schemes to develop is a positive step,** as this will help ensure orderly implementation, and encourage competition. Ultimately, the success will also hinge on the ability to allow and attract a diversity of market participants, including new entrants, to join and contribute to the schemes.

Technical Working Groups

The implementation phase could be governed by Technical Working Groups. In practice, these Working Groups would be responsible for identifying the categories of data/use cases for which there is sufficient demand, and ultimately agree on the implementation plan.

Scheme owners and members would then launch the implementation phase for a given category of data, which entails investing in and constructing the necessary technical infrastructure for data sharing. The standards for this technical infrastructure, again, should be laid out in Phase 1.

The Working Groups could be comprised of representatives from data holders, data users, scheme owners, and consumers. Supervisors could participate as observers, where they'd be informed of the technical work by scheme owners.

Please see the Annex for more details on how these Technical Working Groups could be organised.

Compensation

The compensation model is an example of a high-level scheme principle that should be established in Phase 1. This would then be adapted in individual schemes, based on the given dataset in question.

The compensation model should create the right incentives to promote innovation, reliability and competition. It should allow data holders to be compensated for making data available and managing data access –

providing incentives at industry level – as well as allow data users to participate in the Schemes.

To incentivise the addition of said new use cases, FIDA must allow data holders to develop commercial compensation models. **To align with the Data Act, FIDA should be based on a "reasonable compensation model" that may include a margin.** This margin should be understood as means to ensure data-sharing mechanisms are sufficiently innovative to improve access to more and better customer data, with better quality and more securely, to for instance keep up with cyber threats. Given the added costs for data holders to continuously develop the infrastructure to enable and manage data access permissions as well as enabling data access by third parties, they must be compensated accordingly.

We welcome the Presidency's proposal to explicitly allow for a margin to be included, including a reference to the Data Act in the FIDA legal text. We believe that **including a reference to Article 9 of the Data Act** in the text will be sufficient to determine the general rules as compensation for making data available and will provide valuable incentives to the market.

Align FIDA with the GDPR

The FIDA framework needs to ensure that access to and processing of personal data is **aligned with existing data protection laws.**

In this respect, we welcome the recent EDPB Statement[2] on the payments and **financial data package,** and their views to **clarify that the term 'permission' should be used instead of 'explicit consent',** specifying that 'permission' should not be construed as 'consent' or 'necessity for the performance of a contract' under GDPR.

However, we would like to see the recognition in the legal text that **data users can rely on any of the legal grounds under the General Data Protection Regulation (GDPR) for the processing of customer data under FIDA.** This would help with legal certainty and will ensure there are no restrictions or duplications that go beyond what is established under the GDPR.

In addition, just as the GDPR sets limits to real-time data sharing (and just as the Data Act acknowledges that real-time data sharing should only occur where relevant and where technically feasible), **FIDA should not make real-time data sharing mandatory where it is not technically feasible nor**

[2] European Data Protection Board's (EDPB) Statement on the financial data access and payments package

where the confidentiality, integrity and availability of data can be compromised.

Definition of customer data

Mandated data sharing should be restricted to 'raw' data (i.e. data that has not undergone any processing beyond mere collection). The scope should explicitly exclude derived, inferred or otherwise further processed data as this would inherently impinge on proprietary information, commercial confidential data, trade secrets, and intellectual property rights.

Annex

The technical Working Groups could be organised as follows:

Level 1: Identification of categories of data for which there is sufficient demand, by Technical Working Groups. This would encompass:

These working groups would be comprised of representatives from data holders, data users, and consumers.

Responsibilities would include proposing and analysing use cases. The assessment must include the existence of demand in the market (as defined in the Scheme's rules).

They should then propose the categories of data involved in the use cases that could have the potential to bring benefits to the market, and therefore, whose sharing should be facilitated by the Scheme.

The participation of supervisors in the technical working groups could be envisaged as observer members, or facilitators of the work, or alternatively, they could be regulatory informed of the technical work by scheme owners.

Level 2: Agreeing on the implementation plan:

Committee formed by members form the scheme's stakeholders and also one (or more) supervisory authorities (depending on the category of data involved).

Tasks involve prioritising categories of data identified by the working groups based on both demand and technical complexity and evaluating the level of "estimated market demand" of the use cases those categories of data enable.

The committee will negotiate and agree on the data to be shared, according to the above evaluation, and the implementation plan and the applicable timelines.

Scheme owner and members will launch the implementation phase for a given category of data, which entails investing in and constructing the necessary technical infrastructure for data sharing.

Supervisors participate in this Committee as members and can express opinions and formulate recommendations to steer the work.

Supervisors will also validate or formally approve the implementation plan and the applicable deadline once decide by the Committee.

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