

FINANCIAL DATA ACCESS

Proposal COM(2023) 360 of 28 June 2023 for a **Regulation on a framework for Financial Data Access** and amending Regulations (EU) No 1093/2010, (EU) No 1094/2010, (EU) No 1095/2010 and (EU) 2022/2554

cepPolicyBrief No. 3/2024

SHORT VERSION [[Go to Long Version](#)]

Context | Objective | Interested Parties

Context: Data plays an increasingly important role on financial markets and is a decisive input factor when developing new data-driven financial products and services. However, customers of financial institutions (FIs) regularly lack effective control over their financial data. They face difficulties in accessing this data and in deciding whether to share it with third parties. On the other hand, third parties face hurdles when accessing the data held by FIs which means that customers cannot benefit from data-driven financial products and services provided by third parties.

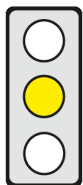
Objective: The Commission wants to establish rules on accessing, sharing and using specific categories of finance-related customer data held by FIs.

Interested Parties: Financial institutions (FIs) like banks, insurance undertakings and asset managers; financial information service providers (FISPs) and the customers of FIs and FISPs.

Brief Assessment

Pro

- ▶ Permission dashboards foster customer confidence when it comes to sharing their financial data.
- ▶ Financial data sharing schemes (FDSSs) help to reduce transaction costs in various ways and can thus facilitate the sharing of financial customer data.
- ▶ The ability to claim compensation maintains incentives for data holders to establish high quality data access interfaces.

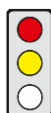


Contra

- ▶ Obliging a multitude of FIs to make customer data available, independent of any identified market failure, is disproportionate.
- ▶ In terms of the scope of the Regulation, several clarifications, specifications and adaptations to the chosen concepts are needed and the terminology requires more precise definition.
- ▶ Limiting the level of compensation payments should only be an option where the data holder has unassailable market power.
- ▶ The legislation lacks sufficient alignment with the General Data Protection Regulation (GDPR).
- ▶ Insufficiently strict treatment of third-country FISPs poses a risk to fair competition in the European market.

General assessment [Long Version C.1.1]

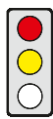
Commission proposal: Financial institutions (FIs) must make certain categories of finance-related customer data available to their customers, upon their request. Furthermore, at the request of a customer, FIs must make such customer data available to other FIs or to financial information service providers (FISPs).



cep-Assessment: The envisaged regulatory concept is, at least partially, flawed. Data access and sharing may be justifiable with respect to consumers, but not with respect to business customers. The latter should, in general, be in a (negotiation) position to conclude data access agreements. Furthermore, obliging a multitude of FIs to make customer data available, independent of any identified market failure, is disproportionate and encroaches unjustifiably upon their entrepreneurial freedoms. If, at the same time, there is no demand among customers or data users for the data, the build-up of data sharing ecosystems is superfluous.

Scope [Long Version C.1.2]

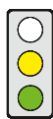
Commission proposal: The Regulation applies to three different kinds of actor: (1) Data holders, i.e. FIs that hold finance-related customer data, (2) customers of FIs and (3) data users, i.e. FIs and FISPs. The Regulation applies to several categories of “customer data”, including bank, investment, insurance and pensions-related data, and encompasses data provided by customers as well as data generated through interactions between customers and a FIs.



cep-Assessment: In terms of the scope, several specifications, clarifications and adaptations should be made to the chosen concepts. The legislator must, inter alia, specify the terms “customer” and “financial information service”, clarify the customer data categories falling within the scope in order to provide legal certainty, and ensure that “customer data” falling within the scope does not go beyond “raw data”. It must also find a more suitable and coherent approach to the handling of “sensitive” financial data and reconsider the strategy for exempting certain smaller FIs from the scope.

Permission dashboards [Long Version C.1.6, C.2.4]

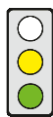
Commission proposal: Data holders must provide their customers with financial data access permission dashboards. These dashboards must be easy to reach and user-friendly, must enable customers to manage and monitor the data access permissions granted to data users, and indicate the specified purpose of the permission. Permission dashboards should not be designed in a way that influences customers to grant or withdraw permissions.



cep-Assessment: Permission dashboards are crucial for empowering customers to effectively manage and monitor for whom, when and for what purposes data users can access and use their financial data. This upholds and fosters customer confidence when it comes to sharing their data. Yet, the legislator should allow FIs, who offer similar financial products and services and deal with comparable types of customer data, to collaborate on developing such dashboards and to agree on common standards in order to find joint or at least similar dashboard solutions. Moreover, alignment with the proposed Payment Services Regulation is desirable.

Financial data sharing schemes (FDSSs) [Long Version C.1.7, C.2.4]

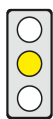
Commission proposal: Data holders and data users must join a “financial data sharing scheme” (FDSS), which governs access to customer data. They may also be members of multiple FDSSs at the same time.



cep-Assessment: The creation of FDSSs may reduce transaction costs by bringing together relevant market actors, enabling the development of common technical standards and data formats, and by facilitating the agreement of joint contractual terms. In order to reach this positive outcome, it would be better if the legislation were to ensure the interoperability of the schemes. However, in case of niche markets or highly specialized financial products or services, scope for data sharing outside FDSSs should remain possible.

Compensation for data access [Long Version C.1.7]

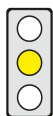
Commission proposal: Within each FDSS, models must be used to determine the maximum compensation that a data holder may charge data users. Such compensation must be “reasonable” and geared towards the lowest level in the specific market. If the data user is a micro, small or medium-sized company, the compensation must not exceed the cost of making the requested data available.



cep-Assessment: The ability to claim compensation from data users for making customer data available within an FDSS maintains incentives for data holders to establish high quality data access interfaces and prevents free rider behaviour by data users. Limiting compensation to a level that is “reasonable” and geared towards the lowest market standard is, however, flawed. Such a restriction is only an option where the data holder has unassailable market power. The legislature should learn from the compensation-related rules of the Data Act (see [cepPolicyBrief](#)).

Authorization and operating conditions of FISPs [Long Version C.1.8, C.2.4]

Commission proposal: FISPs may only access customer data when authorized by a national competent authority. Third-country FISPs must designate a legal representative in a Member State, if they want access to finance-related customer data in the EU. The third-country FISP must be authorised by the competent authority of the Member State, where the third-country FISP intends to access data.



cep-Assessment: Forcing FISPs to abide by specific authorization, organization and operation requirements is pivotal for ensuring that, irrespective of who is undertaking a certain business, the same rules apply. To allow third-country FISPs to access customer data via a legal representative risks distorting competition if there are no equivalent possibilities for EU entities to access finance-related customer data of third-country FIs.