



1 November 2023

**Position Paper of the Association of Foreign Banks in Germany (VAB) on the
Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL 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**

COM (2023) 360

Procedure 2023/0205/COD

The Association of Foreign Banks in Germany (VAB) represents the interests of more than 200 foreign banks, capital management companies and financial services institutions from over 30 countries that maintain subsidiaries or branches in Germany and provide banking and financial services through them. The decisive factor for membership in the association is foreign majority ownership. Almost all foreign financial institutions operating in Germany are members of the VAB.

The categories of customer data in financial services defined in the draft regulation (FIDAR draft) will affect the large number of member companies organised in our association as so-called data holders. It follows that the obligation of the holders of customer data to make this data available to data users (e.g. other financial institutions or FinTech companies) by setting up the necessary technical infrastructure (interfaces) will affect almost all institutions and companies in our association, because the exceptions listed in the draft regulation so far do not apply to most categories of institutions but, according to Art. 2(3) FIDAR draft, only to companies within the meaning of Art. 2(3) (a) to (e) of Regulation 2022/2554 ("DORA"). This will result in massive implementation and follow-up costs for almost all of the companies we represent.

These are our comments to the contents of the above-mentioned proposal and the amendments we would like to propose.

Exemption rule for certain data holders

If we look at the experience from the introduction of the PSD2 interfaces, which was basically obligatory for all account servicing payment service providers (ASPSPs), we can see that for a large number of ASPSPs it was

Association of Foreign Banks
in Germany
Weißfrauenstraße 12-16
60311 Frankfurt am Main
Germany
Tel: +49 69 975850 0
Fax: +49 69 975850 10
www.vab.de

Association of international banks,
investment firms and asset
managers

Registered in the Lobby Register of
the German Bundestag,
Register ID: R002246

Registered in the Transparency
Register of the European
Commission,
Register ID: 95840804-38

foreseeable that there was no sufficiently great interest on the part of customers to use other service providers via the PSD2 interfaces. For many foreign banks organised in our association, companies from the (third) country of origin represent the main customer group, which - as experience with the PSD2 interfaces has shown - have no need to make their customer data available via European interfaces.

At least for the purposes of the new EU Payment Services Regulation (PSR), this circumstance was taken into account and fortunately the following exemption was included: At the request of an ASPSP, the competent authority may exempt the requesting ASPSP from the obligation to set up a dedicated interface and allow it to offer as a secure data exchange interface either one of the interfaces that the ASPSP uses for authentication and communication with its payment service users **or, in justified cases, not to offer a secure data exchange interface at all (Art. 39(1) PSR draft)**. The VAB had increasingly advocated such an exemption for banks whose interface is never or at least very rarely used. **We therefore request that a comparable exemption from the mandatory introduction of interfaces for "Financial Data Access" be included in the text of the regulation.** It would also make sense to leave the modalities for such an exemption to a delegated act yet to be developed, cf. Art. 39(2) PSR draft.

Data holders providing financial services in further Member States

In addition, we ask that the text of the regulation specify in more detail the obligation to set up interfaces for data holders operating across borders. We assume that each data controller as a "legal entity" must offer only one interface for "financial data access", but can offer several interfaces voluntarily. It follows that a data controller that is not only active in its home Member State but also offers financial services in other host Member States via branches established across borders or in the course of cross-border service provision, only has to offer one (common) interface for financial data access for its entire internal market activities. An obligation to introduce one interface specification per Member State, on the other hand, is to be rejected and not in line with the internal market.

Dashboards of customers which are legal persons (Article 8 FIDAR draft)

According to the definition of customer in Art. 3(2) FIDAR draft, also legal persons are in scope. When it comes to Financial Data Access permission dashboards in the meaning of Art. 8 FIDAR draft, it remains unclear which individual representing the customer (legal person) will have access to the dashboard.

Prolonged implementation periods (Article 36 FIDAR draft)

Finally, we would like to point out the immense implementation and transposition work in all affected sectors of the European financial market that will result from the envisaged legal regulations. Against this background, the introduction of the new framework for access to financial data should be able to be prepared for longer. The past has shown, especially with the introduction of the PSD2 interfaces: the elaboration of all technical details for data holders and data users had dragged on for years after the actual start of application of PSD2, most recently still in the form of an adaptation of Delegated Regulation (EU) 2018/389 (so-called "RTS on SCA/CSC") by Commission Delegated Regulation (EU) 2022/2360 of 3 August 2022. We therefore propose that the Open Finance Regulation should not become applicable already 24 months after its entry into force of the new regulation, but only after **36** months (and - by way of derogation - the rules on financial data sharing systems and on eligibility for data access and data organisation only after **24** months instead of 18 months at the earliest).
