

## POSITION PAPER

DATE: 25 September 2023

SUBJECT: FINANCIAL DATA ACCESS REGULATION

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### Dutch pension funds: how to make pension fund members and beneficiaries benefit from the Financial Data Access Regulation

#### INTRODUCTION

The Dutch Federation of Pension Funds welcomes the European Commissions' proposal for the Financial Data Access Regulation. Pension data are an important part of an individual's financial situation. Providing access to occupational and personal pension data assists pension fund members and beneficiaries in obtaining a more comprehensive overview of pension entitlements and personal finances.

We welcome the stakeholder-led approach of making financial entities collaborate in financial data sharing schemes. In principle, this could account for the specificities of the pension sector, while also encouraging unified data sharing at the sub-sector level. A stakeholder-led approach is preferable over both PSD2's decentralized approach and top-down standard setting. This way, pension data sharing can build on existing sector initiatives.

We highlight the specificity of pensions. Pensions are part of employment conditions and part of social security. Dutch pension funds typically offer a single pension scheme, in which participation is mandatory for employees. Such collective products are very different from retail investment products, warranting special treatment.

The Dutch pension sector has previously contributed to the open finance consultation and in the Expert Group on the European Financial Data Space. We have highlighted the need to put safeguards in place in order to build trust in the open finance framework and to protect customers. We appreciate the progress made, especially the choices to compensate data holders, to license data users and to require explicit consent from customers. In this paper, we raise the following points:

- 1. For pension data, four-monthly updates should be acceptable.*
- 2. Disability pension data carry financial exclusion risks and should be out of scope.*

3. *In the context of survivor's pensions, it should be recognized that family members of pension fund participants are not customers about whom data has to be made available.*
4. *Second and third pillar pension products offered by insurance companies do not carry financial exclusion risks and should be in scope.*
5. *Data users should not decide on the functional design of financial data sharing.*
6. *Responsible data usage is crucial.*

### **PENSION SECTOR INITIATIVES LEAD THE WAY ON OPEN FINANCE**

In many Member States, pension data holders have set up pension tracking services, which provide a comprehensive overview of pension entitlements; and in some cases, projections of future retirement income. At [mijnpensioenoverzicht.nl](https://mijnpensioenoverzicht.nl), users get an overview of their Dutch state and occupational pensions. The [European Tracking Service on Pensions](#) initiative will integrate pension data from other EU Member States.<sup>1</sup>

Since July 2023, pension funds are obliged to provide personal guidance on the choices available within the pension scheme. Such choices can pertain to the moment of retirement; variable pension pay-out; and the trade-off between old-age pension and survivor's pension. Financial data access can help pension funds in their ability to provide state of the art personal guidance.

The responsibility to provide personal guidance has been an impetus for Dutch pension stakeholders to develop IT solutions combining pension and other data sources using APIs, leading the way on open finance. Pension funds and their service providers will soon be able to access their members' and beneficiaries' data at other pension funds, through the pension tracking service. Some larger Dutch pension funds are also developing sector-wide digital services around life events. Setting up financial data sharing schemes as intended under FiDA would facilitate these developments.

### **FOUR-MONTHLY UPDATES FOR PENSION FUND DATA SHOULD BE ACCEPTABLE**

Article 5.1 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 monthly cycle. Pension premiums are collected, pension

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<sup>1</sup> For an overview of (the specificities of) pension tracking tools in the European Union, we refer to EIOPA's 2021 [Technical advice on the development of pension tracking systems](#).

entitlements administered and pension benefits paid once a month. In the meantime, the value of the invested pension savings does change, but that is not directly attributed to individual pension fund members and beneficiaries.

The cyclical nature of pension administration should be taken into account. Pension funds should be able to deliver monthly data on pension entitlements. It would be helpful to clarify this specificity in the FiDA recitals. Pension data depends on the payroll declaration chain, which involves employers, pension funds and tax authorities. This administration takes time. Pension data at the Dutch pension tracker [mijnpensioenoverzicht.nl](https://mijnpensioenoverzicht.nl) are currently updated at least every four months.

In view of the regularity and long-termism of pension savings, four-monthly updates should be acceptable for FiDA as well. It should be considered that investments in an overhaul of the pension benefit administration chain would be very costly – especially so for small pension funds. Its benefits are questionable, considering pension accumulation is very constant and serve a long-term financial goal.

#### **DISABILITY PENSION DATA CARRIES FINANCIAL EXCLUSION RISKS**

Recital 9 rightfully states that the scope of this Regulation should demonstrate low financial exclusion risk for consumers. It should therefore not cover data related to the sickness and health of a consumer. In this respect, the current proposal excludes sickness and health insurance products under Solvency II. Comparable financial exclusion risks with disability pension, as identified by the EDPS, have not yet been addressed in the proposal.<sup>2</sup>

Most Dutch pension funds offer disability pension as part of the pension scheme. Pension fund members that are long-term disabled from work continue accruing pension entitlements through the disability pension. This service is essentially an insurance against loss of pensions due to disability. While it is an important part of pension rights, we fear the sharing of data on the eligibility to disability pensions gives a clear indication of the member's health. That would be a breach of GDPR safeguards for personal health data. It could be inappropriately used in the person's risk assessment. Therefore, disability pension should be excluded from scope.

#### **SURVIVOR'S PENSION: PENSION FUND'S POTENTIAL BENEFICIARIES ARE NOT CUSTOMERS**

Like disability pension, survivor's pension is another service that is part of most pension schemes. It provides a pension to the partner(s), ex-partner(s) and/or child(ren) of a deceased member of the pension fund. These survivors become a beneficiary/customer of

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<sup>2</sup> Please note point 11c of the European Data Protection Supervisor's [Opinion on the FiDA proposal](#).

pension funds only in such case. Once more, it is relevant to note that pension funds do not deal with consumers or customers, but with its members and beneficiaries. ‘Beneficiary’ is defined in the IORP II Directive as: “a person receiving retirement benefits”.

Survivor’s pension is part of the pension right of a pension fund member. His or her partner(s), ex-partner(s) and/or children will only receive benefits if and when the member passes away. We interpret this to mean that before this moment in time they are not beneficiaries and essentially have no customer relation with the pension fund. We do not judge it as a responsibility of the pension fund to keep up-to-date information on the family situation of its members. This would be in line with privacy concerns as specified in the GDPR.

Data on family of pension fund participants is patchy in practice – and understandably so. The FiDA Regulation obliges financial entities to share data on customers. It could be made clear 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. They only become a beneficiary after the occurrence of a life event.

### **FOR A COMPREHENSIVE PENSION OVERVIEW, BRING INSURANCE PENSION PRODUCTS IN SCOPE**

FiDA should facilitate a comprehensive overview of pension entitlements. The current scope of pension data is very narrow however, and practically only includes institutions for occupational retirement provision (IORPs). This should be reconsidered.

Pensions are commonly divided in three pillars: state pension, occupational pensions and private pensions. State pensions are regrettably but understandably out FiDA’s scope.<sup>3</sup> With regards to both occupational and personal pensions, only IORPs and Pan-European Personal Pension Product (PEPP) providers are in scope.<sup>4</sup>

Second and third pillar pension products offered by insurers are equally an important source of EU occupational and personal pension savings. Most are life insurances. FiDA’s current scope excludes life insurances however, to avoid financial exclusion. Insurance-based investment products are in scope but according their definition in the Insurance Distribution Directive (IDD), they do not include pension products.

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<sup>3</sup> By including state pensions, which form the largest part of retirement income, pension tracking tools have a major advantage over FiDA data sharing. As state pension providers are not financial entities, they do not fit under FiDA’s legal basis. Nevertheless, we urge policy makers to consider how state pension data can be made available voluntarily or through EU Public Administration Open Data Spaces.

<sup>4</sup> There is currently only one PEPP provider in the EU, which is in a start-up phase.

A definition of insurance-based investment products in the Insurance Distribution Directive (IDD) clearly excludes pension products. Article 2.1 states: *“16) ‘insurance-based investment product’ means an insurance product which offers a maturity or surrender value and where that maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations, and does not include: [...] (c) pension products which, under national law, are recognised as having the primary purpose of providing the investor with an income in retirement, and which entitle the investor to certain benefits; (d) officially recognised occupational pension schemes falling under the scope of Directive 2003/41/EC or Directive 2009/138/EC; (e) individual pension products for which a financial contribution from the employer is required by national law and where the employer or the employee has no choice as to the pension product or provider;”*

Financial exclusion risks should be treated carefully. Yet, the scoping of life insurance products appears to be too narrow. Most insurance pension products contain no data on health or sickness. On that premise, they could be brought into scope. Insurance pension products can be identified as products included in Article 2.3 (b) of the Solvency II Directive and further classified in points (v), (vi), (vii) and (viii) of Annex II. Life insurances as defined in Article 2.3 (b) of Solvency II could thus be brought in scope of the FiDA Directive.

#### **DATA USERS SHOULD HAVE NOT DECIDE ON THE FUNCTIONAL DESIGN OF DATA SHARING**

We 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.

We value FiDA recital 15, that states data sharing related to occupational and personal pension savings should contribute to the development of pension tracking tools. Additionally, recital 24 highlights that, for institutions for occupational retirement provision, the scheme’s interface can be integrated into pension dashboards.

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 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 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, so as to avoid disproportionate results.

### **RESPONSIBLE DATA USAGE IS CRUCIAL**

Before making pension data available, there should be a careful consideration of customer consent, who gets data access and how data is used. The way consumer protection is embedded in the legislative proposal resonates well. Permission dashboards should give customers adequate measures to manage permissions in an informed way. And the restriction of data usage to supervised financial entities and licensed financial information service providers provides adequate safeguards.

Departing from pre-defined use cases would be a preferred route, yet the European Commission proposes to only restrict data usage. This approach could lead to data usage in ways that customers have not intended, or have no reason to value. Considering that the customer – in the case of a pension fund a member or beneficiary – is the most vulnerable party in the data sharing agreement and the data holder has no way of protecting its customer, strong regulation and supervision should apply.

The FiDA legislative proposal rightfully aims that customers must have effective control over their data and confidence in managing permissions. The proposal requires data holders – within the cooperation in a financial data sharing scheme – to offer a permission dashboard in which the customer can manage their permissions. We appreciate the possibilities the dashboard gives for taking control. At the same time, we worry that customers face an overload of information in the dashboard. That way, it could be unclear to customers what it is they consent to. To avoid complexity, layering information within the dashboard should be made possible, so that the most important details of consent are at the forefront of the customer experience.

Clearer guidance on the period and purpose of data access is necessary. While storage limitation and purpose limitation are arranged in paragraph 2 of Article 6 respectively Paragraph 1 of Article 7, risks of data leaks and misuse remain in case of continued data access rights.