



Financial Data and Technology Association

FDATA - Financial Data and Technology Association - South America
www.fdata.global

São Paulo, January 31st, 2020

To the
CENTRAL BANK OF BRAZIL
Addressed to.: Mr. Otávio Ribeiro Damaso
Departamento of Regulation of the Financial System (Denor)
(via e-mail - openbanking.denor@bcb.gov.br)

Ref.: **Comments to the Public Consultation Document nº 73/2019 –
Open Financial System Implementation Proposal (Open Banking)**

Dear Sir Otavio Damaso,

The Financial Data and Technology Association (FDATA), is a not for profit trade association representing the interests of firms across the world who require 'Open Finance' type access to financial data to power innovative business models.

We work with governments, regulatory authorities and the financial services industry to enshrine the rights of customers to share their financial data with regulated organisations of their choosing. In addition to promoting our members' views, we are often deeply involved in specific detailed implementations of Open Finance solutions, holding markets to account in a way that puts the needs of consumers first and for removing risk and engineering cost where possible.

In Europe we have championed the data access element of PSD2 and have been integral in the UK's open banking implementation. We now lead the campaign for Open Finance across the world with active chapters in North America, Europe, Australasia and Asia.

FDATA has recently set up a chapter in Sao Paulo to lead the work in South America with an initial focus on the Brazilian Open Banking implementation. As part of the organization first efforts in the region, FDATA South America made some considerations on the initial document put in public consultation by the Central Bank of Brazil.

The sessions addressed in this response document, the suggested changes and its reasoning according to FDATA’s global expertise and point of view follows below.

In the next weeks, FDATA South America will be working on a blueprint document containing some of the best practices observed around the world to aid in the implementation of Open Finance in Brazil. We will be glad to share this document with the regulators and other interested parties as soon as it is concluded.

Best regards,

Bruno Diniz
 FDATA South America Chapter Lead

RESPONSES:

1.	CHAPTER 1 - PURPOSE AND SCOPE	
	Original	Suggested
	Art. 1 - This Resolution provides for the implementation of the Open Financial System (Open Banking) by financial institutions and other institutions authorized to operate by the Central Bank of Brazil.	Art. 1 - This Resolution provides for the implementation of the Open Financial System (Open Banking) by financial institutions and other institutions authorized to operate by the Central Bank of Brazil. <u>Open Banking is a potential first step towards Open Finance, a broader data-sharing initiative covering all financial services offered by different types of organizations that are part of the daily life of an individual or company.</u>
<p>Comments:</p> <p>Whereas Open Banking is often defined through payment initiation and access to payments data as outlined amongst the first four phases of the Brazilian agenda, expansion of scope would include other banking products such as savings accounts, loans, mortgages, investments, pensions and retail insurance. It is important that the initial phases of Open Banking become enablers of the future state and not developing technology or regulatory blockers. FDATA South</p>		

America agrees with the initial proposal on sequencing. (1) Open data (2) KYC standards (3) Payments data and (4) Payment Initiation.

"Open Financial System" equating to simply Open Banking might be considered today an incomplete view of this transformational movement. This first article of the document could be a good opportunity to indicate that Open Banking (as part of an Open Financial System) is a potential first step towards Open Finance, a framework in which Open Banking is a data subset. **FDATA South America** encourages and supports the scope beyond this first stage - aiming towards a longer vision and the global evolution of this concept.

As a second step after the Open Banking implementation, the UK regulator has established an Open Finance committee and included its development on their 2019-2020 business plan, in order to work towards a broader application of this concept covering the financial market as a whole.

Both Australia and India have established legislation similar to LGPD to provide a full customer data right and have made clear to markets that following Open Banking all financial services can expect to be open using common techniques and technology.

Additional references:

<https://www.fca.org.uk/news/speeches/open-finance-opportunity-financial-services>

<https://www.fca.org.uk/publications/calls-input/call-input-open-finance>

2. CHAPTER 2 - PRELIMINARY DISPOSITIONS	
Original	Suggested
<p>Section I Definitions</p> <p>Art. 2 - For the purposes of the provisions of this Resolution, the following shall be considered:</p> <p>I - Open Banking: standardized sharing of data and services by opening and</p>	<p>.</p> <p>.</p> <p>.</p> <p>I - Open Banking: <u>Is a concept based on the</u></p>

<p>integrating information systems platforms and infrastructures;</p>	<p><u>legal right of consumers and businesses to be the owner of their financial data and to be able to digitally share this data with businesses of their choice.</u> It involves standardized sharing of data and services by opening and integrating information systems platforms and infrastructures.</p>
<p>Comments:</p> <p>FDATA South America believes it is important to define this concept in a broader way, as the technical aspects aren't the foundational first step of open banking, but rather the customer's economic rights in their data. A consumer or business in Brazil should have their right to share their financial data with a regulated actor of their choosing, as sanctioned by the Central Bank's authorisation process.</p>	
<p>Section II Objectives and Principles</p> <p>Art. 3 - The objectives of Open Banking are:</p> <p>I - encourage innovation; II - promote competition; III - increase the efficiency of the National Financial System; and IV - promote financial inclusion.</p>	<p>Art. 3 - The objectives of Open Banking are:</p> <p>I - promote financial inclusion.;</p> <p>II - promote <u>fair and ethical</u> competition; III - encourage innovation; and IV - increase the efficiency of the National Financial System.</p>
<p>Comments:</p> <p>The order was altered to contemplate a priority scale recommended by FDATA South America.</p> <p>The objective related to competition was complemented and became "promote fair and ethical competition" in order to refine the definition.</p>	

	<p>or obtained through the consultation of public or private databases, <u>including those classified as personal data sensitive by current legislation, considering that LGPD admits its treatment in cases where there is the consent of the holder</u>; and</p>
<p>Comments:</p> <p>According to the local General Data Protection Regulation (LGPD) - to be in force starting august 2020 - sensitive personal data can also be subject to sharing if there's positive consent of the holder. According to LGPD, Falls within this category data related to: racial or ethnic origin, religious belief, political opinion, union membership or the organization of a religious, philosophical or political character, referring to health or sexual, genetic or biometric life, when linked to a natural person.</p> <p>FDATA's South America understanding on this subject follows similar reasoning shared by other trade associations in Brazil.</p>	
<p>II - the last available data, with breakdown of the date of its obtaining.</p>	<p>.</p> <p>.</p> <p><u>III - the history of changes to the available data, with a breakdown of the respective update dates.</u></p>
<p>Comments:</p> <p>Related to the sharing of registration data, in complement to § 4, item "II", which states that the last available data should be shared with a breakdown of the date of its obtaining, FDATA South America also suggests that the history of changes to the available data with a breakdown of the respective update dates should be added as a new item (number "III") in the resolution.</p> <p>FDATA's South America understanding on this subject follows similar reasoning proposed by other trade associations in Brazil.</p>	
<p>§ 5 The sharing of transaction data</p>	<p>.</p>

<p>referred to in item I, paragraph "d" of the caption:</p> <p>I - concerns customer related data:</p> <p>a) on products and services contracted or distributed through the institution data donor; and</p> <p>b) accessible through its electronic access channels, including any credit limits eventually contracted; and</p> <p>II - covers, at least, the data and the history of transactions made in the last Twelve (12) months with respect to products and services with contracts in effect during this period.</p>	<p>.</p> <p>.</p> <p>.</p> <p>.</p> <p>.</p> <p>.</p> <p>II - covers, at least, the data and the history of transactions made in the last <u>twenty four (24)</u> months with respect to products and services with contracts in effect during this period.</p>
<p>Comments:</p> <p>FDATA South America believes that a twelve (12) month period is a limited picture when it is considered as the minimum data history of transactions for a company or individual under the open finance scope.</p> <p>A twenty four (24) months range would provide a better indication of a client's behavior in this case.</p>	

4.	CHAPTER 4 - SHARING REQUIREMENTS	
	Original	Suggested
<p>Section IV</p> <p>Share Confirmation</p> <p>Art. 20 - The data donor institution or account holder shall request share confirmation to the customer.</p> <p>Single paragraph. The confirmation procedure should:</p>		<p>.</p> <p>.</p> <p>.</p> <p>.</p> <p>.</p>

<p>I - occur simultaneously with the authentication procedures referred to in art. 16; and</p> <p>II - assure to the client the possibility of discriminating the content of the sharing, observing the scope of data and services and the faculty of grouping dealt with in arts. 5th and 11.</p>	<p>.</p> <p>.</p> <p>.</p> <p>.</p> <p>.</p> <p>.</p> <p><u>III -The data donor institution is required to use a Strong Customer Authentication (SCA) method, which is the ability to check that the customer really asked for the services of the data receiving institution.</u></p>
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Comments:

SCA is a procedure that falls within the global best practices, the reason why **FDATA South America** recommend its inclusion as a new item ("III") at article 20.

<p>Art. 28 - Participating institutions are prohibited from creating barriers to sharing, such as requesting additional customer authorizations, additional validation of customer consent to the receiving or payments initiation institution, or complex access instructions.</p>	<p>Art. 28 - Participating institutions are prohibited from creating barriers to sharing, such as requesting additional customer authorizations, additional validation of customer consent to the receiving or payments initiation institution, or complex access instructions. <u>Additionally, participating institutions are prohibited from using any knowledge of the client's consent to generate automated counter-marketing.</u></p>
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Comments:

This additional provision is in line with global best practices observed by **FDATA South**

America.

5.	CHAPTER 5 - RESPONSIBILITIES	
	Original	Suggested
	<p>Section VI Reimbursement of Expenses between Participating Institutions</p> <p>Art. 42 - The reimbursement of expenses between the participating institutions is prohibited:</p> <p>I - for any interface request with respect to data on channels of access and products and services referred to in art. 5, item I, points "a" and "b", as well as on the payment initiation services referred to in item II (a) of this article;</p> <p>II - for at least:</p> <p>a) 1 (one) interface request per day, per participating institution and per client, about the registration data referred to in art. 5, items I, point "c"; and</p> <p>b) 4 (four) interface requests per day, per participating institution and per regarding the transaction data referred to in art. 5, item I, point "d".</p>	<p>.</p> <p>.</p> <p>.</p> <p>.</p> <p>.</p> <p>.</p> <p>.</p> <p>.</p> <p>.</p> <p>.</p> <p>.</p> <p>.</p> <p>.</p> <p>.</p> <p>.</p> <p>b) <u>Once an hour interface request</u>, per participating institution and per regarding the transaction data referred to in art. 5, item I, point "d".</p>
	<p>Comments:</p> <p>From FDATA South America perspective, limiting the interface calls to four (4) would restrict some use cases, hindering competition and innovation.</p> <p>For most use cases, limiting to once an hour interface request would be an ideal frequency.</p>	

- **Representation should be balanced and equitable:** chaired by the Central Bank with an equal number of members from the large banks, smaller banks, fintech community and other important stakeholders is key on the first steps of creating the implementation body which will deal with Open Finance development and framework.
- **Legal structure of the implementation entity:** There is also the question as to what entity holds the funding for people and long term shared assets. It is FDATA South America's position that this should NOT be a for-profit entity.
- **Funding of the entity's operation:** Considering a not for-profit entity, the funding to run its operation should be provided by the participants proportionally to the size of each one of the parties involved. A business plan and an annual budget should also be contemplated by the participants.
- **Roles within the implementation body:** After the creation of the steering group, we recommend the entity to create the following roles (or similar) in order to better functioning: Program Director (equivalent to Chief Executive); Head of Tech Implementation (equivalent to CTO); A monitoring function (similar to a Compliance Officer, reporting to Central Bank); Head of Security.

Regarding specifically the implementation process, FDATA South America recommends:

- **Bearing in mind the idea of sequencing:** when moving from Open Banking to Open Finance, Brazil should not have to reconstruct the basic parts (data sharing, legal framework, security profiles, dispute resolution management etc.). Core fundamentals can be developed and then applied to other sectors (pensions, investments, insurance, mortgages). This is the position advocated for by FDATA Europe in consultation with the FCA, responding to the FCA's call for input on Open Finance.
- **Having flexibility in dealing with the proposed schedule:** FDATA South America supports the implementation timeline as proposed by the Central Bank. Although, as per demonstrated in Australia's Open Banking journey, there should be an allowance for a degree of flexibility that accommodates reasonable adjustment in response to practical realities of the market.

