



EDPS Formal comments on the draft Commission Delegated Regulation supplementing Regulation (EU) No 1093/2010 of the European Parliament and of the Council with regard to regulatory technical standards specifying the materiality of weaknesses, the type of information collected, the practical implementation of the information collection and the analysis and dissemination of the information contained in the Anti-money laundering and counter terrorist financing (AML/CFT) central database referred to in Article 9a(2) of that Regulation

THE EUROPEAN DATA PROTECTION SUPERVISOR,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC ('EUDPR')<sup>1</sup>, and in particular Article 42(1) thereof,

HAS ADOPTED THE FOLLOWING FORMAL COMMENTS:

## 1. Introduction and background

1. On 9 January 2023, the European Commission issued the draft Commission Delegated Regulation supplementing Regulation (EU) No 1093/2010 of the European Parliament and of the Council with regard to regulatory technical standards specifying the materiality of weaknesses, the type of information collected, the practical implementation of the information collection and the analysis and dissemination of the information contained in the Anti-money laundering and counter terrorist financing (AML/CFT) central database referred to in Article 9a(2) of that Regulation ('the draft Delegated Regulation').
2. The objective of the draft Delegated Regulation, in accordance with Article 9a(1) and (3) of Regulation (EU) No 1093/2010<sup>2</sup> ('the Basic Act'), is to specify<sup>3</sup>:
  - the definition of 'weaknesses' and the materiality of weaknesses;
  - the information about weaknesses and measures taken that should be provided by competent authorities ('reporting authorities') to the European Banking Authority ('EBA');

<sup>1</sup> OJ L 295, 21.11.2018, p. 39.

<sup>2</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, OJ L 331, 15.12.2010, p. 12.

<sup>3</sup> See Explanatory Memorandum, p. 1.



- how EBA will analyse and make available information to competent authorities on a need-to-know and confidential basis;
  - the practical implementation of the collection of the information.
3. The present formal comments of the EDPS are issued in response to a consultation by the European Commission of 9 January 2023, pursuant to Article 42(1) of EUDPR. The EDPS welcomes the reference to this consultation in Recital 21 of the Proposal.
  4. These formal comments do not preclude any additional comments by the EDPS in the future, in particular if further issues are identified or new information becomes available, for example as a result of the adoption of other related implementing or delegated acts<sup>4</sup>.
  5. Furthermore, these formal comments are without prejudice to any future action that may be taken by the EDPS in the exercise of his powers pursuant to Article 58 of the EUDPR and are limited to the provisions of the draft Proposal that are relevant from a data protection perspective.

## 2. Comments

6. The EDPS notes that Article 9 of the draft Delegated Regulation would allow EBA to combine information submitted to it in accordance with the Regulation with any other information available to EBA, including information disclosed to EBA by any natural or legal person. Since this information might also include personal data, the EDPS recommends specifying the types of personal data that may be combined by EBA pursuant to Article 9(2) of the draft Delegated Regulation, as well as the types of personal data that must be provided by the European Securities and Markets Authority ('ESMA') and the European Insurance and Occupational Pensions Authority ('EIOPA') to EBA upon request, pursuant to Article 9(3) of the draft Delegated Regulation.
7. In addition, the EDPS appreciates the specification of the data retention period applicable to personal data processed by EBA in Article 14. However, the EDPS recommends specifying the timing (e.g. on a yearly basis) of the regular assessment of the necessity of the storage of personal data before the expiry of the data retention period.

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<sup>4</sup> In case of other implementing or delegated acts with an impact on the protection of individuals' rights and freedoms with regard to the processing of personal data, the EDPS would like to remind that he needs to be consulted on those acts as well. The same applies in case of future amendments that would introduce new or modify existing provisions that directly or indirectly concern the processing of personal data.

8. Finally, the EDPS notes that Annex II to the draft Delegated Regulation specifies the information on natural persons that must be provided by the reporting authorities in application of Article 5(2), point (b); Article 6, point (m); Article 7, point (d); Article 10(3); Article 10(1), point (b); as well as Article 12(5). In this regard, the EDPS would like to recall that also information related to legal persons may constitute personal data, insofar as they relate to identified or identifiable natural persons<sup>5</sup>, subject to the GDPR.

Brussels, 24 January 2023

*(e-signed)*

Wojciech Rafał WIEWIÓROWSKI

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<sup>5</sup> See Judgment of the European Court of Justice of 9 November 2010 in Joint Cases C-92/09 and C-93/09, *Volker und Markus Schecke GbR (C-92/09) and Hartmut Eifert (C-93/09) v Land Hessen*, ECLI:EU:C:2010:662, paragraph 53.