

EDPS Formal comments on the draft Commission Delegated Regulation supplementing Regulation (EU) 2023/1114 of the European Parliament and the Council with regard to regulatory technical standards on information to be exchanged between competent authorities

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')¹, and in particular Article 42(1) thereof,

HAS ADOPTED THE FOLLOWING FORMAL COMMENTS:

1. Introduction and background

1. On 2 May 2024, the European Commission consulted the EDPS on the draft Commission Delegated Regulation supplementing Regulation (EU) 2023/1114 of the European Parliament and the Council with regard to regulatory technical standards on information to be exchanged between competent authorities ('the draft Delegated Regulation').
2. The objective of the draft Delegated Regulation is to further specify the information to be exchanged between competent authorities to effectively carry out investigation, supervision and enforcement activities².
3. The draft Delegated Regulation is adopted pursuant to Article 95(1) of Regulation (EU) 2023/1114³.
4. The EDPS previously issued Opinion 9/2021 on the Proposal for a Regulation on Markets in Crypto-assets, and amending Directive (EU) 2019/1937⁴.

¹ OJ L 295, 21.11.2018, p. 39.

² Recital 2 of the draft Delegated Regulation.

³ Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (Text with EEA relevance)Text with EEA relevance, OJ L 150, 9.6.2023, p. 40.

⁴ [EDPS Opinion 9/2021 on the Proposal for a Regulation on Markets in Crypto-assets, and amending Directive \(EU\) 2019/1937](#), issued on 24 June 2021.

5. The present formal comments of the EDPS are issued in response to a consultation by the European Commission pursuant to Article 42(1) of EUDPR. The EDPS welcomes the reference to this consultation in Recital 13 of the draft delegated regulation.
6. 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 acts⁵.
7. 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 delegated regulation that are relevant from a data protection perspective.

2. Comments

2.1. Categories of data

8. Article 2(a)(vi) obliges competent authorities to exchange, inter alia, information about the members of the management body of the asset-referenced token issuer's necessary to assess their good repute and suitability. It further specifies that this information should be "*in particular information about their relevant knowledge, skills, work experience and time committed to their duties within the management body of the asset-referenced token issuer, and the information about their reputation listed in Article [8(1)(e)] of Commission Delegated Regulation (EU) 2024/[XXX] [adopted pursuant to Article 18(6), third subparagraph, of Regulation (EU) 2023/1114]*".
9. The EDPS considers that the information to be collected to assess the good repute and suitability should be listed exhaustively and, therefore, recommends deleting the words "in particular" in Article 2(a)(vi) of the draft Delegated Regulation.
10. Similar considerations apply to Article 4(a)(iv) of the draft Delegated Regulation with regard to the information to be exchanged in relation to crypto-asset service provider. Also in this case, the EDPS recommends including a closed list of information to be provided about the reputation of persons responsible for the management of the crypto-asset service provider.

2.2. Purpose of processing

⁵ 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.

11. The EDPS positively notes that Article 1 defines the purposes for the exchange of information in relation to crypto-assets other than asset-referenced tokens or e-money tokens. At the same time, the EDPS notes that Article 1 states that competent authorities must exchange information “[w]hen necessary for the purpose of investigation, supervision of enforcement [...]” (emphasis added). To align Article 1 of the draft Delegated Regulation with Article 95 of Regulation (EU) 2023/1114, the EDPS recommends amending the above-mentioned text as follows “[...] the purposes of investigation, supervision and enforcement activities”. The same recommendation is applicable, *mutatis mutandis*, to Articles 2, 3, 4, 5, 6 of the draft Delegated Regulation.

Brussels, 27 May 2024

(e-signed)

Wojciech Rafał Wiewiórowski