

EDPS Formal comments on the draft Commission Delegated Regulation supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council with regard to regulatory technical standards establishing a template document for cooperation arrangements between competent authorities and supervisory authorities of third countries

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) 2023/1114² of the European Parliament and of the Council with regard to regulatory technical standards establishing a template document for cooperation arrangements between competent authorities and supervisory authorities of third countries ('the draft Delegated Regulation').
2. The objective of the draft Delegated Regulation is to develop regulatory technical standards establishing a template document for cooperation arrangements with supervisory authorities of third countries concerning the exchange of information with those supervisory authorities of third countries and the enforcement of obligations under Regulation (EU) No 2023/1114 in those third countries³.
3. The draft Delegated Regulation is adopted pursuant to the third subparagraph of Article 107 of Regulation (EU) No 2023/1114 of the European Parliament and of the

¹ OJ L 295, 21.11.2018, p. 39.

² 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.

³ Recital 2 of the draft Delegated Regulation.

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.

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.
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.
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

8. The EDPS recalls that any transfer of information containing personal data to supervisory authorities of third countries implies an international transfer of personal data in the meaning of Chapter V of Regulation (EU) 2016/679⁶ (hereinafter 'the GDPR'), and therefore needs to rely on one of the legal basis for transfers provided by the GDPR under this Chapter.
9. In this respect, the EDPS welcomes Recital 3 of the draft Delegated Regulation that specifies that the transfer of personal data between the EU competent authorities and the competent authorities of the third country should take place in full compliance with Regulation (EU) 2016/679 of the European Parliament and of the Council⁷. The same Recital further specifies that "*One of the transfer tools that may be used to*

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 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.

⁶ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, OJ L 119, 04.5.2016, p. 1.

⁷ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, OJ L 119, 04.5.2016, p. 1.

exchange personal data between competent authorities and supervisory authorities of third countries is through administrative arrangements ensuring appropriate safeguards pursuant to Article 46(3)(b) of Regulation (EU) 2016/679, which include enforceable and effective data subject rights". In this regard, the EDPS recalls that personal data transferred on the basis of Article 46 of the GDPR should be afforded a level of protection essentially equivalent to that guaranteed within the EU.⁸

10. The EDPS also welcomes Article 2 of the draft Delegated Regulation which provides that "*Where competent authorities rely on an administrative arrangement pursuant to Article 46(3) of Regulation (EU) 2016/679 for the transfer of personal data to supervisory authorities of third countries, that arrangement shall be annexed to and constitute a part of the cooperation arrangement entered into in accordance with Article 107 of Regulation (EU) 2023/1114*".
11. The EDPS recommends including in Recital 3 a reference to the fact that supervisory authorities relying on such administrative arrangement will nevertheless not be exempted from the procedure established under Article 46(3)(b) GDPR, i.e. that the appropriate safeguards provided by the administrative arrangement will in any case be subject to the authorisation of the competent supervisory authority.
12. Finally, the EDPS notes the absence of the reference to this consultation in a Recital of the draft Delegated Regulation. Hence, the EDPS recommends inserting such a reference in a Recital of the draft Delegated Regulation.

Brussels, 27 May 2024

(e-signed)

Wojciech Rafał Wiewiórowski

⁸ Judgment of 16 July 2020, Schrems II, C-311/18, EU:C:2020:559, para. 105.