

EDPS Formal comments on the draft Commission Delegated Regulation laying down implementing technical standards for the application of Regulation (EU) 2023/1114 of the European Parliament and of the Council on markets in crypto-assets with regard to reporting related to asset-referenced tokens under Article 22(1) and (3) of Regulation (EU) 2023/1114 and the reporting related to e-money tokens pursuant to Article 58(3) 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')¹, and in particular Article 42(1) thereof,

HAS ADOPTED THE FOLLOWING FORMAL COMMENTS:

1. Introduction and background

1. On 27 June 2024, the European Commission consulted the EDPS on the draft Commission Delegated Regulation laying down implementing technical standards for the application of Regulation (EU) 2023/1114 ('MICA Regulation')² with regard to reporting related to asset-referenced tokens under Article 22(1) and (3) of Regulation (EU) 2023/1114 and the reporting related to e-money tokens pursuant to Article 58(3) of that Regulation ('the draft Delegated Regulation').
2. The objective of the draft Delegated Regulation is to establish standard forms, formats and templates for the purposes of reporting to the competent authorities for asset-referenced tokens³.
3. The draft Delegated Regulation is adopted pursuant to the third subparagraph of Article 22(7) of the MICA Regulation.

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), OJ L 150, 9.6.2023, p. 40.

³ Recitals 1 to 6 of the draft Delegated Regulation.

4. The EDPS previously issued Opinion 9/2021 on the MICA Regulation⁴.
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 11 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

8. Recital 6 of the draft Delegated Regulation explains that for the purposes of reporting in accordance with Article 22(3) of the MICA Regulation, crypto-asset service providers should provide to the issuers some information which includes personal data. The recital further specifies that “[i]n any case, national conditions for the processing of such personal data, if any, apply”. The EDPS acknowledges the efforts made to ensure that the draft Delegated Regulation does not affect the application of existing national laws governing the processing of personal data. However, the EDPS considers that the relationship between the draft Delegated Regulation and existing data protection law is not clearly defined. For the sake of clarity, the EDPS recommends making explicit reference to the applicability of Regulation (EU) 2016/679 (GDPR) in the same recital.
9. According to Article 5 of the draft Delegated Regulation, issuers should retain personal data of the individual holders shared by the crypto-asset service providers for a maximum period of up to 5 years from the date of obtaining the personal data by the issuers.

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.

10. The EDPS notes that Recital 9 explains that “[c]onsidering the objective of sharing such information, this maximum retention period should not exceed 5 years from the date of obtaining the personal data”. The EDPS recalls the need to duly justify the necessity of the defined data retention period, which must be based on objective criteria that establish a connection between the data to be retained and the objective pursued⁶. Therefore, the EDPS recommends further detailing the objective criteria that would justify the maximum retention of 5 years instead of referring in general terms to the “objective of sharing such information”. In the absence of such justification, the EDPS recommends assessing whether a shorter storage duration would be sufficient to achieve the envisaged purpose and amending the draft Delegated Regulation accordingly.

Brussels,

⁶ CJEU, Joined cases C-293/12 and C-594/12, *Digital Rights Ireland* (C-293/12) and *Seitlinger* (C-594/12), ECLI:EU:C:2014:238 paragraph 64, Judgment of 6 October 2015, *Schrems*, C-362/14, EU:C:2015:650, paragraph 93, *Tele2 Sverige and Watson and Others*, C-203/15 and C-698/15.