

EDPS Formal comments on the draft Delegated Regulation supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council with regard to regulatory technical standards specifying the requirements for policies and procedures on conflicts of interest for crypto-asset service providers as well as the details and methodology for the content of disclosures of conflicts of interest

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 Delegated Regulation supplementing Regulation (EU) 2023/1114 ('MICA Regulation')² with regard to regulatory technical standards specifying the requirements for policies and procedures on conflicts of interest for crypto-asset service providers as well as the details and methodology for the content of disclosures of conflicts of interest ('the draft Delegated Regulation').
2. The objective of the draft Delegated Regulation is to further specify the requirements for the policies and procedures on conflict of interest for crypto-asset service providers as well as the details and methodology for the content of disclosures of conflicts of interest between themselves and other stakeholders as well as between clients³.

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. 40–205.

³ Recitals 1 and 2 of the draft Delegated Regulation.

3. The draft Delegated Regulation is adopted pursuant to Article 72(5) of the MICA Regulation⁴.
4. The EDPS previously issued Opinion 9/2021 on the MICA Regulation⁵.
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 acts⁶.
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. General comments

8. The EDPS welcomes Recital 13 recalling the applicability of the EU data protection legal framework, in particular Regulation (EU) 2016/679.
9. The EDPS observes that the information to be disclosed in accordance with Article 8 (2) of the draft delegated regulation could be capable of enabling a profile to be drawn up about the individuals concerned, insofar as the information relates to the role and capacity in which the crypto-asset service provider is acting when providing the crypto-asset service to the client, the nature of the conflict of interest identified, the associated risks and the steps and measures taken to prevent and mitigate such risks⁷.
10. The EDPS notes, however, that the information mentioned in Article 8(2) of the draft Delegated Regulation would not be made available to the general public via the website. Indeed the EDPS notes that Article 8(3) of the draft delegated regulation - in line with Article 72(2) of the MICA Regulation - provides that only the *general* nature

⁴ 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.

⁵ [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.

⁶ 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.

⁷ See by analogy also Judgment of the Court of Justice of 22 November 2022, WM, Sovim SA v Luxembourg Business Registers, Joined Cases C-37/20 and C-601/20, ECLI:EU:C:2022:912, paragraphs 40-41.

and source of conflicts of interest and the steps taken to mitigate them must be made available to clients at all times and on any devices.

11. 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,