

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 specifying records to be kept of all crypto-asset services, activities, orders and transactions undertaken

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 August 2024, the European Commission consulted the EDPS 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 specifying records to be kept of all crypto-asset services, activities, orders and transactions undertaken ('the draft Delegated Regulation'). The draft Delegated Regulation is accompanied by an Annex, specifying the list of records to be kept by crypto-asset service providers ('CASPs'), the records of orders, the records of transactions and the details of on-chain data to be kept.
2. The draft Delegated Regulation is adopted pursuant to Article 68(10) of Regulation (EU) 2023/1114 ('MICA')².
3. The EDPS previously issued the Opinion 9/2021 on MICA³.

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 [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.

4. The objective of the draft Delegated Regulation is to provide draft regulatory technical standards to further specify the records to be kept of all crypto-asset services, activities, orders and transactions undertaken⁴.
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 notes that the draft Delegated Regulation would imply the processing of personal data by CASPs in the context of the record keeping of orders and transactions executed by CASPs. The processing of personal data under the draft Delegated Regulation can concern for instance the processing of personal data of natural persons within the CASPs making the investment decision⁶ and of natural persons within the CASPs determining the conditions for the execution of the transactions⁷.
9. Therefore, the EDPS welcomes the reference to the applicability of Regulation 2016/679 ('GDPR')⁸ to the processing of personal data falling within the scope of the

⁴ Draft Delegated Regulation, Explanatory memorandum, p. 1.

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 Article 8 of the draft Delegated Regulation, referring to Field 41 of the Table 3 in Section 3 of the Annex, which in its turn refers to the identifier specified in Article 9 of the draft Delegated Regulation.

⁷ Article 10 of the draft Delegated Regulation, referring to Field 43 of the Table 3 in Section 3 of the Annex, which in its turn refers to the identifier specified in Article 9 of the draft Delegated Regulation.

⁸ 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 (General Data Protection Regulation) (Text with EEA relevance), OJ L 119, 4.5.2016, p. 1–88.

draft Delegated Regulation⁹. However, the EDPS recommends adding a reference to the applicability of Directive 2002/58/EC (ePrivacy Directive)¹⁰.

10. Moreover, the EDPS recommends adding - still having regard to recital 6 of the draft Delegated Regulation recalling the applicability of the data protection principle of data minimisation¹¹ - a reference to the principle of storage limitation¹².
11. More specifically, having regard to Article 2 of the draft Delegated Regulation, the EDPS recommends specifying the maximum retention period applicable to the records to be mandatorily retained in order to be available to the competent authority pursuant to the draft Delegated Regulation.
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,

⁹ Recital 6 of the draft Delegated Regulation.

¹⁰ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), OJ L 201, 31.7.2002, p. 37–47. This reference is due to the inclusion of records of telephone conversations or electronic communications relating to transactions or to the reception, transmission and execution of client orders among the types of records to be mandatorily kept by CASPs as indicated in Section 1 of the Annex to the draft Delegated Regulation.

¹¹ Article 5(1)(c) GDPR.

¹² Article 5(1)(e) GDPR.