

**EDPS Formal comments on the draft Commission Delegated Regulation on supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council with regard to regulatory technical standards specifying the detailed content of information necessary to carry out the assessment of a proposed acquisition of a qualifying holding in a crypto-asset service provider**

**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')<sup>1</sup>, and in particular Article 42(1) thereof,

**HAS ADOPTED THE FOLLOWING FORMAL COMMENTS:**

**1. Introduction and background**

1. On 21 May 2024, the European Commission consulted the EDPS on the draft Commission Delegated Regulation on supplementing Regulation (EU) 2023/1114 ('MICA Regulation')<sup>2</sup> with regard to regulatory technical standards specifying the detailed content of information necessary to carry out the assessment of a proposed acquisition of a qualifying holding in a crypto-asset service provider ('the draft Delegated Regulation').
2. The objective of the draft Delegated Regulation is to provide regulatory technical standards ('RTS') to further specify the information necessary to perform the assessment of a proposed acquisition of a qualifying holding in a crypto-asset service provider ('CASP')<sup>3</sup>.
3. The draft Delegated Regulation is adopted pursuant to Article 84(4), third subparagraph, of the MICA Regulation.
4. The EDPS previously issued an Opinion on the Proposal for a MICA Regulation<sup>4</sup>.

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<sup>1</sup> OJ L 295, 21.11.2018, p. 39.

<sup>2</sup> 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.

<sup>3</sup> Recital 1 of the draft Delegated Regulation.

<sup>4</sup> [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.
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 acts<sup>5</sup>.
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 welcomes Recital 3 of the draft Delegated Regulation, recalling the applicability of Regulation (EU) 2016/679 ('the GDPR')<sup>6</sup>, as well as the specific references to the need to ensure data minimisation and storage limitation.
9. Article 2 of the draft Delegated Regulation aims at specifying the information to be provided by the proposed acquirer that is a natural person, so as to enable the competent authority of the target entity to carry out the prudential assessment of the proposed acquisition.
10. Article 2(a)(i) includes, among the information to be provided, "*subject to national legislative requirements concerning the disclosure of spent convictions, information about any criminal conviction or proceedings where the person has been found against and which were not set aside or procedures including relating to precautionary measures*".
11. Recital 10 indicates that "[...] *The information relevant to the assessment of reputation should include details of criminal convictions and of pending criminal proceedings and civil or administrative cases, open investigations and proceedings, sanctions or other enforcement decisions against the proposed acquirer relating to commercial law, insolvency law, financial services law, money laundering, and terrorist financing, fraud or professional liability*".
12. The EDPS recalls that processing of personal data relating to criminal convictions and offences is subject to the enhanced protection of Article 10 GDPR<sup>7</sup>. Moreover, in line with the principle of data minimisation laid down in Article 5(1)(c) of the GDPR, the collection of personal data should be limited to what is necessary to fulfil the purposes

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<sup>5</sup> 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.

<sup>6</sup> 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, 4.5.2016, p. 1–88.

<sup>7</sup> See in this regard also the Judgment of the Court of Justice of the European Union of 22 June 2021, *B. v. Latvijas Republikas Saeima*, Case C-439/19, ECLI:EU:C:2021:504, paragraph 74 and following.

for which they are processed. Finally, Article 84(4) of the MICA Regulation, which the draft Delegated Regulation seeks to implement, provides that the information required shall be relevant for a prudential assessment, proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition.

13. The EDPS notes that Article 62(3) of the MICA regulation limits the collection of information regarding criminal convictions to a proof of the absence of a criminal record in respect of convictions or the absence of penalties imposed under the applicable commercial law, insolvency law and financial services law, or in relation to anti-money laundering and counter-terrorist financing, to fraud or to professional liability. Such information must be provided both in relation to the members of the management body of the applicant and or all shareholders and members, whether direct or indirect, that have qualifying holdings in the applicant.
14. The information required by the draft Delegated Regulation regarding criminal records should be limited to what is relevant for the assessment of the acquisition of the qualifying holding in the crypto asset service provider. To achieve this objective, the EDPS recommends to bring the wording of Article 2(a)(i) in line with the wording of Article 62(3)(a) and (c) of the MICA Regulation.
15. In particular, the EDPS considers that Article 2(a)(i) of the draft Delegated Regulation should make reference to proof of *the absence of* a criminal record and the *absence of* penalties. Moreover, the draft Delegated Regulation should limit the collection of such information in relation to criminal convictions or penalties that are relevant and proportionate to the assessment. To achieve this objective, the EDPS recommends reflecting the limitations explicitly referred to in Recital 10 in the enacting terms of the draft Delegated Regulation (which reflect also the limitations included in Article 62(3) of the MICA Regulation). Similar considerations apply in relation to Article 2(a) points (ii) and (iv) of the draft Delegated Regulation.
16. The EDPS notes the absence of the reference to this consultation in the draft Delegated Regulation. The EDPS therefore recommends inserting a reference to the EDPS consultation in a recital of the draft Delegated Regulation.

Brussels, 21 June 2024

*(e-signed)*

Wojciech Rafał WIEWIÓROWSKI