

**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 information to be included in a notification by certain financial entities of their intention to provide crypto-asset services**

**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 Delegated Regulation supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council ('MICA Regulation')<sup>2</sup> with regard to regulatory technical standards ('RTS') specifying the information to be included in a notification by certain financial entities of their intention to provide crypto-asset services ('the draft Delegated Regulation').
2. The objective of the draft Delegated Regulation is to further specify the information to be provided by certain financial entities when notifying competent authorities of their intention to provide crypto-asset services<sup>3</sup>.
3. The draft Delegated Regulation is adopted pursuant to Article 60(13), third subparagraph of the MICA Regulation.
4. The EDPS previously issued Opinion 9/2021 on the MICA Regulation<sup>4</sup>.
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.

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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.

<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.

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 understands that the envisaged notification procedure established by the draft RTS would entail the processing of personal data. For example, according to Article 3 (d) of the draft Delegated Regulation, a notifying entity must provide the competent authority with information that would include, among others, the identity of the person in charge of ensuring the notifying entity's compliance with anti-money laundering and counter-terrorist financing obligations, and evidence of the person's skills and expertise.
9. The EDPS recalls that any processing of personal data under the Delegated Regulation must comply with the requirements of Regulation (EU) 2016/679 ('the GDPR')<sup>6</sup>. Consequently, the EDPS recommends inserting in the draft Delegated Regulation a recital referring to the applicability of the GDPR to the processing of personal data.
10. 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, 21 June 2024

*(e-signed)*

Wojciech Rafał WIEWIÓROWSKI

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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.