

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 on the requirements, templates and procedures for handling complaints

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 21 May 2024, the European Commission consulted the EDPS on the draft Commission Delegated Regulation on supplementing Regulation (EU) 2023/1114 ('MICA Regulation')² with regard to regulatory technical standards on the requirements, templates and procedures for handling complaints ('the draft Delegated Regulation').
2. The objective of the draft Delegated Regulation is to provide regulatory technical standards ('RTS') to further specify the requirements, templates and procedures for handling complaints³.
3. The draft Delegated Regulation is adopted pursuant to Article 71(5), third subparagraph, of the MICA Regulation.
4. The EDPS previously issued an Opinion on the Proposal for a MICA Regulation⁴.

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 Recital 1 of the draft Delegated Regulation.

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. 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

2.1. General comments

8. The EDPS welcomes the reference⁶ in the draft Delegated Regulation to the fact that any processing of personal data under this Regulation should be carried out in accordance with applicable Union law on the protection of personal data, notably with Regulation (EU) 2016/679⁷.
9. Article 4 of the draft Delegated Regulation introduces an obligation for crypto-asset service providers to “[...] *acknowledge receipt of a complaint and inform the complainant about whether the complaint is admissible without undue delay after its receipt*”.
10. The EDPS recalls that, pursuant to Articles 13 and 14 GDPR, information about the processing of personal data must be provided in a timely manner. In particular, where Article 13 applies (i.e. information to be provided where personal data are collected from the data subject), the information must be provided by controllers “[...] *at the time when personal data are obtained*”⁸. In this respect, it is important to ensure that the method(s) chosen to provide the information is appropriate to the particular circumstances, i.e. to take into account the manner in which the data controller and

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 Recital 11 of the draft Delegated Regulation.

⁷ 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), OJ L 119, 4.5.2016, p. 1.

⁸ Article 13(1) GDPR.

data subject interact⁹. Against this background, and taking into account the fact that the draft delegated regulation would require crypto-asset service providers to publish the standard template¹⁰ for filling in complaints as set out in the Annex to the draft Delegated Regulation, the EDPS recommends including in the template to be used for the submission of a complaint a heading that contains or makes reference to the information to be provided regarding the processing of personal data.

11. The EDPS further notes that the annex to the draft Regulation provides for the collection of several categories of personal data of the complainant. The EDPS has doubts whether each of the requested categories of personal data provided is strictly necessary for the purpose of handling a complaint. The EDPS especially has doubts whether the collection of a registration or ID number, as well as a signature of the complainant¹¹, is necessary. The EDPS recommends either removing those categories of personal data from the template, or providing a sufficient justification for the collection of these data, for example by way of a recital to the draft Delegated Regulation.
12. 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

⁹ See also paragraph 19 of the Article 29 working Party [Guidelines on transparency under Regulation 2016/679](#), adopted on 29 November 2017, as last revised and adopted on 11 April 2018 and endorsed by the EDPB.

¹⁰ Article 1(3) of the draft Delegated Regulation. Recital 2 of the draft delegated regulation explains that, while the use of the template to fill in a complaint is not obligatory, its introduction aims at avoiding diverging complaints handling procedures among crypto-asset service providers across the Union.

¹¹ See also [EDPB-EDPS Joint Opinion 01/2023 on the Proposal for a Regulation of the European Parliament and of the Council laying down additional procedural rules relating to the enforcement of Regulation \(EU\) 2016/679](#), adopted on 19 September 2023, paragraph 18.