

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 information to be contained in an application for authorisation to offer to the public or to admit to trading asset-referenced tokens

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 Commission Delegated Regulation on supplementing Regulation (EU) 2023/1114 ('MICA Regulation')² with regard to regulatory technical standards specifying the information to be contained in an application for authorisation to offer to the public or to admit to trading asset-referenced tokens ('the draft Delegated Regulation').
2. The objective of the draft Delegated Regulation is to develop draft RTS to further specify the information to be provided in an application for authorisation to offer to the public or to seek admission to trading of an asset-referenced token³.
3. The draft Delegated Regulation is adopted pursuant to Article 18(6) third subparagraph of the MICA Regulation.
4. The EDPS previously issued Opinion 9/2021 on the MICA Regulation⁴.
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. The EDPS welcomes the reference to this consultation in Recital 14 of the draft Delegated Regulation.

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.

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 Recital 3 of the draft Delegated Regulation, recalling the applicability of the GDPR and the EUDPR and the need to ensure compliance with the requirements of data minimisation and storage limitation.
9. Article 9 of the draft Delegated Regulation aims at specifying the information to be provided on the sufficiently good repute of shareholders and members with direct and indirect qualifying holdings in the applicant issuer.
10. The EDPS considers that the information to be collected to assess the good repute of shareholders and members with direct and indirect qualifying holdings in the applicant issuer should be listed exhaustively. Therefore, the EDPS recommends replacing the word “including” in Article 9, first subparagraph of the draft Delegated Regulation with the word “namely”, so as to ensure that the information listed thereunder is interpreted as an exhaustive list. Similar considerations apply in relation to the introductory paragraph of Article 8(1)(e).

Brussels,

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.