

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 the content and format of order book records for crypto-asset service providers operating a trading platform for crypto-assets

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 the content and format of order book records for crypto-asset service providers operating a trading platform for crypto-assets ('the draft Delegated Regulation'). The draft Delegated Regulation is accompanied by an Annex, specifying the content and format of order book records for crypto-asset service providers ('CASPs') operating a trading platform for crypto-assets.
2. The draft Delegated Regulation is adopted pursuant to Article 76(16) 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 specify the content of records to be kept by CASPs operating a trading platform for crypto-assets, as further specified in Table 2 and Table 3 of the Annex to the Regulation.
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 acts⁴.
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 operating a trading platform, for instance in the context of the record keeping of orders executed on behalf of clients⁵.
9. Therefore, the EDPS welcomes the reference to the applicability of Regulation 2016/679 ('GDPR')⁶ to the processing of personal data falling within the scope of the draft Delegated Regulation⁷.
10. However, the EDPS recommends adding to recital 5 of the draft Delegated Regulation, recalling the applicability of the data protection principle of data minimisation⁸, a reference to the principle of storage limitation⁹.
11. More specifically, the EDPS recommends specifying in the draft Delegated Regulation the maximum retention period applicable to the records to be kept at the disposal of the competent authority pursuant to Article 1 of the draft Delegated Regulation.

⁴ 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.

⁵ Article 3, identification of the parties involved in the order, of the draft Delegated Regulation, referring to Table 2 of the Annex, which includes, as Field number 3, the identifier of the natural person acting as client (client identification code).

⁶ 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.

⁷ Recital 5 of the draft Delegated Regulation.

⁸ Article 5(1)(c) GDPR.

⁹ Article 5(1)(e) GDPR.

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,