

EDPS Formal comments on the draft Commission Delegated Regulation on supplementing MiCA Regulation (EU) 2023/1114 of the European Parliament and of the Council with regard to regulatory technical standards to further specify 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 to further specify 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 31(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. The EDPS notes the reference to this consultation in recital 10 of the draft Delegated Regulation.
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

8. The EDPS welcomes the reference to the principle of data minimisation in Recital 8 of the draft Delegated Regulation. For the purpose of completeness, the EDPS recommends making explicit reference to the applicability of Regulation (EU) 2016/679 (GDPR) in the same recital⁶.
9. Article 2 of the draft Delegated Regulation introduces an obligation for issuers of asset-referenced tokens to provide “[...] *on request or when acknowledging receipt of a complaint, clear, accurate and up-to-date written information about the complaints-handling procedure to the complainants*”.
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*”⁷. In this respect, it is critical 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 data subject interact⁸.

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 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.

⁷ Article 13(1) GDPR.

⁸ 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.

11. Against this background, and taking into account the fact that the draft Delegated Regulation would require the development of a template for filling in complaints⁹ 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.

Brussels, 21 June 2024

(e-signed)

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⁹ Article 3 (a) of the draft delegated regulation. Recital 3 of the draft Delegated Regulation explains that even if the complainants have not filed their complaints using the template laid out in the Annex accompanying the draft Delegated Regulation, that alone should not constitute a reason for the rejection of complaints.