

EDPS Formal comments on the draft Commission Delegated Regulation supplementing Regulation 2022/2554 of the European Parliament and of the Council with regard to regulatory technical standards on harmonisation of conditions enabling the conduct of the oversight activities

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 3 July 2024, the European Commission consulted the EDPS on the draft Commission Delegated Regulation supplementing Regulation 2022/2554 ('DORA Regulation')² with regard to regulatory technical standards on harmonisation of conditions enabling the conduct of the oversight activities ('the draft Delegated Regulation').
2. The objective of the draft Delegated Regulation is to harmonise the requirements enabling the conduct of oversight activities in the European Union by further specifying:
 - a. the information to be provided by an ICT third-party service provider in the application for a voluntary request to be designated as critical;
 - b. the information to be submitted by the ICT third-party service providers that is necessary for the Lead Overseer to carry out its duties; and

¹ OJ L 295, 21.11.2018, p. 39.

² Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909/2014 and (EU) 2016/1011 (Text with EEA relevance), OJ L 333, 27.12.2022, p. 1–79.

- c. the details of the competent authorities' assessment of the measures taken by CTPPs based on the recommendations of the Lead Overseer³.
3. The draft Delegated Regulation is adopted pursuant to Article 41(2) second subparagraph of the DORA Regulation.
4. The EDPS previously issued Opinion 7/2021 on the DORA 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.
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. Pursuant to Article 1 of the draft Delegated Regulation, ICT third-party service providers would have to provide, among other data, the name of the legal entity of the ICT third-party service provider⁶ and of the financial entities that make use of the ICT services provided by the ICT third-party service provider⁷.
9. The EDPS recalls that Article 4(1) of Regulation (EU) 2016/679⁸ ('GDPR') and Article 3(1) EUDPR define personal data as *'any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific*

³ Page 1 of the Explanatory Memorandum.

⁴ [EDPS Opinion 7/2021 on the Proposal for a Regulation on digital operational resilience for the financial sector and amending Regulations \(EC\) 1060/2009, \(EU\) 648/2012, \(EU\) 600/2014 and \(EU\) 909/2014](#), issued on 10 May 2021.

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 Article 1(1)(a) of the draft Delegated Regulation.

⁷ Article 1(1)(g)(1) of the draft Delegated Regulation.

⁸ 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.

to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person'.

10. The EDPS understands that the data that would be collected mainly concerns legal entities rather than natural persons. For the sake of completeness, the EDPS recalls that even data concerning legal persons may, in some instances, be considered as personal data, as clarified by the CJEU⁹.
11. Against this background, the EDPS recalls the applicability of the EU data protection framework, in particular the GDPR when personal data is processed in the context of the draft Delegated Regulation. The EDPS therefore recommends adding a recital recalling the applicability of the EU data protection legal framework for any activities under the draft Delegated Regulation that involve the processing of personal data.
12. For the sake of completeness, the EDPS recalls that if personal data is transferred to third countries, for example when the provision of services is provided by critical ICT third-party service providers from third countries¹⁰ or when ICT third-party service provider relies on subcontractors from third countries¹¹, such transfers should take place in accordance with Chapter V of the GDPR.
13. 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,

⁹ See judgment of of 9 November 2010, *Volker und Markus Schecke Gbr v. Land Hessen, and Eifert v. Land Hessen and Bundesanstalt für Landwirtschaft und Ernährung*, Joined cases C-92/09 and C-93/09, EU:C:2010:662, paragraph 53.

¹⁰ Article 3(2)(j) of the draft Delegated Regulation.

¹¹ Article 3(2)(k) of the draft Delegated Regulation.