



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 appropriate arrangements, systems and procedure as well as the templates to be used for preventing, detecting and reporting suspected market abuse, and on the coordination procedures between the relevant competent authorities for the detection and sanctioning of market abuse in cross-border market abuse situations

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 10 January 2025, 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 appropriate arrangements, systems and procedure as well as the templates to be used for preventing, detecting and reporting suspected market abuse, and on the coordination procedures between the relevant competent authorities for the detection and sanctioning of market abuse in cross-border market abuse situations ('the draft Delegated Regulation'). The draft Delegated Regulation is accompanied by an Annex, providing the template to be used for reports concerning reasonable suspicions on orders, transactions and other aspects of the functioning of distributed ledger technology ('STOR').
2. The draft Delegated Regulation is adopted pursuant to Article 92(2) of Regulation (EU) 2023/1114 ('MICA')².

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. The EDPS previously issued Opinion 9/2021 on the MICA proposal³.
4. The objective of the draft Delegated Regulation is to specify three related elements: (i) appropriate arrangements, systems and procedures for persons professionally arranging or executing transactions in crypto-assets; (ii) the ‘STOR’ template to be used by those persons; (iii) coordination procedures for competent authorities when dealing with cross-border market abuse situations⁴.
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. The EDPS notes that the draft Delegated Regulation would imply the processing of personal data of persons professionally arranging or executing transactions in crypto-assets⁶, or of persons in respect of which STOR are submitted (‘suspected persons’)⁷.
9. The EDPS welcomes the reference to the applicability of Regulation 2016/679 (‘GDPR’)⁸ to the processing of personal data falling within the scope of the draft Delegated Regulation⁹. However, the EDPS recommends adding to recital 19 of the draft Delegated Regulation, recalling the applicability of the data protection principle of data minimisation, after the wording “data minimisation principle”, the wording “in particular”. Moreover, since the draft Delegated Regulation may also entail the

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 Explanatory report, p. 1.

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 For instance, Section 1 of the ‘STOR’ template, as provided in the Annex to the draft Delegated Regulation, includes, as mandatory information, the first name and surname of the natural person in charge of the submission of the STOR within the submitting entity.

⁷ For instance, Section 4 of the ‘STOR’ template, as provided in the Annex to the draft Delegated Regulation, includes, as mandatory information, the name, national identification number, address, employment-related data, account numbers and other personal data of suspected persons.

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.

⁹ Recital 19 of the draft Delegated Regulation.

processing of personal data by European Union institutions, bodies and agencies, namely the European Securities and Markets Authority (ESMA)¹⁰, the EDPS recommends adding a reference to the EUDPR.

10. The EDPS welcomes that the draft Delegated Regulation contains a number of safeguards that would help to protect the individuals concerned against unlawful access to or use of their personal data. In particular, the draft Delegated Regulation would require persons professionally arranging or executing transactions to ensure an appropriate level of human analysis in the prevention, monitoring, detection and identification of transactions¹¹, also prior to reporting¹². In addition, these persons would be obliged to take measures to ensure confidentiality¹³ and would be required to organise and provide effective and comprehensive training to relevant staff¹⁴. The draft Delegated Regulation also provides that competent authorities must publish on their website the electronic means that shall be used to submit a STOR and that those means must ensure the completeness, integrity and confidentiality of the information transmitted.¹⁵ Finally, the EDPS also positively notes that the types of information that should be considered as relevant when submitting a STOR are specified in the Annex.
11. Against this background, the EDPS has no further comments on the draft Delegated Regulation.
12. The EDPS notes, however, the absence of a reference to this consultation in a recital of the draft Delegated Regulation. The EDPS therefore recommends inserting such a reference in a recital of the draft Delegated Regulation.

Brussels, 22 January 2025

(e-signed)

Wojciech Rafał WIEWIÓROWSKI

¹⁰ Article 11(c), of the draft Delegated Regulation.

¹¹ Article 3(4) of the draft Delegated Regulation.

¹² Article 5(1) of the draft Delegated Regulation.

¹³ Article 5(3) of the draft Delegated Regulation.

¹⁴ Article 4 of the draft Delegated Regulation.

¹⁵ Article 8(2) of the draft Delegated Regulation.

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