

## **EDPS Formal comments on the draft Commission Implementing Regulation laying down rules for the application of Regulation (EU) No 910/2014 as regards qualified electronic attestations of attributes and electronic attestations of attributes provided by or on behalf of a public sector body responsible for an authentic source**

### **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')<sup>1</sup>, and in particular Article 42(1) thereof,

### **HAS ADOPTED THE FOLLOWING FORMAL COMMENTS:**

#### **1. Introduction and background**

1. On 10 December 2024, the European Commission consulted the EDPS on the draft Commission Implementing Regulation laying down rules for the application of Regulation (EU) No 910/2014<sup>2</sup> as regards qualified electronic attestations of attributes and electronic attestations of attributes provided by or on behalf of a public sector body responsible for an authentic source ('the draft implementing regulation').
2. The objective of the draft implementing regulation is to define rules for qualified electronic attestations of attributes and electronic attestations of the attributes issued by or on behalf of a public sector body responsible for an authentic source, including on the revocability and on the measures to compensate the risks related to non-revocability of qualified electronic attestations of attributes and electronic attestations of attributes issued by or on behalf of a public sector body responsible for an authentic source<sup>3</sup>. In particular, the draft implementing regulation lays down the reference standards, specifications and procedures relating to<sup>4</sup>:
  - a) qualified electronic attestations of attributes;

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<sup>1</sup> OJ L 295, 21.11.2018, p. 39.

<sup>2</sup> Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

<sup>3</sup> Recital 4 of the draft implementing regulation.

<sup>4</sup> Article 1 of the draft implementing regulation.

- b) electronic attestations of attributes issued by or on behalf of a public sector body responsible for an authentic source;
  - c) the list of providers of electronic attestation of attributes issued by or on behalf of a public sector body responsible for an authentic source;
  - d) catalogues of attributes and schemes for the attestations of attributes;
  - e) the verification of attributes against authentic sources or designated intermediaries.
3. The draft implementing regulation is adopted pursuant to Articles 45d(5), 45e(2), 45f(6) and 45f(7) of Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC.
  4. The EDPS previously issued formal comments on the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 910/2014 as regards establishing a framework for a European Digital Identity<sup>5</sup>.
  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 implementing 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 acts<sup>6</sup>.
  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 implementing regulation that are relevant from a data protection perspective.

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<sup>5</sup> [Formal comments of the EDPS on the Proposal for a Regulation of the European Parliament and of the Council amending Regulation \(EU\) No 910/2014 as regards establishing a framework for a European Digital Identity, issued on 28 July 2021.](#)

<sup>6</sup> 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.

## 2. Comments

8. The EDPS welcomes Recital 2 of the draft implementing regulation, confirming that Regulation (EU) 2016/679<sup>7</sup> ('GDPR') and, where relevant, Directive 2002/58/EC<sup>8</sup> apply to the personal data processing activities under the draft implementing regulation.
9. The EDPS further welcomes Recital 10 of the draft implementing regulation, recalling that in case personal data is processed for the purposes of the catalogue of attributes or the catalogue of schemes for the attestation of attribute, the Commission should manage the catalogues in compliance with the applicable data protection legislation, such as the EUDPR. The EDPS notes, however, that the implementation of Article 5 and 6 of the draft implementing regulation may also entail processing of personal data (these articles concern the notifications by Member States of information on providers of electronic attestations of attributes, as well as the publication by the Commission of the list of providers of electronic attestations of attributes)<sup>9</sup>. Therefore, the EDPS recommends specifying in Recital 10, in broader terms, that the EUDPR applies to the processing of personal data by the Commission pursuant to the draft implementing regulation, and *in particular* when personal data is processed for the purposes of managing the catalogue of attributes or the catalogue of schemes for the attestation of attribute, as provided in Articles 7 and 8 of the draft implementing regulation.
10. In previous formal comments<sup>10</sup>, the EDPS noted that harmonised specifications of which data elements are appropriate for certain intended use(s) (use-case(s)) could help to address excessive access requests. The definition of the permissible attribute requests would not only address the legal certainty and interoperability issues, but also enhance user's control on their data and mitigate risks of 'request fatigue' for wallet users.

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<sup>7</sup> Regulation (EU) No 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).

<sup>8</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

<sup>9</sup> Pursuant to Article 5 of the draft implementing regulation the Commission must make available to Member States a secure electronic notification system, enabling Member States to notify information on providers of electronic attestations of attributes by or on behalf of a public sector body responsible for an authentic source. Member States must submit, through the secure electronic notification system, the information specified in Annex III, which includes data which may be constitute personal data within the meaning of Article 4(1) GDPR and Article 3(1) EUDPR, such as the contact email and contact phone number of the issuer.

<sup>10</sup> [EDPS Formal comments on the draft Commission Implementing Regulation \(EU\) laying down rules for the application of Regulation \(EU\) No 910/2014 of the European Parliament and of the Council, as regards the integrity and core functionalities of European Digital Identity Wallets](#), paragraph 31. The draft implementing regulation which forms the subject matter of these formal comments has been adopted as Commission Regulation (EU) 2024/2979 of 28 November 2024 (OJ L, 4.12.2024).

11. The EDPS points out that the current version of the Architecture and Reference Framework<sup>11</sup> refers to three methods to manage the revocation of person identification data and electronic attestation of attributes: (i) the use of attestations with expiration of 24 hours; (ii) the use an attestation status list mechanism; (iii) the use of an attestation revocation list mechanism.
12. The reference to “*validity status management*” in Article 4(1) of the draft implementing regulation might seem to favour (only refer to) revocation management methods relying on validity status (such as the attestation status list) over the two alternatives referred to in the Architecture and Reference Framework. Therefore, the EDPS recommends to clarify, by way of a recital, that there may be different methods to manage the revocation or validity status of electronic attestations of attributes.
13. The EDPS welcomes that Article 4(1) of the draft implementing regulation requires providers of qualified electronic attestations of attributes and electronic attestations of attributes issued by or on behalf of a public sector body responsible for an authentic source to have written and publicly accessible policies relating to validity status management.

Brussels, 31 January 2025

*(e-signed)*

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<sup>11</sup> [Architecture and Reference Framework - ARF v. 1.4.1](#) issued on 11 September, 2024. See also [the Discussion Paper for eIDAS Coordination Group regarding Topic A: Privacy risks and mitigation](#), version 1.0, updated on 14 January 2025.