

EDPS Formal comments on the draft Commission Delegated Regulation supplementing Regulation (EU) 2023/956 of the European Parliament and of the Council by specifying the conditions for granting accreditation to verifiers, for the control and oversight of accredited verifiers, for the withdrawal of accreditation and for mutual recognition and peer evaluation of accreditation bodies

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 Community institutions and bodies and on the free movement of such data ('EUDPR')¹, and in particular Article 42(1) thereof,

HAS ADOPTED THE FOLLOWING FORMAL COMMENTS:

1. Introduction and background

1. On 6 of November 2025 the European Commission consulted the EDPS on the draft Commission Delegated Regulation supplementing Regulation (EU) 2023/956² of the European Parliament and of the Council by specifying the conditions for granting accreditation to verifiers, for the control and oversight of accredited verifiers, for the withdrawal of accreditation and for mutual recognition and peer evaluation of accreditation bodies ('the draft Delegated Regulation').
2. Pursuant to Regulation (EU) 2023/956, where embedded emissions in goods imported into the customs territory of the Union from 2026 are determined based on actual values, they are to be verified by a verifier. The objective of the draft Delegated Regulation is to lay down requirements for the competence of verifiers and the activities which they need to be able to perform once accredited³ and to specify the competence requirements and activities which verifiers are to carry out pursuant to this draft Delegated Regulation, in a similar fashion as for the activities and requirements provided under the EU Emissions Trading System ('EU ETS')⁴

¹ OJ L 295, 21.11.2018, p. 39.

² Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism, OJ L 130, 16.5.2023, p. 52.

³ Recital 3 of the draft Proposal.

⁴ Recital 4 of the draft Proposal.

established under Directive 2003/87/EC of the European Parliament and of the Council.

3. The draft Delegated Regulation is adopted pursuant to Article 18(3) of Regulation (EU) 2023/956.
4. The present formal comments of the EDPS are issued in response to a consultation by the European Commission pursuant to Article 42(1) of Regulation 2018/1725⁵ ('EUDPR').
5. 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 acts⁶.
6. 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

7. The EDPS notes that the draft Delegated Regulation would entail the processing of a limited amount of personal data. In particular, when the applicant shall make available to the national accreditation body the necessary documentation, such documentation would include a list of the technical experts in verification and key personnel involved in the verification of operators' emissions reports⁷. Similarly, verifiers are expected to send to the national accreditation body that has accredited them the names of the members of the verification team⁸.

⁵ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons 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, OJ, 21.11.2018, L.295, p. 39.

⁶ 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.

⁷ Article 3(4)(d) of the draft Proposal.

⁸ Article 22(1)(c) of the draft Proposal.

8. For the sake of completeness, the EDPS recalls that the even the data concerning legal persons may in some cases be considered as personal data, as clarified by the CJEU⁹.
9. Against this background, the EDPS recommends adding a recital to the draft Delegated Regulation recalling that, when personal data are processed in the context of the application of the draft Delegated Regulation, Regulation 2016/679¹⁰ ('the GDPR') applies.
10. The EDPS further notes that Article 21 and Article 22 of the draft Delegated Regulation would require competent authorities and verifiers to exchange information, including personal data¹¹, with the competent national accreditation body. The EDPS understands that these exchanges are necessary to allow the accreditation bodies to perform their ongoing surveillance or oversight function as set out in Regulation (EU) 2018/2067¹², to which Article 18(2) of the Regulation (EU) 2023/956 refers¹³.
11. The EDPS also notes the absence of a reference to the consultation of the EDPS pursuant to Article 42(1) EUDPR in a recital of the draft Delegated Regulation. Therefore, the EDPS recommends adding such reference in a recital of the draft Delegated Regulation.
12. The EDPS remains available for any further advice needed.

Brussels, 13 November 2025

(e-signed)

Wojciech Rafał WIEWIÓROWSKI

⁹ See Judgment of the European Court of Justice of 9 November 2010, Volker und Markus Schecke GbR and Hartmut Eifert v Land Hessen, Joint Cases C-92/09 and C-93/09, ECLI:EU:C:2010:662, paragraph 53. In these cases, the determining factor is whether the information 'relates to' an 'identifiable' natural person.

¹⁰ 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, pp. 1–88.

¹¹ Article 22(1)(c) of the draft Proposal.

¹² Commission Implementing Regulation (EU) 2018/2067 of 19 December 2018 on the verification of data and on the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council (Text with EEA relevance.), OJ L 334, 31.12.2018, p. 94–134.

¹³ Article 18(2) of the Regulation (EU) 2023/956 states that "A national accreditation body may, on request, accredit a legal person to be a verifier for the purpose of this Regulation where it considers, on the basis of the documentation submitted to it, that such person has the capacity to apply the verification principles referred to in Annex VI when performing the tasks of verification of the embedded emissions pursuant to Articles 8 and 10. Where the legal person is accredited in accordance with Implementing Regulation (EU) 2018/2067 for a relevant group of activities, the national accreditation body shall take such accreditation into account for the assessment of the qualifications of an accredited verifier that are necessary to perform the verification for the purpose of this Regulation."