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INFORMATION

From:	General Secretariat of the Council
To:	Working Party on the Environment
N° Cion doc.:	ST 8042 2022 INIT + ADD 1 + ADD 2 + ADD 3 + ADD 4 + ADD 5
Subject:	F-gases Regulation: Formal Comments of the European Data Protection Supervisor on the Commission Proposal

Delegations will find attached, for information, a letter from the European Data Protection Supervisor which contains the above-mentioned formal comments on the proposal for F-gases regulation.



EDPS
EUROPEAN DATA PROTECTION SUPERVISOR

IM 005319 2022
23.05.2022

WOJCIECH RAFAŁ WIEWIÓROWSKI
SUPERVISOR

E-MAIL

H.E. Philippe LEGLISE-COSTA
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Presidency of the Council of the
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Brussels, 23 May 2022
WRW/NS/asj/D(2022)0993 C2022-0423
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Subject: Formal Comments¹ of the European Data Protection Supervisor on the Proposal for a Regulation of the European Parliament and of the Council on fluorinated greenhouse gases, amending Directive (EU) 2019/1937 and repealing Regulation (EU) No 517/2014

Your Excellency,
Mr Secretary-General,

Having regard to Article 42(1) of 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, please find enclosed Formal Comments on the Proposal for a Regulation of the European Parliament and of the Council on fluorinated greenhouse gases, amending Directive (EU) 2019/1937 and repealing Regulation (EU) No 517/2014.

We have sent a copy of these Formal Comments to the President of the European Commission and the President of the European Parliament.

Yours sincerely,

(e-signed)

Wojciech Rafał WIEWIÓROWSKI

Encl.: Formal Comments

Cc: Mr Serge DE BIOLLEY, Director for Justice, General Secretariat of the Council

Contact persons: [REDACTED]

¹Article 20(1) of the EDPS Rules of Procedure provide that "In response to requests from the Commission pursuant to Article 42(1) of the Regulation, the EDPS shall issue opinions or formal comments."



EDPS Formal comments on the Proposal for a Regulation of the European Parliament and of the Council on fluorinated greenhouse gases, amending Directive (EU) 2019/1937 and repealing Regulation (EU) No 517/2014

1. Introduction and background

1. On 5 April 2022, the European Commission issued a Proposal for a Regulation of the European Parliament and of the Council on fluorinated greenhouse gases, amending Directive (EU) 2019/1937 and repealing Regulation (EU) No 517/2014 ('the Proposal')¹.
2. The objective of the Proposal is to ensure that the fluorinated greenhouse gases policy is aligned with the objectives set out in the European Green Deal, the Kigali Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer and the Paris Agreement on Climate Change. The Proposal aims to contribute to the 2030 Agenda for Sustainable Development and its Sustainable Development Goals, most prominently to "fight climate change". The Proposal would replace Regulation (EU) No 517/2014² of the European Parliament and of the Council that was adopted to reverse the increase in fluorinated greenhouse gas emissions³.
3. The present formal comments of the EDPS are issued in response to a consultation by the European Commission of 6 April 2022, pursuant to Article 42(1) of Regulation 2018/1725⁴ ('EUDPR'). The EDPS welcomes the reference to this consultation in Recital 43 of the Proposal.
4. 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.
5. 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 Proposal that are relevant from a data protection perspective.

¹ COM(2022) 150 final.

² Regulation (EU) No 517/2014 of the European Parliament and of the Council of 16 April 2014 on fluorinated greenhouse gases (OJ L 150, 20.5.2014, p. 195).

³ COM(2022) 150 final, p. 6.

⁴ 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, L295, p. 39).

2. Comments

6. The EDPS understands that this Proposal would entail processing of personal data. For instance, Article 10 of the Proposal would require establishing or adapting certification programmes, including evaluation processes, and ensure that training on practical skills and theoretical knowledge is available for natural persons carrying out the following tasks involving fluorinated greenhouse gases. This trainings would undoubtedly involve processing of personal data, such as the full name of natural persons attending that training. In addition, Article 20 of the Proposal would require the Commission to set up and operate an electronic system for the management of the quota system, licensing of imports and exports and reporting ('F-gas Portal')⁵.
7. The EDPS welcomes recital 42 of the Proposal confirming that the protection of individuals with regard to the processing of personal data by the Member States is governed by Regulation (EU) No 2016/679⁶ ('GDPR') and the protection of individuals with regard to the processing of personal data by the Commission is governed by the EUDPR.
8. The EDPS notes that the Proposal envisages the interconnection of the F-gas Portal with the European Single Window Environment for Customs, in order to ensure automatic, real-time, customs controls, at shipment level as well as an electronic exchange and storing of information on all shipments of fluorinated greenhouse gases and the concerned products and equipment presented to customs. In this regard, the EDPS would like to recall his Formal Comments on the Commission Proposal for a Regulation establishing the European Union Single Window Environment for Customs⁷. In addition, the EDPS understands that by interconnection of the F-gas Portal with the European Union Single Window Environment for Customs, any processing of personal data in the F-gas Portal would also be subject to the provisions concerning data protection contained in the Regulation for European Union Single

⁵ The EDPS recalls that even the data concerning legal persons may, in some cases, be considered as personal data, as clarified by the CJEU (see judgment of Court of Justice of European Union of 9 November 2010, *Volker und Markus Schecke Gbr and Hartmut Eifert v. Land Hessen*, Joined Cases C-92/09 and C-93/09, ECLI:EU:C:2010:662 at paragraph 53, where the CJEU considered that legal persons can claim the protection of Articles 7 and 8 of the Charter in so far as the official title of the legal person identifies one or more natural persons). In these cases, the determining factor is whether the information 'relates to' an 'identifiable' natural person. Consequently, personal data would normally be processed in all cases where the information concerning a producer, importer or exporter relates to an identified or identifiable individual.

⁶ 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 (OJ L 119, 4.5.2016, p. 1).

⁷ [EDPS formal comments on a Proposal for a Regulation of the European Parliament and of the Council establishing the European Union Single Window Environment for Customs and amending Regulation \(EU\) No 952/2013](#), issued on 20 November 2020.

Window Environments for Customs⁸. For the avoidance of doubt, the EDPS suggests to confirm this by way of a recital in the Proposal. If this would not be the case, the EDPS recommends introducing similar provisions in the enacting terms of this Proposal.

9. Given the subject matter and the provisions of the Proposal, which do not raise significant issues having regard to the protection of personal data, the EDPS has no further comments on the Proposal.

Brussels, 23 May 2022

(e-signed)

Wojciech Rafał WIEWIÓROWSKI

⁸ See Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the European Union Single Window Environment for Customs and amending Regulation (EU) No 952/2013 (COM(2020) 673 final), in particular Articles 6, 7 and 9 thereof.