



EDPS Formal comments on the draft Commission Delegated Regulation on supplementing Regulation (EC) No 767/2008 of the European Parliament and of the Council concerning the Visa Information System (VIS) and the exchange of information between Member States on short-stay visas, long-stay visas and residence permits as regards the predetermined list of occupations (job groups)

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 8 November 2022 the European Commission consulted the EDPS on the draft 'Commission Delegated Regulation on supplementing Regulation (EC) No 767/2008 of the European Parliament and of the Council concerning the Visa Information System (VIS) and the exchange of information between Member States on short-stay visas, long-stay visas and residence permits as regards the predetermined list of occupations (job groups)' ('the draft Proposal').
2. The objective of the draft Proposal is to lay down the predetermined list of occupations (job groups) that visa authorities should use when entering information about the current occupation of visa applicants in the VIS application file. This information should be taken from the visa application form, in accordance with Article 9(4)(l) of Regulation (EC) No 767/2008.
3. The draft Proposal is adopted pursuant to the last paragraph of Article 9(7) of Regulation (EC) No 767/2008.
4. The EDPS previously issued the EDPS formal comments on the draft Commission Delegated Regulation laying down the predetermined list of job groups used in the application form, pursuant to Article 17(3) of Regulation (EU) 2018/1240 of the

¹OJ L 295, 21.11.2018, p. 39.

European Parliament and of the Council². These formal comments are relevant for the present draft Proposal because they addressed the draft (now adopted) Delegated Regulation establishing the predetermined list of job groups used in the ETIAS application form³.

5. The present formal comments of the EDPS are issued in response to a consultation by the European Commission of 8 November 2022, pursuant to Article 42(1) of Regulation 2018/1725⁴ ('EUDPR'). In this regard, the EDPS welcomes the reference to this consultation in Recital 11 of the Proposal.
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 Proposal that are relevant from a data protection perspective.

2. Comments

2.1. Selection of job groups

The EDPS notes that the draft Delegated Regulation would introduce in Annex I a predetermined list of job groups based on the major, sub-major, minor and unit groups of

² https://edps.europa.eu/data-protection/our-work/publications/comments/commission-delegated-regulation-laying-down_en.

³ Commission Delegated Regulation (EU) 2021/916 of 12 March 2021 supplementing Regulation (EU) 2018/1240 of the European Parliament and of the Council establishing a European Travel Information and Authorisation System (ETIAS) as regards the predetermined list of job groups used in the application form, C/2021/1574, OJ L 201, 8.6.2021, p. 1, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32021R0916&from=EN>.

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, L.295, p. 39.

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 it 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.

the International Standard Classification of Occupations 2008 (ISCO-08). A similar approach has been put in place for the definition of the predetermined list of job groups in the framework of ETIAS. The EDPS already expressed his concerns with regard to the need to use the minor and unit groups of such standard, which however were not addressed and remain relevant in the present context⁶.

Similarly to the ETIAS Regulation⁷, the VIS Regulation establishes that information on the applicants' current occupation is processed for two main purposes. First, according to Article 9j (4)(f), the information on the applicants' current occupation is one of the data used by the ETIAS Central Unit to establish specific risk indicators. These specific risk indicators are compared against the data recorded in an application file by means of an algorithm enabling the profiling of applicants, to identify persons who may be otherwise unknown to responsible authorities of the Member States but are assumed to be of interest for irregular migration, security or public health purposes. Second, in line with Article 45a of the VIS Regulation (as amended by Regulation (EU) 2021/1134), duly authorised staff of the competent authorities of Member States, the Commission, eu-LISA, EASO and the European Border and Coast Guard Agency, including the ETIAS Central Unit consult information on applicants' current occupation for reporting and statistical purposes.

Taking into account the purposes for which information on the occupation of applicants is processed and the fact that no justification is brought forward with regard to the need to further specify the applicants' minor and unit group, the EDPS recommends limiting the list of job groups to the major and sub-major groups.

The suggestion to limit the predetermined list of job to these two categories is further supported by the fact that although the predetermined list of job groups is based on an international standard, it does not fully reflect the occupation classifications of individual countries. For instance, the profession of data protection officer is not included. As a consequence, introducing a level of granularity that corresponds to the minor and unit group of the ISCO-08 increases the risk of processing inaccurate and/or unnecessary data in relation to the purposes for which they are processed. Should the necessity to keep all four job groups be demonstrated, then the EDPS recommends specifying in a recital under what circumstances the relevant authorities must select the minor or unit groups.

2.1. Other comments

The EDPS notes that Recital 2 refers to the 'VIS application form'. Although some of the data introduced in the application form by the applicants will indeed be stored in the VIS, the

⁶ https://edps.europa.eu/data-protection/our-work/publications/comments/commission-delegated-regulation-laying-down_en.

⁷ Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226, OJ L 236, 19.9.2018, p. 1.

EDPS points out that it is not a VIS application form but rather an application form for visas. Therefore, to avoid confusion over the purpose of the application form in question, the EDPS recommends changing the text and instead referring to 'visa application form'.

Finally, the EDPS would like to point out a clerical mistake with regard to the requirements laid down in Article 1(4) and Article 1(5) of the draft Delegated Regulation. More specifically, Article 1(4) of the draft Delegated Regulation specifies that "Where the visa authority chooses point (a) or **point (b)** of paragraph 3 [of Article 1 the draft delegated regulation], the visa authority **shall select the current occupation of the applicant from the predetermined list of job groups** laid down in the Annex." At the same time Article 1(5) of the draft Delegated Regulation states that "Where the visa authority chooses **point (b)**, (c) or (e) of paragraph 3 [of Article 1 the draft delegated regulation], the visa authority **shall not select any occupation from the predetermined list of job groups** laid down in the Annex" (*emphasis added*). The EDPS recommends the Commission to modify the provision so as to remove any potential contradiction.

Brussels, 2 December 2022

(e-signed)

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