

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 European Parliament and of the Council

1. Introduction and background

The European Travel Information and Authorisation System (ETIAS) has been established by Regulation (EU) 2018/1240¹ (the ETIAS Regulation) and requires all visa-exempt third country nationals to apply online for travel authorisation prior to the date of their departure to the Schengen area.

One of the personal data that applicants are required to provide when filling in the ETIAS application form is the current occupation. When applicants select the option “employed” or “self-employed” they shall select their current occupation (job group) from a predetermined list.

Pursuant to Article 17(3) of the ETIAS Regulation, the Commission has been empowered to adopt delegated acts to lay down this predetermined list of job groups as well as rules on introducing modifications to that list.

The present formal comments of the EDPS are issued in response to the legislative consultation by the European Commission pursuant to Article 42 (1) of Regulation 2018/1725.² In this regard the EDPS welcomes the reference to this consultation in Recital 11 of the draft Delegated Regulation.

2. Comments

The EDPS notes that the draft Delegated Regulation introduces in Annex I a predetermined list of job groups based on the Major, Sub-major, Minor and Unit Groups of the International Standard Classification of Occupations 2008 (ISCO-08) and that, according to Article 1(2) of the draft Delegated Regulation, applicants are required to select at least the relevant Major and Sub-major Group. Applicants may be required to further specify the Minor and Unit Group, although the circumstances under which this might be necessary are not laid down in the draft Delegated Regulation.

According to the ETIAS Regulation, information on the applicants’ current occupation is processed for two main purposes. First, according to Article 33(4)(d), 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

¹ 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. 1–71.

² 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 (Regulation 2018/1725).

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 84 of the ETIAS Regulation, duly authorised staff of the competent authorities of Member States, the Commission, eu-LISA and 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 the European Commission to limit 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 the ETIAS Regulation provides in Article 17(2)(i) for the possibility to provide additional information on the exact job title of applicants, where the application is subject to the manual processing. Not only does this approach limit the collection of more detailed information to those cases where further analysis is required, but it also represents the most accurate way for applicants to provide their exact job title.

Therefore, to limit the risk of processing inaccurate data, and ensure that the personal data is adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed, the EDPS invites the European Commission to consider the possibility of limiting the predetermined list of job groups used in the application form included in Annex I of the draft Delegated Regulation to the Major and Sub-major Groups. Should the necessity to keep all four job groups be demonstrated, the EDPS recommends specifying under what circumstances applicants should select the Minor and Unit Groups.

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