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COVER NOTE

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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
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Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 5.4.2023 supplementing Regulation (EC) No 767/2008 of the European Parliament and of the Council as regards the predetermined list of occupations for the purposes of the Visa Information System

Delegations will find attached document C(2023) 2260 final.

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COMMISSION DELEGATED REGULATION (EU) .../...

of 5.4.2023

supplementing Regulation (EC) No 767/2008 of the European Parliament and of the Council as regards the predetermined list of occupations for the purposes of the Visa Information System

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

On 7 July 2021, two Regulations were adopted which amended Regulation (EC) No 767/2008 concerning the Visa Information System (VIS) and the exchange of information between Member States on short-stay visas, long-stay visas and residence permits. These two Regulations are Regulation (EU) 2021/1134 for the purpose of reforming the Visa Information System, and Regulation (EU) 2021/1152 as regards the establishment of conditions for accessing other EU information systems for the purposes of the European Travel Information and Authorisation System.

The amended VIS Regulation requires the Commission to adopt delegated acts. In particular, pursuant to Article 9, third paragraph of Regulation (EC) No 767/2008, the Commission is delegated the task to lay down the pre-determined list of occupations (job groups).

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The Commission expert group on information systems for borders and security – Sub-Group on Visa Information System was established. All Member States were presented with an opportunity to nominate experts to participate in the VIS Subgroup of the Expert Group on Information systems for Borders and Security, in accordance with Article 48a(4) of Regulation (EC) No 767/2008 and with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. As a result, the Commission Delegated Regulation was developed on the basis of the input given by experts of the Member States in the framework of the above-mentioned Expert Group.

This Expert Group was consulted for the first time on 24th September 2021. The experts were also given the opportunity to provide the Commission with written comments. A revised version of this Regulation, on the basis of the feedback received, was presented to the Expert Group on 24 September 2022. On 23 January 2023, the draft was further discussed and updated accordingly, after which the text was considered final by the experts and by the Commission.

In addition, the European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice ('eu-LISA') advised the Commission regarding the technical needs and feasibility of the measure proposed.

Additionally, the European Data Protection Supervisor was consulted before adopted to ensure the respect of Data Protection provisions.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

In accordance with Article 9, first paragraph, point (4)(l) of Regulation (EC) No 767/2008 the data to be entered in the application file shall contain the current occupation (job group), taken from the application form. The visa authority shall enter the occupation in the application file by selecting the occupation provided by the applicant from a predefined list of occupations. The Commission is to adopt a delegated act to define that predetermined list of occupations (job group).

The Regulation conforms to the principle of proportionality in that it is limited to requesting minimum information required to establish the occupation of the applicant.

The Regulation is without prejudice to Directive 2004/38/EC¹.

The Regulation is without prejudice to Part Two of the EU-UK Withdrawal Agreement².

¹ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).

² Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ L 29, 31.1.2020, p. 7).

COMMISSION DELEGATED REGULATION (EU) .../...

of 5.4.2023

supplementing Regulation (EC) No 767/2008 of the European Parliament and of the Council as regards the predetermined list of occupations for the purposes of the Visa Information System

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of information between Member States on short-stay visas, long-stay visas and residence permits (VIS Regulation)³, and in particular Article 9, third paragraph, thereof,

Whereas:

- (1) Regulation (EC) No 767/2008 establishes the Visa Information System (VIS) and defines the purpose and functionalities of, and the responsibilities for the system. That Regulation sets up conditions and procedures for the exchange of data between Member States on short-stay visas, long-stay visas and residence permits.
- (2) As part of the application form for short-stay visas to be completed by each applicant, applicants are to provide personal data related to their current occupation. When entering data in the application file pursuant to Article 9 of Regulation (EC) No 767/2008, the occupation is to be entered by selecting the occupation from a predetermined list of occupations (job group).
- (3) A predetermined list of job groups should thus be laid down for the purposes of the VIS. The list should use the International Standard Classification of Occupations (ISCO) adopted by the International Labour Organisation. In order to ensure that data on applicants' occupations is sufficiently specific, the visa authority should be required to select job groups to at least level 2 (sub-major group) of the Standard, but also to levels 3 (minor group) or 4 (unit group), where available.
- (4) The data field on the applicant's current occupation in the VIS application file should ensure that only relevant options are displayed and actively assist the visa authority in finding the job group by filtering options on the basis of previous selections made.
- (5) Specific provisions apply to third-country nationals subject to a visa requirement, who are family members of citizens of the Union to whom Directive 2004/38/EC of the European Parliament and of the Council⁴ applies or of third-country nationals enjoying

³ OJ L 218 13.8.2008, p. 60.

⁴ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the

the right of free movement equivalent to that of Union citizens under an agreement between the Union and its Member States, on the one hand, and a third country, on the other, and who do not hold a residence card pursuant to Directive 2004/38/EC. Similarly, the predetermined list of current occupations (job groups) should not apply to family members of UK nationals who are themselves beneficiaries of the EU-UK Withdrawal Agreement in the host State for which the visa application is made.

- (6) Given that Regulation (EU) 2021/1134 of the European Parliament and of the Council⁵ builds upon the Schengen *acquis*, Denmark, in accordance with Article 4 of Protocol No 22 on the Position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, notified the implementation of Regulation (EU) 2021/1134 in its national law. Denmark is therefore, bound by this Regulation.
- (7) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part⁶. Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (8) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis*⁷, which fall within the area referred to in Article 1, point B of Council Decision 1999/437/EC⁸.
- (9) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*⁹, which fall within the area referred to in Article 1, point B of Decision 1999/437/EC, read in conjunction with Article 3 of Council Decision 2008/146/EC¹⁰.

Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).

⁵ Regulation (EU) 2021/1134 of the European Parliament and of the Council of 7 July 2021 amending Regulations (EC) No 767/2008, (EC) No 810/2009, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1860, (EU) 2018/1861, (EU) 2019/817 and (EU) 2019/1896 of the European Parliament and of the Council and repealing Council Decisions 2004/512/EC and 2008/633/JHA, for the purpose of reforming the Visa Information System (OJ L 248, 13.7.2021, p. 11).

⁶ This Regulation falls outside the scope of the measures provided for in Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20).

⁷ OJ L 176, 10.7.1999, p. 36.

⁸ Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* (OJ L 176, 10.7.1999, p. 31).

⁹ OJ L 53, 27.2.2008, p. 52.

¹⁰ Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 1).

- (10) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*¹¹ which fall within the area referred to in Article 1, point B of Council Decision 1999/437/EC, read in conjunction with Article 3 of Council Decision 2011/350/EU¹².
- (11) This Regulation constitutes an act building upon, or otherwise relating to, the Schengen *acquis* within, respectively, the meaning of Article 3(2) of the 2003 Act of Accession and Article 4(2) of the 2005 Act of Accession.
- (12) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council¹³ and delivered an opinion on 2 December 2022,

HAS ADOPTED THIS REGULATION:

Article 1
Current occupation

1. Pursuant to Article 9, first paragraph, point (4)(l) of Regulation (EC) No 767/2008 for the completion of the current occupation data field in the application file, the visa authority shall choose one of the following options:
 - (a) employed;
 - (b) self-employed;
 - (c) unemployed / not employed;
 - (d) retired;
 - (e) student.
2. Where the visa authority chooses point (a) or point (b) of paragraph 1, the visa authority shall select the current occupation of the applicant from the predetermined list of job groups laid down in the Annex.

¹¹ OJ L 160, 18.6.2011, p. 21.

¹² Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

¹³ 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 L 295, 21.11.2018, p. 39).

3. Where the visa authority chooses point (c), (d) or (e) of paragraph 1, the visa authority shall not select any occupation from the predetermined list of job groups laid down in the Annex.
4. Where the applicant is a minor, only the options in points (a), (b), (c) or (e) of paragraph 1 shall be visible and available for selection.
5. The data field on the applicant's current occupation in the VIS application file shall assist the visa authority in finding the relevant job group by filtering options on the basis of previous options selected.

Article 2
Entry into force and applicability

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

The provisions in this Regulation shall apply from the date of the start of operations of the VIS pursuant to Article 11 of Regulation (EU) 2021/1134.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels, 5.4.2023

For the Commission
The President
Ursula VON DER LEYEN