



## **EDPS Formal comments on the draft Commission Delegated Decision laying down the measures for flagging pursuant to Articles 36(4) and 39(2) of Regulation (EU) 2018/1240 of the European Parliament and of the Council**

### **1. Introduction and background**

According to Article 36 of regulation (EU) 2018/1240, the responsible ETIAS National Unit of the Member States may decide to issue a travel authorisation with a “doubts to be lifted flag” or “false hit/no grounds for refusal flag”, or with a combination of both flags. The first type of flag, is attached to a travel authorisation to recommend border authorities to proceed with a second line check. The second type flag is attached to a travel authorisation to indicate to border authorities that a hit was triggered during the processing of the application, but that either it constitutes a false hit or it is accurate but there are no grounds for refusal of the travel authorisation. The second type of flag should specify how the hit triggered was assessed and should be used to prevent conflict with alerts in other information systems. The responsible ETIAS National Units may also attach such flags upon the request of a consulted Member State.

Pursuant to Article 36(4) of Regulation (EU) 2018/1240, the Commission has been empowered to adopt delegated acts to avoid conflicts with alerts in other information systems and to define the conditions, the criteria and the duration of flagging. Furthermore, pursuant to Article 39(2) of Regulation (EU) 2018/1240, the Commission has been empowered to adopt delegated acts in order to further define the type of additional information that may be added to a flag, its language and formats, as well as the reasons for the flags.

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.<sup>1</sup> In this regard the EDPS welcomes the reference to this consultation in Recital 12 of the draft Delegated Decision.

### **2. Comments**

The draft Delegated Decision, laying down the measures for flagging pursuant to Articles 36(4) and 39(2) of Regulation (EU) 2018/1240, does not contain provisions which would raise concerns having regard to the right to the protection of personal data.

In light of the above, the EDPS has no recommendations to be made with regard to the draft Delegated Decision.

Brussels, 4 September 2020

**[e-signed]**  
**Wojciech Rafał WIEWIÓROWSKI**

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<sup>1</sup> 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).