

Consultation

The impact of the use of body scanners in the field of aviation security on human rights, privacy, personal dignity, health and data protection

Background

On 11 March 2008 Regulation (EC) No 300/2008 of the European Parliament and of the Council on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002¹ was adopted. The aim of this Regulation is to protect persons and goods within the European Union by preventing acts of unlawful interference with civil aircraft (e.g. hijack, sabotage of aircraft). One of the means for ensuring this is to screen persons before they enter security restricted areas at airports and board an aircraft.

The Commission is required by Article 4(2) of this Regulation to adopt general measures on aviation security, which must include the 'methods of screening allowed'. One possible method of screening persons at airports is by use of machines known as 'body scanners'. In order to decide whether or not 'body scanners' could be allowed as a method of screening persons at airports and if so, under what conditions, the Commission is carrying out a consultation on the impact of the use of body scanners in the field of aviation security on human rights, privacy, personal dignity, health and data protection.

This consultation is carried out in the light of a Resolution adopted by the European Parliament on 23 October 2008 on the impact of aviation security measures and body scanners on human rights, privacy, personal dignity and data protection.²

The EP Resolution asks the Commission to:

- carry out an impact assessment relating to fundamental rights;
- consult the European Data Protection Supervisor (EDPS), the Article 29 Working Party and the Fundamental Rights Agency (FRA);
- carry out a scientific and medical assessment of the possible health impact of such technologies;
- carry out an economic, commercial and cost-benefit impact assessment.

Body scanners

What are body scanners?

Body scanners produce an image of the body of a person showing whether or not objects are hidden in or under his clothes. The image produced is rather opaque, not of high quality and resembles a photographic negative. For a person to be screened by a body scanner, he must stand still for a few seconds either inside the body scanner (which is the size of a telephone booth) or directly in front of it.

Are there different types of body scanners?

There are various technologies of body scanners being developed. The most advanced technologies are:

- millimetre wave, using radio waves equivalent to 0.01% of the permissible dosage for mobile phones;
- backscatter, using low dosage x-rays equivalent to 2% of the dosage of radiation experienced by a passenger during a long-haul flight

¹ OJ L97, 9.4.2008, p. 72.

² EP Resolution (2008)0521

- t-ray, using terahertz radiation which lies between infrared light and microwaves on the electromagnetic spectrum.

The term 'body scanner' is used generically to cover all these various technologies.

Why are body scanners under consideration for possible use in the field of aviation security?

A weakness in aviation security today is the detection of non-metallic items. All passengers normally pass through walk-through metal detectors (WTMD) which should ensure that guns and knives (and some other prohibited items) are detected. If the WTMD alarms, this alarm is often resolved with a hand-held metal detector (HHMD). The use of metal detectors is complemented by selecting passengers for a hand search.

The combination of metal detectors and hand searches is currently the optimal means of detecting concealed prohibited items. However, the quality of hand searches is very variable at Community airports, as has been seen by the Commission as part of its compliance monitoring programme of airport inspections (in accordance with Article 7(2) of Regulation (EC) No 2320/2002). Furthermore, passengers often find hand searches intrusive and upsetting to their dignity. Finally, the hand searching of passengers is time-consuming and labour-intensive, making it expensive to perform.

Since body scanners can detect any item concealed on a person's body or in or under his clothes, they could be used as an alternative to the existing means of screening passengers.

Consultation

Questionnaire

In order to address the issues raised by the European Parliament in its Resolution, questions as set out below have been developed for consultation of interested parties, including the European Data Protection Supervisor (EDPS), the Article 29 Working Party and the Fundamental Rights Agency (FRA).

The Commission is kindly requesting you to respond to the questions below to the extent possible and as concisely as possible. You are not obliged to answer all questions. For example, the EDPS may choose to ignore the questions raised in part II on the detection capabilities of body scanners, whereas equipment manufacturers would be in the position to answer these questions.

Responses to the questions below should be provided **by Friday 19 December 2008** at the latest by e-mail to the dedicated mailbox:

tren-bodyscanners@ec.europa.eu

Body Scanners Task Force

In addition to the questionnaire, the Commission is organising a 'public-private dialogue' that will take the form of a Body Scanners Task Force. **The first meeting of the Body Scanners Task Force will take place on Friday 12 December 2008 in Brussels.** The meeting will take place in English only.

If you would like to attend the meeting of the Body Scanners Task Force on Friday 12 December 2008, you are kindly requested to apply for an invitation **by Wednesday 3 December 2008** at the latest by sending an e-mail to the dedicated mailbox:

tren-bodyscanners@ec.europa.eu

In this email you should indicate the name, organisation and e-mail address of the person(s) that would like to attend the Task Force meeting.

Based on the number of requests received, you will by Friday 5 December 2008 at the latest be informed whether or not you can attend the meeting. The Commission will ensure that a

balanced representation of interested parties is allowed to attend the meeting. Please note that only invitation holders will be permitted access to the meeting.

Report

On the basis of these consultations, the Commission will make a report on body scanners and the impact of their use in the field of aviation security on human rights, privacy, personal dignity, health and data protection. The report will address the questions raised by the European Parliament in its Resolution on body scanners. It will also form the basis of whether or not the Commission will bring forward legislation to allow body scanners as a method of screening at airports and/or under what conditions they could be allowed.

Personal data protection statement

1. What is the objective for launching a consultation on the impact of the use of body scanners in the field of aviation security on human rights, privacy, personal dignity, health and data protection?

The objective of this consultation is to collect the views of interested parties.

2. What personal information will be collected and for what purpose?

The following data will be collected: name of the organisation, name of a contact person and e-mail address. The data will identify the respondent, notably in case of multiple replies. In addition, they may serve to interpret the results of the consultation by classifying them according to certain categories.

3. Additional information

The contact data provided by the respondent shall make it possible to contact the organisation to request clarification if necessary on the information supplied. Moreover, the contact data could be used for inviting the relevant organisation to a future meeting of the Body Scanners Task Force.

4. Who has access to your information and to whom is it disclosed?

The contributions will be analysed by Unit F-5 of DG TREN, which deals with aviation security matters. Contributions received may then be used in the abovementioned report to be written by the Commission. The report will contain a list of those organisations that made contributions unless they indicated their wish to remain anonymous. The report will be made publicly available.

5. How do we protect and safeguard your information?

The replies are being kept at the European Commission with access limited to designated Commission officials or agents. In line with Regulation (EC) No 45/2001 on data protection, supervision is being exercised by the European Data Protection Supervisor.

6. How can you verify, modify or delete your information?

You can verify, modify or delete your personal data kept at the European Commission. If you wish to modify or delete your reply, please send a message to the contact address mentioned in paragraph 7 below.

7. Contact information

Please address any issues/questions concerning this document by e-mail to the dedicated mailbox:

tren-bodyscanners@ec.europa.eu

QUESTIONNAIRE

Questions on the impact of the use of body scanners in the field of aviation security on human rights, privacy, personal dignity, health and data protection

I. General information

1.	On behalf of whom are you answering this questionnaire? Please be as precise as possible, e.g. type and name of organisation.
2.	Name: Address: Contact telephone number: E-mail address:

II. Detection capabilities of body scanners

1.	On a scale of 1-10, how would you rate the detection capabilities of body scanners? Please explain your rating. <i>'detection capabilities' means 'being in a position to identify objects hidden in or under a person's clothes'</i> <i>1 = low detection capabilities; 10 = high detection capabilities</i>
2.	On a scale of 1-10, how would you rate the detection capabilities of body scanners when compared to other, existing methods of screening – i.e. walk-through metal detectors (WTMD), hand-held metal detectors (HHMD), hand searches? Please explain your rating. <i>1 = much lower detection capabilities; 5 = equivalent detection capabilities; 10 = much higher detection capabilities</i>
3.	What objects (e.g. type, size, material of object) can be detected on a person when screened by a body scanner?
4.	Please provide any further relevant information on the detection capabilities of body scanners that has not been addressed in the questions above.

III. Fundamental rights - general

1.	Respect for privacy, human dignity as well as protection of personal data are the fundamental rights most often discussed in relation to body scanners. Are there any other fundamental rights that in your opinion could be affected (either positively or negatively) by the use of body scanners?
2.	<p>If at an airport screening point body scanners are used, should the person to be screened be given the choice between a body scanner or other (existing) methods of screening?</p> <ul style="list-style-type: none"> ○ Yes, the person to be screened should be given a choice (so, screening by body scanner on a voluntary, optional basis) ○ No, the person to be screened should not be given a choice (so, screening by body scanner on a mandatory basis)
3.	<p>If the use of body scanners is optional, what information should be given to persons to allow them to make a considered choice about being screened by a body scanner?</p>
	<p>When and where should the person to be screened be informed?</p> <p><i>(e.g. on airline/airport websites, at check-in, at the screening point)</i></p>
4.	<p>Do you consider that the person being screened by a body scanner can be identified solely by the image produced?</p>
	<p>If so, why?</p>
	<p>If not, why not?</p>
5.	<p>On a scale of 1-10, how would you rate the level of intrusion of body scanners with a person's privacy and personal dignity when compared to other, existing methods of screening at airports – i.e. walk-through metal detectors (WTMD), hand-held metal detectors (HHMD), hand searches?</p> <p>Please explain your rating.</p> <p><i>1 = significantly lower level of intrusion; 5 = around the same level of intrusion; 10 = significantly higher level of intrusion</i></p>
6.	<p>If the use of body scanners can replace both the use of metal detectors and hand searches at airport security points, would you welcome their introduction (subject to the rules on the use of body scanners)?</p>

7.	<p>If body scanners were allowed to be used as a means of screening persons, under what conditions should they in your opinion be used in order to address concerns related to fundamental rights?</p> <p>Please describe these conditions in detail, e.g. by describing the procedure to be followed.</p> <p><i>(e.g. 1: only use at remote distance. Screener A (at remote distance of the person being examined) looks at the image and if he notes a suspicious object, he should have radio contact with screener B who is next to the person being examined. Screener B will ask the person being examined to get the suspicious object out of his pocket or he will subject the person to a hand search.)</i></p> <p><i>(e.g. 2: allow persons the choice of being screened by a body scanner or by other, existing means of screening)</i></p>
8.	<p>Should certain categories of persons be automatically exempted / excluded from being screened by body scanner?</p> <p>If so, please give reasons why.</p> <p><i>(e.g. persons under 18, pregnant women, persons with a pacemaker)</i></p>
9.	<p>Please provide any further relevant information on fundamental rights in general that have not been addressed in the questions above, nor in part V on data protection.</p>

IV. Health

1.	<p>What type(s) of technology is (are) used by the body scanners that you have examined, use and/or produce?</p> <ul style="list-style-type: none">➤ Millimetre wave;➤ Backscatter / x-ray;➤ Terahertz/ t-ray;➤ Other (describe);
2.	<p>How far can the body scanner indicated by you under point 1 penetrate, e.g. into clothes, to the skin, just below the surface of the skin, to internal organs?</p>
3.	<p>What are the possible health implications when using the type(s) of technology as indicated by you under point 1?</p> <hr/> <p>Do you have scientific evidence to come to this conclusion?</p> <p>Please provide details of any scientific evidence that you may have (e.g. reports).</p>
4.	<p>Please provide any further relevant information on health issues that have not been addressed in the questions above.</p>

V. Protection of personal data

The fundamental right to the protection of personal data is laid down in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and Article 8 of the Charter of Fundamental Rights of the European Union, as detailed in Directive 95/46/EC.³

In order to establish whether or not data protection rules apply, it must first be established whether personal data of individuals are being processed.

- **personal data** means "any information relating to an identified or identifiable natural person ('data subject')" (Article 2 of Directive 95/46/EC; see also Article 29 Working Party: "Opinion N° 4/2007 on the concept of personal data").
- **processing of personal data ('processing')** means "any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction" (Article 2 of Directive 95/46/EC).

1.	Do you consider the use of a body scanner as processing personal data?
	If so, why?
	If not, why not?

If body scanners in use are deemed to be processing personal data, the rules require body scanners to be designed and selected in accordance with the aim of collecting, processing or using no personal data or as little personal data as possible. In particular, use is to be made of the possibilities for pseudonymisation or rendering individuals anonymous. The use of Privacy Enhancing Technologies (PETs) can help to design information and communication systems and services in a way that minimises the collection and use of personal data and facilitate compliance with data protection rules.⁴

2.	How could in your opinion the requirements on the design and selection of body scanners be put into practice in order to best respect rules on data protection? <i>(e.g. only consultation of images by a screener, but no storage / archiving; blurring the face to make images anonymous; using mimic boards to display results instead of images)</i>
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Furthermore, if body scanners in use are deemed to be processing personal data, then the processing of such personal data could constitute an interference with the right to respect for private life, under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and Article 7 of the Charter of Fundamental Rights of

³ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23.11.1995, p. 31.

⁴ See Communication from the Commission to the European Parliament and the Council on Promoting Data Protection by Privacy Enhancing Technologies (PETs); COM/2007/0228 final.

the European Union. Such interference would only be permitted under three conditions which are cumulative. Each condition has an autonomous function to fulfil:

- **Legitimacy:** The objective must be legitimate and meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others according to Article 52 of the Charter of Fundamental Rights of the European Union;
- **In accordance with the law:** The conditions under which the restriction is imposed must be provided for by law, in legislation or regulations which must be accessible to the individual concerned and protect that individual from arbitrariness through, inter alia, precision and foreseeability;
- **Proportionality:** The means chosen must be proportionate to the end pursued so that they can be considered necessary. A disproportionate infringement of the right to protect personal data is not allowed, even for the sake of achieving highly desirable objectives.

3.	<p>If a person is given the choice of different screening methods and he opts for a body scanner, then in your view does this count as consenting to his image being handled and examined (subject to the rules on the use of body scanners)?</p> <p>If so, why?</p> <p>If not, why not?</p>
4.	<p>Legitimacy</p> <p>Body scanners would be used for screening persons at airports in order to protect persons and goods within the European Union by preventing acts of unlawful interference with civil aircraft (e.g. hijack, sabotage of aircraft).</p> <p>Do you consider the condition of 'legitimacy' to be met when using body scanners for this purpose in the field of aviation security?</p> <p>If so, why?</p> <p>If not, why not?</p>
5.	<p>In accordance with the law</p> <p>Should rules on the use of body scanners be set at Community (EC) level or at Member State level?</p> <p>Please explain your answer.</p>

6.	<p>Proportionality</p> <p>Do you consider the use of body scanners in the field of aviation security to be proportionate to the end pursued so that they can be considered necessary and genuine?</p> <p>If so, why?</p> <p>If not, why not?</p>
7.	<p>If body scanners were allowed to be used as a means of screening persons at airports, under what conditions should they in your opinion be used in order to respect in full the rules on personal data protection?</p> <p>Please describe these conditions in detail, e.g. by describing the procedure to be followed.</p>
8.	<p>Please provide any further relevant information on the protection of personal data that has not been addressed in the questions above.</p>

VI. Economic, commercial and/or cost-benefit impact assessment

1.	<p>Have you performed an economic, commercial and/or cost-benefit impact assessment on the use of body scanners?</p> <p>If so, what was the outcome of this/these impact assessment(s)?</p> <p>Please provide details of the impact assessment (e.g. reports).</p>
2.	<p>If the use of body scanners is not prescribed as a compulsory means of screening, but is allowed as an optional means of screening, on what basis would you decide to use body scanners?</p> <p><i>(e.g. budget, number of passengers, throughput, facilitation)</i></p>
3.	<p>If the use of body scanners is not prescribed as a compulsory means of screening, but is allowed as an optional means of screening, do you consider it necessary to carry out a(n) (European) economic, commercial and/or cost-benefit impact assessment?</p> <p>Please explain your reasoning.</p>
4.	<p>Please provide any further relevant information on economic, commercial and/or cost-benefit impact assessments that has not been addressed in the questions above.</p>