

RIKSDAG ADMINISTRATION
SECRETARY-GENERAL OF
THE RIKSDAG

**SVERIGES
RIKSDAG**

6 December 2010

To the European Commission
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The Riksdag referred the Commission communication *on the use of security scanners at EU airports* (COM(2010) 311) to the Parliamentary Committee on Justice [*Justitieutskottet*] for examination.

The Committee reported the results of its examination in an opinion to the Chamber, No 2010/11:JuU4. A decision on the opinion was taken on 2 December 2010.

The opinion is attached.

Kathrin Flossing
Secretary-General of the Riksdag

Opinion of the Committee on Justice

2010/11:JuU4

Use of security scanners at EU airports

Summary

In this opinion, the Committee discusses the European Commission's communication of 15 June 2010 to the European Parliament and the Council on the use of security scanners at EU airports, COM(2010) 311. The communication addresses the use of security scanners at EU airports from several different perspectives.

When the European Parliament and the Council have submitted their views, the Commission will decide on the next steps to take, including whether or not to propose an EU legal framework on the use of security scanners at EU airports and the conditions to be included in such a framework to ensure full respect of fundamental rights and to address health concerns. The communication aims at providing a factual basis for discussing the key issues associated with the possible introduction of security scanners at EU airports.

The purpose of security scanners is to prevent crime and combat terrorism. There is currently no common EU strategy for security scanners addressing such issues as technical standards and rules for their use. However, security scanners are being deployed on a trial basis at a number of airports within the EU. In the communication, the Commission states that these airports use various technologies and apply different conditions for their use. The Commission sees this as a problem, partly because passengers suffer from additional unnecessary screening, which conflicts with the principle of 'one-stop security'.

The Commission goes on to discuss some other concerns that have been raised in relation to the use of security scanners. These concerns relate, among other things, to the fact that some methods expose the person scanned to ionising (e.g. X-ray) radiation, which is harmful to health. With some technologies, checking with a security scanner also produces a detailed image of the screened person's body. This is felt to conflict with the principle of protecting human dignity, which is enshrined in the European Charter of Fundamental Rights. Capturing and reproducing images of a person also falls under EU legislation on data protection.

The Committee on Justice, which is in favour of the new technology *per se*, welcomes the Commission's initiative to foster discussion on whether to introduce an EU framework for the use of security scanners and the rules that such a framework should contain.

The Committee stresses the importance of considering the privacy aspects and possible health risks adequately before introducing any common EU standards. The Committee believes that special attention should also be given to the question of retention periods in the continuing discussion. In as much as the use of security scanners involves the processing of personal data, the Committee feels that the systems should be designed in a way that prevents images being stored, copied, printed, retrieved or sent remotely. Unauthorised access should also be prevented.

The Committee on Justice does not believe that it is possible at this early stage to take a definitive view on the question of subsidiarity, but considers that the introduction of common standards for those airports within the EU that are already deploying the technology is unlikely to conflict with the principle.

A note setting out points of disagreement (Green Party and Left Party) is appended to the Committee's opinion.

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The Committee's proposal regarding the Riksdag's decision

Use of security scanners at EU airports

The Committee proposes that the Riksdag take note of the Committee's opinion.

Note setting out points of disagreement (Green Party, Left Party) — reasoning

Stockholm, 23 November 2010

For the Committee on Justice

Morgan Johansson

The following Committee members participated in the decision: Morgan Johansson (Social Democratic Party), Johan Linander (Centre Party), Krister Hammarbergh (Moderate Party), Ewa Thalén Finné (Moderate Party), Kerstin Haglö (Social Democratic Party), Christer Adelsbo (Social Democratic Party), Helena Bouveng (Moderate Party), Elin Lundgren (Social Democratic Party), Johan Pehrson (People's Party), Arhe Hamednaca (Social Democratic Party), Maria Ferm (Green Party), Caroline Szyber (Christian Democrats), Kent Ekeröth (Sweden Democrats), Lena Olsson (Left Party), Carl-Oskar Bohlin (Moderate Party), Mattias Jonsson (Social Democratic Party) and Pia Hallström (Moderate Party).

Description of the matter

The matter and its preparation

In accordance with Chapter 10, Section 5, of the Riksdag Act [*Riksdagsordningen*], the Chamber referred the Commission's communication of 15 June 2010 to the European Parliament and the Council on the use of security scanners at EU airports, COM(2010) 311, to the Committee for Justice for examination and opinion.

The Government Offices [*Regeringskansliet*] sent an explanatory memorandum on the communication to the Riskdag (2010/11:FPM1).

The Committee on Justice gave the Committee on the Constitution, the Committee on Defence [*Försvarskommittén*] and the Committee on Transport and Communications the opportunity to comment on the Commission's communication. The Committee on the Constitution and the Committee on Transport and Communications submitted their opinions on 9 November 2010.

Key contents of the document

The Commission's communication addresses the use of security scanners at EU airports from several different perspectives. When the European Parliament and the Council have submitted their views, the Commission will decide on the next steps to take, including whether or not to propose an EU legal framework on the use of security scanners at EU airports and the conditions to be included in such a framework to ensure full respect of fundamental rights and to address health concerns. The communication aims at providing a factual basis for discussing the key issues associated with the possible introduction of security scanners at EU airports.

The purpose of security scanners is to prevent crime and combat terrorism. There is currently no common EU strategy for security scanners addressing such issues as technical standards and rules for their use. However, security scanners are being deployed on a trial basis at a number of airports within the EU. In the communication, the Commission states that these airports use various technologies and apply different rules for their use. The Commission sees this as a problem, partly because passengers suffer from additional unnecessary screening, which conflicts with the principle of 'one-stop security'.

The Commission goes on to discuss some other concerns that have been raised in relation to the use of security scanners. These concerns relate, among other things, to the fact that some methods expose the person scanned to ionising (e.g. X-ray) radiation, which is harmful to health. With some technologies, checking with a security scanner also produces a detailed image of the screened person's body. This is felt to conflict with the principle of protecting human dignity, which is enshrined in the European Charter of Fundamental Rights. Capturing and reproducing images of a person also falls under EU legislation on data protection.

The Committee's examination

Explanatory memorandum

An explanatory memorandum (2010/11:FPM1) was drawn up within the Government Offices in response to the Commission communication on security scanners. Under the heading 'Preliminary Swedish position', the explanatory memorandum states that the Government welcomes the fact that the Commission has taken an initial step towards addressing the issue of security scanning. It also states that the Government previously expressed a generally positive view of the new technology, which both simplifies and significantly improves security screening, but also stressed the importance of clarifying possible health risks and handling the privacy aspects in a satisfactory way.

Statement from the Committee on the Constitution

Issues relating to fundamental rights fall within the remit of the Committee on the Constitution. The Committee on Justice therefore gave the Committee on the Constitution the opportunity to comment on the communication on security scanners. The Committee on the Constitution submitted its comments on 9 November 2010.

In its statement, the Committee on the Constitution stresses the importance of ensuring that any conditions for the use of security scanners include binding rules setting strict requirements to safeguard fundamental rights, such as the protection of private life and personal data, and the prohibition of discrimination on the basis of race, colour, religion etc. The Committee emphasises that the main aim of such rules should not be to facilitate the introduction of further surveillance, but rather to provide real protection. If an overall assessment indicates that there should be a uniform set of rules for the use of security scanners, the Committee on the Constitution considers that a suitable starting point might be to use only technology that does not produce body images.

The Committee on the Constitution also stresses that, for privacy reasons, there may be grounds for recommending a technology that entails the least possible risk of harm. This is because there may be a risk of some individuals otherwise opting for a more intrusive method of examination for fear of the risk of harm.

In as much as the use of security scanners involves the processing of personal data, the Committee feels that the application should be designed in such a way that images are not stored, copied, etc., and that unauthorised access is prevented.

The Committee on the Constitution also agrees with the Commission's view that the travelling public should be provided with clear and comprehensive information on all aspects of security scanner use.

The Committee also endorses the expectation of European Data Protection Supervisor that there should be a more extensive in-depth analysis of the special needs and possible solutions relating to security at airports, to be assessed from a privacy and data protection standpoint. The Committee also hopes to see an impact analysis focussing on human rights, as called for by the European Parliament in Resolution No (2008) 0521 of 23 October 2008.

The full statement from the Committee on the Constitution is attached as Annex 2.

Statement from the Committee on Transport and Communications

Issues relating to airports and aviation fall within the remit of the Committee on Transport and Communications. The Committee on Justice therefore gave the Committee on Transport and Communications the opportunity to comment on the communication on security scanners. The Committee on Transport and Communications submitted its comments on 9 November 2010.

In its comments, the Committee on Transport and Communications states that, based on the transport issues that it has to consider, the Committee has no objections to the Commission continuing to investigate the issue of security scanners.

The Committee on Transport and Communications believes that, based on experience gained so far, security scanners can simplify the screening of passengers and make it more flexible. According to the Committee on Transport and Communications, the increased use of security scanners could therefore make a positive contribution towards the overall transport policy goals laid down by the Riksdag, which

include improving citizens' journeys by way of increased reliability, safety and comfort. In view of this, the Committee on Transport and Communications welcomes the fact that the Commission is looking into the use of security scanners.

The Committee believes that the fact that security scanners are not systematically and uniformly deployed within the EU at present means that passengers suffer from additional unnecessary screening and cannot benefit from the key principle of 'one-stop security'.

The Committee on Transport and Communications states that those Member States that have carried out trials of security scanners say that these increase passenger throughput, are generally accepted among passengers and increase staff convenience. According to the Committee on Transport and Communications, security scanners can be expected to help maintain an acceptable rate of passenger throughput at security checks, and so improve passenger convenience.

The full statement from the Committee on Transport and Communications is attached as Annex 3.

Views of the Committee on Justice

The purpose of security screening is to detect dangerous items such as weapons, knives and explosives, in order to prevent crime and combat terrorism.

A security scanner is the generic term for the technology that can detect metal and other objects at a security check, including plastic and liquid explosives carried under the clothes. The alternative available today to provide similar results is for the security staff to carry out a full-body search. In principle, therefore, screening with a security scanner could replace examination with a walk-through metal detector and in many cases even a full-body search. When a security scanner clears a person, therefore, no further searches or screens are normally necessary.

According to the Commission communication, a number of Member States that have conducted trials with security scanners have reported that the scanners are a valid alternative to existing screening methods in terms of effectiveness of detecting items of different materials. The communication also states that there is general acceptance of the method among passengers.

Given that security scanners can help to both simplify and improve security screening, and in view of the positive effects in the form of increased passenger throughput and staff convenience referred to by the Committee on Transport and Communications, the Committee on Justice takes a generally positive view of the new technology per se.

As is clear from the Commission communication, the technology is at the development stage, and security scanners are still rare in Europe. The increased use of security scanners at EU airports is however a fact. Trials of the technology have been carried out or are in progress in Finland, the United Kingdom and the Netherlands, for example. As pointed out by both the Commission and the Committee on Transport and Communications, the lack of uniform standards for security scanners within the EU means that passengers suffer from additional unnecessary screening, limiting their chance to benefit from the principle of 'one-stop security'. This is obviously unsatisfactory.

In view of this, the Committee welcomes the Commission's initiative to foster discussion on whether to introduce an EU regulatory framework for the use of security scanners and the rules that such a framework should contain.

The Committee feels that the question whether a uniform set of rules on security scanners should be introduced, and which of the existing scanning technologies may in that case be considered most suitable for aviation within the EU, must be assessed from a holistic perspective, also taking account of the cost aspect, for example. If such an assessment should lead to a proposal for a common set of rules in this area, the Committee would particularly stress the importance of respecting fundamental rights. Before introducing any common EU standards for security scanners, the Committee on Justice believes that it is especially important to ensure that the privacy aspects and any possible health risks are adequately addressed. On this basis, the Committee on Justice feels that the technology that has the least possible impact on health and on personal privacy should be recommended. As pointed out by the Committee on the Constitution, there is good reason on both health and privacy grounds for recommending in the continuing discussions a technology that entails the minimum risk of harm. As there are scanning technologies that do not involve any risks to health, it is evident that these are the ones that should be deployed.

The Committee believes that special attention should also be given in the continuing discussion to the question of retention periods. In this connection, the Committee wishes to point out that the main purpose of security scanners is to increase safety within aviation. They are not, therefore, intended to be used as a tool for investigating crime. The Committee on Justice therefore agrees with the view expressed

by the Committee on the Constitution that, in as much as the use of security scanners involves the processing of personal data, the systems should be designed in a way that prevents images being stored, copied, printed, retrieved or sent remotely. Unauthorised access should also be prevented.

The Committee considers that it is also important to inform air travellers of the availability of the alternative methods of screening offered alongside the use of security scanners.

The Commission communication does not contain any practical proposals, but rather aims at providing a factual basis for discussing the possible introduction of security scanners at EU airports. The Committee on Justice does not believe that it is possible at this early stage to take a definitive view on the question of subsidiarity, but considers that the introduction of common standards for those airports within the EU that are already deploying the technology is unlikely to conflict with the principle. On the other hand, the Committee cannot comment in this context on whether the introduction of mandatory provisions for the deployment of the technology at other airports in the EU would be compatible with the subsidiarity principle.

Note setting out points of disagreement

The Committee's proposal regarding the Riksdag's decision and its position have resulted in the following note setting out points of disagreement.

Use of security scanners at EU airports - reasoning (Green Party, Left Party)

by Maria Ferm (Green Party) and Lena Olsson (Left Party).

Position

We do not share the positive view of scanning technology per se expressed by the majority of the Committee. In our opinion, there is no basis at this early stage for the Riksdag to make any statement, either positive or negative, on the technology itself. We agree with the remaining views expressed by the majority.

ANNEX 1

List of proposals discussed

European Commission communication to the European Parliament and to the Council on the use of security scanners at EU airports, COM(2010) 311.

ANNEX 2

Statement from the Committee on the Constitution, No 2010/11:KU2y

Use of security scanners at EU airports

To the Committee on Justice

The Committee on Justice decided on 30 September 2010 to give the Committee on the Constitution the opportunity to comment on the Commission communication on the use of security scanners at EU airports, COM(2010) 311.

The Committee on the Constitution has limited its comments to a discussion of how the use of security scanners relates to fundamental rights.

Considerations of the Committee

Applicable rules

Instrument of Government

In Sweden, according to Chapter 1, Article 2, fourth paragraph of the Instrument of Government, the public institutions shall protect the private and family lives of private persons. Private life is also safeguarded by the fundamental right to the protection of privacy in data processing laid down in Chapter 2, Article 3, second paragraph of the Instrument of Government. According to Chapter 2, Article 6 of the Instrument of Government, all citizens shall be protected in their relations with the public institutions against any physical violation also in cases other than those relating to capital and corporal punishment. The term 'physical violation' refers mainly to violence against the human body and also medical examinations, minor operations such as vaccinations and the taking of blood samples, and other similar actions generally referred to as physical examinations (Holmberg at al., Grundlagarna (Principles), 2nd edition, 2006, p. 110).

European Convention on Human Rights

According to Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention), which Sweden has signed, everyone has the right to respect for his private and family life, his home and his correspondence. Any restrictions to these rights may only be introduced where they are in accordance with the law and necessary in the interests of certain goals stated in the Article. Freedom of thought, conscience and religion are covered in Article 9.

According to Chapter 2, Article 23 of the Instrument of Government, no act of law or other provision may be adopted which contravenes Sweden's undertakings under the European Convention. The European Convention has also had the force of law in Sweden since 1995.

According to the Lisbon Treaty, the European Union must subscribe to the European Convention.

European Charter of Fundamental Rights

The Lisbon Treaty made the European Charter of Fundamental Rights legally binding, giving it the same legal standing as the Treaties.

Among the rights laid down in the Charter, Article 7 states that everyone has the right to respect for his or her private and family life, home and communications. The protection of personal data is covered by Article 8. Everyone has the right to the protection of personal data concerning him or her, as laid down in Article 8(1). Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified. This is set out in Article 8(2). According to Article 8(3), compliance with these rules shall be subject to control by an independent authority. Then there is freedom of thought, conscience and religion, dealt with in Article 10.

In the section on 'Equality', Article 21(1) states that any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

Any limitation on the exercise of the rights and freedoms recognised by the Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others. This is laid down in Article 52(1).

Article 52(3) states that, in so far as the Charter contains rights which correspond to rights guaranteed by the European Convention, the meaning and scope of those rights shall be the same as those laid down by the Convention, but that provision shall not prevent Union law providing more extensive protection.

Resolution from the European Parliament

The Commission communication on the use of security scanners at EU airports is a response to Resolution No (2008) 0521 of 23 October 2008 from the European Parliament, which was drawn up following a proposal from the Commission that meant that the permitted methods for screening of passengers at EU airports would also include 'body scanners'.

The Resolution also states that the European Parliament considered that the conditions for taking a decision had not yet been met, given that essential information was still lacking, and asked the Commission to

- carry out an impact assessment relating to human rights;
- consult the European Data Protection Supervisor, the Article 29 Working Party (cf. Article 29 of the Data Protection Directive) and the European Union Agency for Fundamental Rights;
- 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.

The Commission communication

The communication addresses the increasing use of security scanners at the airports of the European Union regulated at national level. In the communication, the Commission also examines arguments that only common European standards for aviation security can provide a framework ensuring a harmonised approach to the use of security scanners at airports

Security scanners

The term 'security scanners' is used for a technology that is capable of detecting objects carried under clothes. According to the Commission, when a security scanner clears a person, in principle no further searches or screens are necessary. Today, the weakness of walk-through metal detectors in identifying non-metallic items requires screeners to undertake full-body searches in order to achieve comparable results.

The Commission goes on to state that, besides increasing the capability of detecting non-metallic items and liquids, security scanners are expected to assist in keeping throughput times at screening points at an acceptable speed. The communication states that airport trials and tests suggest that security scanners permit a rigorous screening of a great number of passengers in a short amount of time while providing a reliable detection capability. The Commission notes that it is possible that future technology may further increase the speed and efficiency of security scanners by avoiding the need to divest jackets, boots, etc.

The communication reports that the purchase cost of a basic security scanner ranges between EUR 100 000 and 200 000 per unit. Upgrading with additional software which might be needed to address privacy and data protection concerns, for example, or components to enable the automatic use of the security scanner equipment, might entail additional costs of EUR 20 000. Depreciation for aviation security equipment is commonly done over a period of 5 to 10 years.

In accordance with EU law, the communication states, Member States may introduce the use of security scanners at their airports either i) by exercising their right to apply security measures that are more stringent than existing EU requirements or ii) temporarily, by exercising their right to conduct trials of new technical processes or methods for a maximum period of 30 months. The Commission mentions some formal trials of security scanners as a primary method for screening passengers undertaken at various airports within the EU.

Objections to the use of security scanners

According to the communication, the concerns raised over the use of security scanners for screening at airports relate in part to the creation of body images. The Commission states that technologies now exist that do not produce images.

The capability of revealing a detailed display of the human body (even blurred), and possibly medical conditions, has been criticised with reference to the principle of respect for human dignity and private life. Some persons also might face difficulties reconciling their religious beliefs with a procedure involving a review of their body image by a human screener.

Moreover, where the right to equal treatment and the prohibition of discrimination are concerned, the

Commission states that operating standards must ensure that passengers asked to undergo a security scan are not chosen based on criteria such as gender, race, colour, ethnic or social origin, religion or belief.

Possible ways of addressing issues concerning human dignity, data protection, etc.

According to the Commission, existing technical facilities allow blurring the face and/or parts of the body not needed for further analysis to confirm the absence of prohibited articles. The Commission also notes that it is also technically possible to produce instead of real images of the body only a mannequin or a stick figure, which does not reveal any real parts of the screened person's body, but only identifies the location for further searches.

The communication gives examples of possible ways to address concerns related to the respect for fundamental rights, developed for trials, tests and actual deployment of security scanners.

- The officer analysing the image ('the reviewer') works remotely without any way of seeing the person whose image is being analysed.
- The reviewer has no way of linking the analysed image to any real person, by applying remote reviewing together with the use of equipment without any storage facility.
- Detailed reviews of images can be undertaken by a person of the same gender.
- Appropriate methods of automated communication must ensure that the exchange between the reviewer and the screener at the checkpoint is limited to the information necessary to satisfactorily search the person.
- More thorough hand searches must take place in cabins or in specially designated separate rooms.

The Commission mentions that 'privacy by design' and privacy enhancing technologies (PETs) applied to hardware and software incorporated in security scanners produce information and communication systems and services minimising the collection and the processing of personal data. Such systems would ensure, for example, that

- images are not stored (retained), copied, printed, retrieved or sent remotely and that unauthorised access is prevented, and
- images analysed by a human reviewer are not linked to the identity of the screened person and are kept 100 % anonymous.

An additional solution mentioned by the Commission is eventually to phase out human analysis of images by automation of the object recognition process, which may be used either to assist the human screener in interpreting images or to carry out this interpretation automatically. Automatic threat recognition (ATR) is based on specific software, designed to recognise dangerous objects.

Whatever technology and operational safeguards are chosen, the conditions for the use of security scanners will need to be laid down in binding rules, the Commission goes on. Member States' authorisations for individual deployment at airports should be based on a thorough assessment of the possible impact on fundamental rights and the safeguards available. Moreover, comprehensive and clear information to the public on all aspects of security scanners use in aviation security should be also ensured.

Conclusions

In its conclusions, the Commission states, among other things, that common EU standards for security scanners can ensure an equal level of protection of fundamental rights, by way of technical standards and operational conditions that would have to be laid down in EU legislation. Only an EU-wide strategy would, according to the Commission, ensure uniform application of security rules and standards throughout all EU airports. This is essential to ensure both the highest level of aviation security and the best possible protection of EU citizens' fundamental rights.

Today, security scanner technologies exist that do not produce full-body images. Technical standards and operational conditions to be laid down by law could significantly reduce concerns related to fundamental rights. The Commission believes that under existing technology and safeguards attached to the use of security scanner equipment, fundamental rights issues can be dealt with by a combination of technical equipment specifications and operational rules. Minimum standards could be laid down by law.

Based on discussions with the European Parliament and the Council, the Commission will decide on the next steps to take. As any legislative proposal would have to be accompanied by an impact assessment, the Commission would immediately start working on such an impact assessment to address the issues raised in the Report.

Comments from the European Data Protection Supervisor

The European Data Protection Supervisor (EDPS) advises the EU institutions and bodies on data protection issues. His consultative role relates to proposals for new legislation, as well as ‘soft law instruments’ that affect personal data protection in the EU. He also monitors new technologies that may have an impact on data protection. The objective is to ensure that the EU citizens’ fundamental rights to protection of privacy and personal data are maintained, while society evolves. One of the instruments available to the EDPS is EDPS comments, which address data protection issues in Commission communications, for example.

In his comments on the Commission’s communication on the use of security scanners at EU airports, the EDPS makes the following points, among others.

As a preliminary comment, the EDPS expresses support for the idea of a European approach to security scanners, provided that the necessity test is met, and the best possible safeguards are included. A European approach would contribute to ensure legal certainty and the best and most consistent protection of EU citizens.

The EDPS supports the considerations developed by the Commission, which question ‘whether adding new security layers after every incident is an effective means to improve aviation security’. The need for a more holistic approach, as defined further in the text, has been advocated by the EDPS in a number of his previous opinions in relation to new measures in the field of law enforcement and fight against terrorism. He is therefore looking forward to further developments and to a comprehensive and in depth analysis of the specific needs and possible solutions with regard to airport security, to be assessed from a privacy and data protection perspective.

The EDPS reiterates the recommendations made in previous opinions regarding the need for the Commission to define and promote ‘best available techniques’ together with industry stakeholders, following the same procedure adopted by the European Council in the environmental field. In the case of security scanners, ‘best available techniques’ could mean the most effective and advanced stage in the development of activities and their methods of operation which indicate the practical suitability of particular techniques for providing a defined detection threshold, in compliance with the EU framework for privacy and data protection. These BATs will be designed to prevent or, where that is not practicable, to mitigate to an appropriate level the security risks related to airports and minimise as much as possible their impact on individuals.

This process is intended to provide reference documents on best available techniques which will offer very useful guidance and greater legal certainty for EU airport management organisations and their security operators. It will also enhance the harmonisation of such measures throughout EU airports. Last but not least, the definition of privacy- and security-friendly BATs will facilitate the supervisory role of the data protection authorities by providing them with privacy and data protection compliant technical references adopted by data controllers.

The EDPS also stresses that consent should not be used to legitimise the processing of personal data if there is no legal basis for that processing. In other words, the legal need to legitimise the use of security scanners should not be transferred to the consumer through a ‘choice’ option. Although choice might be considered at first sight as a more balanced solution, it casts doubt on the real necessity and efficiency of security scanners. It also raises the question of effective choice: if refusing to use a scanner results in longer queues and a presumption that the passenger has something to hide, there is no real consent. The introduction of a legal obligation would therefore still seem to be unavoidable in the light of Article 8 ECHR and Articles 7-8 EU Charter.

Finally, the EDPS points out that the Commission communication (point 56, last indent) might be confusing, as it suggests that images analysed by a human reviewer could have no link to the identity of the screened person and would be 100 % anonymous. In such a case the EDPS believes that even if no direct link with the individual can be made by the reviewer, there is still an indirect possibility of identification, as there is a connection between the reviewer and other agents, which will take a decision

regarding the risks posed by the passenger. This is particularly true in an environment where ID documents and personalised travel documents are readily available. There is therefore no complete anonymity, and the scheme should not be presented as guaranteeing such anonymity. However, it remains less intrusive than a direct viewing (and thus a direct identification) and in that sense it should be preferred to direct viewing.

Position of the Committee on the Constitution

The Commission communication states that, besides increasing detection performance of non-metallic items and liquids, security scanners are expected to assist in keeping throughput times at screening points at an acceptable speed (point 47). As the EDPS has commented, there is a need for a more holistic approach in relation to new measures in the field of law enforcement and fight against terrorism.

By way of introduction, the Committee wishes to stress the importance of ensuring that any conditions for the use of security scanners include binding rules setting strict requirements to safeguard fundamental rights, such as the protection of private life and personal data, and a prohibition of discrimination on the basis of race, colour, religion etc. The main aim of such rules, whether they set minimum technical requirements or are based on other factors, must not be to facilitate the introduction of further surveillance, but rather to provide real protection.

If an overall assessment indicates that there should be a uniform set of rules for the use of security scanners, the Committee considers that a suitable starting point might be to use only technology that does not produce body images. One particular argument for such a starting point is that criticism has been directed at the capability of revealing a detailed image of the human body (even blurred) and possibly medical conditions, such as prostheses. It is a reasonable starting point that only technology that does not produce body images should be used, as the Commission communication indicates that this is a technical option that is already available today. The fact, mentioned by the EDPS, that there is no complete anonymity when images are analysed by a human reviewer also suggests that only such technology should be allowed.

In this connection, the Committee wishes to emphasise that there is good reason on privacy grounds for recommending a technology that entails the least possible risk of harm, because there may be a danger of some individuals choosing a more intrusive method of examination than security scanners for fear of the risk of harm.

The Committee also wishes to stress that, in as much as the use of security scanners involves the processing of personal data, it feels that the systems should be designed as set out by the Commission (point 56) to ensure that images are not stored (retained), copied, printed, retrieved or sent remotely, and that unauthorised access is prevented.

As the Commission also states (point 87), the travelling public should receive clear and comprehensive information on all aspects linked to the use of security scanners. In the Committee's view, it is particularly important that travellers should be informed of the right to choose other examination and screening methods instead of security scanners, and of what these methods involve.

Finally, the Committee endorses the expectation of the European Data Protection Supervisor that there should be a more extensive in-depth analysis of the special needs and possible solutions relating to security at airports, to be assessed from a privacy and data protection standpoint. The Committee also hopes to see an impact analysis focussing on the human rights called for by the European Parliament in Resolution No (2008) 0521 of 23 October 2008.

Stockholm, 9 November 2010

For the Committee on the Constitution

Peter Eriksson

The following Committee members participated in the decision: Peter Eriksson (Green Party), Per Bill (Moderate Party), Peter Hultqvist (Social Democratic Party), Andreas Norlén (Moderate Party), Helene Petersson i Stockaryd (Social Democratic Party), Billy Gustafsson (Social Democratic Party), Karl Sigfrid (Moderate Party), Phia Andersson (Social Democratic Party), Karin Granbom Ellison (People's Party), Hans Hoff (Social Democratic Party), Per-Ingvar Johnsson (Centre Party), Hans Ekström (Social Democratic Party), Kajsa Lunderquist (Moderate Party), Tuve Skånberg (Christian Democrats), Jonas Åkerlund (Sweden Democrats), Mia Sydow Mölleby (Left Party) and Ann-Britt Åsebol (Moderate Party).

ANNEX 3

Statement from the Committee on Transport and Communications, No 2010/11:TU1y

On the use of security scanners at EU airports

To the Committee on Justice

On 30 September 2010, the Committee on Justice gave the Committee on Transport and Communications the opportunity to comment on Commission communication COM(2010) 311 on the use of security scanners at EU airports.

The Committee on Transport and Communications addresses those parts of the matter that fall within the remit of the Committee.

Considerations of the Committee

Background

General

A common European policy for aviation security was developed following the attacks on 11 September 2001. There have also been serious security incidents leading to discussions and responses at the international level. At first, EU legislation followed international standards on aviation security almost to the letter. Since 29 April 2010, there has been new EU legislation in this area. This has replaced the rules that were in force before.

The main principle of European as well as international rules is to keep threat items away from aircraft. These rules lay down inspection obligations for the Commission and Member States' authorities, and the possibility for Member States to set more stringent security measures in case of increased risk. This common regulatory framework enabled the principle of 'one-stop security' within the European Union. This principle implies that passengers, luggage and cargo arriving from another EU airport do not need to be re-screened when transferring.

In Sweden, the costs of security screening are collected from operators by way of a fee for every passenger. The amount of the fee is based partly on the airports' budgeted costs for security screening and the expected numbers of passengers. An equalisation system ensures that the fee is the same regardless of which airport a passenger departs from.

Security scanners

'Security scanner' is the general term used for a technology that is capable of detecting objects carried under clothes. There are various types of technology for security scanners, and other types are in development. Today technologies exist that neither produce images nor emit radiation.

Security scanners are deployed for security screening at European airports, but not in a systematic and uniform way. The current EU legislation does not permit airports to systematically replace any of the recognised screening methods and technologies with security scanners. However, Member States are entitled to introduce security scanners for airport trials or as a more stringent security measure than those provided for by EU legislation. Some countries that conducted trials reported to the Commission that security scanners are a valid alternative to existing screening methods. These countries stated that security scanners improved passenger throughput, were generally accepted by passengers and increased staff convenience.

The Commission communication

The communication addresses the increasing use of security scanners at the airports of the European Union regulated at national level.

The Commission states that, in order to end the current fragmented rules on how and when to deploy security scanners, their use must be based on common standards.

According to the Commission, adding new layers of methods and technologies after each incident proves more and more inefficient. Security checkpoints become overburdened with new equipments and the operation of newly developed security tasks, and a more holistic approach is required.

The Commission stresses that security scanners were originally included in the proposal that later became the Regulation that entered into force on 29 April 2010. However, when the European Parliament called for a more thorough analysis of the situation, the Commission excluded security scanners from the proposed Regulation.

The Commission emphasises that security scanners can replace walk-through metal detectors because they are able to identify different materials, such as metallic, plastic and liquid objects. When a security scanner clears a person, in principle no further screens are necessary. According to the Commission, security scanners can increase passenger throughput at security checks. The Commission states that, although scanner screening requires the person to stand still inside or next to the machine, it only takes about 20 seconds to produce and interpret passenger data.

As regards costs, the Commission reports that it is difficult to undertake a general cost assessment of

the deployment of security scanners. The purchase cost per unit ranges between EUR 100 000 and 200 000. This price does not include upgrades etc. Depreciation is commonly done over a period of 5 to 10 years.

Position of the Committee on Transport and Communications

With regard to the use of security scanners at EU airports, the Committee wishes to make it clear by way of introduction that aviation and airport issues fall within the remit of the Committee, while privacy aspects and any radiation risks fall within the remit of other Committees.

As background to its assessment, the Committee also wishes to point out that the Riksdag, in a previous broad parliamentary order, established that the overall goal of transport policy is to assure socially effective and sustainable long-term transport provision for citizens and businesses all over the country. Among other things, this means that citizens' journeys should be improved in terms of increased reliability, safety and comfort. Based on experience gained so far, the increased use of security scanners can contribute towards this goal by simplifying the screening of passengers and making it more flexible.

In view of this, the Committee welcomes the fact that the Commission is looking into the use of security scanners. In the Committee's view, the different standards for scanners that are currently applied in Europe could create problems. Because security scanners are not systematically and uniformly deployed throughout the EU, passengers suffer from additional unnecessary screening and cannot benefit from the principle of 'one-stop security'. The Committee believes that this principle is important both for passengers and for industry. In the Committee's view, an EU strategy would promote a more uniform application of security rules and standards throughout all EU airports.

The Committee finds that security scanners can replace walk-through metal detectors and body searches. The Committee also notes that, according to the Commission communication, technology exists today that does not emit radiation and so poses no risk to the health of travellers. Those Member States that have conducted trials have reported that security scanners improved passenger throughput, were generally accepted by passengers and increased staff convenience. According to the Committee, security scanners can therefore be expected to help maintain an acceptable rate of passenger throughput at security checks, and so improve passenger convenience.

Based on the transport considerations that it has to consider, the Committee therefore has no objections to the Commission continuing to investigate the issue of security scanners.

Stockholm, 9 November 2010

For the Committee on Transport and Communications

Anders Ygeman

The following Committee members participated in the decision: Anders Ygeman (Social Democratic Party), Jan-Evert Rådström (Moderate Party), Pia Nilsson (Social Democratic Party), Eliza Roszkowska Öberg (Moderate Party), Lars Mejern Larsson (Social Democratic Party), Malin Löfsjögård (Moderate Party), Lars Tysklind (People's Party), Leif Pettersson (Social Democratic Party), Anders Åkesson (Centre Party), Gunilla Carlsson i Hisings Backa (Social Democratic Party), Sten Bergheden (Moderate Party), Stina Bergström (Green Party), Annelie Enochson (Christian Democrats), Tony Wiklander (Sweden Democrats), Edward Riedl (Moderate Party) and Jonas Sjöstedt (Left Party).

Differing opinion

Use of security scanners (Green Party, Left Party)

Stina Bergström (Green Party) and Jonas Sjöstedt (Left Party) make the following comment:

We consider that the issues of privacy and radiation are especially important. Although they do not fall within the remit of the Committee on Transport and Communications, the nature of these issues, with their implications for passengers, call for this Committee to take a position.

We would therefore stress that it is important that, for the sake of passenger safety and convenience, security scanners should not constitute a health risk of violation of privacy. The continuing investigations should therefore focus on a technology that neither produces images nor emits radiation.