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COMMISSION STAFF WORKING PAPER

Summary of IMPACT ASSESSMENT on the possible use of security scanners at EU airports

Accompanying document to the

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1. The present impact assessment¹ relates to a possible proposal to amend part A (1) of the Annex to Regulation (EC) 272/2009² and related acts to include security scanners on the list of the eligible security screening methods and technologies at EU airports and to lay down performance requirements and operational conditions for their use.

1. POLICY BACKGROUND

2. Aviation security is regulated at EU level on the basis of Regulation (EC) 300/2008 and supplemented by Regulation (EC) 272/2009 and detailed in several implementing legislation. At present security scanners are not on the exclusive list of eligible screening methods and technologies for screening persons.
3. On 5 September 2008 the European Commission proposed to the Council and the European Parliament to add security scanners to this list³. However, the European Parliament opposed the Commission's proposal by indicating, in its resolution of 23 October 2008, that since security scanners could impact on human rights, privacy, personal dignity and data protection a more in-depth assessment of the situation was necessary⁴.
4. In its Communication to the European Parliament and the Council on the use of security scanners at EU airports⁵ of 15 June 2010 the Commission addressed the issues raised by the European Parliament and recognised that security scanners can improve the quality of security controls at EU airports in comparison to the use of metal detectors and at the same time identified the need to avoid any risks to human health and to ensure the protection of fundamental rights.

¹ The present impact assessment is without prejudice of further decisions taken at political level. In particular, as regards the health implications related to the use of certain security scanners, in June 2011 the Commission has requested its Scientific Committee on Emerging and Newly Identified Health Risks (SCENIHR) to assess the possible effects on health of security scanners which use ionising radiation. While awaiting the results of such a study and without prejudice to Council Directive 96/29/EURATOM of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation, a further option has been considered at political level, notably allowing as method for passenger screening only security scanners which do not use ionising radiation.

² Supplementing legislation as foreseen by Regulation 300/2008.

³ Aviation Security Committee of 9/10 July 2008.

⁴ The EP Resolution (2008)0521 asked 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.

⁵ COM (2010)311.

2. PROBLEM DEFINITION

5. Security scanners are currently not on the list of authorised methods for passenger screening. EU airports may only deploy security scanners a) under new equipment trials to temporarily replace the current primary screening system⁶ or b) as a more stringent security measure⁷.
6. As demonstrated by airport trials, the resulting prohibition of a general use of security scanners as a screening method negatively affects airport security efficiency as it does not provide airports with the necessary flexibility to tailor the setup of security checkpoints in such a way that it provides the most efficient way of meeting the EU security requirements. In addition, security scanners can offer an interesting alternative to full hand search providing a less intrusive and a standard quality security screening method which can reduce the possible discomfort for passengers. However, the deployment of security scanners has raised concerns in terms of fundamental rights and health.

3. OBJECTIVES

7. The general objective of the proposed amendment is to allow airports to make the best possible use of security scanners which meet the security requirements laid down in EU law. This objective could be achieved by allowing the use of security scanners as a primary method for passenger's screening.
8. The specific objectives are:
 - (1) To allow the deployment of security scanners to increase the number of passengers screened for non metallic items,
 - (2) To help airports improve their general efficiency and strengthen their competitive position in the following ways:
 - Optimising airport security costs;
 - Increasing passengers' satisfaction and reducing the discomfort for passengers related to intrusive screening methods;
 - Increasing their reputation of a modern airport using the most advanced screening technologies.
 - (3) To ensure the protection of health of passengers and secure the respect of fundamental rights.
9. There are important trade-offs between these objectives, in particular between security and fundamental rights. This impact assessment seeks to identify the options which meet the objectives in the most balanced way.

⁶ Chapter 12.8 of Regulation 185/2010.

⁷ Article 6 of Regulation (EC) 300/2008.

4. SUBSIDIARITY

10. The Commission would act according to comitology rules under Regulation (EC) 300/2008 on the basis of Article 100 of the Treaty on the functioning of the European Union.
11. The main result of the EU action in aviation security is the concept of one-stop security: it implies that, once controlled at an EU airport, passengers, baggage and cargo can be transferred at another EU airport without the need to be controlled again. This principle provides passengers with great facilitation and gives airports and airlines a competitive advantage and generally considerable financial and operational benefits.
12. The lack of EU action and the undertaking of fragmented or uncoordinated action by individual Member States would increase the existing concerns on security, fundamental rights and health and create inequality of treatment of passengers and staff at different EU airports.

5. POLICY OPTIONS AND THEIR ANALYSIS

13. In order to remedy this situation the following options are identified and analysed:
 - Option 1: No new EU regulatory action (baseline scenario)
 - Option 2: No/discontinued EU action: the abolition of the exclusive nature of the list of screening methods and technologies
 - Option 3: Adding security scanners to the list of eligible screening methods for passengers
 - Option 4: Adding security scanners to the list of eligible screening methods for passengers and fixing the detection performance standards with the general possibility for passengers to opt-out
 - Option 5: Adding security scanners to the list of eligible screening methods and technologies for passengers and fixing the detection performance standards and the operational conditions under the implementing legislation
 - Option 6: Adding security scanners to the list of eligible screening methods and technologies for passengers and fixing the detection performance standards and the operational conditions under the implementing legislation with the general possibility for passengers to opt-out
 - Option 7: Making the use of security scanners mandatory at all airports, in combination with the operational conditions of option 5
14. The options were compared against their effectiveness and efficiency in meeting the three specific objectives, as well as their other impacts, in particular on the detection performance, the safeguard of fundamental rights and health and the financial costs for the airports.

15. Options 2, 3, 4, 5 and 6 were found to meet the objectives in the most effective way. In particular, options 2, 3 and 5 provide most flexibility to the airports in optimising the efficiency of their security activities (objective 2), while options 4 and 6 maximise fundamental rights and health protection thanks to the opt-out possibility (objective 3).
16. Options 2 and 3, which rank well in terms of efficiency and effectiveness in reaching the objectives, have a clear negative impact on the safeguard of fundamental rights and health as well as the detection performance of threats at checkpoints.
17. Option 4 would improve the situation as described in the baseline scenario since airports could decide to deploy security scanners to increase their general efficiency while ensuring the harmonisation of security and compliance with fundamental rights. It could increase the public acceptance of the security scanners technology but it would weaken the achievement of cost-efficiency as it cannot be excluded that airports would have to ensure for opting-out passengers an alternative method of screening. However, based on current experience, the latter two effects are likely to be marginal. Security is likely to be weakened.
18. Option 5 proposes a good balance between meeting the objectives and optimising other policy impacts. Indeed it allows airports to deploy security scanners to improve their general efficiency while ensuring the harmonisation of security levels and compliance with fundamental rights and health protection. However, because opt-outs are not foreseen the social acceptance of this technology might be reduced.
19. Option 6 would allow airports to deploy security scanners and would offer the best protection of fundamental rights and health by providing the possibility of opting out. Although opting-out possibilities could increase the public acceptance of the security scanners technology, they could weaken the achievement of cost-efficiency. However, as in option 4 the latter two effects are likely to be marginal. Under option 6, as in option 4, opt-out possibilities could weaken security.
20. The impact assessment considers that while option 5 would appear to be the best option from the perspective of efficiency and security, option 6 would offer the best protection of fundamental rights and health. The present impact assessment considers that both options are valid and that the trade-offs between them have to be addressed by the political decision makers.