



Meeting of LIBE Committee on recent developments in Counter-terrorism policies (body scanners, "Detroit flight"...)

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1. The EDPS is closely following all relevant developments at EU and national level concerning the impact of the use of body scanners.
2. Our official position, (Opinion adopted 11/02/2009) which remains valid, was arrived at in collaboration with the WP29, in response to a consultation request from the Commission.
3. Some recent events have reignited the interest in body scanners. We are ready again to advise the Parliament, the Commission and the Council on the necessity and content of possible EU rules that may be compulsory for all Member States. Although we do not comment on individual Member States' initiatives, we do analyse them carefully as they may help contribute to a more complete understanding of the topic.
4. We recognise the need to strengthen airport security measures and to undertake new assessments of some of them, since the effectiveness and added value of certain screening process for liquids and explosives cannot be dismissed as a point of principle.
5. However, the EU legal framework on fundamental rights - the Lisbon Treaty, the EU Charter, the European Convention - implies that the necessity of body scanners should first be assessed "holistically", in a global context with reference to all other existing or potential security measures. Preference should be given to the least invasive measures,

clarifying why other instruments might be inefficient or not properly implemented.

6. We were pleased to note of the letter from Vice President Jacques Barrot to the WP29 (dated 8 January 2010), stating that the EU Commission will follow the impact of this new technology from the economical point of view, as well as from the medical and the fundamental rights perspective including data protection, *before* submitting a proposal on this issue; and that it is carefully evaluating not only the compatibility with privacy and data protection but also operational issues such as the optimal location of devices, a graduated approach to different alerts, staff training and the notice to passengers. We also welcome the report announced in Toledo by Vice President Barrot on the effectiveness of this technology, on its possible health effects and on its compatibility with the right to privacy. It is also relevant to note that according to Mrs. Napolitano, the use of scanners "*is not the deciding factor nor essential for guaranteeing safety*" although the US considers them as useful.
7. Should EU institutions decide to justify the necessity and the proportionality of such a privacy and dignity-intrusive tool, the principle of "privacy by design" should apply at all stages. This means that a fully justified use of body scanners on a wide scale should be as "privacy friendly" as possible and this requirement should be part of the technology used (e.g. no full body imaging, but signalling specific areas). A mimic board is obviously less dignity-invasive than a naked body.
8. Indeed the EU legal framework on data protection is robust and applies to the entire process of body scanning from collection of images to access, retention and deletion of related data.
9. Body scanners have a significant impact on the privacy of passengers and such screening might, in certain cases, be a humiliating experience, especially for those with certain health conditions. Since privacy is a precondition to the exercise of many other fundamental rights, we consider that the evaluation of the health impact of this technology far from irrelevant.
10. Nevertheless a considered position on body scanners from a data protection perspective depends mainly on how, where, when, and with which rigorous procedures they are installed and used (for example with a remote operator analysing a full picture, or through an automatic detection algorithm, with or without the recording of pictures), and also on which guarantees for the interested persons are put in place.

11. In summary, it would now seem inappropriate to say that the use of body scanners as such is against EU privacy laws.
12. It is also interesting to note that whilst some of the more invasive first generation scanners showed for instance the whole skeleton of passengers, there are now models which appear to be more compliant with EU law and the aforementioned position adopted by EDPS and WP 29.
13. In particular, one recent development ensures that images shown to operators are no longer real pictures of a passenger and instead use a representation showing possible zones where suspected elements should may be located.
14. Finally, the fast pace of development of this technology highlights the need to be orientated towards the future, as new techniques could be either more privacy invasive or more privacy friendly.