

## ARTICLE 29 Data Protection Working Party



Brussels, 11 February 2009  
D(2009) 2251

The President

EUROPEAN COMMISSION  
Mr. Daniel CALLEJA CRESPO  
Director  
DIRECTORATE GENERAL FOR  
ENERGY AND TRANSPORT  
DIRECTORATE F – Air Transport  
Office DM24 05/123  
B-1049 BRUXELLES

**N/Réf. : AT/YPA/SV/SN/GDP/LL/CE091018**  
**A rappeler dans toute correspondance.**

Dear Mr Calleja Crespo,

Thank you for your letter of 27 November 2008 inviting the Art. 29 WP to attend the first meeting of the Body Scanners Task Force and providing us with a questionnaire on the use of body scanners.

You have sent this questionnaire to the EDPS as well and since we are both asked to provide you with our ideas on the introduction of body scanners from a data protection point of view, the Art. 29 WP and the EDPS have decided, as a first step, to jointly answer the questionnaire. Our common replies are attached.

Let us first of all express the data protection authorities' strong reservation towards body scanners as described in your questionnaire. Aviation security is a legitimate aim but the use of any devices to be introduced in addition to already existing walk through metal detectors (WTMD) and hand scanners needs to be based on sound evidence as to why they are needed and why existing measures are not sufficient. As you can see from our answers to the questionnaire we are of the view that body scanners can have a great impact on the privacy of passengers. For that reason it is important to carefully assess the necessity of any new devices and to check if other less intrusive alternatives using privacy enhancing technologies to reach the same goal are available.

The use of body scanners could only be considered as proportionate if an acceptable balance is struck between their necessity and their effectiveness on the one hand and their impact on the privacy of passengers on the other hand. Only if the necessity of their use is properly established, and if in parallel the appropriate data protection safeguards are in place and the rights of individuals are guaranteed, could body scanners be considered as proportionate.

This Working Party was set up under Article 29 of Directive 95/46/EC. It is an independent European advisory body on data protection and privacy. Its tasks are described in Article 30 of Directive 95/46/EC and Article 15 of Directive 2002/58/EC.

The secretariat is provided by Directorate D (Fundamental Rights and Citizenship) of the European Commission, Directorate General Justice, Freedom and Security, B-1049 Brussels, Belgium, Office No LX-46 01/06.

Website: [http://ec.europa.eu/justice\\_home/fsj/privacy/index\\_en.htm](http://ec.europa.eu/justice_home/fsj/privacy/index_en.htm)

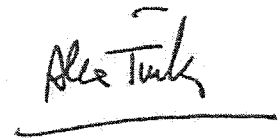
Furthermore, the use of body scanners can only be foreseen in accordance with law. If, therefore, rules on the use of body scanners were to be set at Community (EC) level, legislation at Member State level would also be needed. In this context it has to be said that cultural differences as to the acceptance of body scanners might exist in Member States which should be taken into account when drafting community legislation.

We also want to stress that not all questions were clearly formulated and could be answered in different ways. The impact on privacy depends on the technologies used and the safeguards established. Therefore, the Art. 29 WP and the EDPS should be involved in the legislative process regarding the definition of rules on the use of body scanners to be able to provide the Commission with further advice.

Finally, the data protection authorities need more information about the effectiveness of body scanners already in use now to further examine their impact on privacy. We would therefore appreciate being provided with the results of the first pilot projects conducted in several European airports, as well as any other material considered helpful in this context.

We hope that the answers given are useful to the Commission and other stakeholders in their ongoing discussions on the introduction of body scanners. We remain available for any further input you might require.

Yours sincerely

A handwritten signature in black ink, reading "Alex Türk", with a horizontal line underneath it.

Alex Türk  
Chairman

Annex: 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

Cc: Vice-President Barrot  
Mr. Hans-Gert Pöttering, President of the European Parliament  
Mr. Mirek Topolánek, Presidency of the European Union  
Mr. Jonathan Faull, Director General, DG JLS