

## ARTICLE 29 DATA PROTECTION WORKING PARTY



Brussels, 14 December 2011

Monique de Smet, Director Government  
and Industry Affairs  
International Air Transport Association  
Avenue Louise 350  
1000 Brussels

Dear Ms de Smet,

Recently, the European Data Protection Authorities, united in the Article 29 Working Party<sup>1</sup> (Working Party), have been involved in the setting of the European legislation authorising the use of body scanners in airports<sup>2</sup>. In addition, the Working Party closely follows all ongoing negotiations of agreements about the use of passenger data for law enforcement purposes (PNR agreements), as well as the smart borders concept proposed by the Commission. The increase in security measures in airports bringing new passenger screening systems into operation, is also of great interest to the Working Party.

The IATA “*Checkpoint of the future*” project has come to our attention and based on documents available on IATA’s website<sup>3</sup>, our understanding is that this new concept relies on the following key points.

- Risk profiling: “*Using passenger data and behaviour detection to screen passengers based on risk*”.
- Physical screening at the airport, combined with electronic data pre-screening by governments before flight.
- Board / no board decision, that can be made on the basis of the risk analysis
- Differentiated physical security measures with passengers directed to different lanes: known traveller / normal / enhanced lanes.

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<sup>1</sup> The Article 29 Working Party (Art. 29 WP) is established by Article 29 of 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. It is the independent EU Advisory Body on Data Protection and Privacy. Its tasks are laid down in Article 30 of Directive 95/46/EC and in Article 15 of Directive 2002/58/EC.

<sup>2</sup> The Article 29 Working Party has adopted a paper on body scanners on 11 February 2009 accompanying a letter to the European Commission ; the European Privacy and Data protection Commissioners' Conference adopted a resolution on the use of body scanners for airport security purposes on 29-30 April 2010; and the EDPS sent a letter to the Commission in this regard

<sup>3</sup> <http://www.iata.org/events/agm/2011/gallery/pages/checkpoint-gallery.aspx> : photo gallery  
<http://www.iata.org/pressroom/Documents/security-june-2011.pdf> : media briefing Security  
[http://www.iata.org/whatwedo/safety\\_security/security/Documents/checkpoint-qa.pdf](http://www.iata.org/whatwedo/safety_security/security/Documents/checkpoint-qa.pdf) : Checkpoint of the future Q&As

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 C (Fundamental Rights and Union Citizenship) of the European Commission, Directorate General Justice, B-1049 Brussels, Belgium, Office No MO-59 02/013.

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

The IATA “*checkpoint of the future*” concept also relies on biometric identification, behavioural analysis, lane assignment, random selection, baseline screening for all, and expedited screening for known travellers.

The proposed new procedure is expected to operate as follows.

- At arrival at the checkpoint the passenger biometrically identifies him or herself and has a brief encounter with a behavioural analyst.
- The passenger is assigned a lane based on pre-screening or random selection.
- The passenger walks through the lane and is security screened while in motion.
- All passengers are screened to a baseline.
- Passengers who voluntarily opt in to a known travel program receive expedited screening.
- Those which little is known about or those randomly selected go to an enhanced security lane.

In light of all these elements, it is clear for the Working Party that the “*Checkpoint of the future project*” will have an impact on privacy and human rights. Risk assessments of passengers, as well as the use of biometrics imply personal data processing. Therefore, data protection authorities have to look at all potential impacts of new security passenger screening systems.

In this regard, the Working Party would like to receive more detailed information on how the system will work, in particular the prior screening of passengers to assign a risk assessment score or code that will determine which security lane they are directed to.

In addition, the Working Party would be glad to hear more about where the new system uses personal data to function and how basic data protection principles are met. The Working Party would notably like to learn details about:

- the legal basis of the processing;
- data flows and personal data processing involved;
- type and categories of personal data that will be used and for what purpose(s);
- possible automated decisions on individuals;
- possible personal data recipients;
- possible re-use of the data;
- information given to passengers;
- rights guaranteed to passengers (including redress); and
- retention periods.

The Working Party is also aware that different pilots of the “*Checkpoint of the future*” are going to be launched in Europe, and would like to receive more details about this. We would also be interested to hear your views on how your concept fits with other measures for border security and passenger screening currently in place or being proposed within the EU.

As this project will involve processing personal data, the Working Party would like to remind you that some national data protection authorities must be consulted before

starting any local pilots. Furthermore, the legal basis for such pilots has to comply with European and national legal frameworks.

The Working Party would appreciate being kept informed of the further work on the project and would like to invite you to present more detailed views on the data protection impact of the project in writing or in person at a future “Borders, Travel and Law Enforcement” (BTLE) subgroup meeting, which is likely to be held in February 2012 (exact date to be confirmed).

Yours faithfully,

For the Working Party

Jacob Kohnstamm  
Chairman