Commission Implementing Regulation (EU) No 1147/2011 of 11 November 2011 amending Regulation (EU) No 185/2010 implementing the common basic standards on civil aviation security as regards the use of security scanners at EU airports (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) No 1147/2011

of 11 November 2011

amending Regulation (EU) No 185/2010 implementing the common basic standards on civil aviation security as regards the use of security scanners at EU airports

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 establishing common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002[(1)] and in particular Article 4(2) and (3).

Whereas:

(1) In accordance with Article 4(2) of Regulation (EC) No 300/2008, the Commission is required to adopt general measures designed to amend non-essential elements of the common basic standards laid down in the Annex to that Regulation by supplementing them.

(2) Article 4(3) of Regulation (EC) No 300/2008 further provides that the Commission must adopt detailed measures for implementing the common basic standards on civil aviation security laid down in the Annex to that Regulation, as supplemented by the general measures adopted by the Commission on the basis of Article 4(2).

(3) In particular, Commission Regulation (EC) No 272/2009[(2)] supplementing the common basic standards on civil aviation security provides for general measures in respect of methods of screening allowed for passengers as laid down in Part A of its Annex.

(4) In order to allow the use of security scanners as method for the screening of passengers, provisions on this use, minimum detection performance standards and minimum operational conditions shall be set.

(5) Commission Regulation (EU) No 185/2010[(3)] should therefore be amended accordingly.

(6) Security scanners shall be deployed and used in compliance with Council Recommendation 1999/519/EC of 12 July 1999 on the limitation of exposure of the general public to electromagnetic fields (0 Hz to 300 GHz)[(4)] and Directive 2004/40/EC of the European Parliament and of the Council of 29 April 2004 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from

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physical agents (electromagnetic fields) (18th individual directive within the meaning of Article 16(1) of Directive 89/391/EEC)[5].

(7) By laying down specific operational conditions on the use of security scanners and by providing passengers with the possibility to undergo alternative screening methods, this Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, including respect for human dignity and for private and family life, the right to the protection of personal data, the rights of the child, the right to freedom of religion and the prohibition of discrimination. This Regulation must be applied according to these rights and principles.

(8) The measures provided for in this Regulation are in accordance with the opinion of the Committee on Civil Aviation Security,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EU) No 185/2010 is amended in accordance with the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 11 November 2011.

For the Commission

The President

José Manuel BARROSO

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ANNEX

The Annex to Regulation (EU) No 185/2010 is amended as follows:

(1) in Chapter 4, point 4.1.1.1 is replaced by the following:

4.1.1.1 Before screening, coats and jackets shall be taken off and shall be screened as cabin baggage. The screener may request the passenger to undertake further divesting as appropriate.;

(2) in Chapter 4, point 4.1.1.2 is replaced by the following:

4.1.1.2 Passengers shall be screened by:

(a) a hand search; or

(b) walk-through metal detection (WTMD) equipment; or

(c) explosive detection dogs in combination with point (a); or

(d) security scanners which do not use ionising radiation.

Where the screener cannot determine whether or not the passenger is carrying prohibited articles, the passenger shall be denied access to security restricted areas or rescreened to the screener's satisfaction.;

(3) in Chapter 4, the following point is added:

4.1.1.10 When a security scanner with a human reviewer, as defined under point 12.11.1, second paragraph, is used for screening of passengers the following minimum conditions shall be complied with:

(a) security scanners shall not store, retain, copy, print or retrieve images. However, any image generated during the screening can be kept for the time needed for the human reviewer to analyse it and shall be deleted as soon as the passenger is cleared. Any unauthorised access and use of the image is prohibited and shall be prevented;

(b) the human reviewer analysing the image shall be in a separate location so that he/she cannot see the screened passenger;

(c) any technical devices capable of storing, copying or photographing or otherwise recording images shall not be allowed into the separate location where the image is analysed;

(d) the image shall not be linked to any data concerning the screened person and his/her identity shall be kept anonymous;

(e) a passenger may request that the image of his/her body is analysed by a human reviewer of the gender of his/her choice;

(f) the image shall be blurred or obscured to prevent the identification of the face of the passenger.

Paragraphs (a) and (d) shall also apply to security scanners with automatic threat detection.

Passengers shall be entitled to opt out from a security scanner. In this case the passenger shall be screened by an alternative screening method including at least a

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hand search in accordance with Attachment 4-A of Commission Decision (2010)774. When the security scanner alarms, the cause of the alarm shall be resolved.

Before being screened by a security scanner, the passenger shall be informed of the technology used, the conditions associated to its use and the possibility to opt out from a security scanner.;

(4) in Chapter 11, point 11.3 is replaced by the following:

11.3 CERTIFICATION OR APPROVAL

11.3.1 Persons performing tasks as listed in points 11.2.3.1 to 11.2.3.5 shall be subject to:

(a) an initial certification or approval process; and

(b) for persons operating x-ray or EDS equipment or for human reviewers of security scanners, recertification at least every 3 years; and

(c) for all other persons, recertification or reapproval at least every 5 years.

11.3.2 Persons operating x-ray or EDS equipment or human reviewers of security scanners shall, as part of the initial certification or approval process, pass a standardised image interpretation test.

11.3.3 The recertification or reapproval process for persons operating x-ray or EDS equipment or for human reviewers of security scanners shall include both the standardised image interpretation test and an evaluation of operational performance.

11.3.4 Failure to undertake or successfully complete recertification or reapproval within a reasonable timescale, not normally exceeding 3 months, shall result in the related security entitlements being withdrawn.

11.3.5 Certification or approval records shall be kept for all persons certified or approved, respectively, for at least the duration of their contract.;

(5) in Chapter 11, the following point is added:

11.4.1.1 Human reviewers of security scanners shall be subject to recurrent training consisting of image recognition training and testing. This shall take the form of classroom and/or computer based training for at least 6 hours in every 6-month period.

The results of testing shall be provided to the person and recorded, and may be taken into consideration as part of the recertification or reapproval process.;

(6) in Chapter 12, the following points are added:

12.11 SECURITY SCANNERS

12.11.1 **General principles**

A security scanner is a system for the screening of persons that is capable of detecting metallic and non-metallic objects, distinct from the human skin, carried on the body or within clothes.

A security scanner with human reviewer may consist of a detection system that creates an image of a person’s body for a human reviewer to analyse and establish that no metallic and non-metallic objects, distinct from the human skin is carried on the body of the person screened. When the human reviewer identifies such an object, its location