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COMMISSION RECOMMENDATION

of 23.6.2022

**on voluntary performance requirements for X-ray equipment used in public spaces
(outside aviation)**

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

- (1) Except for the field of civil aviation, Union law does not provide, at present, for harmonised performance requirements for X-ray equipment used for detection in public spaces. Such requirements differ between Member States, leading to uneven and not always sufficiently high levels of protection of the general public against security threats. Terrorists and other criminals may exploit the resulting vulnerabilities, including to stage attacks or conduct other criminal activities in Member States with a lower level of security in public spaces.
- (2) Terrorist attacks committed across the Union in recent years have predominantly taken place in public spaces, targeting members of the general public. In order to contribute to a sufficiently high level of protection against terrorist attacks and security threats in public spaces across the Union, voluntary performance requirements for X-ray equipment should be set out at Union level.
- (3) The detection equipment, including X-ray equipment, used in the field of civil aviation is subject to detailed requirements laid down in Commission Implementing Decision C(2015) 8005¹. Those requirements are well defined and offer a high and consistent level of protection in the field of civil aviation security. Therefore, that field should not be covered by this Recommendation. In addition, in the interest of clarity, it should be clarified that this Recommendation is without prejudice to acts of Union law regulating safety aspects of X-ray equipment.
- (4) In the Counter-Terrorism Agenda for the EU², the Commission committed to support the development of voluntary requirements for detection technologies to ensure that they detect the security threats they need to detect, while preserving the mobility of people. In pursuit of this commitment, the Commission established the Technical Working Group on detection performance requirements, composed of Member State experts, manufacturers and officials from a number of Commission services, and asked it to assist in developing voluntary performance requirements for X-ray equipment at Union level. This Recommendation, and in particular the voluntary

¹ Commission Implementing Decision C(2015) 8005 laying down detailed measures for the implementation of the common basic standards on aviation security containing information, as referred to in point (a) of Article 18 of Regulation (EC) No 300/2008.

² Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions. A Counter-Terrorism Agenda for the EU: Anticipate, Prevent, Protect, Respond COM(2020) 795 final.

requirements contained therein relating to product documentation and X-ray performance, is based on the preparatory work conducted by this working group.

- (5) The voluntary performance requirements contained in this Recommendation should be used by Member States in public procurement of X-ray equipment intended to be used for security-threat detection in public spaces.
- (6) This Recommendation, which has no binding force, should not be understood as requiring the Member States to procure or use certain particular X-ray equipment for security-threat detection in public spaces. The decisions on which equipment to procure or use in a given public space should continue to be taken exclusively by Member States, in accordance with Union law. This Recommendation should rather aim to promote the use of the voluntary performance requirements contained in this Recommendation in the context of Member States' procurement activities to contribute to achieving an equivalent and high level of security-threat detection performance by X-ray equipment used by Member States' authorities in public spaces across the Union.
- (7) The voluntary performance requirements contained in this Recommendation should not be understood as being intended to replace national performance standards for X-ray equipment, where such national standards exist. In particular, Member States should remain free to apply, in accordance with Union law, more stringent performance requirements for X-ray equipment used to detect security threats in public spaces.
- (8) This Recommendation should indirectly incentivise manufacturers to comply with the requirements in future production of X-ray equipment. Member States should therefore require in the procurement document for the X-ray equipment to be used for security-threat detection in public spaces that the tenderers include in the tender the product documentation and declaration of conformity based on the manufacturer's own methodology to demonstrate the conformity of the X-ray equipment with the voluntary performance requirements contained in this Recommendation.
- (9) The use of X-ray equipment in public spaces may pose challenges from the viewpoint of the rights to protection of privacy and personal data. It is of crucial importance in relation to all activities connected to the use of the X-ray equipment at issue, including the procurement and operation of the equipment and any subsequent processing activities, to limit the intrusiveness as much as possible and, in any event, to act in compliance with the relevant acts of Union law, in particular Regulation 2016/679 of the European Parliament and of the Council³, Directive 2016/680 of the European Parliament and of the Council⁴ and the Charter of Fundamental Rights of the European Union.
- (10) Bearing in mind in particular the relevant technological developments in the area of security-threat detection, the voluntary performance requirements for X-ray equipment

³ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

⁴ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

contained in this Recommendation should be subject to review and adjustments where necessary. The Commission, with the assistance of the technical working group on detection performance requirements, will therefore closely follow technological and other relevant developments and regularly assess the need for adjustments of this Recommendation.

- (11) In the interest of effectiveness and transparency, Member States should be encouraged to give effect to this Recommendation and submit a report on their implementing measures to the Commission within a reasonable timeframe.
- (12) On the basis of those reports and any other relevant information, the Commission will, after a suitable time period, assess the progress made in giving effect to this Recommendation, with a view, inter alia, to assessing whether Union legal acts with binding force on this subject matter are necessary.

HAS ADOPTED THIS RECOMMENDATION:

1. For the purposes of this Recommendation, the following definitions apply:
 - (a) ‘X-ray equipment’ means radiographic X-ray scanners used for physical controls aimed at security-threat detection, in which a pseudo-colour image is generated based on measured changes of X-ray radiation that passes through scanned items of interest;
 - (b) ‘security-threat detection’ means the determination of the presence or absence of one or more substances or objects of interest which may be used to cause security threats, such as explosives, dangerous chemicals, firearms or sharp objects;
 - (c) ‘performance requirements’ mean the technical specifications to be met by X-ray equipment intended to ensure that the equipment adequately performs its security-threat detection functions;
 - (d) ‘product documentation’ means the documentation, in paper or electronic form, accompanying the X-ray equipment;
 - (e) ‘public spaces’ mean any physical place that is accessible to the public, regardless of whether certain conditions for access may apply;
2. Member States should require in the procurement document for X-ray equipment to be used for security threat detection in public spaces that the tenderer include in the tender the product documentation set out in point 1 of the Annex.
3. Member States should ensure that the X-ray equipment they procure for the use of security-threat detection in public spaces comply with the performance requirements set out in point 2 of the Annex, except when acting in the field of civil aviation.
4. Member States should require in the procurement document for X-ray equipment to be used for security-threat detection in public spaces that the tenderer include in the tender a declaration of conformity with the performance requirements that is issued by the manufacturer, based on the manufacturer’s own methodology.
5. By 23 June 2023, Member States should take the necessary measures, in accordance with Union law, to give effect to this Recommendation.

6. Member States should report to the Commission on their implementing measures by 23 December 2023.

Done at Brussels, 23.6.2022

For the Commission
Ylva Johansson
Member of the Commission

