/ Contribution by AlgorithmWatch

EDPB's guidelines 05/2022 on the use of facial recognition technology in the area of law enforcement

Facial recognition, the most common form of biometric surveillance, is being trialed and deployed at an alarming rate throughout Europe. Facial recognition technologies (FRT) are often deployed in secrecy and without the necessary legal safeguards; can be intrusive; and may pose a significant threat to our basic human rights – that's why we devote a particular attention to the issue in our work.

AlgorithmWatch very much welcomes the European Data Protection Board's (EDPB) Guidelines 05/22 on the use of facial recognition technology in the area of law enforcement. Our submission is not intended to be a comprehensive review on the guidelines but will only highlight and reflect on selected points of the guidelines which are most relevant for our work.

First of all, depending on the context in which FRT is being deployed, the level of risk may vary greatly. For instance, a one-to-one biometric authentication at an airport may also limit the enjoyment of fundamental rights but potentially in a proportionate and thus justifiable way. On the contrary, a system for biometric identification like FRT (one-to-many) deployed in publicly accessible spaces can enable mass surveillance, which would clearly violate our right to privacy and would create a chilling effect that undermines rights to freedom of thought, conscience and religion, freedom of opinion, expression and information, and freedom of assembly and association.

Hence, we highly appreciate and support that the EDPB explicitly stresses that a **data protection impact assessment (DPIA)** before the use of FRT is a mandatory requirement. Furthermore, we welcome that the EDPB recommends **making public the results of the DPIAs**, or at a minimum the main findings and conclusions of the DPIA, as a trust and transparency enhancing measure. However, in our view, data protection can only take us so far. In light of the variety of fundamental rights touched by the use of biometric recognition systems like FRT, a more **comprehensive fundamental rights impact assessment i**s crucial. While we are aware that this goes beyond the EDPB's mandate, we invite the EDPB to actively push for such comprehensive assessments. Fundamental rights are inextricably interlinked and the use of FRT epitomizes the way in which the violation of one right can go hand in hand with the violation of many others.

Second, we very much appreciate the EDPB's suggestion that *"before the national legislator creates a new legal basis for any form of processing of biometric data using facial recognition, the competent data protection supervisory authority should be consulted."* In addition, since FRT may impact certain groups of people more adversely than others, it would be crucial to **involve the representatives** of potentially affected groups – for instance civil society – in any consultations on the topic, too.

Third, we welcome and support the EDPB's position for a **strict ban on remote biometric identification** (RBI) of individuals in publicly accessible spaces. As the guidelines stress, RBI poses a high risk of intrusion into individuals' private lives and has no place in a democratic society. We notably welcome that such ban the EDPB is promoting regarding RBI in publicly accessible spaces is

neither limited to real-time RBI – without accounting for post RBI – nor limited to the area of law enforcement. These two limitations are limiting the ban foreseen in the EU's draft Artificial Intelligence Act, creating major loopholes for the deployment of RBI which can easily lead to mass surveillance.

Lastly, it is understandable that the guidelines predominantly focus on the deployment of FRT. However, accordingly, they fail to account for the **development and sale/export of these systems to third countries** for use in law enforcement. From a fundamental rights' perspective this is worrying as it concerns infringement of basic rights of people abroad – which the EU and its Member States have an obligation to take into consideration, too.

AlgorithmWatch appreciates the EDPB's guidelines and the public consultation process on these. We look forward to such collaborations in the future with the common goal: the protection of our basic human rights and democracies which value the significance of pluralism.