



EUROPEAN COMMISSION

Ursula von der Leyen
The President

Brussels, 10 MAI 2021
Ares (2021) 2562805

Honourable Member,

I would like to thank you and the co-signatories for your letter expressing your concerns about our legislative proposal on artificial intelligence (AI).

Let me clarify at the outset that the leaked document you mention in your letter was not published by the Commission and does not reflect our final position on the use of AI systems.

I agree that the use of mass surveillance technologies risks having a chilling effect on our democratic principles. The unconditional use of AI systems for remote biometric identification in publically accessible spaces is considered particularly intrusive for the rights and freedoms of the persons concerned. Such unconditional use may affect the private life of a large part of the population and their rights to personal data protection, evoke a feeling of constant surveillance and indirectly dissuade from making use of the freedom of assembly and other fundamental rights. On the other hand, I believe that such systems may also have a beneficial impact that should not be overlooked. When used to help visually impaired persons, to find missing children or to act against a specific and imminent terrorist threat, these technologies may be of a great help.

As you mention in your letter, we already have strong rules in place for data protection. Processing biometric data for remote identification systems is in principle prohibited under data protection rules and can only be allowed under very specific conditions. The Commission's intention with the legislative proposal on AI is not to replace or weaken existing regulation, but to complement this solid framework of rules in view of providing further transparency and legal certainty for the protection of European citizens.

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The objective of the legal framework proposed on 21 April 2021 is to ensure the effective protection of fundamental rights in the EU.

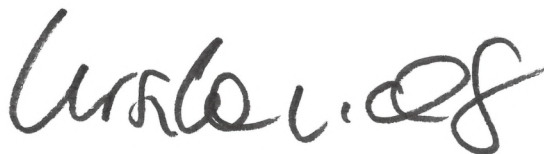
The use of real-time remote biometric identification in public places for law enforcement purposes should therefore in principle be prohibited with a few, narrowly defined exceptions, where the use is strictly necessary to achieve a sufficiently substantial public interest. These exceptions include situations involving the targeted search for specific potential victims of crime, including missing children; a response to the threat of a terror attack or the detection and identification of perpetrators of serious crimes exhaustively enumerated in the EU legislation on the European Arrest Warrant. In addition, the use of those systems should be based on clear indications as regards the aforementioned situations and should be subject to limits in time and space, as well as to an express and specific authorisation by a judicial authority or an independent administrative authority of a Member State. Finally, such use presupposes rules in the national law of a Member State that decides to deploy real-time remote biometric identification systems for some or all of the situations circumscribed narrowly in the legislative proposal on AI.

The Commission also proposes under the new rules to consider all AI systems intended to be used for remote biometric identification of persons as high-risk and subject to ex ante third-party conformity assessments as well as to '4-eyes' human control. Among the mandatory requirements applicable to high-risk AI systems, high quality data sets and testing will help to make sure such systems are accurate and that there are no discriminatory impacts on the affected population.

Finally, all emotion recognition and biometric categorisation systems will be subject to specific transparency obligations. In addition, they will be considered high-risk applications if they fall under the use cases identified as such in Annex III of the proposal, for example, when they are used in the areas of employment, education, law enforcement, migration and border control.

Our Union is based on a set of core values and principles that we have to defend at all times. I remain fully committed to work together with the Parliament to defend European citizens' liberties and fundamental rights as well in the digital age.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Ursula von der Leyen', written in a cursive style.

Ursula von der Leyen