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EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

DATA PROTECTION NOTICE

Remote biometric identification for law enforcement purposes: selected use-cases

The European Union Agency for Fundamental Rights (FRA or Agency) processes the personal data of a natural person in compliance with Regulation 2018/1725 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC.

This data protection notice explains FRA's policies and practices regarding its collection and use of your personal data, and sets forth your privacy rights. We recognise that information privacy is an ongoing responsibility, and we will update this notice where necessary.

1. Why do we process personal data?

The purpose of the processing of the personal data is to collect information and data for the purpose of the FRA research project on 'Remote biometric identification for law enforcement purposes: selected use-cases' by conducting interviews, non-participant observations and a small-scale quantitative survey.

This project is intended to provide FRA with research evidence on the actual operation of selected use-cases of remote biometric identification in the context of law enforcement, in six EU Member States (France, Germany, Greece, Hungary, Italy and The Netherlands). It will serve to increase the understanding of the range of fundamental rights implications attached to the deployment and use of selected remote biometric

identification systems, which were used, are actually in use or may potentially be used in practice. It will thereby inform the implementation of the AI Act and other relevant legislation.

The research will be carried out by the external contractor (AWO Belgium, which is established in Onze-lieve-vrouwstraat 41, 2180 Ekeren, Belgium), selected by FRA through a public procurement procedure and which will act as processor. The contractor will use the services of several sub-processors as indicated in the record of processing.

The research includes interviews with key stakeholders, which may take place in-person or remotely, using a semi-structured questionnaire. It also includes non-participant observation of the use of remote biometric identification systems by law enforcement agaencies and small-scale quantitative surveys on public perceptions of these systems in places in which they are deployed. The information gathered will help AWO draft a comparative report that will complement FRA's wider body of research on artificial intelligence, big data and fundamental rights.

2. What kind of personal data does the Agency process?

We will collect only the following personal data necessary for the processing operation described above.

(a) General personal data:

- Personal details (name, surname), or in the case of small-scale surveys, demographic information (age bracket, gender)
- Contact details (email address, mobile number)
- Employment details (work experience, languages, name and type of the employer/organisation, address of the employer/ organisation)
- Other (please give details)

  - If the interviews with the relevant persons from national law enforcement agencies, technology providers, data protection authorities, national human rights institutions, civil society organisations and rights holders take place online via Teams or Zoom, these tools will process additional personal data such as Device Information, Content and Context from Meetings, Usage Information Regarding Meetings, Unique identification numbers and signatures.

    For a more detailed overview of the data processed by Microsoft and Zoom, please see the Microsoft Products and Services Data Protection Addendum (https://www.microsoft.com/licensing/docs/view/Microsoft-Products-and-Services-Data-Protection-Addendum-DPA?lang=1&year=2024) and Zoom's Privacy Statement and Data Processing Addendum (https://explore.zoom.us/en/privacy/, https://explore.zoom.us/docs/doc/Zoom_GLOBAL_DPA.pdf).
  - Audio recording for accuracy and note-taking purposes.
  - Information disclosed during the interviews: this is the information that interviewees will disclose to interviewers in the course of interviews.

(b) Special categories of personal data may be incidentally revealed during the interviews, non-participant observations and small-scale surveys:

- data revealing racial or ethnic origin
- political opinions
- religious or philosophical beliefs
- genetic data, biometric data, data concerning health

- Should the interviews take place online, racial or ethnic origin, political opinions and/or religious or philosophical beliefs might be incidentally revealed by the image when participants switch on their cameras.
- Moreover, although there is no intent to process special categories of personal data for the abovementioned purposes, there is a possibility that such personal data may be communicated by interviewees to AWO in the course of interviews.

3. How do we collect and process your personal data?

The data will be collected for the purpose of semi-structured interviews and non-participant observations conducted by the external contractor.

*3*a. *Information you provide us*

You may provide us with missing contact or employer information that is not publicly available online, through the consent form that will be provided to you before the interview, such as: name, employer's name, function title, telephone number, and email address.

The interviews will be conducted face-to-face. In case of difficulties with organising interviews in-person, they may be conducted via a video call. The platform used to this end will be Microsoft Teams or Zoom.

For accuracy and note-taking purposes, and only with your consent, interviews (both in person and online) will be audio recorded by AWO. In the case of in-person interviews, this will be done using a secure device owned by the researcher. In the case online interviews, the recordings will be created using MacWhisper, an on-device application that offers a higher level of data protection than the comparable functions on Teams or Zoom, since no data (audio, text or other) leaves the device to generate the audio file. For more information about MacWhisper, see the app developer's privacy policy: https://impresskit.net/press-release/f5537c9f-c2c1-42d9-a870-6cecd28a8c31). The recordings will be kept by the research team at AWO and may be shared with FRA for quality control purposes.

AWO also uses MacWhisper to generate transcripts of the interview from the interview audio recordings. MacWhisper makes use of generative models to transcribe audio. Again, because it is an on-device application, no data leaves the device to generate the transcript. The generated transcripts will be validated by the interviewer and used by the AWO project team to produce a pseudonymised summary record of the conversation, which will be then used to assist with the drafting of the report.

Audio recording will not be deployed during the non-participant observation of law enforcement use of remote biometric identification systems. Notes will be taken by the researchers and then used to generate a pseudonymised summary of the non-participant observation exercise, which will be then used to assist with the drafting of the report.

Whether you participate in an interview or a non-participation observation exercise, your name will not be included in the report and none of the information you disclose will be attributed to individual respondents.

The small-scale surveys will conducted by AWO's partner IPSOS, which will act as a sub-processor of personal data for this specific processing operation. Personal data collected directly from survey respondents will be pseudonymized by IPSOS and provided to AWO and FRA as an anonymised dataset, from which it will not be possible for AWO or FRA to identify respondents. More detailed information and a further privacy notice will be provided to individual survey respondents by IPSOS prior to the data collection.

3b. Information we collect about you

Your IP address, connection details, cookies, and/or device information might be collected if the interviews take place online via Microsoft Teams or Zoom.

More information about Microsoft's and Zoom's privacy and security practices are available at: https://learn.microsoft.com/en-us/microsoftteams/privacy/teams-privacy and https://explore.zoom.us/en/privacy/.

AWO will offer interviewees a choice of online conferencing tool for the interview and confirm that this will be used in advance of the interview.

3c. Information we receive from other sources

The controller and processor will collect and process publicly available contact details of potential participants in the interviews and in the non-participant observations by searching online for their name, employer's name, function title, telephone number, and email address. They may also obtain this information from FRA (subject to receiving consent for sharing their contact details with the contractor) or from AWO researchers' own professional networks.

4. Who is responsible for processing your personal data?

The Agency is the legal entity responsible for the processing of your personal data and determines the objective of this processing activity. The Head of the Justice, Digital and Migration Unit is responsible for this processing operation.

1. Which is the legal basis for this processing operation?

The processing operation is carried out in the public interest, and it is necessary to achieve the Agency's objective, as stated in Article 2 of its Founding Regulation (EC) No. 168/2007 (as amended) to provide its stakeholders, including Union institutions and EU Member States, with assistance and expertise relating to fundamental rights, including its tasks described in Article 4 (1)(a), (c) and (d). The project is also included in FRA's Single Programming Document 2024 – 2026 Fiche B.2.3, available here.

Therefore, the processing is lawful under Article 5.1.(a) of the Regulation (EU) No 2018/1725.

In addition, since the participation in the above mentioned interviews is not mandatory, we will request your explicit consent to the processing of the personal data by means of a consent form, and to the audio recording of the interviews, for accuracy and transcription purposes. Therefore, the processing is also in accordance with Article 5.1.(d) of Regulation (EU) No 2018/1725.

The incidental processing of special categories of data (e.g. video revealing racial/ethnic origin) is lawful under Article 10(2)(a) of Regulation 2018/1725. Specific consent has been given and is stored.

2. Who can see your data?

The details of interview and non-participant observations participants (names, surnames, contact details, employment details) will be available to the AWO project team (including sub-processors) and FRA staff working on the project. Access is restricted to authorized staff members and only these members have access rights to open the files. AWO and FRA will have access to these personal data as well as to the data collected via interviews. All personal data will be deleted after the specified data retention period has passed (see point 10).

3. Do we share your data with other organisations?

Personal data is processed by the Agency only. In case that we need to share your data with third parties, you will be notified to whom your personal data has been shared with.

4. Do we intend to transfer your personal data to Third Countries/International Organizations

Your personal data will be accessed from the UK by the lead researchers. We carry out these data transfers based on the EU-UK adequacy decision adopted by the European Commission on 28 June 2021.

Moreover, as Microsoft and Zoom are US based companies and they are subject to US Surveillance laws, a transfer of limited personal data cannot be completely discarded. Such transfers, if any, fall under the adequacy decision for the EU-US Data Privacy Framework adopted by the European Commission on 10 July 2023.

5. When will we start the processing operation?

We will start the processing operation together with the contractor in May 2024.

6. How long do we keep your data?

AWO will keep the personal and contact details, audio recordings and transcripts from the interviews for three months after the project's end (until 31.3.2025). FRA will keep the personal and contact details for one year after the project's end (until 31.12.2025) for the purposes of finalising the final FRA report. FRA can receive access to the audio recordings and transcripts upon request for quality management purposes. Should FRA receive any such files, they will be deleted at the latest in one year after the end of the contract. FRA will archive the anonymized summary records of the conversations and final report.

IPSOS will delete all individual survey responses as soon as the anonymised dataset has been satisfactorily received by FRA and AWO. The validation period will be one month after the surveys have been conducted. Surveys will take place between June and August 2024.

7. How can you control your data?

Under Regulation 2018/1725, you have rights we need to make you aware of. The rights available to you depend on our reason for processing your information. You are not required to pay any charges for exercising your rights except in cases were the requests are manifestly unfounded or excessive, in particular because of their repetitive character.

We will reply to your request without undue delay and in any event within one month of receipt of the request. That period may be extended by two further months where necessary, taking into account the complexity and number of the requests.

You can exercise your rights described below by sending an email request to rbiproject@fra.europa.eu.

7.1. The value of your consent

Since your participation is not mandatory, we need proof that you consented to the processing of your personal data in the way indicated in section 3. Consent will be collected by email prior to your participation in the interview or non-participant observations. Consent will be collected orally in the case of the small-scale surveys and recorded on the tablets used by the interviewers to collect the survey responses. You have the right to withdraw your consent at any time, and we will delete your data or restrict its processing. While consent may be withdrawn during the surveys, it may not be possibe to withdraw consent once the data has been psuedonymised and subsequently fully and irreversibly anonymised. All processing operations up until the withdrawal of consent will still be lawful.

7.2. Your data protection rights

a. Can you access your data?

You have the right to receive information on whether we process your personal data or not, the purposes of the processing, the categories of personal data concerned, any recipients to whom the personal data have

been disclosed and their storage period. Furthermore, you can have access to such data, as well as obtain copies of your data undergoing processing.

b. Can you modify your data?

You have the right to ask us to rectify your data you think is inaccurate or incomplete at any time.

c. Can you restrict us from processing your data?

You have the right to restrict the processing of your personal data. If you do, we can no longer process them, but we can still store them. In some exceptional cases, we will still be able to use them (e.g. with your consent or for legal claims). You have this right in a few different situations: when you contest the accuracy of your personal data, when the Agency no longer needs the data for completing its tasks, when the processing activity is unlawful, and finally, when you have exercised your right to object.

d. Can you delete your data?

You have the right to ask us to delete your data when the personal data are no longer necessary for the purposes for which they were collected, when you have withdrawn your consent or when the processing activity is unlawful. In certain occasions we will have to erase your data in order to comply with a legal obligation to which we are subject.

We will notify to each recipient to whom your personal data have been disclosed of any rectification or erasure of personal data or restriction of processing carried out in accordance with the above rights unless this proves impossible or involves disproportionate effort from our side.

e. Are you entitled to data portability?

Data portability is a right guaranteed under Regulation 1725/2018 and consists in the right to have your personal data transmitted to you or directly to another controller of your choice.
In this case, this does not apply for two reasons: I) in order for this right to be guaranteed, the processing should be based on automated means, however we do not base our processing on any automated means; II) this processing operation is carried out in the public interest, which is an exception to the right to data portability in the Regulation.

f. Do you have the right to object?

When the legal base of the processing is "*necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the Union institution or body*" which is the case in most of our processing operations, you have the right to object to the processing. In case you object, we have to stop the processing of your personal data, unless we demonstrate a compelling reason that can override your objection.

g. Do we do automated decision making, including profiling?

Your personal data will not be used for an automated decision-making including profiling.

8. What security measures are taken to safeguard your personal data?

The Agency has several security controls in place to protect your personal data from unauthorised access, use or disclosure. We keep your data stored on our internal servers with limited access to a specified audience only.

AWO will take all reasonable steps to ensure that the personal data processed is kept secure and treated in accordance with this notice, the contract between AWO and FRA, and the applicable law. AWO implements technical and organisational safeguards in order to prevent unauthorised access to personal data, including limiting access to personal data to those who require it, configuring the tools we use to process the minimum amount of personal data possible, encrypting the data when relevant, the implementation of security protocols and staff training.

9. What can you do in the event of a problem?

a) The first step is to notify AWO by sending an email to privacy@awo.agency or contacting them via any other means (AWO's registered address is Sq. de Meeûs 35, 1000 Bruxelles, Belgium).

b) Data subjects can also reach out directly to the Agency by sending an email to rbiproject@fra.europa and ask FRA to take action.

c) If you obtain no reply from AWO or the Agency or if you are not satisfied with it, contact the FRA Data Protection Officer (DPO) at dpo@fra.europa.eu.

d) At any time you can lodge a complaint with the EDPS at http://www.edps.europa.eu, who will examine your request and adopt the necessary measures.

10. How do we update our data protection notice?

We keep our data protection notice under regular review to make sure it is up to date and accurate.

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Electronically signed on 02/05/2024 13:32 (UTC+02) in accordance with Article 11 of Commission Decision (EU) 2021/2121