

# EDPB/EDPS Joint Opinion on Commission's AI Proposal: Call for Ban of Biometric AI Surveillance



## News

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On 18 June 2021, the European Data Protection Board (EDPB) and European Data Protection Supervisor (EDPS) adopted a [joint opinion](#) on the European Commission's Proposal for a regulation laying down harmonised rules on artificial intelligence (AI). The EDPB and the EDPS welcomed the Commission's proposal that had been presented on 21 April 2021 (→ [euCRIM news item of 13 May 2021](#)). They made clear that it has important data protection implications.

The EDPB and the EDPS further welcomed the extension of the proposal to the provision and use of AI systems by EU institutions, bodies or agencies (EUIs). They criticised, however, the exclusion of international law enforcement cooperation from its scope.

Regarding the risk-based approach to AI systems, the EDPB and the EDPS stressed that the concept of "risk to fundamental rights" should be aligned with the General Data Protection Regulation (GDPR). The proposal should explicitly address the rights and remedies available to individuals affected by AI systems.

The EDPB and the EDPS were also critical of the Commission's exhaustive list of high-risk AI systems, which might create a black-and-white effect undermining the overall risk-based approach. They agreed with the proposal in that the classification of an AI system as "high-risk" does not necessarily mean that it is still lawful *per se* and can be deployed by the user as such.

Regarding the prohibition of the use of certain AI systems, the EDPB and the EDPS recommended that intrusive forms of AI – such as those AI systems intended to be used by law enforcement – be prohibited AI systems under Art. 5 of the proposal, instead of simply being classified as "high-risk" in the annex. They particularly anticipate that the use of remote biometric identification of individuals in publicly accessible spaces may create an especially high-risk of intrusion into individuals' private lives. They therefore called for a stricter use of such AIs, e.g. a general ban on any use of AI for automated recognition of human features in publicly accessible spaces (e.g., recognition of faces, gait, fingerprints, DNA, voice, keystrokes and other biometric or behavioural signals) in any context. They also endorsed a ban AI systems using biometrics to categorize individuals into clusters based on ethnicity, gender, political or sexual orientation, and any other grounds on which discrimination is prohibited under Art. 21 CFR.

Despite welcome the designation of the EDPS as the competent market surveillance authority for the supervision of the EUIs, its role and tasks need further clarification. They embraced the proposal for the establishment of the "European Artificial Intelligence Board" (EAIB). However, they feel that the future AI

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Regulation should give more autonomy to the EAIB, in order to allow the Board to truly ensure the consistent application of the Regulation across the single market.

Regarding transparency issues, the opinion recognised that ensuring transparency in AI systems is a very challenging goal. The registration of high-risk AI systems in a public database in order to provide information about the application and the flaws of AI systems would be welcomed.

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