Study on Biometric Recognition and Behavioural Detection

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In August 2021, a study assessing the ethical aspects of biometric recognition and behavioural detection techniques with a focus on their current and future use in public spaces was released. The study was commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the JURI and PETI Committees.

The study notes that biometric identification, biometric categorisation, behavioural detection, emotion recognition, brain-computer-interfaces (BCIs), and similar techniques are serving a broad variety of purposes (e.g., healthcare, law enforcement) and are being used to an increasing extent by public and private bodies. The aim of the study was therefore to analyse different types of biometric techniques and to draw conclusions for EU legislation. The study provided the following:

The study stressed that the main ethical issue of biometric identification lies within the so-called enrolment phase – the creation and storage of a unique template that identifies a particular person. By creating this template, unique physical features of a human being are being transformed into digital data (a process called the "datafication of humans"). The study pointed out that the collection and use of features that are part of the human body interferes with the human's personal autonomy and dignity. A person whose features have been collected and stored cannot escape biometric identification as there is a risk that the template can come into the possession of anyone.

Biometric identification methods in public spaces, understood as large-scale surveillance of individuals, also raise ethical issues. The study warns that the use of biometric categorisation of human individuals may lead to risks of discrimination, stigmatisation, and the drawing of inappropriate inferences. Categorising individuals may lead to a standardised profiling or scoring to achieve a given goal in a given social context.

The potentially intrusive nature of biometric detection of human conditions (e.g., intention to commit a crime, fear, fatigue or illness) is one of the major ethical concerns because often very intimate traits can be analysed.

The study raised the question of whether the existing and proposed legislation adequately addresses the ethical and fundamental rights issues occurring due to the use of biometric recognition. This especially concerns the Commission proposal for an Artificial Intelligence Act (AIA) of 21 April 2021 (à eucrim 2/2021, 77). According to the study, the proposal is a step in the right direction, but it failed to address ethical concerns in a consistent manner. Therefore, several recommendations are made in this respect, *inter alia*:

The Commission should have the possibility to adapt the list of prohibited AI practices periodically, potentially under the supervision of the European Parliament.

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