Sophie in't Veld
MEP European Parliament
Rue Wiertz 60
B-1047 Brussels
Belgium

Brussels, 10 August 2021

by e-mail only

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Dear Ms in 't Veld,

Thank you for your letter concerning the use of Automatic Image Recognition System on migrants in Italy. The EDPB dedicates special attention to the issue of facial recognition technologies, which raises unprecedented issues and concerns in terms of data protection.

Whilst facial recognition technologies may generally undermine the right to respect for private life and the protection of personal data, but also other fundamental rights and freedoms (in particular freedom of expression and information, freedom of assembly and association, and freedom of thought, conscience and religion), it clearly engenders wider issues from an ethical and societal point of view, especially when dealing with vulnerable people such as migrants.

Concerning the use of facial recognition technologies to monitor disembarkation operations in Italy by police authorities, the Italian Data Protection Authority, according to the information shared, examined the so called "Sari Real Time System", on the basis of a data protection impact assessment carried out by the Ministry of Interior, in accordance with the national legislation implementing the Law Enforcement Directive (EU) 2016/680[1], prior to the activation of the said system. In particular, this system was not designed to be used specifically for migration, asylum and border control activities, but in general to operate in support of investigative activities.

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[1] See Article 23 of the Legislative Decree No 51 of 18 May 2018.

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In the negative Opinion issued on 25 March 2021[2,] the Italian DPA, in line with the guidance of the Council of Europe, considered the use of facial recognition technologies to be extremely delicate for the purposes of prevention and prosecution of criminal offence. In particular, the Sari Real Time System would entail an automated processing of biometric data on a large-scale basis, that could also concern people not sought by the police, for instance, persons attending a political demonstration. Even though the impact assessment submitted by the Ministry explained that the images would be deleted immediately, the identification of a person would be achieved through the processing of biometric data of all people present in the monitored space, so as to generate templates comparable with those included in a "watch-list". This would result in a transition of surveillance activities, from targeted surveillance of some individuals to universal surveillance.

Regarding this specific case mentioned in your letter, I would like to stress again that while, for the investigation of the use of the said technologies and the enforcement of the GDPR in individual cases, the competency lies with each national supervisory authority, the role of the EDPB is to ensure the consistent application of the GDPR according to Article 70 of the GDPR and to Article 51 of the LED.

To this end, the EDPB is committed to continuing its work on analysing the use of facial recognition. The EDPB guidelines adopted in January 2020 on processing of personal data through video devices, already address these technologies, and several supervisory authorities have also taken positions or adopted decisions on specific cases involving facial recognition. This is also the case of the Italian SA, as you pointed out in your letter. This work is still ongoing, in particular with a view to steer the future legislative work at European and national levels, especially with regard to the use of facial recognition technologies by law enforcement authorities.

In this regard, it is worth mentioning the Joint Opinion 5/2021 recently adopted by the EDPB and the EDPS on the Commission's proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act)[3], which includes specific restrictions on the use of AI systems for 'real-time' remote biometric identification for the purpose of law enforcement. In this Joint Opinion, the EDPB and the EDPS underlined that the use of AI in the area of police and law enforcement requires

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[2] See Decision No 127 of 25 March 2021 available at https://www.garanteprivacy.it/web/guest/home/docweb/-/docweb-display/docweb/9575877.
[3] See EDPB-EDPS Joint Opinion 5/2021 on the proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) available at https://edpb.europa.eu/our-work-tools/our-documents/edpbedps-joint-opinion/edpb-edps-joint-opinion-52021-proposal_en

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area-specific, precise, foreseeable and proportionate rules that need to consider the interests of the persons concerned and the effects on the functioning of a democratic society.

More specifically, they called for a general ban on any use of AI for an automated recognition of human features, such as faces, in publicly accessible spaces, in any context. A ban was equally recommended on AI systems categorising individuals from biometrics, including face recognition, into clusters according to ethnicity or other grounds for discrimination under Article 21 of the Charter. Furthermore, the EDPB and the EDPS considered that the use of AI systems intended to be used by competent public authorities, such as polygraphs and similar tools to detect the emotional state of a natural person, is highly undesirable and should be prohibited.

In addition, as mentioned in its two-year work programme for 2021-2022, the EDPB is currently working on Guidelines on the use of facial recognition technologies in the area of law enforcement.

Therefore, the EDPB is fully aware of the importance of ensuring that the fundamental rights and freedoms of individuals, including the right to privacy and data protection, are adequately safeguarded when individuals' biometric data are subject to automatic processing through facial recognition technologies for purposes of border management, and will follow closely the developments on this matter.

In line with the EDPB Strategy 2021-2023, the Board will continue to monitor new and emerging technologies, such as facial recognition, and their potential impact on the fundamental rights and daily lives of individuals, and will help to shape Europe's digital future in line with our common values and rules, while continuing to work with other regulators and policymakers to promote regulatory coherence and enhanced protection for individuals.

Yours sincerely,

Andrea Jelinek

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