Facial Recognition Technology in the context of law enforcement and fundamental rights

#### **Dr Tamas MOLNAR**

legal research officer Research and Data Unit Tamas.Molnar@fra.europa.eu

fra.europa.eu





# FRA focus paper on facial recognition technology

- Draws on previous and ongoing FRA research
- Focuses on use of "live facial recognition technology" (LFRT) by law enforcement
- Based on interviews with experts and practitioners (in selected EU Member States)
- Discusses selected fundamental rights implications → legal analysis

https://fra.europa.eu/en/publication/2019/facial-recognitiontechnology-fundamental-rights-considerations-context-law



Facial recognition technology: fundamental rights considerations in the context of law enforcement FRA Focus

> Facial recognition technology (FRT) makes it possible to compare digital facial images to determine whether they are of the same person. Comparing footsge obtained from video careness (CUV) with images in databases is referred to as "Wor facial recognition technology: "Examples of national invertigence and the EU using such technology: as parase – but several are testings its podmicil. This paper therefore looks at the fundamental rights impleations of relying on live FRT, focusing on its use for lave enforcement and horder-management purposes.

> EV law receptions as "sensitive data" people's head images, which are a form of biometric data. But such images are as loss optim early to capture in public places. Although the accuracy of matches is improving, the risk of errors remains mari – particularly for earlthm missively groups. Moreover, papel whereis mages are captured and processed might not know this is happening—and so cannot challinge possible missors. The paper writes and analyses these and obten inframmarial rights challings and the triggered when public authorities deply live FIT for law enforcement purposes. It also briefly presents steps to take to help soviel inflay solubilities.

#### Contents

1. Facial recognition technology and fundamental rights: setting the scene	- 2
2. Facial images as a unique biometric identifier in EU law	
3. What is factal recognition technology?	
4. Accuracy of facial reception technology: assessing the risks of wrong identification	0
5. Use of facial recognition technology by public authorities in the EU	
6. Fundamental rights implications of using live facial recognition: general points	18
7. Fundamental lights most affected	
Coordenians	

A RANGE A



## What is facial recognition technology?

- Verification (one-to-one)
  - ABC gates
  - Cell phones
- Identification (one-to-many)
  - Closed vs. open set identification
  - Live Facial Recognition Technology (LFRT)
- Categorisation
  - Gender, ethnicity, age
  - Many other issues





## Accuracy of facial recognition technology

- Enormous increase in accuracy over the past years →sparked interest from public sector, too
- Variation in the accuracy of available software
- Challenges to assess accuracy
  - Only probabilities →trade-off between
    - false positives
    - false negatives
  - Accuracy comes from training/test databases
- Data quality & training databases → can lead to discrimination



Fundamental rights considerations – horizontal issues

- Public perceptions →certain share of the population feels uncomfortable with the use of (L)FRT (see FRA survey results <u>here</u>)
- Human dignity as the foundation of fundamental rights ("mother right")
- Requirements for justified interferences with a right →see EU Charter & ECtHR case law ('essence of right'; necessity & proportionality test)
- Depends on the <u>purpose</u> of use & <u>context</u>
- Balance of accuracy [technology will never be perfect]



## Selected fundamental rights under scrutiny

- Respect for private life
- Protection of personal data
- Non-discrimination
- Rights of the child and of older persons
- Freedom of assembly and of association
- Freedom of expression
- Right to good administration
- Right to an effective remedy and a fair trial





#### **Conclusions & Steps to take**

- Clear & sufficiently detailed legal framework must regulate facial recognition technologies
- Different fundamental rights risks depending on application [i.e. verification/identification] and context [e.g. during demonstrations]
- ✓ Assessing purpose is key  $\rightarrow$  esp. in case of LFRT
- ✓ Fundamental rights impact assessment as an essential tool
- ✓ Public authorities procuring FRT: placing fundamental rights requirements at the centre of all technical specifications
- Close monitoring by independent supervisory bodies of facial recognition developments needed







#### Thank you for your kind attention! ? Questions ?

fra.europa.eu