

II

(Non-legislative acts)

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2021/27

of 7 January 2021

on the request for registration of the European citizens' initiative entitled 'Civil society initiative for a ban on biometric mass surveillance practices'

(notified under document C(2021) 32)

(Only the English text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2019/788 of the European Parliament and of the Council of 17 April 2019 on the European citizens' initiative ⁽¹⁾, and in particular Article 6 thereof,

Whereas:

- (1) A request for registration of the European citizens' initiative entitled 'Civil society initiative for a ban on biometric mass surveillance practices' was submitted to the Commission on 15 October 2020. On 11 November 2020, the Commission informed the group of organisers of its assessment ⁽²⁾ that the initiative could not be registered in its entirety because some of the measures it proposed did not meet the requirement laid down in Article 6(3)(c) of Regulation (EU) 2019/788. The Commission had been invited to adopt a Commission recommendation, to launch infringement procedures and to carry out comprehensive research, whilst the Commission can only be requested to make proposals for legal acts of the Union under the Regulation.
- (2) As a result, an amended version of the initiative was submitted to the Commission on 7 December 2020.
- (3) The objectives of the amended initiative are expressed as follows: 'We call on the European Commission to strictly regulate the use of biometric technologies in order to avoid undue interference with fundamental rights. In particular, we ask the Commission to prohibit, in law and in practice, indiscriminate or arbitrarily-targeted uses of biometrics which can lead to unlawful mass surveillance. These intrusive systems must not be developed, deployed (even on a trial basis) or used by public or private entities insofar as they can lead to unnecessary or disproportionate interference with people's fundamental rights. Evidence shows that uses of biometric mass surveillance in Member States and by EU agencies have resulted in violations of EU data protection law, and unduly restricted people's rights including their privacy, right to free speech, right to protest and not to be discriminated against. The widespread use of biometric surveillance, profiling and prediction is a threat to the rule of law and our

⁽¹⁾ OJ L 130, 17.5.2019, p. 55.

⁽²⁾ C(2020) 7869.

most basic freedoms. In this ECI, we therefore urge the Commission to propose a legal act which will build upon, and fully respect, the general prohibitions in the GDPR ⁽³⁾ and the LED ⁽⁴⁾ to ensure that EU law explicitly and specifically prohibits biometric mass surveillance.’

- (4) An annex provides further details on the subject, objectives and background to the citizens’ initiative and notes that biometric data are increasingly used by public, national and EU law enforcement authorities and private entities for identification or profiling of people in public spaces, which poses ‘an inherently unnecessary and disproportionate interference in a wide range of fundamental rights including privacy and data protection’. The annex notes, furthermore, that while ‘the existing EU legal framework clarifies [...] that the use of biometric data shall be limited to what is strictly necessary with regards to a legitimate aim pursued, subject to the principle of proportionality [...] such general principles are subject to broad exceptions’.
- (5) The organisers have submitted further background information on their proposal for a legal act of the Union and possible accompanying measures, as well as a draft legal act.
- (6) The initiative, as amended, invites the Commission to submit a proposal for a legal act to prohibit indiscriminate uses of biometrics which can lead to mass surveillance. As already indicated to the organisers by the Commission in its assessment of 11 November 2020, that proposal could be based on Article 16(2) or Article 114 of the Treaty, or both, depending on whether the use of biometrics would be banned or strictly regulated. Article 16(2) of the Treaty provides a legal basis for the Commission to propose legal acts relating to the protection of individuals with regard to the processing of personal data by Union institutions, bodies, offices and agencies, and by the Member States when carrying out activities which fall within the scope of Union law, and the rules relating to the free movement of such data. Article 114 of the Treaty provides a legal basis for the Commission to propose measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States, which have as their object the establishment and functioning of the internal market.
- (7) For these reasons, none of the parts of the initiative manifestly falls outside the framework of the Commission’s powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties as required by Article 6(3)(c) of Regulation (EU) 2019/788.
- (8) The annex to the initiative refers to four possible accompanying measures. Since the Commission is not requested to submit a proposal for a legal act of the Union in respect of any of those measures, the latter do not meet the condition laid down in Article 6(3)(c) of the Regulation to be registered as part of the subject matter of the initiative. Those measures thus fall outside the scope of this registration decision. However, if the Commission considers it appropriate to adopt a proposal for a legal act in the area covered by the initiative, it could also consider the possibility to take into account in that proposal some of those measures, namely the need for guidance to the Member States on the implementation of its provisions, the involvement of the data protection authorities in the application of such provisions, and the content and principles of the Ethics Guidelines of the High-Level Expert Group on Artificial Intelligence (AIHLEG) ⁽⁵⁾.
- (9) The group of organisers has provided appropriate evidence that it fulfils the requirements laid down in Article 5(1) and (2) of Regulation (EU) 2019/788, and that it has designated the contact persons in accordance with the first subparagraph of Article 5(3) of that Regulation.

⁽³⁾ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

⁽⁴⁾ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (Law Enforcement Directive) (OJ L 119, 4.5.2016, p. 89).

⁽⁵⁾ <https://ec.europa.eu/futurium/en/ai-alliance-consultation/guidelines>

- (10) The initiative is neither manifestly abusive, frivolous or vexatious, nor manifestly contrary to the values of the Union as set out in Article 2 of the Treaty on European Union and rights enshrined in the Charter of Fundamental Rights of the European Union.
- (11) In conclusion, the initiative entitled 'Civil society initiative for a ban on biometric mass surveillance practices' meets all the requirements laid down in Article 6(3) of Regulation (EU) 2019/788 and should therefore be registered,

HAS ADOPTED THIS DECISION:

Article 1

The European citizens' initiative entitled 'Civil society initiative for a ban on biometric mass surveillance practices' shall be registered.

Article 2

This Decision is addressed to the group of organisers of the European citizens' initiative entitled 'Civil society initiative for a ban on biometric mass surveillance practices', represented by Mr Diego Javier NARANJO BARROSO and Mr Riccardo COLUCCINI acting as contact persons.

Done at Brussels, 7 January 2021.

For the Commission
Věra JOUROVÁ
Vice-President
