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The need for a global consideration of the human rights implications of biometrics

Opinion¹

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A. Conclusions of the committee

1. Following the terrorist attacks of 11 September 2001, biometric technology has gained public acceptance in the strife for greater security and to fight terrorism, but also fraud and other crime. At the same time, biometric technology has advanced significantly as a tool for reliable authentication.

2. However, biometrics also raises a range of social, legal and ethical concerns, including those relating to privacy and other human rights. There are fears that uncontrolled expansion in the collection, storage and use of biometric data infringes human rights, for example through the pooling of information stored in different data banks or the commercial exploitation of personal biometric data.

3. The Committee on Culture, Science and Education warmly welcomes the report prepared by Mr Holger Haibach and adopted by the Committee on Legal Affairs and Human Rights ([Doc. 12522](#)). With regard to the human rights implications of biometrics, a wide political discussion at European level is most timely and of great value to national legislators. The technological progress in this field challenges existing norms and standards, both at national level and globally.

4. Through Article 8 of the European Convention on Human Rights (ETS No. 5), the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and the Convention on Human Rights and Biomedicine ("Oviedo Convention", ETS No. 164), the Council of Europe

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has set European standards concerning the fundamental rights to protection of personal data, private life and human dignity. This *acquis* of standards, as well as the wide experience accumulated through the committees established under those conventions, put the Council of Europe and its member governments in a leading position in Europe and beyond.

5. While the report rightly refers to the European Convention on Human Rights and Convention ETS No. 108, it is important not to forget the Oviedo Convention. This convention has so far been signed by 34 member states and ratified by 27.

6. The explanatory memorandum by Mr Haibach cites as examples of “biometric data” the collection of DNA samples (paragraphs 5 and 10), as well as measurements of the heart rate, body temperature and brain activity patterns (paragraph 7). Those biometric data are part of an individual’s most intimate private life and physical integrity. Mr Haibach also points out the risk of private firms such as insurance companies taking an immense interest in biometrics since any information on their clients’ health status helps their commercial calculations (paragraphs 11 and 19).

7. Within the framework of the Oviedo Convention, human rights requirements have, for example, been analysed with regard to the collection of DNA samples as well as genetic testing in the context of insurance contracts. It is not only the protection of personal data of individuals which is at stake, but also the right to the protection of their private life (paragraph 10 of the Oviedo Convention) and their human dignity and physical integrity (paragraph 1 of the Oviedo Convention).

8. The European Commission closely co-operates in the Council of Europe’s work under Convention ETS No. 108 and the Oviedo Convention. The European Union and non-member states may sign both conventions and can thus ensure a global consideration of the human rights implications of biometrics based on established European standards.

9. The committee agrees with the proposals by its rapporteur, Ms Anne Brasseur, which are intended to reinforce the excellent text adopted by the Committee on Legal Affairs and Human Rights.

B. Proposed amendments

to the draft resolution

Amendment A (to the draft resolution)

In the draft resolution, paragraph 4.1, after the words “the European Convention on Human Rights” insert the following words:

“, the Convention on Human Rights and Biomedicine (“Oviedo Convention”, ETS No. 164)”.

Amendment B (to the draft resolution)

In the draft resolution, paragraph 4.3.1, after the words “gain in security”, insert the following words:

“or in the protection of public health or of the rights of others”.

Amendment C (to the draft resolution)

In the draft resolution, at the end of paragraph 4.3.2, add the following words:

“where such data may include personal medical or health information unnecessarily”.

Amendment D (to the draft resolution)

In the draft resolution, after paragraph 4.3.3, insert the following sub-paragraph:

“ensuring the right of individuals to be informed about the collection and processing of their biometric data;”.

Amendment E (to the draft resolution)

In the draft resolution, at the end of paragraph 4.3.5, add the words “or corrected;”.

Amendment F (to the draft resolution)

In the draft resolution, at the end of paragraph 4.3.6, add the following words:

“, as well as by avoiding abusive pooling of unrelated data storage systems;”.

Amendment G (to the draft resolution)

In the draft resolution, replace paragraph 4.5.2 with the following text:

“requiring adequate training of those handling biometric data;”.

to the draft recommendation*Amendment H (to the draft recommendation)*

In the draft recommendation, paragraph 1, after the first sentence insert the following sentence:

“The Assembly also notes in this context the importance of the Convention on Human Rights and Biomedicine (“Oviedo Convention”, ETS No. 164).”

Amendment I (to the draft recommendation)

In the draft recommendation, at the end of paragraph 3, add the following sentence:

“, as well as inviting non-member states and the European Union to become parties to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and to the Oviedo Convention.”

C. Explanatory memorandum by Ms Brasseur, rapporteur for opinion**1. Amendments A, H and I**

1. The report rightly refers to the European Convention on Human Rights and Convention ETS No. 108, but it is also important not to forget the Oviedo Convention on Human Rights and Biomedicine. The processing of personal biometric data must respect data protection standards, but the collection and use of such data must also comply with general human rights standards concerning human dignity, physical integrity and private life as specified in particular in the Oviedo Convention. It is in the interests of all member states to promote wider adherence to the established standards under Convention ETS No. 108 and the Oviedo Convention. Therefore, references should be included in the general parts of the resolution (Amendment A) and the recommendation (Amendment H) and non-member states and the European Union should be invited to become parties to these treaties (Amendment I).

2. Amendment B

2. Though security issues may typically be invoked to justify interferences with human rights concerning biometrics, “security” is not the unique legitimate aim under the European Convention on Human Rights which could justify such interferences.

3. Amendment C

3. Biometric data may legitimately be required for identification purposes, such as biometric photos for passports or fingerprints in judicial investigations. Therefore, it may be difficult to accept that individuals should be allowed to refuse such biometric data. However, some biometric data can also reveal personal medical or health information, such as an existing illness or mental specificity or a genetic predisposition to develop an illness. The latter information is obviously not required for identification purposes. This should be clarified in paragraph 4.3.2.

4. Amendment D

4. It is a fundamental right to be informed of the fact that biometric data are collected or processed. Where this information is lacking, neither individuals nor the state can properly ensure that such collection or processing complies with human rights standards. Therefore, it is important to explicitly mention this right beyond the abstract requirement of a general transparency in the context of consent referred to in paragraph 4.3.4.

5. Amendment E

5. Individuals should always have the right to ask for the correction of their data if they are erroneous or become inaccurate, even if the simple erasure of data is not possible.

6. Amendment F

6. Mr Haibach's report rightly emphasises the potential dangers resulting from an unauthorised pooling or interconnection of data storage systems. Biometric data stored in different systems could be combined in order to create a more precise profile of individuals, thus infringing their right to private life. Therefore, it is important to explicitly refer to abusive pooling of unrelated data storage systems in paragraph 4.3.6.

7. Amendment G

7. Where private companies or individuals collect biometric data, it is proportionate and necessary to require not only accountability (paragraph 4.5.1) but also adequate training of those handling such data. It should not be an obligation for states to promote the training of the private sector. Therefore, paragraph 4.5.2 should be rephrased accordingly.