

Buan-Mhisean na hÉireann chuig na Náisiún Aontaithe agus
Eagraíoch idirnáisúnta eile | An Ghinéiv
Permanent Mission of Ireland to the United Nations and
Other International Organisations | Geneva
Mission Permanente de l'Irlande auprès de l'Office des Nations Unies et
des autres organisations internationales | Genève



TPN/083/2022

The Permanent Mission of Ireland to the United Nations Office and other International Organisations in Geneva presents its compliments to the Secretary-General of the United Nations (High Commissioner for Human Rights) and refers to the communication OL IRL 3/2022.

With reference to the aforementioned communication, enclosed please find a response from Minister for Foreign Affairs, Mr Simon Coveney T.D., in consultation with the Minister for Justice, Helen McEntee T.D.

The Permanent Mission of Ireland to the United Nations Office and other International Organisations in Geneva avails itself of this opportunity to renew to the Secretary-General of the United Nations (High Commissioner for Human Rights) the assurances of its highest consideration.

Geneva, 4 October 2022





Ref: OL IRL 3/2022

To: The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right to privacy; and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms which countering terrorism.

Re : Joint Communication from Special Procedures on the Garda Síochána (Recording Devices) Bill 2022.

3 October 2022

Dear Special Rapporteurs,

I welcome your Joint Communication dated 30th September 2022 concerning proposals to include measures to permit the use of Facial Recognition Technology (FRT) in the forthcoming Garda Síochána (Recording Devices) Bill 2022.

In consultation with my colleague, the Minister for Justice, Helen McEntee, I wish to provide the following information in relation to the matters raised in the communication.

The Garda Síochána (Recording Devices) Bill 2022 was published on 4th August 2022. The Minister for Justice, Helen McEntee T.D., has stated her intention to introduce provisions for the use of facial recognition technology by An Garda Síochána as committee stage amendments to the Bill. The Minister will ensure that adequate time is provided to have a meaningful debate on the proposals in Parliament.

I, and my Government colleagues, understand that there are legitimate concerns in relation to the use of facial recognition technology. There are clear dangers for society if the technology is misused or improperly implemented. We are very conscious of the privacy issues concerning the gathering and use of all personal data by law enforcement. The Government is also conscious of the need to ensure privacy rights are infringed only to the extent that is necessary and proportionate for the investigation and prosecution of offences and the protection of the public. Specifically, individually calibrated mitigations and safeguards must be developed and introduced from the outset. Appropriate governance and accountability arrangements must also be put in place. Furthermore, as is always the case with any domestic legislation, both the executive and legislature have the significant obligation to ensure that such laws as are made are strictly in line with constitutional norms as reflected in the Irish Constitution which protects the rights referred to at paragraph 2 of your letter.

The Special Rapporteurs have referred to the plans for the introduction of FRT in Ireland when the European Union is considering comprehensive legislative action in the field of Artificial Intelligence and you have mentioned that the use of “real time” remote biometric identification systems in publicly accessible spaces is to be prohibited unless certain limited exceptions apply. Ireland supports this approach. The draft EU Artificial Intelligence Act will be a regulation and will take direct effect in Member states bound by the Instrument. Ireland is one of the EU Member States that will be bound by the instrument. It is intended to draft the proposals relating to “real time” facial recognition along the lines set out in the Commission proposal (i.e. Ireland will outlaw all-real time FRT by law enforcement authorities other than in the specific exceptions proposed in that Act). As a matter of how EU law is received into and made part of Irish domestic law pursuant to our Constitution, there will not be any conflict between the final form of the EU Act and any domestic legislation. The European Commission has recommended that specific authorisations for real time FRT should be granted by a judicial or independent administrative authority. Ireland also agrees with this approach.

The Special Rapporteurs have also referred to the absence of proper pre-legislative scrutiny. The Joint Oireachtas Committee on Justice carried out pre-legislative scrutiny on the General Scheme of the Garda Síochána (Digital Recordings) Bill, including written submissions and oral hearings, in September 2021. Evidence was given and discussed on FRT during the pre-legislative scrutiny process and recommendations in respect of FRT were included in the Committee’s report. IHREC were consulted during the preparation of the General Scheme and its views were taken into consideration during the drafting of the Bill. Ongoing consultation is taking place with IHREC on the FRT proposals. I should explain that the original intention of the General Scheme of the Bill was to be as technology-neutral as possible, to allow for regular developments in this rapidly changing technological environment. It was envisaged that secondary legislation in the form of Codes of Practice would regulate the specific uses and procedures for such technology, including any use of FRT. Any updates to the Code of Practice would require further consultation with stakeholders. It is directly in response to the discussions and recommendations arising from pre-legislative scrutiny that the Minister now proposes to set out more detail on the limits to the use of FRT and the minimum safeguards to apply in the primary legislation. Codes of Practice can set further limits and safeguards and will be subject to Human Rights and Data Protection assessments. Officials wrote to relevant stakeholders over the summer of 2022 seeking further views in relation to FRT and it is intended to consult the stakeholders again very soon, once the Minister’s proposals have been finalised. The proposals will be scrutinised at committee stage and in the following stages of the parliamentary process. This provides ample and additional opportunity for debate as part of the constitutional process engaged in enacting legislation.

Accordingly the balancing of significant and constitutionally recognised rights including to privacy, to freedom of expression and assembly, *inter alia*, and the rights of citizens equally to public and national security including the rights of victims of crime are matters that remain in consideration at all stages as legislation such as the Garda Síochána (Recording Devices) Bill 2022 progresses. That balancing exercise is constitutionally required and conducted with the utmost seriousness. There can be no basis for a suggestion that Ireland, in legislating, would not maintain and observe the highest regard for all constitutionally recognised rights, obligations and precepts.

Furthermore, as a sovereign Member State of the European Union, Ireland is fully entitled to introduce its own legislation that regulates an area of the activities of citizens and State authorities while recognising, respecting and balancing rights. Ireland, in common with any Member State, cannot be obligated to withhold legislation that it views as necessary and domestically required pending the development and negotiation of a law at European Union level. Moreover, once the Union has legislated in this realm, Ireland will ensure that any domestic legislation accords with the terms of that Union Act.

While the exact detail of the amendments has yet to be agreed by Government, broadly speaking the proposals under consideration include the following features and safeguards.

The proposal to introduce facial recognition technology is in line with the proposals contained in the Report of the Commission on the Future of Policing which recommended the digital transformation of the Irish police service to enhance the frontline policing capability. Policing in Ireland is to be information-led, using modern technology platforms and ensuring timely access to data and information.

It is proposed to introduce both retrospective and live facial recognition facilities into An Garda Síochána. All uses of FRT will have a specific goal, and the precise approval and oversight mechanisms to be put in place to ensure robust oversight arrangements in relation to all uses of FRT are currently being finalised for inclusion in this legislation.

It is intended that the use of technology such as FRT must have a robust legal basis and must be accompanied by rigorous and detailed safeguards. In addition to being compliant with constitutional law norms referred to above it also follows that the legislation will have to meet acceptable standards of clarity, precision and foreseeability. Data protection rules must and will also be complied with.

Fundamental rights will be respected as is required by the Irish Constitution. It is a *sine qua non* that any limited interference with these rights must be justified and proportionate. I refer specifically to the concerns expressed in paragraph (c) of your correspondence as follows:

“The proposed use of FRT by law enforcement for ‘real time’ analysis of footage of large numbers of persons, to identify them and then possibly track and apprehend them, raises significant human rights concerns, particularly with regards to the exercise of the right to freedom of assembly.”

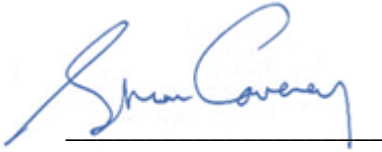
I wish to assure the rapporteurs that there are no proposals for the use of FRT for ‘real time’ analysis in any such manner. It is proposed that the use of ‘real time’ FRT will be expressly prohibited in the Bill except in the strictly limited circumstances provided for in the current draft AI Act as set out above, which does not permit FRT to be used for the mass surveillance of public gatherings. The right to freedom of assembly is a fundamental human right protected by the Irish Constitution, and the Irish Government is fully committed to the protection and vindication of that right and every other right recognised under the Constitution as interpreted and applied by the Irish judiciary. I understand and share the concerns expressed on the use of FRT for ‘real time’ analysis in such contexts. However, I can reassure that no such power for law enforcement to use FRT in such a manner is being contemplated by Ireland. Indiscriminate mass surveillance using FRT, or profiling that could result in discrimination will be prohibited. Further, any individual who believes their rights have been interfered with will have access to the Ombudsman Commission – the independent statutory body for police complaints.

Concerns have also been raised about the accuracy of such systems. The most essential safeguards in relation to ensuring accuracy are the supremacy of human decision making, human oversight of the systems used and human accountability. In all circumstances, the technology will only be used for decision support purposes. All decisions will continue to be taken by trained Garda personnel. The use of FRT for automated decision-making (without human intervention) will not be permitted.

The operation of FRT by An Garda Síochána will also be subject at all times to the terms of the Data Protection Act 2018, which gives effect to the Law Enforcement Directive.¹

I hope the information provided above will reassure the Special Rapporteurs of our robust approach and detailed preparations for the introduction of this new technology.

Yours sincerely,



Simon Coveney TD
Minister for Foreign Affairs and
Minister for Defence

¹ 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