dacuro
die datenschutz-experten

Comments to the draft of EDPB-Guidelines 5/2022 on the use of facial recognition technology in the area of law enforcement

I. Introduction

On 16 May 2022, the draft of „*Guidelines 5/2022 on the use of facial recognition technology in the area of law enforcement* "was submitted by the European Data Protection Board (EDPB) for public consultation. This document constitutes the contribution of dacuro GmbH to this process. The comments below refer to the paragraphs (further as "para." or „paras.") of the draft.

II. Comments

- **Para. 16:** In paragraph 16 one can read as follows: „*Beyond the scope of these guidelines and outside the scope of LED, facial recognition may be used for a wide variety of objectives, both for commercial use and to address public safety or law enforcement concerns".* We would like to draw the EDPB's attention to the fact that biometric recognition technology including FRT (facial recognition technology) is also gaining a foothold in the private sector (see the EDPB's press release "*Dutch DPA issues Formal Warning to a Supermarket for its use of Facial Recognition Technology*", https://edpb.europa.eu/news/national-news/2021/dutch-dpa-issues-formal-warning-supermarket-its-use-facial-recognition_en). Since this development triggers various data protection related questions, our suggestion would be that the EDPB addresses this issue (the use of biometric recognition technologies in the private sector) in its future guidelines.

- **Para. 100:** In paragraph 100 one can read as follows: "*Any personal data stored in the logs of the systems are subject to strict purpose limitations (e.g. audits) and should not be used for other purposes (e.g. to be able to still perform recognition/verification including an image that has been deleted from the reference databases). Security measures should be applied to ensure the integrity of the logs, whereas automatic monitoring systems to detect abuse of logs are highly recommended".* Our suggestion would be to provide examples for security measures in connection with the integrity of the logs. Further, we would like to point out that the abuse of the access rights to the law enforcement databases is a real issue and not an academic subject matter– see the press release of the Data Protection Authority of Baden-Württemberg dated 18 June 2019 (link: https://www.baden-wuerttemberg.datenschutz.de/wp-content/uploads/2019/06/Erstes-Bu%C3%9Fgeld-gegen-Polizeibeamten.pdf). Therefore, the issues mentioned in para. 100 such as "security measures" and "purpose limitations" are of high importance.