

/ Open letter to the German Government

Biometric Surveillance in Publicly Accessible Spaces: implement promises regarding the AI Act that were made in coalition treaty

8 November 2022

Dear Members of the German Government,

We are addressing you on behalf of 24 civil society organizations as the negotiations on the **EU Artificial Intelligence Act (AI Act)** are in full swing and the EU Council will soon agree on a general approach towards it.

The undersigned organizations very much welcome the fact that the **German government explicitly stated in its coalition treaty¹ that biometric identification in publicly accessible spaces must be ruled out by an EU-wide legislation.** The AI Act and in particular Article 5d of the draft could become an effective instrument for a meaningful ban with its additional legal safeguards to the already existing legal frameworks.

Regrettably, we continue to see broad gaps in the Council's latest compromise version that would prevent a comprehensive and reliable ban on biometric identification in public spaces.

- First, the prohibition in Article 5d only applies to "real-time" biometric identification systems in publicly accessible spaces.
- Second, the ban is limited to law enforcement agencies or actors acting on their behalf – a restriction that would not prevent surveillance by other public and private actors and is not mirrored in the coalition treaty.
- Third, the subparagraphs in Article 5d list a number of exceptions in which the prohibition should not apply which largely undermines its substance.
- Fourth, the fact that the AI Act should not apply when national security is invoked by a Member State may lead to the justification of the use of biometric identification systems which may enable mass surveillance.

¹ Coalition treaty 2021-2025 among the Social Democratic Party of Germany (SPD), Alliance 90/The Greens and the Free Democratic Party (FDP) https://www.spd.de/fileadmin/Dokumente/Koalitionsvertrag/Koalitionsvertrag_2021-2025.pdf

In other words: The ban on biometric identification in Art. 5d of the draft AI Act, in its current form, fails to prevent the multiple fundamental rights violations that this practice may entail.

We thus see a discrepancy between the position represented in the government's coalition treaty and the position currently emerging from the Council negotiations regarding the AI Act. We call on you to once again explicitly advocate a ban of biometric surveillance in publicly accessible spaces and thus to implement this central promise of the coalition treaty in this decisive phase of the Council negotiations. A strong signal from the German government to other EU member states at this time would be central to implementing what the coalition promised last December. The ban on biometric surveillance in the AI Act will only reliably protect our fundamental rights if it is not full of loopholes. The people in Europe are counting on you.

Signatories:

The image displays a collection of logos for various organizations and groups. The logos are arranged in a grid-like fashion. The organizations include: Algorithm Watch, Algorithm Watch/CH, accessnow, Amnesty International, ARTICLE 19, ApTI (Asociația pentru Tehnologie și Internet), DIGITALE FREIHEIT, DIGITALE GESELLSCHAFT, digitalcourage, DIGITALE GESELLSCHAFT, European Center for Not-for-Profit Law, EDRI, eff (Electronic Frontier Finland), Elektronisk Forpost Norge, EPICENTER WORKS (for digital rights), Homo Digitalis (Protect your rights), Initiative Schwarze Menschen in Deutschland e.V., Irish Council for Civil Liberties, IT-Politisk Forening (www.itpol.dk), OPEN KNOWLEDGE FOUNDATION DEUTSCHLAND, RSF (REPORTER OHNE GRENZEN), and WIKIMEDIA DEUTSCHLAND. There is also a large stylized logo on the right side consisting of a vertical line, a horizontal line, and a large 'S' shape.