

**Opening statement to the Joint Oireachtas Committee on Justice
by the Irish Council for Civil Liberties and Digital Rights Ireland**

**Draft General Scheme of the Garda Síochána
(Recording Devices) (Amendment) Bill 2023**

15 February 2024

1. ICCL and Digital Rights Ireland thank the committee for this opportunity to discuss the proposed legislative scheme to enable Garda use of Facial Recognition Technology (FRT).
2. The use of FRT by police engages many fundamental human rights including, but not limited to, the rights to human dignity, privacy, protection of personal data, non-discrimination, protest, and freedom of expression, all of which are enshrined in the EU Charter of Fundamental Rights.
3. We call on the committee to urge the Government to reconsider this proposal to introduce FRT into Irish policing as we believe the risks to these fundamental rights are too high. We make this call for several reasons.

FRT is unreliable and not the silver bullet solution it's often presented to be.

4. FRT involves comparing a biometric template created from a face detected in an image or video against a reference database of biometric templates in an attempt to identify a person.
5. But even when there are optimal conditions in terms of image quality, FRT is not designed to give police a singular positive identification or 'match' of a person. Instead, at best, it gives a person running an FRT search a guess list of who the person could be - a list of potential candidates accompanied by similarity scores. A threshold value is fixed to determine when the software will indicate that a probable match has occurred. Should this value be fixed too low or too high, it can create a high false positive rate or a high false negative rate respectively. There is no single threshold setting which eliminates all errors.

FRT is discriminatory.

6. The discriminatory effects of FRT are well documented. While error rates will vary depending on the multiple factors which can affect the performance of an FRT system, these errors do not affect all individuals equally. Studies have clearly demonstrated deeply inherent racial and gender biases in FRT, meaning women and people of colour would be more likely to be misidentified and brought to the attention of gardai, than white men.

FRT can enable powerful mass, indiscriminate and pervasive surveillance.

7. The implications of police use of this highly intrusive technology can vary depending on the purpose and scope of its use. But the use of FRT by gardaí, as proposed in this scheme - to use *any* images or recorded footage that An Garda Síochána legally retains, or can legally access, to locate, identify, and track people in respect of certain crimes - would result in a seismic shift in the surveillance capabilities of Irish policing. This brings us to our fourth point.

The Bill, as proposed, is, in our view, unlawful under EU law.

8. The committee must consider the European Union's Law Enforcement Directive, as transposed in our 2018 Data Protection Act; the forthcoming Artificial Intelligence Act; case-law from the Court of Justice of the European Union; and recent guidelines published by the European Data Protection Board on FRT. With those in mind, it's our position that this general scheme is not in step with those frameworks. For example:
 - The use of FRT, as provided for, is not clear, precise or foreseeable;
 - It creates a model of indiscriminate surveillance of people in Ireland;
 - It fails to limit the use of facial data to when it is "strictly necessary";
 - It fails to ensure that any FRT use would be targeted in terms of the individuals to be identified;
 - It fails to ensure that anyone whose biometric data is processed by FRT is directly linked to a specific crime, as required under the EU law principles of necessity and proportionality;
 - It fails to require prior judicial approval of any use of FRT but instead allows for problematic internal Garda approval;
 - It fails to acknowledge or appreciate the inherent racial and gender biases within FRT;
 - There is a stark lack of safeguards and limitations on the use of FRT within the scheme; and
 - There is no specific explanation as to the source of "biometric data which is legally held by An Garda Síochána" against which FRT searches would be run.
9. In conclusion, we urge this committee to urge the Government to reconsider introducing FRT to Irish policing and warn that to do so on foot of ill-defined methods and purposes is to invite not only breaches of innocent people's rights but also to see otherwise secure convictions at risk of successful appeals.