On Regulation (EU) 2024/1689 and personality assessment

The prohibition contained in art. 5.1.f[1] refers to systems that: (1) Deduce or infer emotions or intentions of natural persons[2]; (2) do so based on biometric data of natural persons; and, (3) are deployed in the educational or work environment.

Assuming that from a contextual perspective the system will be applied in the educational field, it is necessary to analyze how the Regulation defines the other cumulative requirements. That is, (i) inferring "emotions" or "intentions" and (ii) what it considers "biometric data". If both elements are not present, the system would not be subject to the prohibition.

Regarding the first, the regulation states that the system in question must infer or distinguish emotions or intentions. It defines these as "happiness, sadness, indignation, surprise, disgust, embarrassment, enthusiasm, shame, contempt, satisfaction and amusement" (recital 18). That is, the RIA includes in its definition psychological and physiological responses to external stimuli of limited duration related to mood changes. It does not refer to physical states (tiredness or pain), and in line with the above, the identification of personality traits cannot be considered included either.

This is because personality traits do not identify or infer emotions, in the sense expressed by the RIA, but rather define stable and consistent patterns that do not depend on an immediate stimulus. Personality traits do not identify a person's happiness when receiving good news, nor their nervousness or indignation when going through airport security; they allow us to identify whether a person is optimistic, extroverted or kind as a consistent and stable pattern.

As for the second requirement, even in cases where emotions or intentions are identified in the sense of the RIA, only systems that do so based on biometric data are prohibited.

The RIA defines personal data, in a similar way to that established by the GDPR, as "obtained from specific technical processing, relating to physical, physiological or behavioural characteristics of a natural person, such as facial images or fingerprint data".

Therefore, the definition of biometric data refers to physiological or behavioural traits that are externalised and processed using a technological solution. This type of data includes data of a physiological nature (fingerprints, facial recognition, iris or retina analysis, etc.), as well as some of a behavioural nature (voice recognition pattern of a natural person; walking patterns of a person; typing dynamics on electronic devices; or signature and handwriting, if they collect and identify patterns such as stroke, writing precision, pressure, inclination, etc.).

However, the content of a text itself, in which a person organizes and expresses his or her ideas, even if it is collected by a computer system, cannot be considered biometric data, although analyses can be performed from it and data of interest can be extracted, such as personality traits.

In conclusion, systematically interpreting the RIA, the prohibition of art. 5.1.f would not apply to the system for the reasons stated.

[1] "The following AI practices are prohibited: ... the placing on the market, the putting into service for this specific purpose or the use of AI systems to infer the emotions of a natural person in workplaces and educational establishments, except where the AI system is intended to be installed or placed on the market for medical or security reasons" [2] See recital 18 of the RIA.