D9.9 Ethical Guidelines for Decision Makers

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TRESSPASS
robus**T** **R**isk bas**E**d**Risk based** **S**creening and alert **S**ystem for **PASS**engers and luggage
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ABSTRACT

This deliverable identifies the current legal, ethical and societal challenges facing the introduction of risk based border management. Its aim is to take into account broader considerations that have not been part of the ethics assessment carried out so far in the TRESSPASS project, which focussed on specific risk indicators and on specific technologies.

These challenges include: the compatibility of a risk based approach to border management with the current legal developments at EU level; public attitudes towards surveillance;[1] migration policies; the use of specific technologies by public authorities and recent political developments in Europe.

On the basis of these considerations, the deliverable formulates the following 10 guidelines for decision makers interested in the implementation of risk based border management:

1) **Ensure compatibility with the evolving legal framework:** Closely monitor the current legal developments at EU level, especially (a) the EUCJ ruling on the PNR Directive, (b) the draft of the Artificial Intelligence Act and (c) the parliamentary initiative on the ban of social scoring systems, and ensure that any instrument creating a legal basis for risk based border management is compatible with such developments.
2) **Ensure that fundamental and human rights are effectively protected:** Provided risk based border management relies on a lawful legal basis, enforce or adopt legal instruments necessary to fully operationalise general fundamental and human rights, including redress options for both EU and non-EU citizens.
3) **Ensure independent oversight**: Once the legal basis of risk based border management is adopted and the fundamental rights safeguards specifications are in place, establish independent control bodies and endow them with the powers necessary to effectively monitor the implementation of risk based border management and sanction misconducts.
4) **Verify effectiveness and minimize data use**: Provided that risk based border management is compatible with the broader legal framework: a) carefully check the effectiveness of risk based border management in light of security considerations and b) opt for concepts reducing data collection to the minimum.
5) **Explore alternatives:** Seriously explore alternative strategies aimed at reducing the need for physical travel (also taking into account climate change and pandemic risks), thus keeping mobility flows flow to a level manageable with current rule-based border controls. Compare the advantages and disadvantages of such strategies with those based on increasing mobility flows and risk based border management.
6) **Ensure data quality**: Opt for solutions that minimize personal data collected and privilege data drawn from verified databases (i.e., law enforcements authorities' databases) as opposed to un-verified data either contained in un-official

[1] This deliverable follows the understanding of "surveillance" adopted by David Lyon and considering surveillance to be "the focused, systematic and routine attention to personal details for purposes of influence, management, protection or direction". "focused" refers to the fact that surveillance is directed towards individuals, "systematic" to the fact that it is performed according to protocols is deliberate and not randomly and finally "routine" refers to the fact that it is part of every-day life. See Lyon, David, Surveillance studies: an overview. Cambridge: Polity Press 2009, 14.

databases collected for other purposes (such as commercial purposes) or provided by travellers themselves.

7) **Select appropriate technologies**: Consider which sensors and technologies, of those independently assessed in D9.8 *Updated framework for assessing direct ethical, legal and societal impact of risk based screening concepts*, shall become part of risk based management.
8) **Select appropriate risk indicators:** Carfully select the risk indicators and the appropriate weighting that can be used in the risk based border management concept, taking into account the ethics assessment provided in D2.2 *Risk indicators*.
9) Select the appropriate scope of risk based border management: Notwithstanding the conditions listed in Guidelines 1-8, carefully consider whether a risk based approach to border management should be restricted to serious crimes and terrorism or applied to migration as well.
10) **Encourage and enable public debate:** Ensure that any future introduction of risk based border management is underpinned by open communication and public discussions with all stakeholders on the expected advantages and potential risks of the envisaged measures.

Guidelines 1, 2 and 3 establish the preconditions for all further steps and occupy a higher hierarchical position than the other ones. These preconditions are the compatibility of risk based border management with the broader legal context at EU level, the creation of legal safeguards ensuring that the general fundamental and human rights framework can be effectively realized in the domain of risk based border management and the creation of oversight bodies with effective control and sanction powers to monitor the implementation of risk based border management.

All guidelines involve legal, ethical and societal considerations. However, each of them emphasises different aspects. Guidelines 1, 2, 3 and 4 focus mostly on legal and regulatory aspects, while guidelines 5 and 9 mostly concern broader ethical issues regarding the overall orientation of the EU policy. Guidelines 6, 7 and 8 are strictly related to ethical considerations that shall inform the definition of specific legal instruments. Finally, guideline 10 addresses societal aspect.

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List of Acronyms and Abbreviations

ACRONYM	EXPLANATION
C2	Command and Control System
CONOPS	Concept of operations
EAB	Ethical Advisory Board
ECJ	European Court of Justice
EC	European Commission
ELSA	Ethical, legal and societal aspects
EU	European Union
TRESSPASS	robusT Risk basEd Screening and alert System for PASSengers and luggage
BCP	Border Crossing Point
PDPbD	Privacy and Data Protection by Design
PNR	Passenger Name Record
TRA	Traveller Registration Application
TCSS	Thermal counter spoofing sensor
TLTP	Travellers and luggage tracking sensor platform
RTBA	Real-Time Behavioural Analytics
LPDS	Legacy Possession detection systems
PNR	Passenger Name Record

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1 INTRODUCTION

1.1 Background

The aim of TRESSPASS is to develop, demonstrate and validate a cohesive risk based border management (RBBM) concept for air, maritime and land border crossing points. The TRESSPASS risk based approach distinguishes itself from a rule based approach because, while risk based border controls principally aim to differentiate checks and screening on the basis of the individual risk level calculated for each traveler, rule based approaches apply the same kind of checks and screenings for all travelers. It focuses on border controls at regular border crossing points (BCPs), such as airports, maritime ports and land border crossing points.

Among others focus points of the innovation action project are immigration control, customs and smuggling prevention, police searches as well as approaches for cross border crime and terrorism prevention. The TRESSPASS framework adopts an *ethics and data protection by design* approach, which aims to ensure alignment with ethical research standards.

To ensure that these standards are met throughout the project, WP9 (Ethics and Data Protection) was appointed to identify key ethical, legal and societal aspects (ELSA) of risk based border management, to develop guidelines for decision makers and to evaluate their implementation. In order to achieve this, a comprehensive framework for impact assessment was developed which identifies the typology of ethical, legal and societal issues that risk based border management tools can bare. This framework enables a comparative assessment of different border check procedures and allows a better understanding of the risks and trade-offs that come with their implementation. It is based on the *Guidelines for Trustworthy AI* which were released in 2018 by the High-Level Expert Group on Artificial Intelligence (AI HLEG) and specifically the *Assessment List for Trustworthy AI* (ALTAI) which is part of these Guidelines. The guidelines aim to foster a secure, ethically approved and innovative AI development in Europe. They are based on the research of the European Group on Ethics in Science and New Technologies.

To assist actively in the process, a range of “what-if”-scenarios was drafted (and provided to BCP designers, legislators and the traveling public among others) in order to firstly identify the differences between current concepts and practices of customs and border checks and the risk based approach and secondly to develop strategies how such impact could be minimized during the design of the concept and of the technologies.

The purpose of WP9 is to contribute to the tech-focused work packages of the project by voicing potential ethical concerns during the design and development processes. Its role is therefore to implement a value-sensitive approach and to suggest options to mitigate or reduce ethical, legal and societal negative impact.

1.2 Aim of this document

The TRESSPASS project has developed and tested an integrated risk based approach for border checks. Currently, the TRESSPASS solutions are not deployed in real-world border management. This deliverable aims to inform stakeholders who are in place to decide whether and how to implement the TRESSPASS concept and components, on the wider ethics challenges affecting the possible adoption of the TRESSPASS results in order to enable informed and balanced decisions. D10.6 *Sustainability report (roadmap)* has provided an

overview of the different policy options at hand that could facilitate the introduction of risk based border management.[2]

In order to provide comprehensive assessment of all issues involved and to complement the ethical impact assessment conducted for single technologies (T9.3), the analysis presented in this deliverable focuses on the wider ethical field, i.e. ethical aspects that are not only relevant for specific border crossing checkpoints or persons involved in this specific context. In this respect, this deliverable is complementary to previous work carried out in TRESSPASS and focusing on ethical aspects: A detailed ethics assessment of single TRESSPASS technologies based on the Guidelines for Trustworthy AI has been carried out in TRESSPASS D9.8 *Updated framework for assessing direct ethical, legal and societal impact of risk based screening concepts*.[3] Moreover, an important aspect of the overall ethics assessment is the evaluation of the single risk indicators. An assessment of the ethical impact of each risk indicator used in the TRESSPASS air pilot has been provided in D2.2 *Risk indicators*. Since this deliverable is EU-restricted, however, it is not possible to discuss its results here in detail.

This deliverable is public, which means that the audience is potentially wider than the targeted group of decision-makers. Its aim, however, is not to provide the general public with an answer to the question under what conditions and in which circumstances risk based border management is ethical. Instead, it addressed decision-makers who are interested in the implementation of the TRESSPASS concept and are therefore already convinced of the fact that this concept can bring significant improvements to current border management practices within the EU. The assumption, then, is that the intended audience shares an understanding of the possible advantages of risk based border management and that information on the legal, ethical and societal challenges toward the implementation of risk based border management can enable more differentiated decision making.

1.3 Input / Output to this document

Input to this deliverable is provided by:

- D1.4 *Analysis of the legal and regulatory framework*
- WP2 (especially D2.1 *Design Basis Threat*) for the definition of scope and aim of risk based concept.
- All technical WPs (3 *Sensors & Information gathering*,4 *Data fusion and analytics*, 5 *Dynamic Risk Assessment and Alert System*) for details on components.
- Task T9.3 “Framework for assessment of direct ethical, legal and societal impact” carried out in TRESSPASS D9.7 “Framework for assessing direct ethical, legal and social impact of risk based screening concepts” and D9.8 “Updated framework for assessing direct ethical, legal and social impact of risk based screening concepts”.
- Task T6.2 “Consolidation of CONOPS framework and scenario definition (evolving model) carried out in TRESSPASS D.6.2 “Evolving CONOPS framework”.
- Task T6.3 “Integration of acceptability data into design criteria.
- Task T6.4 “Identification of KPIs for the future implementation and validation of the TRESSPASS solution including post-Project
- WP8 “pilots” for different options of implementation of risk based concept.

[2] Section 3 of D10.6 *Sustainability report (roadmap).*

[3] For more information on the assessed impact of each category please refer to this document, publicly available on the cordis portal: https://cordis.europa.eu/project/id/787120/results

- T10.3 “Roadmap” for existing policy options

The results of this deliverable can be used in T10.3 “Roadmap” in order to integrate D10.6 *Sustainability report (roadmap)*.

Since this deliverable is one of the last TRESSPASS reports, its output is mainly directed to audience outside of the project (decision-makers) than to further internal reports. Especially, it aims to provide publicly available information on the ethical aspects involved by risk based border management, in order to enable decision makers to take ethically informed decisions on the implementation of the TRESSPASS results.

2 METHODOLOGY

This deliverable relies principally on research on existing literature, legal and ethical regulation as well as proposals for new legal instruments at EU-level. In order to identify the wider ethics challenges that would be raised by the adoption of the TRESSPASS risk based border management concept, it relies on two kinds of sources:

1) TRESSPASS-internal sources, such as public and non-public reports, which describe the components developed in the project, how they were integrated in the project pilots as well as information pertaining to the risk indicators used. The use of information from confidential and classified deliverables and materials is subject to confidentiality restrictions which affects the level of detail that the discussion can achieve.[4]
2) Official EU documents pertaining to relevant current developments affecting the legal and ethical regulation of risk based border management or related practices and technology applications. This part focusses especially on current developments at the EU level and considers legislative documents, proposals for the introduction of new regulations issued or commissioned by official organs of the EU. It refers not only to norms already in force, but also to current proposals for regulations. It is necessary to include this second kind of documents because of the innovative character of the TRESPPASS solutions and the need for adaptation of the legal framework to new technological developments. Occasionally, the deliverable also refers to scientific papers targeting specifically this kind of developments.
3) Media reports focusing on TRESSPASS or similar technologies or concepts in the EU in order to investigate public acceptance issues. Public acceptability is further investigated through reference to a survey conducted by TRESSPASS in collaboration with the H2020-Project PERSONA.

The first kind of sources provide the necessary background for appreciating the kind of wider ethical implication that can be reasonably expected to originate from the adoption of the TRESSPASS results. The second kind of sources makes it possible to discuss these implications in the light of the existing and emerging legal and ethical framework at EU-level. Finally, reference to the third kind of sources provides the background for the appreciation of public acceptance and acceptability of the TRESSPASS solutions.

On the basis of these three sources, the main wide ethical issues of risk based border management are identified and discussed. Whenever possible, guidelines are formulated that provide options for decision-makers interested in the implementation of risk based border management in order to address the ethical issues identified.

[4] The specific documents (both public and non-public) used as a basis for the discussion are referenced either in the text or in the footnotes. The use of these sources has the obvious function of enabling a discussion of the ethical aspects of the specific TRESSPASS solutions.

3 A RISK BASED APPROACH TO BORDER CONTROL: ASSUMPTIONS AND CHALLENGES

3.1 Basic assumptions

The TRESSPASS project aims to reform border controls by shifting from the current, mainly rule-based to a risk based approach. While in a rule-based approach all travelers undergo the same checks, a risk based approach aims to identify in advance which travelers could pose a higher risk and should therefore undergo more stringent checks. Travelers to whom a lower risk level has been assigned, by contrast, should undergo more relaxed checks.[5]

In the TRESSPASS architecture, tested with volunteers during the project pilots, the risk-classification is based on screenings carried out during three phases: the pre-travel phase, when travelers approach the BCP and the stage at the BCP. During the pre-travel phases, travelers have to register using the Traveller Registration Application (TRA), which provides information on travelers and on route. This information is then used to perform screenings via web intelligence (WI) and C2 (Command and Control System). While approaching the BCP point, travelers' movement patterns are analysed using behavioural analytics (Video Tracking Component (VTC) and Real-Time Behavioural Analytics (RTBA) components). At the BCP stage, the input provided by other components and sensors is processed and combined with pre-defined risk indicators in order to update the individual risk level of travelers. In this phase, several components are used: Thermal counter spoofing sensor (TCSS) aim to detect individuals wearing a mask; the x-ray scanner the Legacy Possession detection systems (LPDS) shall detect illegal goods in trucks; Travellers and luggage tracking sensor platform (TLTP) shall track travellers and luggage through the BCP; finally MMCAT *Multi Modal Communication Analysis Tool* is used in second-line for interviewing travelers whose risk level has been calculated to be high in order to support border guard assessing whether the interviewed individual may not be telling the truth.

It is important to stress that the TRESSPASS concept is modular and flexible: not all described components must be necessarily used, and some of them, such as the WI component, can be activated not by default but only conditionally upon previous alerts for a specific individual.

From an ethical and data protection point of view, the TRESSPASS project assumes that a risk based approach brings an advantage by reducing checks and their impact for the majority of travelers, who do not pose a risk. This should guarantee better proportionality between checks and perceived risks. If this would be the case, this increased proportionality would be the main ethics advantage of the adoption of a risk based approach. This advantage would then need to be balanced against the possible ethical negative impact of other aspects of the system.

According to the TRESSPASS concept, moreover, the need for a shift to a risk based approach derives from the assumption that traveler flows will continue to increase in the years to ocme and that keeping the current system will result in increasingly longer waiting times at BCPs due to checking procedures. This argument is relevant from an ethical point of view as well,

[5] For a comprehensive description of the TRESSPASS concept see D1.2. *Risk based border management conept*

since it provides the basis for assessing the proportionality and necessity of the shift to a risk based approach for border checks.

3.2 Main challenges

At the current stage, however, the assumptions mentioned face several challenges. These concern:

1) The potential for errors in the calculation of the risk levels of travelers;
2) The actual possibility to reduce checks for low-risk travelers by maintaining the current level of security;
3) The validity of the assumption that the number of travelers will continue to increase.

3.2.1 Possibility of errors

Regarding the first point, there is a need for more empirical evidence on error rates, false positives and false negatives in risk based border management. The existing measures at EU level that most resemble a risk based approach are the collection and processing of PNR data. The data currently available on the effectiveness of the use of PNR data do not enable such independent assessment, since error rates are not reported in the EU-statistics.[6] Regarding the single TRESSPASS components, it is not possible to draw final conclusions about their accuracy, as they are still in the experimental phase, but a preliminary assessment has been provided in D9.8 *Updated framework for assessing direct ethical, legal and societal impact of risk based screening concepts*.

3.2.2 Security levels

Regarding the second point, the existing legal framework does not allow a reduction of controls below the current level for low-risk travelers.[7] For most of travelers, current checks while crossing borders are limited to identity and document checks (passport or ID control, in some cases visa).[8] For people traveling within the Schengen borders, passport and ID controls are mostly not carried out. According to the TRESSPASS hypothesis, risk assessment should enable to make first-line interviews more focused or to omit them. However, considering that currently first-lines interviews are carried out for a limited section of travelers, it is not evident how, in relation to the other travelers, lowering the level of controls at BCP would allow to maintain the same level of security that is currently provided, since this would eliminate all remaining identity checks. To address these and further questions, TRESSPASS WP7 has developed a simulator whose results are presented in D7.8 Fast Simulation and Analysis Algorithms for Risk Based Border Control Systems (Final).

The TRESSPASS concept allows for differentiated applications. Possible ways to implement it include requiring pre-travel registration via TRA without distinguishing between EU and non-EU citizens and requiring TRA registration also for travels within the Schengen area. The first

[6] For more details see Orrù, Elisa, Legitimität, Sicherheit, Autonomie. Baden-Baden: Nomos 2021, 243-245, <https://www.nomos-elibrary.de/10.5771/9783748923169/legitimitaet-sicherheit-autonomie>.
[7] Article 9 of the Schengen Border Code foresees circustamces in which more relaxed checks would be permitted, but this is not applicable to the TRESSPASS concept, since the relaxation of border checks is permitted only under "exceptional and unforeseen circumstances" and, moreover, refers to a general and not personalized (i.e. focused on specific individuals) relaxation of checks (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0399).
[8] Luggage controls are not mentioned here as they belong to transport security rather than border security.

option was followed in the TRESSPASS air pilot, while the second one is followed in the PNR framework, which also applies for intra-EU flights.[9] It is therefore worthwhile also discussing these options. If the risk based approach would also be applied to EU citizens entering or travelling within the Schengen area, for them, this would indeed mean increasing the quantity and quality of the controls they are subjected to. At all three stages of risk based screenings, they would experience additional screenings and checks than in the current situation: at the pre-travel phase through TRA and WI, at the stage of approaching the BCP by Video Tracking Component (VTC) and Real-Time Behavioural Analytics (RTBA), and finally at the BCP at least through Thermal counter spoofing sensor (TCSS) and Travellers and luggage tracking sensor platform (TLTP).

Finally, assuming that a risk based approach would be effective in reducing queuing times at BCPs and that for some travelers it would result in less stringent checks at the BCPs, these advantages should be balanced against the increasing amount of data collected and processed, especially at the pre-travel phase and while approaching the BCPs, but also at the BCP itself. Full-blown risk based screenings at these stages would include measures such as:

- Collection and processing of personal data via the Traveller Registration Application (TRA) app;
- scanning of social media accounts and of the open and dark web via the Web Intelligence (WI) component;
- tracking via Video Tracking Component (VTC) and Real-Time Behavioural Analytics (RTBA) while approaching the BCP and
- screening and further tracking at the BCP by:
    a) the Thermal counter spoofing sensor (TCSS),
    b) the Travellers and luggage tracking sensor platform (TLTP)
    c) Legacy Possession detection systems (LPDS)
    d) *Multi Modal Communication Analysis Tool* MMCAT as part of second-line checks.

An assessment of the human rights and ethical impact of these technologies has been provided in D9.8 *Updated framework for assessing direct ethical, legal and societal impact of risk based screening concepts*. The components mentioned have differing impacts on human rights and principles such as autonomy, data protection, non-discrimination, democracy and rule of law. Some of them are expected to have a high negative impact on these principles, other are expected to have a moderate impact.

A modular application of risk based border management could opt for using only some of these components. If the decision is taken to introduce a risk based border crossing concept, the ethical risks of the single components should be taken into account. The appreciation of the ethical risks should inform the decision about which of them could be integrated in such a concept and which other pose unacceptable risks in terms of human rights protection and ethical impact. The results of the ethics assessment presented in D9.8 *Updated framework for assessing direct ethical, legal and societal impact of risk based screening concepts* can provide detailed guidance on the impact of each component and on mitigating strategies.

It should also be taken into account that most of the new data used for assessing travelers' risk are non-verified data, meaning data that travelers provide without verification by border guards (such as the data provided through TRA). This could trigger a verification spiral in order

[9] The use of PNR data for intra-EU flights is not compulsory according to the PNR directive, however all but one member states have opted for extending the use of PNR data also to intra-EU flights.

to ensure that data provided are veritable, for instance by verifying the identity of subjects compiling the *Traveller Registration Application* (TRA) through real-time online ID verification. The same holds for biometric identification. Some of the TRESSPASS components not performing biometric identification like the Thermal counter spoofing sensor (TCSS) and Video Tracking Component (VTC), could indeed exploit their technical potential best in combination with biometric identification. It can be reasonably expected, thus, that their adoption would generate pressure to combine these components with biometric identification functionalities.[10]

Overall, it can be concluded that a full-blown risk based approach involves an increase in data collection and processing of all travelers, including those who would potentially experience more relaxed border checks once they have reached the BCP. Consequently, the introduction of a full blown risk based approach would imply an expansion of surveillance possibilities and apparatuses. The basic ambition of a risk based concept is that these disadvantages can be balanced by more proportional checks at the BCPs. D9.8 *Updated framework for assessing direct ethical, legal and societal impact of risk based screening concepts* and D2.2 *Risk indicators* provide the detailed assessment of single components and single risk indicators respectively which can be used to guide this balancing act.

3.2.3 Travel flows

Regarding the third point, namely the assumption that travel flows will continue to increase in the future, challenges derive from the recent pandemic crisis and from considerations regarding climate change. The COVID-19 pandemic has brought about a drastic reduction of travel flows world-wide. Although this reduction has also had obvious disadvantages, it has shown that many activities, such as collaborative work, can be conducted reasonably well from a distance and that attractive alternatives to physical travel exist in certain domains. Considering the possibility of further pandemics in the next decades and the impact of mobility on climate change, a more promising strategy for decision-makers could be to rethink mobility and work towards a sustainable reduction of travel flows. Elaborating a short, middle and long-term strategy for mobility reduction thus seems to be an approach more sustainable than taking for granted an increase in mobility, which could be drastically stopped by the next pandemic and is possibly not desirable as well in view of the environmental costs it implies.

3.3 Related guidelines

In order to provide advice on how to deal with the challenges related to the risk based concept's basic assumptions, the following guidelines are suggested:

- If the compatibility with the broader legal framework is given: a) the effectiveness of risk based border management in light of security considerations should be carefully checked and b) concepts reducing the data collection at the minimum should be preferred. (Guideline Nr. 4 of the final list)
- Alternative strategies for reducing the need for physical travel (also taking into account climate change issues and pandemic risks) need to be thoroughly explored. These alternatives could enable keeping traveler flow to a level which is well-manageable with current rule-based border controls. Advantages and disadvantages of such strategies should be compared with the ones relying on the premises of

[10] For more details see Orrù, Elisa, Legitimität, Sicherheit, Autonomie, 282-284.

increasingly mobility flows and on risk based border management in order to enable a balanced cost-benefit analysis. (Guideline Nr. 5 of the final list)

- Solutions collecting as little data as possible and working with verified databases (law enforcements authorities databases) shall have priority over solutions relying on non-verified data. Non-verified data are ones either derived from non-official databases, or collected for other purposes (such as commercial purposes), or provided by travellers themselves without verification. (Guideline Nr. 6 of the final list)
- It should be carefully pondered which sensors and technologies shall become part of risk based management, considering the assessment of single components provided in D9.8 *Updated framework for assessing direct ethical, legal and societal impact of risk based screening concepts* (Guideline nr. 7 of the final list)
- It should be carefully pondered which risk indicators and with which weighting can be used in the concept, taking into account the ethics assessment provided in D2.2 *Risk indicators* (Guideline Nr. 8 of the final list)

4 WIDER ETHICAL CONTEXT

4.1 Legal framework

This section considers the possible introduction of a risk based approach in light of the existing legal framework and of legislative initiatives at the EU level.

4.1.1 Legal basis

As the overview on the existing legal framework presented in TRESSPASS D1.4 *Analysis of the legal and regulatory framework* shows, a legal basis for introducing a comprehensive risk based approach to border controls is missing. Providing such a legal basis would therefore be a first necessary step for implementing the TRESSPASS concept. D1.4 *Analysis of the legal and regulatory framework* also provides indications on which existing legal instruments could provide a starting point for departing from the existing rule-based model and shifting to a risk based approach. [11] These include Regulation (EC) No 300/2008 and (Regulation (EU) 952/2013).

However, it is not clear whether a legal instrument introducing risk based border management would be compatible with legislative proposals currently under discussion at the EU level. The Proposal by the EC for an Artificial Intelligence Act[12], presented in April 2021, lists among the prohibited artificial intelligence practices[13] the following:

"The placing on the market, putting into service or use of AI systems by public authorities or on their behalf for the evaluation or classification of the trustworthiness of natural persons over a certain period of time based on their social behaviour or known or predicted personal or personality characteristics, with the social score leading to either or both of the following:

(i) detrimental or unfavourable treatment of certain natural persons or whole groups thereof in social contexts which are unrelated to the contexts in which the data was originally generated or collected;

(ii) detrimental or unfavourable treatment of certain natural persons or whole groups thereof that is unjustified or disproportionate to their social behaviour or its gravity".

It is beyond the scope of this deliverable to answer the question whether the TRESSPASS concept would fall within the scope of the mentioned articles. It is advisable, however, to closely monitor the development of the proposal and, if appropriate, to clarify why the proposed solution would not fall into the scope of the prohibited practices.

Additionally, the European Parliament is discussing the introduction of a ban on, among others, "social scoring systems, which try to rate the trustworthiness of citizens based on their

[11] See section 4.3 of D1.4 *Analysis of the legal and regulatory framework.*

[12] REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL LAYING DOWN HARMONISED RULES ON ARTIFICIAL INTELLIGENCE (Artificial Intelligence Act), COM/2021/206 final of 21.4.2021, https://eur-lex.europa.eu/resource.html?uri=cellar:e0649735-a372-11eb-9585-01aa75ed71a1.0001.02/DOC_1&format=PDF

[13] Title II, Article 5, (1) c) of the Artificial Intelligence Act COM/2021/206 final of 21.4.2021.

behaviour or personality".[14] In this case as well, developments must be closely monitored and any regulation providing the legal base for the introduction of a risk based border control management should clarify how and why the proposed concept does not fall into the scope of the banned practices.

4.1.2 Fundamental rights

Beyond the legal basis, another crucial point is fundamental rights protection. As Gloria González Fuster concluded in a Study requested by the European Parliament, "the current EU data protection legal framework shall not be assumed to offer enough solid safeguards for individuals in light of the increased uses of automated decision-making and profiling for law enforcement and criminal justice purposes".[15] As noted by Gonzáles Fuster, the provisions of the GDPR do not apply when the processing is carried out by public authorities for law enforcement purposes. Rather, the applicable legal instrument in these cases is the Law Enforcement Data Protection Directive, whose restrictions to the use of personal data are in some cases less stringent that the ones of the GDPR and which also provides for derogations.

Moreover, in the Recommendations 02/2020 on the European Essential Guarantees for surveillance measures[16] the EDPB stated that, in order for the fundamental rights to privacy and data protection to be effectively safeguarded, four "European Essential Guarantees" must be provided:

A. Processing should be based on clear, precise and accessible rules.

B. Necessity and proportionality with regard to the legitimate objectives pursued need to be demonstrated.

C. An independent oversight mechanism should exist.

D. Effective remedies need to be available to the individual.

A future potential legal framework for introducing risk based controls should guarantee that these four criteria are respected.

4.2 Political climate and possible misuse

Beyond the legal framework, also the wider political situation in the EU and beyond should be taken into account when considering introducing a risk based approach to border management.

Compliance with the rule of law and the existing most basic human rights guarantee cannot be taken for granted even within the EU. During the last years, authoritarian tendencies have risen throughout Europe, bringing about the strengthening of antidemocratic, populist and extremist movements and parties in many European Countries. Where antiliberal and antidemocratic tendencies are represented in the Government, the infringement of

[14]European Parliament News 2021, Use of artificial intelligence by the police: MEPs oppose mass surveillance, https://www.europarl.europa.eu/news/en/press-room/20210930IPR13925/use-of-artificial-intelligence-by-the-police-meps-oppose-mass-surveillance.

[15] Artificial Intelligence and Law Enforcement. Impact on Fundamental Rights, July 2020, Study Requested by the LIBE committee of the EU Parliament.

[16] Adopted on 10 November 2020, add ref.

fundamental rights and rule of law guarantees in EU-countries has increased as well.[17] Moreover, human rights abuses by national and EU authorities have been documented in relation to push-back practices against refugees and in violation of the non-refoulement principle.[18] Finally, history and recent development show that political regimes can suddenly change and that tools and datasets that initially were used in accordance with the legal framework and for ethically acceptable purposes can be appropriated by authoritarian forces and used in ways that violate fundamental human rights.[19]

In such a political climate, it should be carefully considered which consequences the introduction of more powerful and extensive surveillance tools and powers could have. Even if at European level more stringent fundamental rights guarantees would indeed be introduced, it cannot be assumed that these would be really implemented and enforced throughout the EU. The introduction of a risk based approach in the current situation is therefore likely to offer increased or more elaborate opportunities for human rights abuses.

4.3 Migration control

Beyond combating crime and terrorisms, regulating migration (both regular and irregular, both from outside and within the EU) is one of the possible applications of the risk based approach piloted in TRESSPASS. This possible application of the risk based approach deserves more in-depth consideration with respect to the ethical issues raised and to the need for public acceptance of such uses.

First of all, there are concerns regarding the implications of merging these different purposes in one unified system.) In a report on the use of EU IT-systems by law enforcement authorities, the EU Agency for Fundamental Rights (FRA) has stated that: "The EU and its Member States should carefully assess the fundamental rights impact of access by law enforcement to data stored in IT systems in the field of asylum and migration. These data systems typically concern people who are not suspected of having committed crimes".[20] Therefore, the consultation of databases linked to migration and asylum should not be the default option for LEAs interested in investigating crimes and counteracting terrorism.

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[17] See, recently, https://www.europarl.europa.eu/news/en/press-room/20211014IPR14911/poland-meps-call-for-the-primacy-of-eu-law-to-be-upheld, https://ec.europa.eu/commission/presscorner/detail/en/speech_21_5361, https://www.europarl.europa.eu/news/en/press-room/20210701IPR07502/european-parliament-vehemently-opposed-to-hungarian-anti-lgbtiq-law, https://www.europarl.europa.eu/news/de/press-room/20210930IPR13942/rule-of-law-in-hungary-meps-conclude-three-day-trip-to-assess-the-situation.

[18] https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/689368/EPRS_BRI(2021)689368_EN.pdf; https://www.amnesty.org/en/latest/news/2021/10/eu-new-evidence-of-systematic-unlawful-pushbacks-and-violence-at-borders/, https://voelkerrechtsblog.org/a-pushback-against-international-law/.

[19] An example are the lists of gay people compiled by the German Institute for Sexual Research before the Nazis got in power and then seized by them, which is supposed to have helped the Nazis organize the arrest and deportation of homosexuals in the concentrations and extermination camps. For a recent example see https://www.independent.co.uk/asia/south-asia/us-afghanistan-database-taliban-government-b1915425.html

[20] European Union Agency for Fundamental Rights, Under watchful eyes: biometrics, EU IT systems and fundamental rights, 2018, opinion 14.

A second specific issue regards cooperation with third countries as part of the EU practices of migration control. The EU FRA pointed to the fact that bilateral agreements, memoranda of understanding and other documents that regulate the cooperation with third countries often lack specific safeguards to ensure fundamental rights protection.[21]

A de facto practice of border controls thus exists, in which in spite of existing legal provisions and human rights conventions, human rights violations against migrants are perpetrated by third countries[22] and also by authorities of the EU and of EU member states, as mentioned above (section 3.2). This shows that migrants and refugees are especially vulnerable subjects particularly affected by a lack of effective redress mechanisms.

For these and further reasons, EU border and migration policy often lacks widespread public acceptance and has been harshly criticized by media, academics and civil society (see below section 3.5).

The considerations above thus suggest special caution whether risk based border controls should be applied to migration or whether to restrict their application to the prevention and prosecution of crime and terrorism.

4.4 Related guidelines

- Current legal developments at the EU level need to be closely monitored. Relevant developments include the upcoming ECJ (European Court of Justice) ruling on the Passenger Name Record (PNR) Directive, the proposal for an Artificial Intelligence Act and the parliamentary initiative on the ban of social scoring systems. It should be ensured that any normative act introducing the legal basis for risk based border management is compatible with the developments mentioned (Guideline 1 of the final list).
- If the compatibility of the legal basis for risk based border management is ascertained, additional legal instruments shall be implemented, ensuring that the general fundamental and human rights framework can be fully operationalized in the context of risk based border management (including redress options for both EU and non-EU citizens) (Guideline 2 of the final list).
- If the legal basis of risk based border management will be provided and the fundamental rights safeguards specifications will be in place, independent control bodies shall be established. These will need to be empowered with the necessary rights and prerogatives in order to effectively monitor the implementation of risk based border management and sanction misconducts (Guideline 3 of the final list).
- Even if the conditions listed in the Guidelines 1-8 are in place, it should be carefully pondered whether a risk based approach to border management should be restricted to serious crimes and terrorism or applied to migration as well (Guideline 9 of the final list).

[21] European Union Agency for Fundamental Rights, How the Eurosur Regulation affects fundamental rights, September 2018

[22] See for instance https://www.amnesty.org/en/latest/news/2021/07/libya-horrific-violations-in-detention-highlight-europes-shameful-role-in-forced-returns-2/

5 ACCEPTABILITY ISSUES

5.1 Results from the PERSONA-TRESSPASS acceptance study

TRESSPASS, in cooperation with the PERSONA project, has conducted an acceptability survey on no-gate crossing points.[23] From this survey, the following points regarding the potential acceptance of a risk based concept for border controls can be extracted:

- When the perceived security relevance of the data to be provided and to be analysed is not apparent, levels of acceptance tend to decrease.
- Acceptance tends to decrease when the purpose of data processing is regulating migration, as compared to combating terrorism.
- Significant concerns regard the possibility that travelers' behaviour is misunderstood as a consequence of behavioural profiling.

5.2 Media coverage

TRESSPASS itself as well as other H2020 projects developing similar concepts and technologies have also been in the focus of critical media attention.[24] The concerns and critiques expressed in such articles revolve around four main issues:

1) **Specific technologies**: First, criticism has focused on specific technologies, especially so-called lie detectors, such as the one developed as part of the H2020 project IBorderCtrl (Intelligent Portable Control System). The TRESSPASS MMCAT component has attracted similar criticism.[25] It should be noted, however, that the MMCAT tool presents differences from the technology developed in IBorderCtrl, especially due to the fact that MMCAT does not formulate decisions by itself, but provides support for human decision-making,
2) **Expansion of surveillance**: Second, a major concern regards the expansion of surveillance capabilities that can be brought about by risk-assessment practices and other security measures that involve the use of digital technologies and the collection and processing of data.
3) **Migration**: Third, the use of such technologies to support migration controls is a further major element of critique. This is especially true in connection with the condemnation of current practices of border management that are perceived to be particularly brutal.
4) **Transparency**: Finally, a lack of transparent communication of H2020 research aims and results is a further element attracting major criticism. This critique was not directed to TRESSPASS specifically and TRESSPASS has undertaken targeted steps to

[23] See Deliverable 6.3 *Integration of acceptability criteria and results (TBD depending on schedule of BES-18 project*).

[24] https://www.amnesty.org/en/latest/news/2019/03/automated-technologies-and-the-future-of-fortress-europe/, https://digit.site36.net/2021/02/08/behavioural-analysis-and-twitter-check-eu-security-research-tests-new-lie-detector-for-border-control/, https://digit.site36.net/2021/04/26/eu-project-iborderctrl-is-the-lie-detector-coming-or-not/, https://www.derstandard.at/story/2000127538715/eu-investiert-millionen-in-drohnen-und-luegendetektoren-an-den-grenzen, https://www.heise.de/tp/features/EU-Sicherheitsforschung-entwickelt-Luegendetektor-fuer-die-Grenzkontrolle-5051919.html, https://minusgrenzen.com/grenzschutz-durch-digitalen-festungsbau/

[25] See footnote above.

proactively address this kind of criticism. Such steps include publishing dedicated FAQs on the project website, classifying some project deliverables as "public" (including all deliverables focusing on ethical aspects) and publishing them on the project website and accepting all interview requests by the media. Limits to this strategy, however, are set by information security constraints and confidentiality rules, according to which information related to, among others, technical and operation details is classified in accordance to H2020 confidentiality rules.

5.3 Related guidelines:

- If the compatibility with the broader legal framework is given, concepts reducing the data collection at the minimum shall be preferred over more data-intensive concepts (part of Guideline Nr. 2 of the final list)
- Solutions using data derived from verified databases (law enforcement authorities' databases) shall be preferred over solutions using non-verified data either contained in non-official databases, collected for other purposes (such as commercial purposes), or provided by travellers themselves without verification. (Guideline Nr. 6 of the final list)
- It should be carefully considered which sensors and technologies shall become components of the risk based management, considering the assessment of single components provided in D9.8 *Updated framework for assessing direct ethical, legal and societal impact of risk based screening concepts* (Guideline nr. 7 of the final list)
- It should be pondered which risk indicators and with which weighting can be used in the concept, taking into account the ethics assessment provided in D2.2 *Risk indicators* (Guideline Nr. 8 of the final list)
- It should be ensured that any initiative aiming at the introduction of risk based border management is accompanied by open communication and public discussion involving all stakeholders. Such public deliberative process shall rely on reliable information on the expected advantages and involved risks of the envisaged measures and inform decision-making (Guideline Nr. 10 of the final list).

6 CONCLUSIONS

This deliverable has highlighted the main ethical challenges that need to be resolved before a risk based border management concept is introduced in real-world border controls. This chapter summarizes them. It re-orders the guidelines for decision-makers presented above around the related challenges:

Challenge 1:

> At present, it is controversial whether the main reason for introducing a risk based approach, namely scaling the intensity of checks on the risk level assigned to each traveler in order to make checks more proportional is legally permissible, operationally meaningful (considering that a high level of security should be maintained) and desirable in light of the expansion of data collection and processing from the pre-travel phase to the checks at BCPs.
>
> Related Guidelines:

- Current legal developments at the EU level need to be closely monitored. These include the pending ECJ ruling on the PNR Directive, the developments of the Artificial Intelligence Act and the parliamentary initiative on the ban of social scoring systems. Any normative act introducing the legal basis for risk basedrisk based border management must be compatible with the outcomes of the developments mentioned.
- If the compatibility with the broader legal framework is provided in the evolving legal framework: a) The effectiveness of risk based border management in light of security considerations must be carefully checked and b) concepts reducing the data collection at the minimum shall be the default solution.
- Alternative strategies for reducing the need for physical travel (also taking into account climate change issues) should be thoroughly explored. These alternative could help, among others, keeping the flow of travelers to a level which is easily manageable with current rule-based border controls. The advantages and disadvantages of such strategies shall be compared with the ones relying on the premises of increasingly mobility flows and on risk based border management.

Challenge 2:

The introduction of a risk based approach has the potential to bring about an expansion of surveillance possibilities and apparatuses.

> Related Guidelines:

- It should be opted for solutions collecting as little data as possible and working with verified databases (law enforcements authorities databases) as opposed to non-verified data either contained in non official databases, or collected for other purposes (such as commercial purposes) or provided by travellers themselves without verification.
- It needs to be considered which sensors and technologies shall become part of the risk based management, considering the assessment of single components provided in D9.8 *Updated framework for assessing direct ethical, legal and societal impact of risk based screening concepts*.
- It should be pondered which risk indicators and with which weighting can be used in the concept, taking into account the ethics assessment provided in D2.2 *Risk indicators*.

Challenge 3: Beyond the legal basis, sufficiently strong specifications of fundamental rights safeguards specifically tailored to a risk based approach to border controls are also currently missing.

Related Guidelines:

- If the legal basis for risk based border management will be provided within the evolving legal framework, additional legal instruments will be needed. These shall ensure that the general fundamental and human rights framework can be fully operationalized into the context of risk based border management (including redress options for both EU and non-EU citizens).

Challenge 4:

The rise of authoritarian forces throughout Europe raises a reasonable expectation that opportunities for human rights abuses would increase if more powerful surveillance practices were to be introduced at a European level.

Related Guidelines:

- Once the legal basis of risk based border management is provided and the fundamental rights safeguards specifications in place, independent control bodies shall be established and empowered with the necessary rights and prerogatives in order to effectively monitor the implementation of risk based border management and sanction misconducts.

Challenge 5:

The use of a risk based approach in the context of migration control raises particularly serious ethical concerns. These are related to:

- Overall criticism to the approach to migration of EU authorities. These focus on death at sea, the violence and abuses migrants and refugees are exposed to while attempting to reach the EU borders and their connection to the lack of effective legal migration options;
- the lower security threat posed by migration as compared to serious crime and terrorism;
- the tension between migration restrictions and the right to asylum and international protection
- the fundamental rights violations perpetrated by EU member states authorities and tolerated by EU agencies at the European borders.

Related Guidelines

- Even if the conditions listed in the Guidelines 1-8 are given, it needs to be carefully considered whether a risk based approach to border management should rather be restricted to serious crimes and terrorism or really be applied to migration as well.

Challenge 6):

Several aspects of risk based border checks have been met with acceptability concerns by media, academics and civil society.

Related Guidelines

- It should be ensured that any initiative aiming at the introduction of risk based border management is accompanied by open communication and public discussion involving

all stakeholders and debating the expected advantages and involved risks of the envisaged measures.

On the basis of these considerations, the following conclusion can be drawn:

For introducing a risk based approach to border controls, substantive changes in the legal framework are needed. These should:

a) provide a clear the legal basis on which such controls can operate and
b) develop a framework pertaining to the specificities of the technologies in line with the general fundamental rights guarantees.

Whether such reform is desirable from a political, societal and ethical point of view is a matter that must be openly and publicly discussed involving policy makers, legal experts, democratic institutions, academics, civil society and the media. This deliverable has provided an overview of the main issues that can serve as a starting point for this deliberative process.

A possible approach minimizing concerns would consist in opting for a situational risk based approach as an alternative to individual profiling and behavioral analysis (see D9.8 *Updated framework for assessing direct ethical, legal and societal impact of risk based screening concepts*). Moreover, restricting such application to the aims of counteracting serious crime and terrorism and excluding migration control from the possible applications is likely to reduce ethical and acceptability issues.

7 DOCUMENT VERIFICATION AND PLAGIARISM CHECK

This section provides information on document verification including how to complete a plagiarism check. A plagiarism check is mandatory before the submission of a document to the European Commission.

7.1 Verification and Quality Assurance

Before the document's submission to the European Commission, it will be up to the WP leader, Task Leader and the Coordinator to review internally and verify the quality of the content of the deliverable, with careful consideration of the document's dissemination level.

7.2 Plagiarism check and risk mitigation

The document's main author, with the assistance of the WP leader and the Coordinator, is responsible for performing a plagiarism check. Plagiarism is an important issue that can have serious consequences (up to termination of the project by the European Commission) if not addressed. The European Code of Conduct for Research Integrity (published by the European Science Foundation ESF and All European Academies, ALLEA) along with the H2020 reference documents state that no kind of plagiarism is tolerated.

The following kinds can immediately be identified:

- Uncredited verbatim copying of individual elements (sentences, paragraphs and illustrations) of great or small extent,
- Uncredited improper paraphrasing of pages or paragraphs,
- Credited verbatim copying of major/minor portions of text without clear delineation[26]
- Uncredited verbatim copying of one's own work is considered self-plagiarism.

The WP leader and Coordinator will assure quality of the document and verify that the relevant checks have been completed.

Please note that **although there exists a large number of free online tools for plagiarism checking, it is recommended that they be avoided for all security-sensitive deliverables.** Manual checking when necessary should be sufficient.

[26] with proper credits and text delineated (for example by using quotes), it can be considered quoting and not plagiarism. Still, quoting should be used to a small extent, i.e. a few sentences not entire paragraphs. Delineation means that it must be immediately apparent in the text that it has been copied from another source, using quotes or a box surrounding the text and that it is differentiated by the deliverable text.

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LIST OF FIGURES

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ANNEX A: JOINT OPINION OF THE EXTERNAL MEMBERS OF THE TRESSPASS EAB MARIA GRAZIA PORCEDDA AND MARINA MARKELLOU

A background to the deliverable was the commendable commitment of the TRESPASS consortium to privacy and data protection by design approaches. TRESSPASS arguably satisfies ethical research criteria and yet, such a finding is independent of the question as to whether the TRESSPASS system should be adopted.

Deliverable D9.9 aims to offer decision-makers the necessary background information to weigh up the pros and cons of risk based border control systems and, more specifically, assess the desirability of adopting some, or all, of the TRESSPASS components, either on an *ad hoc* or continuous basis. The document takes as neutral an approach as possible in light of existing legal constraints and the scarcity of data produced in the context of relevant initiatives (e.g. PNR databases).

Significantly, the promised advantages of risk based systems rest on shaky grounds. The deliverable points out that the easing of mandatory identity document controls would be unlawful and that passengers would not necessarily gain from such systems, in that the requirement to fill in digital forms before departure would impose new burdens on them. It is also questionable whether additional technological systems would shorten queueing time (data from the use of e-gates could help in this respect). For border control agents, reliance on unverified data could possibly trigger the need to perform additional checks; the extent to which such systems would deter individuals committed to serious crime and terrorism remains to be demonstrated, particularly as we do not have access to reliable data on false negatives drawn from comparable systems. There is a risk that fusion systems would become accessible to contractors, as well as that they could be repurposed to detect petty criminality. Lat but not least, the creation of new databases would keep broadening the attack surface for cybercriminals. This would expose both passengers whose data may be compromised, as well as border control agencies, whose systems could be attractive to ransomware attackers.

Lessons from data retention-related case law, especially La Quadrature du Net and Privacy International, offers useful guidelines, by analogy, as to thresholds for using personal data for law enforcement purposes, situations in which intrusive forms of data processing that constitute a serious interference or particularly serious interference would be permitted, and safeguards that must accompany the processing of data. In such line of cases, the Court has stressed that the undisclosed retention and use of data collected by private actors for purposes other than law enforcement is "likely to generate in the minds of the persons concerned the feeling that their private lives are the subject of constant surveillance", which is a hallmark of police states. One of the aims pursued by early proposers of data protection legislation was avoiding the downsides of merging databases and the power imbalances such fusion would create. The initiatives referred to in the deliverable appear to be in line with the spirit of past legislators, in that they wish to ban the adoption of profiling-based scoring systems drawing from data fusion.

Decision-makers are confronted with tough choices; one note of caution is that once systems are put in place, they are rarely dismantled, so a guarded approach is justified. The deliverable attempts to succinctly summarise the main issues at stake. As such, the document should be

seen as a point of departure, rather than a conclusion, for a broad reflection as to the kind of society that could be fostered by different forms of risk based border control systems.

TRESSPASS ETHICAL ADVISORY BOARD REVIEW

REVIEW COMMENTS

Comment No	Page - Section	Comment	Response
1	9/2.1	It is important to mention somewhere in the document that risk based approach also entails the possibility of error in the assignment of higher/lower risks. It is significant that we understand the limitations of the project's research	Section 3.2.1 added to address this point
2	9/2.1	I believe that the term "score" should be carefully used. It should be clarified whether this could fall or not fall under the "PROHIBITED ARTIFICIAL INTELLIGENCE PRACTICES ?" Is it excluded ? Please check the following: "The proposal for the Artificial Intelligence Act prohibits AI-based social scoring for general purposes done by public authorities. (…) Finally, the use of 'real time' remote biometric identification systems in publicly accessible spaces for the purpose of law enforcement is also prohibited unless certain limited exceptions apply." Would it fall under the limited exceptions, are BCPs considered publicly accessible spaces or not? Does the issue depend on national legislation on biometrics as authorized by GDPR A.9(2)? I am afraid there are not certain answers or they may difficult to find, but the contemplation could add value to the dialogue. Please see: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0206	Issues now discussed in section 4.1.1
3	9/2.1	Very controversial issue, especially considering the potential association with the issue of prohibition of torture or inhuman treatment. Although it is differentiated upon, it could raise such concerns.	
4	9/2.2	Also, the possibility of errors.	Changes implemented as suggested
5	13/3.2	I suggest it is replaced with "violate fundamental human rights". I would avoid any classification of HR at the document, as HR are basic rights and freedoms of people anyway, they are indivisible and have equal status.	Changes implemented as suggested

6	13/3.3	I read it differently. To my understanding, EU FRA states the exact opposite in the previous sentence. So, it should not be the default option but the last resort or even arguable if such cross-check should take place at least according to EU FRA.	Changes implemented as suggested

Note: the comments by Dimitra Papadaki (KEMEA) are reported here in her role as ethical expert of KEMEA, although she is formally no member of the TRESSPASS EAB.