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Abbreviations

ADDS	Automatic Deception Detection System
BCAT	Border Control Analytics Tool
BCP	Boarder Control Post
CFREU	Charter of Fundamental Right of the European Union
D	Deliverable
DAAT	Document Authenticity Analytics Tool
DoW	Description of Work
ECHR	European Convention on Human Rights
ED	European Dynamics
EES	Entry/Exit System
ETIAS	European Travel Information and Authorisation System
EU	European Union
FMT	Face Matching Tool
GDPR	General Data Protection Regulation
HTTPS	Hypertext Transfer Protocol Secure
ISO	International Organization for Standardization.
LUH	Leibniz Universität Hannover
MMU	Manchester Metropolitan University
RBAT	Risk-Based Analytics Tool

1 Executive Summary

This report is a follow-up of the ethical report and mitigation plan contained in Deliverable D1.2. It also considers the legal analysis made in Deliverable D2.3 and is aimed at providing a preliminary assessment of the status quo of the recommendations made in the above deliverables concerning ethics requirements of the project. In general, this report reflects part of the monitoring activity of the project by the Ethics Advisor.

The analysis done in this report is mainly focused on reviewing the tools developed so far within the life of the project as well as assess the plan for carrying out the test pilot. Elements that are focused in this report include the safeguards for processing of personal data, for example, to prevent repurposing of data, or when engaging in profiling or automated decision-making. Protection of fundamental rights such as unequal treatment, human dignity; and other ethical concerns relating to the risk of stigmatisation, human-computer interaction, among others, also appear in this report. Attention is equally given to the protection of intended volunteers that will participate in the test pilots as human subjects. Various risk mitigation measures have also been proposed to safeguard these volunteers.

This report concludes that the progress made so far in the project consider and reflect the ethics recommendations. However, as the development of the tools is ongoing, this assessment is based on the current status of the project. A final report will follow this towards the end of the project when all the tools would have been developed.

2 Introduction

Improving the effectiveness of border checks has been an issue of intense discussion on both European and national level, following the influx of migrants and refugees since 2015. Such state of affairs has reinforced the right of the European Union and its Member States to control their borders using all possible means. Recently, several legal reforms have occurred, including the considerable amendments of the Schengen Borders Code regarding how border checks shall be performed. These reforms have also paved the way to enhance border checks by substituting the current system with new technical means as one possible pathway to achieve effective control.

In this regard, the iBorderCtrl project aims at developing a toolkit for border checks based on innovative technologies. This approach is in line with the latest developments on a European level. For example, in December 2016, the European Commission published a proposal on how to reinforce the Schengen Information System, proposing changes such as improving the security and accessibility of the system. It also introduces the obligation to create an SIS alert in cases related to terrorist offences and improving information sharing, and cooperation between the Member States through the introduction of a new alert category on "unknown wanted persons". Further, full access rights will be granted to Europol. In May 2017, the Commission sets out a new approach to interoperability of information systems, which includes establishing a European search portal, a shared biometric matching service and a common identity repository.¹ Following these considerations, it appears that border checks will be increasingly substituted by technical means.

It has to be noted, though, that a specific challenge with innovative technologies is that they are not often (clearly) covered by the existing legal framework, leaving room for various interpretations, and possibly, challenging the moral principles of modern societies. As such, these technical means could cause various legal and ethical issues. Concerning border control, international law imposes duties on the state not to carry out border checks in a manner that violates human rights. For iBorderCtrl, this means that the fundamental human rights (human dignity, equality and privacy, etc.) are of utmost importance, and have to be carefully considered and balanced with other rights and obligations when assessing the benefits and risks arising from new technologies. Such an approach will ensure that appropriate safeguards to minimise the negative impact on fundamental rights are implemented right from the design of the system.

2.1 Scope and main objectives of this deliverable

This deliverable is part of WP 1, focusing on the ethics requirements to be applied for iBorderCtrl. The general outset of this deliverable was already outlined in the legal review being performed within the scope of Task 2.3, as well as in the ethical report and risk mitigation plan developed within Task 1.2. To this extent, D1.1 is the first of two ethical reports which will be submitted within the lifespan of the project by the ethics advisor to monitor whether the project follows the ethical guidelines which had been developed. This is particularly important to achieve two major goals:

Firstly, the project involves test pilots to assess whether the systems developed by the consortium are functioning as intended. Naturally, this requires the processing of personal data, including sensitive data such as fingerprints. To ensure that the privacy rights of volunteers participating in the test pilots are protected, it is crucial to implement proper

¹ See http://europa.eu/rapid/press-release_IP-17-1303_en.htm.

safeguards in the test pilots and to strictly follow the rules which had been developed in the risk mitigation plan.

Secondly, the constant monitoring of the project's progress allows to quickly identify any non-compliance with legal/ethical requirements when developing the different iBorderCtrl components and correcting such. This ensures that the project stays compliant with the rules always.

This interim report will, therefore, give an overview on the ongoing developments within the project and the status quo from an ethical point of view. As the overall assessment of the legal and ethical implications has already been done in D2.3 and D1.2, the present report will not include any new research on how the technologies utilised for iBorderCtrl should be seen from a legal/ethical point of view. Rather, it will focus on how these findings connect with the actual developments of the project.

2.2 Structure of this document

This interim report will be structured as follows:

- Section 3 will describe the methodology which has been applied to achieve the results constituting the basis of this report. This includes a description of which measures are being applied to ensure constant and comprehensive monitoring of the project.
- Section 4 includes an overview on the different ethical issues identified as relevant within the scope of iBorderCtrl.
- Section 5 includes a summary of the risk mitigation plan, which includes the different measures to be applied both in the research phase as well as the exploitation phase to avoid causing a violation of fundamental rights given the ethical issues outlined in section 4.
- Section 6 then concludes on the implementation status, reflecting the various requirements summarised in section 5 and the status quo of the project from a technical point of view.
- Section 7 concludes this report, providing a summary of the major findings, including potential ethical issues and suggestions on to ensure legal and ethical compliance.

3 Methodology

Part of the ethical safeguards to be applied to iBorderCtrl include two reports by the ethical advisor to be submitted within the periodic reporting. To prepare the report, it is important for the advisor to monitor the ongoing developments of the project, and to keep track of the status quo, as well as possible changes both in the technical framework and the applicable regulatory framework.

While monitoring changes in the regulatory framework is not related to the activities performed in iBorderCtrl per se, keeping track of the status quo of the ethical compliance within the project requires a procedure that allows the ethics advisor to gain an insight into the ongoing processes. This is particularly challenging due to the fact that the ethics advisor shall be an external entity, which as such is not part of the consortium. In fact, a certain distance to the project is even required to ensure an objective and neutral view and assessment of the ethical issues which might arise in the project.

In order to ensure a comprehensive monitoring while at the same time considering these peculiarities, the ethical advisor has worked closely with LUH as the legal partner in the project, and as an intermediary between the technical partners in charge for developing the iBorderCtrl components, the end users who will conduct the pilots and the external ethical advisor. To this extent, the day to day monitoring has been performed by LUH, forwarding relevant information to the ethical advisor for further discussions. Vice versa, remarks on potential ethical issues identified by the ethics advisor have been discussed with LUH to develop feasible remedies wherever applicable.

To this extent, LUH has reviewed all relevant deliverables and participating in the bi-weekly technical telcos with the technical partners. This allowed to keep track of the ongoing developments, while at the same time pointing out possible risks and challenges from a legal and ethical point of view. Therefore, this report includes contributions from LUH as an insider into the daily developments of the project.

4 Summary of ethical/legal concerns about iBorderCtrl

Within the iBorderCtrl project, including the subsequent exploitation and marketability of individual components developed in the project, several areas which may raise some ethical concern have been identified in Deliverables D1.2 and D2.3. The following chapter gives an overview of the most important issues.

4.1 Right to Privacy and Protection of Personal Data

Privacy and data protection became a priority area for policymakers and European interlocutors in shaping the future of the information society, including smart products and devices. Given the prominence of the issue, it is equally important that the technical and legal developments must be reconciled with ethical/philosophical considerations, since the development and adaption of ethical principles, has for the most parts, been concurrent with the development of law in the field.

Several privacy and data protection related provisions which are relevant in the context of iBorderCtrl have been described in D2.3. For example, the Charter of Fundamental Rights of the European Union (CFREU) contains in its Art. 7 (Respect for private and family life) as follows: “Everyone has the right to respect for his or her private and family life, home and communications” Furthermore Art. 8 (Protection of personal data) stipulates that “Everyone has the right to the protection of personal data concerning him or her”.² And Art. 8 (2) determines that personal “data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.”

The right to privacy also exists on EU Member States level, as numerous constitutions implicitly or explicitly grant the right to privacy. In the case of Germany, for instance, the German Federal Constitutional Court interpreted that the German Constitution (“Basic Law”) includes a right to “informational self-determination” derived from Art. 1(1), 2(1) of the Basic Law. The term was first used in a German constitutional ruling in connection with personal information collected during a census in 1983. In particular, the German Constitution Court held that “... in the context of modern data processing, the protection of the individual against the unlimited collection, storage, use and disclosure of his/her personal data is encompassed by the general personal rights of the German Constitution. This basic right warrants in this respect the capacity of the individual to determine in principle the disclosure and use of his/her personal data. Limitations to this informational self-determination are allowed only in case of overriding interest (such as public interest).”³

In general, protecting the right to privacy and data protection have nowadays become of utmost importance in an increasingly digitalised world. It is, therefore, crucial to assess the impact of iBorderCtrl on individuals’ right to privacy and data protection and to mitigate risks associated with the tools to be developed in the project whenever possible.

4.2 Unequal treatment

The concept of equality and non-discrimination is very complex with numerous ramifications and consequences and therefore both challenging from a legal as well as an ethical point of view. The

² Art. 8 (1) CFREU

³ In German: BVerfGE 65, 1 - Volkszählung

CFREU deals with equality in Chapter III, (Art. 20-26). Of particular importance are Art. 20 (Equality before the law) and Art. 21 (Non-discrimination) which reads as follows:

- 1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.*
- 2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.*

Similar to the CFREU, the European Convention on Human Rights (ECHR) prohibits against discrimination in on several grounds (Art. 14).⁴ Apart from that, constitutional and legal traditions of the member states do also prohibit discrimination and profess equality. In fact, a legal justification is required to implement any discriminatory measures. These justifications are subject to the principle of proportionality, meaning that both the positive and the negative impact of a measure have to be considered and balanced. The concept of proportionality is also well established and recognised as one of the general principles of European Union law.⁵ It is also recognised in Article 5 of the EC Treaty, stating that "any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty". Therefore, proportionality as a principle has to be considered hand-in-hand with the requirement of avoiding unequal treatment.

4.3 Human dignity

Another fundamental principle of the European legal framework is that human dignity has to be respected in any case. It describes the concept of individual's or group's right to be valued and respected. Therefore, it expresses the requirement of fair and ethical treatment of every human being. The principle of human dignity can be found in various legal sources. For the territory of the European Union, the concept of human dignity is reinforced by the EU's charter of fundamental rights (CFREU) which provides in its Preamble: "Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity". Consequently, several articles are dedicated to protecting human dignity. Art. 1 says: "Human dignity is inviolable. It must be respected and protected." It is followed by Art. 2 (Right to life), Art. 3 (Right to the integrity of the person), Art. 4 (Prohibition of torture and inhuman or degrading treatment or punishment) and Art. 5 (Prohibition of slavery and forced labour), which may be seen as further manifestations of the concept of human dignity. Human dignity has furthermore been incorporated into national Constitutions, e.g., Germany.⁶

Individual's or group's dignity may be violated in multiple ways. Most obviously, a violation of human dignity can be seen in torture, slavery, bonded labour, or putting human beings into inhuman living conditions. However, there may also be cases where a violation of human dignity is less obvious and

⁴ "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

⁵ See *Federation Charbonniere de Belgique v High Authority* [1954] ECR 245 Case C8/55[11]; *Internationale Handelsgesellschaft v Einfuhr- und Vorratsstelle Getreide* [1970] ECR 1125 Case 11/70; *R v Minister of Agriculture, Fisheries and Food ex parte Fedesa* [1990] ECR I-4023 Case C-331/88

⁶ Art 1(1) of the German Basic Law (Grundgesetz) reads: "Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority."

might have numerous facets and dimensions. For example, to humiliate a person and subject them to public ridicule, or “dehumanizing” a person, referring to an act with which individuals are stripped of their human characteristics or treated as less valued human beings. Human dignity may also be violated by degradation, where the inherent value of a human being is deprecated.

Of particular relevance for the iBorderCtrl project in this context of human dignity is the instrumentalization and objectification of persons. Objectification means to reduce a human being to an object or thing, to treat someone as if he/she does not possess physical or psychological boundaries, or to treat someone with no concern for their feelings and individual experiences.

4.4 Risk of stigmatisation

[REDACTED]

[REDACTED]

[REDACTED]

4.5 Profiling

[REDACTED]. ‘Profiling’ means any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements.⁷ [REDACTED]

[REDACTED]

[REDACTED] profiling is subject to specific requirements. According to Article 22 of the GDPR, data subjects may have the right to not be subject

⁷ See Article (4) (4) of Regulation 679/2016/EU and Article (3) (4) of Directive 680/2016/EU. Please also see 4.6

to profiling that results in legal effects concerning the data subject or similarly significantly affects him or her. Article 11 of Directive 680/2016/EU prohibits profiling in general, unless appropriate safeguards are applied. [REDACTED]

4.6 Automated decision making

[REDACTED] The basis of legal/ethical considerations regarding automated decision making processes in the context of iBorderCtrl is again - like in the case of profiling – Art. 22 GDPR or Art. 11 Directive 680/2016/EU. Article 11 of Directive 680/2016/EU prohibits decisions based solely on automated processing unless appropriate safeguards are applied.⁸

4.7 Human-machine interaction

It is important to note that neither the use of such technology is regulated nor guidelines for the interaction of humans and machines regarding border checks can be found in the current legal system.

⁸ Art. 11 (1) Member States shall provide for a decision based solely on automated processing, including profiling, which produces an adverse legal effect concerning the data subject or significantly affects him or her, to be prohibited unless authorised by Union or Member State law to which the controller is subject and which provides appropriate safeguards for the rights and freedoms of the data subject, at least the right to obtain human intervention on the part of the controller.

(2) Decisions referred to in paragraph 1 of this Article shall not be based on special categories of personal data referred to in Article 10, unless suitable measures to safeguard the data subject's rights and freedoms and legitimate interests are in place.

(3) Profiling that results in discrimination against natural persons on the basis of special categories of personal data referred to in Article 10 shall be prohibited, in accordance with Union law.

However, according to Art. 7 SBC, border guards shall, in the performance of their duties, fully respect human dignity, in particular, in cases involving vulnerable persons. Furthermore, Art. 16 SBC stipulates that the Member States shall ensure that the border guards are specialised and properly trained professionals, taking into account common core curricula for border guards. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4.8 Function creep

Another ethical issue that needs to be considered within the scope of iBorderCtrl is the problem of “function creep”. The European Commission describes function creep as “technology and processes introduced for one purpose [and] extended to other purposes which were not discussed or agreed upon at their implementation”.⁹ This means that personal data is being collected and used for one specific, predefined and legitimate purpose, and then there is a subsequent shift of purpose. This might, for instance, occur due to new technological developments or possibilities. Consequently, processing that was socially, ethically and legally acceptable purpose might “creep” towards another purpose which is beyond what was originally intended and understood and may not be compliant with the legal and ethical framework. Function creep challenges fundamental principles of privacy such as purpose limitation and, in the context of informed consent, the principle of transparency. Function creep has been a serious concern, especially in the context of surveillance, and the use of biometrics. Data linkage can also be a major threat to privacy.¹⁰

For iBorderCtrl, it is, therefore, crucial to periodically review the systems that are being built, and technical advancements that have occurred through the project. This includes both the research phase where new technologies or a change in know-how might enable new developments and the exploitation phase in which the system would be used for actual border checks. Constant monitoring to ensure that the system is still operated within the original purpose for which it has been set up or the purpose that the legislator has defined is crucial to avoid function creep.

⁹ European Commission Directorate-General Joint Research Centre, Biometrics at the Frontiers: Assessing the Impact on Society. For the European Parliament Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (LIBE), Executive Summary, 2005, p 7

¹⁰ House of Commons Science and Technology Committee, Current and future uses of biometric data and technologies, Sixth Report of Session 2014–15, p.27.

5 Risk Mitigation Measures

According to the DoW, an appropriate mitigation plan must be included in D2.2 (Reference Architecture and Components Specifications) to tackle the specific ethical risks arising from iBorderCtrl. Therefore, the ethics deliverables aim to minimise any negative impacts on volunteers participating in the iBorderCtrl project on the one hand. On the other hand, the measures proposed also apply to the possible exploitation phase. For the latter, consideration is given to the peculiarities of every scenario to ensure a comprehensive risk mitigation plan. As the legal framework to be applied during the research phase differs from the legal framework to be applied for exploitation and use in real border check scenarios after the project ends, the mitigation measures are listed according to every phase.¹¹

5.1 Research Phase

5.1.1 Overall Design of the Test Pilots

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

5.1.2 System requirements

[REDACTED]

- [REDACTED]
- [REDACTED]

¹¹ Further details on the applicable legal framework and the distinction of both phases can be found in D2.3.

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]

5.1.3 Anonymisation and Pseudonymisation

[REDACTED]
[REDACTED]

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]

5.1.4 Transparency and Training

[REDACTED]
[REDACTED]
[REDACTED]

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]

5.1.5 Legal obligations for all parties involved

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

5.2 Exploitation Phase

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

6 Current implementation status

[Redacted text block]

6.1 Ethical risk awareness and monitoring

[Redacted text block]

6.1.1 Awareness-Raising

[Redacted text block]

[Redacted text block]

6.1.2 Monitoring and guidance

[Redacted text block]

[REDACTED]

6.2 Implementation of measures

[REDACTED]

6.2.1 Test pilots

[REDACTED]

[REDACTED]

[REDACTED]

6.2.2 System requirements

[REDACTED]

[REDACTED]

[REDACTED]

-
- [REDACTED]
 - [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6.2.3 Anonymisation and pseudonymisation

An important safeguard with regard to minimising ethical risks for involved individuals is the use of anonymisation and pseudonymisation. This applies to all data used in the test pilots: Those entered by participants, as well as data used for simulating a test environment.

With regard to volunteers participating in the test, the options for applying anonymisation and pseudonymisation are rather limited: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6.2.4 Transparency and training

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6.2.5 Compliance with legal obligations

The proper implementation of the risk mitigation plan also includes compliance with certain legal obligations. First, and most importantly, volunteers for the test pilots need to give their valid informed consent to participate in the test pilots performed during the project lifespan. For the iBorderCtrl test pilots of the overall software, a toolkit to be performed by the end-users, D2.3 contains draft legal texts of a letter of informed consent, which shall be signed by the volunteers. As this text was drafted at the early stage of the project (month 8), it does not cover all the details required to inform volunteers before they provide their informed consent. Therefore, it is important to update the content once the development of the software toolkit progresses. While the legal partners are aware of this requirement, the text has not been updated yet. However, it is planned to tackle this requirement hand-in-hand with deliverables D3.2 and D4.1, as these deliverables further describe the data processing within the iBorderCtrl software toolkit, including the processing of personal data.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6.2.6 System architecture and exploitation

Last but not least, some general requirements regarding the system architecture needed to be considered, also in the light of possible exploitation.

[REDACTED]

One peculiarity of consent is that the data subject must be able to revoke his or her consent anytime. This means that, should a user decide to revoke consent, there needs to be a fall-back procedure to normal border checks [REDACTED]

[REDACTED]

¹⁴ See Approval Memo SE1617123 in Annex A.

¹⁵ See participant information sheet in Annex A.

[REDACTED]

Another technique raising ethical concerns is the utilisation of automated decision making. As already outlined in D1.2 and D2.3, this can put individuals at risk of suffering negative consequences due to technical failures, bad data quality, etc. In order to minimise this impact, such a decision should not have a significant legal effect on the person, such as a refusal at the border. [REDACTED]

[REDACTED]

Finally, to ensure that the iBorderCtrl system is capable of actually enhancing border checks also from an ethical point of view, it is recommended to monitor the actual impact during the test pilots. In particular, the success rate as compared to normal border check procedures might be of interest. [REDACTED]

[REDACTED]

¹⁶ See art. 22 of the ETIAS proposal, COM(2016) 731 final.

7 Conclusions

Considering the ethical impact of border control technologies right from the design and development stages of such systems is an added value towards respecting fundamental rights and other moral values of the modern society. Although this report is preliminary, and focuses on how the ethical and other related recommendations in D1.2 and D2.4 have been implemented until this stage of the project, the ethical monitoring will continue throughout the lifespan of the project, including when the methodology for the test pilot has been concluded.

The current assessment indicates that the tools developed so far are in line with the ethical and legal guideline developed in the above mentioned deliverables. A final and comprehensive report will be done towards the end of the project when all the tools have been developed and the infrastructure set up.

8 References

Charter of Fundamental Rights of the European Union (CFREU), available at

www.europarl.europa.eu/charter/pdf/text_en.pdf

Deliverable D1.2 - OEI – Requirement No. 2, Ethical Report and Risk Mitigation Plan

Deliverable D2.3 – Legal Review

Directive 680/2016/EU on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, , available at

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L0680&from=EN>

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<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61970CJ0011>

Judgment of the Court (Fifth Chamber) of 13 November 1990, The Queen v Minister of Agriculture, Fisheries and Food and Secretary of State for Health, ex parte: Fedesa and others. Reference for a preliminary ruling: High Court of Justice, Queen's Bench Division - United Kingdom. Substances having a hormonal action - Validity of Directive 88/146/EEC, Case C-331/88, available at

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=ecli:ECLI:EU:C:1990:391>

Proposal for a Regulation establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 515/2014, (EU) 2016/399, (EU) 2016/794 and (EU) 2016/1624, COM(2016) 731 final, available at

https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/legislative-documents/docs/20161116/proposal_etias_en.pdf

Regulation 679/2016/EU on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), available at

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&qid=1491476255651&from=en>

Annex

- Approval Memo SE1617123
- Participant information sheet



Manchester
Metropolitan
University

MEMORANDUM

TO [REDACTED]
FROM [REDACTED]
DATE 11th July 2017
DATE OF EXPIRY: 30th August 2017
SUBJECT Application for Ethical Approval (**SE1617123**)

On the 11th July 2017 the Head of Ethics for Science & Engineering considered your application for Ethical Approval (**SE1617123**) entitled "iBorderCtrl Intelligent Portable ContROI SyStem (H2020 project)". The application has been granted Favourable Opinion and you may now commence the project.

MMU requires that you report any Adverse Event during this study immediately to the Head of Ethics [REDACTED] and the Research Degrees Administrator. Adverse Events are adverse reactions to any modality, drug or dietary supplement administered to subjects or any trauma resulting from procedures in the protocol of a study.

An Adverse Event may also be accidental loss of data or loss of sample, particularly human tissue. Loss of human tissue or cells must also be reported to the designated individual for the Human Tissue Authority licence. Please notify Professor [REDACTED] of any issues relating to this.

If you make any changes to the approved protocol these must be approved by the Faculty Head of Ethics. If amendments are required you should complete the MMU Request for Amendment form (found on the Graduate School website) and submit it to the Administrator.

Regards,

[REDACTED]
[REDACTED]
[REDACTED]

Participant Information Sheet

Study Title: A Study of Deceptive Behaviour (Lie Detection)



This **Participant Information Sheet** concerns an experiment on secure border control for the project iBorderCtrl at Manchester Metropolitan University, as part of the European Union's Horizon 2020 research and innovation programme under grant agreement No 700626.

Invitation to Participate

We would like to request your participation in a scientific study of deceptive behaviour (lie detection). The study is being conducted within a research project funded by the EU called iBorderCtrl (Intelligent Portable Control System). This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 700626. The project started on the 1st September 2016 and lasts for three years. The main objective of this study is to enable faster and thorough border control for third country nationals crossing the land borders of EU Member States. This scientific study has received MMU ethical approval SE1617123.

For ethical reasons we are required to ask your permission in advance and let you know what you are agreeing to. We have provided the answers to the key ethical questions below. If you require any further information before agreeing to participate please contact: [REDACTED]

What is the purpose of the study?

The purpose of the study is to investigate the types of non-verbal deceptive behaviour exhibited by both male and females and within different ethnic groups.

Do I have to take part?

It is up to you to decide. We will describe the study and go through this **Participant Information Sheet** with you and answer any of your questions.

If you decide to take part we will give you

- **Sponsor Informed Consent Form**
 - This will be given to you prior to the experiment and we will ask you to give this form to a Sponsor – a person who can identify you, but who will not take part in the experiment.
 - If you agree to take part in the experiment, you will need to bring the completed Sponsor Informed Consent Form with you.
- **Participant Informed Consent Form**
 - You will receive this form to read and asked to sign to participate in the experiment.
- **Debrief, Supplementary Data and Final Consent Form**

- This Form will be completed after the interview in the debriefing stage of the experiment.
- This will include asking you four questions about the feelings you had during the experiment
- A further informed consent form which allows you to consent having full knowledge of the actual experiment.

You are free to withdraw at any time, without giving a reason.

What will happen to me if I take part?

If you agree, you will be asked to take part in short activities followed by a short interview in which you will either tell the truth or lie.

The interviews will be recorded and analysed by computer programs to see if they can tell when people are deceiving and when they are telling the truth.

You will also be asked to complete a few questions about yourself and your feelings about the experiment in a short follow-up de-briefing session. The reason for this is that sometimes-scientific studies produce surprising results, which need to be analysed, and this background information could help

What will you expect me to know?

We want to emphasise that we are not testing your intelligence or ability in any way. This is not an intelligence test, we are measuring non-verbal behaviour and you are helping us by providing data.

Is there any risk?

We will not ask you any questions that would normally be considered offensive. The questions asked will be similar to those asked by airport security.

The risk involved is equivalent to watching a late evening news bulletin or participating in an amateur improvisational drama class.

We think it is very unlikely that the activities and interview questions used in this study would recall unpleasant memories or experiences, however the following counselling support is available if you need them:

Counselling Support:

- Support for MMU students: Counselling, Health and Wellbeing Service, <http://www2.mmu.ac.uk/counselling/>
- Free counselling from The Samaritans (Phone 116 123)
- Access to counselling through MIND: <https://www.mind.org.uk/information-support/drugs-and-treatments/talking-treatments/finding-a-therapist/#charity>

Part of this study compares the non-verbal behaviour (NVB) of different ethnic groups. The comparison in this experiment (White European vs. Arabic / Asian) is a continuation of work on ethnic diversity we have done in the past (for example looking at the different NVB of Tanzanian women). *For cultural reasons, you may consider whether members of your family, circle of friends or wider community would have a negative reaction to your taking part in the experiment before volunteering.*

At the end of the experiment you will be able to choose the degree of privacy / confidentiality with which your data will be published, including complete anonymity.

You are free to withdraw at any time, without giving a reason.

How long will the data kept for?

The answers to the questions about yourself will be kept for no longer than 6 months after the last results are published or the end of the iBorderCtrl project. The video materials will be separated from the personal data and kept permanently, if you consent. This is because the data can be very useful in long-term studies. The two reasons for this is that sometimes-scientific studies produce surprising results, which need to be analysed, also this can assist in identifying ground truth for the data. Participants will only be asked to sign the consent form after the experiment has been completed to ensure they are happy with the process.

Will you publish my personal information?

We will never disclose your personal information to anyone outside the project. If you specifically volunteer consent for it, we may use your video recordings or still pictures to publicise the project - for example in public engagement (news media) or in bids for future support. This will not be permitted unless you agree to it **after** you have completed the experiment through the Debrief, Supplementary Data and Final Consent Form during the Debrief session.

How long will it take?

The activities and interviews take up to 25 minutes each. As there may be some waiting for the interview room to be checked between participants, you should expect up to half an hour to be required. Also, for some participants, we will enter a small amount of personal data into a simple database. The maximum time it will take is one hour.

How do I give consent?

If after reading this **Participant Information Sheet**, you agree to take part in the experiment you will be asked to:

1. Read the Participant Informed Consent Form and if you consent, to sign the form.
2. You will then be asked to take part in an activity and an interview.
3. Following the interview you will be debriefed. This will include reading and signing a further **Participant Confirmed Consent Form** which allows you to consent having full knowledge of the actual experiment.

Because it would bias the experiment to give you too much information in advance, we only ask for full consent at the end of the experiments, during the de-briefing session. However, please be aware that **you may withdraw at any time** during the experiment if you are unhappy about it.

Do I receive financial compensation?

There is no financial compensation for taking part.

There are good reasons why you might also wish to take part. This experiment makes an important contribution to science and the practical outcomes could make activities like air travel both safer and more convenient in the long term (i.e. less queuing in airports). Also, after Brexit, the UK will no longer be an EU member state, so all UK citizens will benefit from reduced border crossing delays when travelling to EU countries.

Nearly all of the previous participants in our previous study told us they enjoyed doing it or had gained some insight about themselves. Developing skills in deception may also be an important positive contribution in certain professions such as medicine and policing.

What if there is a problem?

If you have a concern about any aspect of this study, you should ask to speak to the Investigators who will do their best to answer your questions:

Investigators:

[Redacted]
[Redacted]
[Redacted]