Intelligence Network & Secure Platform for Evidence Correlation and Transfer

D8.2 First Report on Ethical Governance

Document Summary Information

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Contributions from	Dr. David Barnard Wills, Dr. Joshua Hughes		

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Glossary of terms and abbreviations used

Abbreviation / Term	Description
CCI	UCD Centre for Cybersecurity and Cybercrime Investigation
DMP	Data Management Plan
DPA	Data Protection Authority
DPIA	Data Protection Impact Assessment
DPO	Data Protection Officer
EAB	Ethics Advisory Board
EC	European Commission
EDPS	European Data Protection Supervisor
GDPR	General Data Protection Regulation
LEA	Law Enforcement Authority
LED	Law Enforcement Directive
LIA	Legitimate Interests Assessment
LSG	Law Enforcement Authority Steering Group
POPD	Processing of Personal Data
TRI	Trilateral Research
UCD	University College Dublin
WP	Work Package

1   Introduction

The aim of this deliverable is to document the ethical management processes and any ethical issues experienced during the first 18 months of the project. It is an interim version of the report and will be updated at month 24 and month 42. The month 42 version will include a guide on results exploitation and use after the end of the project.

1.1   Mapping INSPECTr Outputs

The purpose of this section is to map INSPECTr Grant Agreement commitments, both within the formal deliverable and task description, against the project's respective outputs and work performed.

Table 1: Adherence to INSPECTr GA Deliverable & Tasks Descriptions

INSPECTr GA Component Title	INSPECTr GA Component Outline	Respective Document Chapter(s)	Justification
DELIVERABLE			
D8.2 First Report on Ethical Governance	*A report documenting the ethical management processes and any ethical issues experienced during the project.*	*Sections 2, 3 and 4.*	*Sections 2 and 3 document the ethics management processes and tools used within these processes.* *Section 4 documents the ethical issues experienced in the first 18 months of the project.*
TASKS			
ST8.1.1 Research Ethics	*Commit to responsible research and innovation, research ethics…Set up a regular ethics review process including an ethics review panel. Identify and assess any ethical issues that might arise from each of INSPECTr's activities and deliverables and define measures to be taken in the case of ethical issues…Manage relationships with relevant ethics stakeholders.*	*Sections 2, 3 and 4.*	*Sections 2 and 3 document the ethics management processes and tools used within these processes.* *Section 4 documents the ethical issues experienced in the first 18 months of the project.*

1.2 Deliverable Overview and Report Structure

This deliverable has three main sections.

Section 2 sets out the INSPECTr ethical management processes. This includes standing processes and ad hoc processes as well as INSPECTr ethics communication channels.

Section 3 sets out seven (7) tools used by the INSPECTr project to identify and monitor ethics issues in the project. These tools provide a foundation for ethical discussions during the processes outlined in section 2.

Section 4 sets out the main ethical issues experienced by Trilateral Research Ltd (TRI) during the first 18 months of the project.

2   The Ethical Management Processes

This section sets out the ethical governance processes used by TRI within the project. The section is divided into standing processes which occur at a set regular date and time and ad hoc processes, which may occur regularly but are engaged by the ethics team as needed. The final subsection outlines the main communication tools used by the ethics manager, Trilateral Research Ltd. (TRI), and the other project partners to discuss and share information on ethical issues within the project.

This is the internal ethics management process within the project and is complemented by the EC's own external ethical review process.

2.1   Standing Processes: Weekly, Monthly or Quarterly

There are three types of standing process relevant to the discussion and management of ethical issues within the project: (i) meetings that are internal to partner TRI only; (ii) meetings between TRI and other INSPECTr partners; (iii) meetings between TRI and the independent Ethics Advisory Board (EAB).

2.1.1   Internal TRI Review Meetings – Weekly and Monthly

The TRI ethics manager reviews the project on a weekly basis. Within TRI, there are then monthly meetings between the TRI project team (i.e., TRI staff working across WP6, WP7 and WP8), as well as monthly project meetings between the project lead, the lead's line manager and the Director. These meetings cover all aspects of TRI's work in INSPECTr but focus predominantly on WP8 ethics management as it is the largest responsibility attributed to TRI within the Grant Agreement.

2.1.2   INSPECTr Meetings - Monthly

The INSPECTr Coordinating Partner CCI, hosts a monthly consortium meeting, typically every first Tuesday of the month for two hours. During this meeting, the TRI ethics manager presents a PowerPoint to update partners on the WP8 ethics activities over the past month and looks forward to the intended activities over the next 30-day and 90-day periods. Outstanding queries are sometimes raised with partners by the ethics manager at this meeting and partners can ask questions of the ethics lead. The following monthly consortium meetings have been attended by the TRI ethics manager, with associated WP8 presentations delivered:

- 6 April 2020
- 5 May 2020
- 2 June 2020
- 7 July 2020
- 11 August 2020
- 8 September 2020
- 6 October 2020
- 3 November 2020
- 1 December 2020
- 12 January 2021
- 2 February 2021

Since November 2020, following the second ethics check, the TRI ethics manager has established monthly WP8 meetings with other WP leads. These meetings are scheduled for one hour (changing to 30 mins every quarter when there is overlap with the EAB meeting – see below) on the last Monday of the month to allow for a fuller discussion of the ethics issues within the project. The EAB chair (i.e., Castlebridge) and EAB project partners (i.e., RUG) are also invited and encouraged to attend this meeting. The WP8 monthly meeting deliberately falls every quarter on the same day as the EAB quarterly meetings. To date, the following WP8 monthly meetings have been held:

- 30 November 2020
- ~~28 December 2020~~ (cancelled due to public holiday)
- 25 January 2021
- 22 February 2021

2.1.3 Ethics Advisory Board Quarterly Meetings

Since October 2020, following the second ethics check, the EAB has established standing quarterly EAB meetings to discuss and oversee ethical issues arising from the INSPECTr project. These meetings are held on the last Monday of the month every quarter. The TRI Ethics manager attends these meetings. The EAB Chair liaises with the TRI Ethics Manager to identify any priority issues for discussion. Prior to the quarterly meetings, the EAB met to review the ethics requirements (WP9) deliverables on an ad hoc basis.

To date, the following EAB meetings attended by the TRI ethics manager have been held:

- 26 October 2020
- 14 Dec 2020 (ad hoc end of year)
- 25 January 2021

2.2 Ad Hoc Processes: In Response to Project Need

2.2.1 INSPECTr Law Enforcement Authority Steering Group ('LSG') Monthly Project Meetings

While there are regular Law Enforcement Authority Steering Group ('LSG') meetings, the TRI ethics manager requests to attend these meetings from the Coordinating Team on an as-needed basis. This will occur where the TRI ethics manager identifies a need to discuss ethics issues directly and more fully with the law enforcement authorities (LEAs) who may not always attend the monthly consortium meetings. In the first 18 months of the project, these needs have typically been to ensure that LEAs, together with their Data Protection Officers (DPOs) and Data Protection Authorities (DPAs), had established a clear legal basis for the processing of closed case file data; that Data Protection Impact Assessments (DPIAs) were completed where relevant; and that LEAs were clear on what steps they should take to ensure an appropriate contract is in place with technical partners accessing LEA data. To date, the following LSGs have been attended by the TRI ethics manager:

- 14 July 2020
- 31 July 2020
- 21 August 2020
- 28 October 2020
- 2 December 2020
- 9 December 2020

- 3 February 2021

2.2.2   INSPECTr Technical Meetings

During the early stages of the project the main consortium meetings were technical meetings aimed at defining further the INSPECTr requirements. The TRI ethics manager attended these early meetings, including a three-day workshop at UCD in Dublin on 10-12 March 2020 (month 6). The TRI ethics manager presented to technical partners on the early ethics requirements and the commitments made by the project, as well as contributing on ethical challenges and benefits arising from partner discussions. Due to the existence of multiple other avenues for engagement, the TRI ethics manager does not now routinely attend the ongoing weekly technical meetings. The TRI ethics manager has requested that ethical representation be included in any technical demonstrations held by project partners.

2.2.3   TRI Discussion Requests with Individual Partners

A core way the TRI ethics manager liaises with partners to encourage and ensure ethical commitments are considered and adhered to within the project is through one-to-one communication with partners. This is a weekly activity for the TRI ethics manager and occurs through email, telephone, Skype, Teams, and GoToMeeting channels.

2.2.4   Ethics Webinars and Partner Dialogues

The TRI ethics manager has organised a number of ethics webinars and in-depth 'partner dialogues' (referred to as 'workshops' where external expertise has been included), to assist partners in the fulfilment of their ethics commitments. The following webinars, dialogues or workshops have occurred at the time of writing:

- **19-20.09.2019, Presentations on ethics requirements and WP8 – compliance with European social values, fundamental rights and applicable legislation at the project Kick Off Meeting,**
  - Ethics requirements
    - Different forms of ethics in the project
    - Obligations
      - EU regulations
      - H2020 grant agreement
      - Ethics self-assessment and review
      - EC required ethics deliverables
  - WP8
    - Ethics related tasks
    - Ethical principles
    - Process for establishing ELSI issues
    - Potential ELSI issues for INSPECTr
    - Privacy-by-design process
  - Format: Live, in-person presentation, approx. 40min each.
  - Attendance: representatives from full consortium, typically project leads.

- **26.05.2020, Webinar: Ethics Governance in INSPECTr**
  - Agenda:

1. Knowing your legal basis for processing personal data
2. Personal Data Processing – Key Principles
3. DPIAs
4. Other Ethical Governance Issues
5. Towards Ethical Requirements for INSPECTr

- o Format: Live one-hour webinar.
- o Attendance: Available to full consortium. Targeted to all partners.

- **26.05.2020, Webinar: Doing a DPIA**
  - o Agenda:

    1. Objectives
    2. What is a DPIA, and when do I need to do one?
    3. DPIA in practice
       a. Who carries out the DPIA
       b. Your DPIA Process – 4 obligations
       c. Understanding necessity and proportionality
       d. Assessing risk
       e. Consultation and working with stakeholders
    4. Guidance Materials on DPIAs
    5. DPIAs and the INSPECTr Project

  - o Format: Pre-recorded PowerPoint slide and audio learning tool on OnlyOffice.
    Nb. This recording was updated in August 2020 to reflect amended partner intentions on personal data processing.
  - o Attendance: Available to full consortium. Targeted to partners requiring DPIAs, i.e., CCI, BFP, AFG, EPBG and IGPR.

- **04.09.2020, Partner Dialogue: DPIAs**
  - o Agenda:

    1. Step-by-step walk through of TRI DPIA template for the purposes of assisting LEA partners BFP and AGS in populating their respective DPIAs for Task 1.3. Technical and ethical contributions were required.

  - o Format: Live on GoToMeeting.
  - o Attendance: CCI, AGS, BFP, TRI

- **11.09.2020, Partner Dialogue: DPIAs**
  - o Agenda:

    1. Step-by-step walk through of TRI DPIA template for the purposes of assisting LEA partners BFP and AGS in populating their respective DPIAs for Task 1.3. Technical and ethical contributions were required.

  - o Format: Live GoToMeeting.
  - o Attendance: CCI, AGS, BFP, TRI

- **19.01.2021, Workshop: Ethical Integration of Online Data into the INSPECTr Platform**
  - o Agenda:
    1. Overview on purpose
    2. Data Minimisation

          a. Web scraper

          b. LEA node access to publicly available APIs

          c. Relational Navigator

      3. Data subjects rights

          a. LEA node access to publicly available APIs

      4. Understandability and Explainability

          a. Relational Navigator

      5. Storage and Destruction of Data

          a. All 3 tools

- o <u>Format</u>: Live two-hour Teams meeting
- o <u>Attendance</u>: Dr. Thilo Gottshalk (external); BFP; CCI; GN; ILS; LSP; PHS; PSNI; RUG; SIREN; VLTN.

- **26.01.2021, Workshop: Ethical AI in the INSPECTr Platform**
  - o <u>Agenda</u>:

Part 1: Diversity, Discrimination and Fairness

- Q. 1. What tools are being developed using pre-trained AI models?
- Q. 2. What data sets have been used/are being used to train the model?
- Q.3. What is known about ethics controls in the development of the original model in terms of mitigating bias?
- Q.4. How is bias being mitigated in the datasets used by partners?

Part 2: Transparency and Explainability

- Q.5. How will the results of the tool be communicated to the LEA investigator in an understandable way so that the investigator can weigh the AI interpreted evidence?
- Q.6. How should the communication style differ for the convolutional neural networks (CNN) (relying on fixed inputs) and the recurrent neural network analysis (RNN), which does not rely on fixed points? – Should LEA filters align with the fixed inputs?
- Q.7. Which tools will provide their outputs in quantification, and to what extent can this be avoided?
- Q.8. To what extent can the communication of outputs be harmonised among the tools for the benefit of LEA understandability (while retaining accurate communication)?

Part 3: Accountability

- Q.9. What is the performance evaluation/accuracy method for each tool?
- Q.10. What is INSPECTr's human evaluation approach to the use of AI in INSPECTr? (e.g. performance evaluations, then understandability evaluations etc)
- Q.11. What scope is there to add a post-operation audit to the tools if the TRL is low?
  - o <u>Format</u>: Live two-hour Teams meeting
  - o <u>Attendance</u>: Phil Booth (external); Castlebridge; CCI; EBOS; GN; ILS; PSNI; SIREN; TRI; UCD; UNIL; VLTN.

2.3   Communications Channels: Continuous

There are three core communications channels used by the TRI ethics manager to communicate with project partners. At the project level, the most formal channel is the project OnlyOffice platform. This is followed by the less formal RocketChat #Ethics thread. On an individual level, the TRI ethics manager regularly communicates with partners through email, telephone, Skype, Teams and GoToMeeting. The nature of ethics communications on the OnlyOffice Platform and RocketChat are described below.

2.3.1 Only Office Platform

Ethics deliverables, tools and working documents are primarily shared with partners and the EAB through the OnlyOffice platform established by CCI. All ethics deliverables are stored in the main deliverables folder. Otherwise, a specific 'Ethics' folder is used by the TRI ethics manager to collate information viewable by all partners on issues such as: partner legal basis for processing personal data, European Commission (EC) ethics check responses, ethics training tools, and workshop notes. The project 'Incidental Findings Policy' and 'Log' as well as the project 'Data Transfer Log' are also stored and available to partners in this folder. See Figure 1 below for a screenshot of the folder contents – the working documents within the folder are confidential to the project.

Figure 1: Screenshot from INSPECTr OnlyOffice 'Ethics' subfolder (at 7 January 2021)
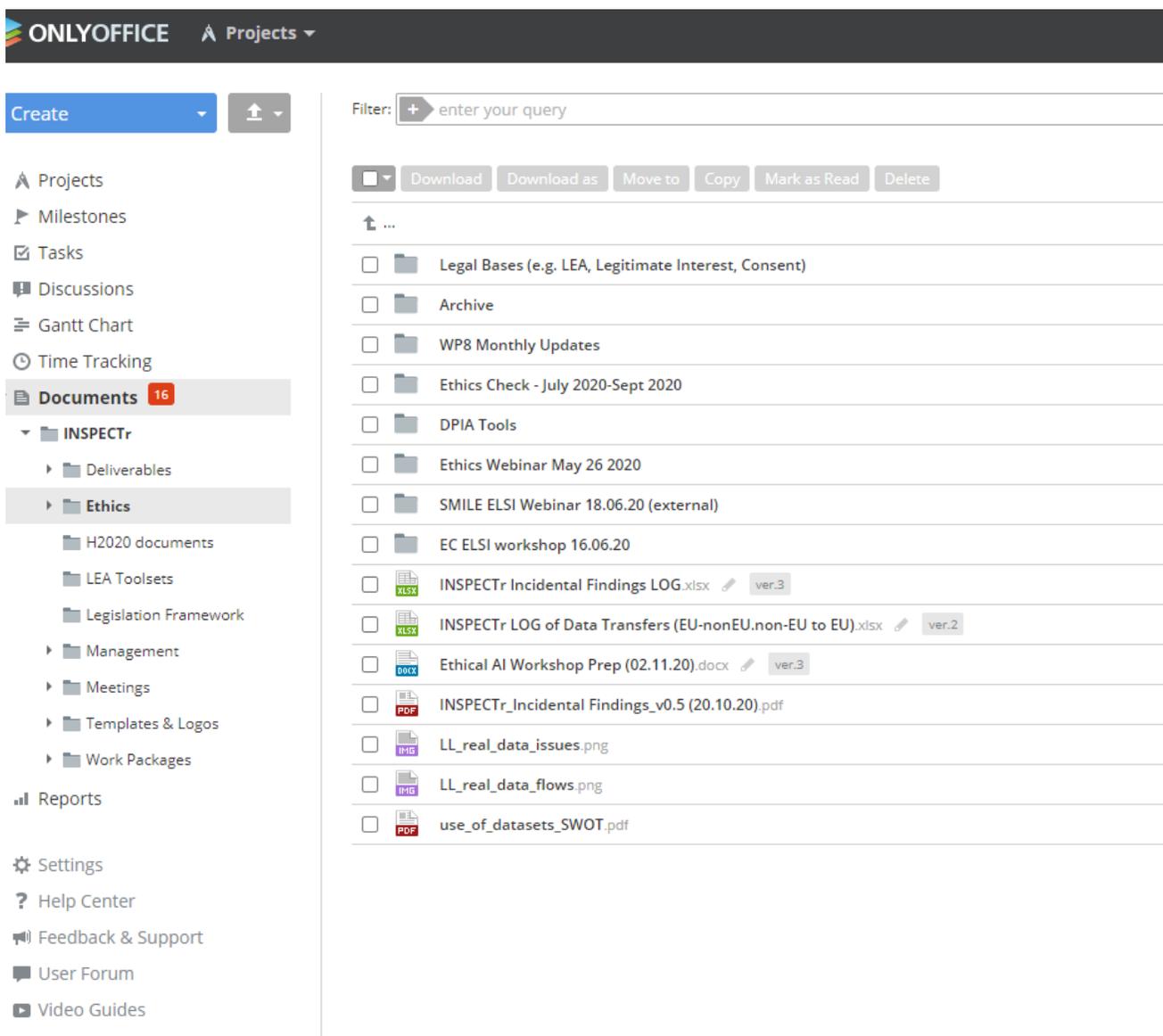
The TRI ethics manager also uses the OnlyOffice platform 'Discussion' threads to communicate to partners about the uploaded ethics documents and forthcoming events.

2.3.2   Rocket Chat #Ethics Thread

INSPECTr partners use RocketChat to communicate on a more informal basis. A distinct #Ethics Thread exists for ethics specific (WP8) communication, which is open to all partners to view and contribute. Partners have been encouraged to post ethics queries to this thread. This forum is however, more commonly used to share information, such as communications around the occurrence of ethics focused webinars by other H2020 security projects, notes from attendees and data protection updates, e.g., on Brexit. The diagram on data flow within INSPECTr task T1.3, prepared by CCI for the T1.3 law enforcement authorities (LEA) data protection impact assessments (DPIAs), was also shared on this thread as a helpful visual aid for all technical and non-technical partners. See Figure 2 below for a screenshot of the thread heading – the content of the thread is confidential to the project.

Figure 2: Screenshot from Rocket Chat #Ethics Thread Heading

2.3.3   Individual Partner Contact with Ethics Manager – Email, Telephone, Teams, GoToMeeting, Skype and Private Message.

The TRI ethics manager sends and receives emails with individual partners regularly. Email is the preferred medium for making formal requests of partners where the issue is considered fundamental to meeting the ethics requirements of the project. Where further elaboration is necessary, Skype, Teams and GoToMeeting have all been platforms regularly used by the TRI ethics manager when engaging with partners. Finally, Rocket Chat also has the option of private messaging individual partners. This is also frequently used for less formal queries with individual partners.

3 Tools Used to Identify and Monitor Ethical Issues

There are a number of tools used within the project to identify and track ethical issues. This section details seven (7) core INSPECTr tools, which are regularly referred to in the ethical governance processes referenced above in section 2 of the deliverable.

3.1 Data Management Plan

The Data Management Plan (DMP) documents the consortium's plan on the handling of research data during the project and after the end of the project. This includes what data will be collected, processed and/or generated, which methodology and standards will be applied, whether data can be shared or made open access (OA)[1] and how data will be curated and preserved in line with the H2020 Guidelines on FAIR Data Management (2016).[2] It is a project 'living' document, with the first iteration available from month 6 of the project and routinely updated since this time.

Section 2 of the DMP is especially helpful for monitoring the intentions of partners concerning research data. It provides an overview by both partner and task of the research data, including personal data, to be processed within INSPECTr. The information within section 2 is consistently harmonised with the 'TRI TouchPoint Table' (see section 3.7 below).

Requests concerning partner updates to the DMP is a standing item at the monthly WP8 meetings (and previously at the monthly consortium meetings). The DMP is available to and amendable by all partners on OnlyOffice, within the 'Management' subfolder. Previous substantial iterations are also stored in an 'archive' folder.

3.2 Data Protection Impact Assessments ('DPIAs')

Ethics Requirement No.17 (deliverable D9.15) set out TRI's assessment concerning whether a DPIA is needed for individual INSPECTr tasks. This assessment followed the guidance set out in Opinion WP248 of the Article 29 Working Party.[3] TRI advised a DPIA for INSPECTr Tasks T1.3, ST3.2.4, ST4.4.1 and ST4.4.2 and provided a comprehensive DPIA template to assist partners. At the time of writing, DPIAs exist for partners AGS and BFP for T1.3 (Living Labs), and from partner CCI for ST3.2.4 (web scraper), ST4.4.1 (facial and object recognition tool) and ST4.4.2 (facial and object recognition tool). These DPIAs represent an initial evaluation of the data protection risks and mitigation efforts for the respective tasks. All partners have been advised to consult with organisational DPOs, some of which have already provided feedback. The DPIAs will be re-evaluated prior to the commencement of the respective tasks, as documented in the personal data processing timeline (see subsection 3.7.1 below). At the time of writing, EPBG and IGPR have also been asked to complete DPIAs for T1.3. All LEAs intending to process real closed-case file data in the INSPECTr Living Labs have been requested to supply DPIAs for T1.3 on account of their unique organisational contexts. Otherwise, the LEA T1.3 DPIAs will be substantially

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[1] Open access (OA) refers to the practice of providing online access to scientific information that is free of charge to the end-user and reusable. 'Scientific' refers to all academic disciplines. In the context of research and innovation, 'scientific information' can mean peer-reviewed scientific research articles (published in scholarly journals) or research data (data underlying publications, curated data and/or raw data). See European Commission, H2020 Programme Guidelines to the Rules on Open Access to Scientific Publications and Open Access to Research Data in Horizon 2020, Version 3.2 21 March 2017.

[2] European Commission DG for Research & Innovation, *H2020 Programme Guidelines on FAIR Data Management in Horizon 2020*, 26 July 2016. http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/hi/oa_pilot/h2020-hi-oa-data-mgt_en.pdf

[3] Article 29 Data Protection working party Opinion WP248 Guidelines on Data Protection Impact Assessment (DPIA) and determining whether processing is "likely to result in a high risk" for the purposes of Regulation 2016/679, April 2017.

similar as regards the processing of personal data within the INSPECTr platform. The LEAs have completed DPIAs at different timescales partly because of the differing lengths of time taken to identify their legal basis for processing – an *a priori* requirement.

3.3   Incidental Findings Policy & Log

Although not a Grant Agreement requirement, the existence of an Incidental Findings Policy was identified by TRI as ethically desirable for the project. Partners PHS and TRI took on the development of the policy in March 2020. Draft versions were shared with partners and the EAB for comment and in October 2020 the final version was placed on the OnlyOffice platform within the Ethics folder (see Figure 1). The Policy sets out a clear process for project decision-making should an incidental finding arise. An Incidental Findings 'Log' has also been developed to record Incidental Findings decisions within the same folder. At the time of writing, there have been no incidental findings logged.

Incidental Findings are a standing item in the WP8 monthly meetings.

3.4   Non-EU Transfer of Personal Data Log

The project keeps a 'Log' of project transfers of personal data from EU to non-EU countries and international organisations, as well as from non-EU countries to the EU (or another third state). Ethics requirement No. 6 in deliverable D9.4 covering this protection of personal data issue was identified as open for monitoring and the log has been established in part to ensure that partners keep track of personal data transfers. At the time of writing, no personal data transfers of this nature have been noted within the log. Following the EU-UK trade deal, which exempts the UK from being treated as a third country until at least April 2021, partners are not required to log data transfers to the UK.[4] This advice will be updated if the situation changes.

The International Transfer of Personal Data Log is a standing item in the WP8 monthly meetings.

3.5   ILS INSPECTr Risk Assessment Tool

Partner ILS manages the INSPECTr risk assessment tool under task ST7.1.2. The risk assessment tool using a standard methodology, attributing separate scores (between 1-10) to risks under 'impact' and under 'likelihood', adding the two scores together to rank the overall risk out of 20. The tool has a specific category for 'Ethics' risks. A number of ethics categorised risks have been identified by the TRI ethics manager and other partners within the early stages of the project. Many of these have since been removed or deescalated following mitigating measures during the first and second EC ethics check processes (June and September 2020).

The risk assessment tool is a standing item at the monthly consortium meetings.

3.6   Legal Basis for Processing Personal Data

Within the OnlyOffice Ethics folder, there is a sub folder entitled 'Legal Basis'. That folder keeps a record of the LEA legal basis provided by the four LEAs processing closed case file data in the Living Labs. The same folder includes copies of Legitimate Interests Assessments (LIAs) from partner CCI for activities where this forms the

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[4] Trade and Cooperation Agreement between The European Union and The European Atomic Energy Community, of the one part, and The United Kingdom of Great Britain and Northern Ireland, of the other part, 31.12.2020, OJ L 444/14. See, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2020.444.01.0014.01.ENG

legal basis. It is further expected that a record of any informed consent forms will also be stored in this folder for human research activities that rely on consent.

Finally, section 6 of the INSPECTr Privacy Statement on the INSPECTr website https://inspectr-project.eu/privacy.html#research_data sets out in a transparent manner the legal basis used by partners for the processing of personal data within the project.

3.7 TRI 'Touchpoint Table' for Ethical Issues

Following the second EC ethics check which completed in September 2020, TRI developed and populated a tool known as the 'TRI TouchPoint Table' to track ethics issues and commitments made in the project. This tool has been used to consolidate the various commitments made in the WP9 ethics requirements deliverables. It highlights the core ethics issues identified during the first 18 months of the project as most relevant for ongoing monitoring within the project. These concern the tasks which: (i) incorporate online or publicly available sources of personal data; (ii) involve personal data transfers from EU to non-EU countries and vice versa; (iii) involve AI models; and (iv) include human research participants. These areas can be observed in the blue coloured cells in Figure 3 below. The 'TRI TouchPoint Table' is also forward looking and seeks to identify ethics issues beyond the scope of the project, but which the project should consider in the design requirements. These issues are largely similar to those relevant to the project itself, with human research participation removed but with the added concern of profiling and surveillance. These areas can be observed in the grey coloured cells in Figure 3 below. If the ethics issues identified are relevant to a specific task, a tick (i.e. 'v') is placed in the relevant cell, accompanied by a fuller explanation as well as the activities to which partners have committed to mitigate these risks (see, 'Explanation' and 'Addressing these issues' cells respectively).

The 'TRI TouchPoint Table' has been used since November 2020 as the main ethics monitoring document for discussion of ethics issues with WP leaders during WP8 monthly meetings, and with the EAB during quarterly meetings.

3.7.1 Personal Data Processing Timeline

Although the project has processed only a limited amount of personal data during the first 18 months, awareness between partners of the intended timeline for personal data processing is essential to ensuring that any contingent ethical commitments have been fulfilled in advance of processing. The timeline has taken various forms but since October 2020 has formed a composite part of the TRI 'TouchPoint Table' for Ethical Issues (see Figure 3 below).

The timeline is discussed with WP leads at the WP8 monthly meetings.

Figure 3: Screenshot of Headings Used in INSPECTr's 'TRI TouchPoint Table'

4   Ethical Issues Experienced during m1 – m18 of the INSPECTr Project

The main ethical issues experienced in the first 18 months of the project pertain to ethical governance, albeit there is a recognised overlap with ethics requirements for the technology the project aims to develop itself. Deliverable D8.5, also due at month 18 of the project, sets out the ethical, legal and social requirements for the INSPECTr platform and tools.

4.1   Meeting the WP 9 Ethics Requirements Timeline

The WP9 Ethics Requirements added to the project by the EC had 18 of the 20 deliverables scheduled for the first six months of the project, either due at month 1, month 3 or month 6. Meeting these deadlines was a specific challenge for TRI, the partner which took on responsibility for managing the ethics requirements, as the information requested was often not yet known by partners. This extended to partners ability to define the scope of personal data to be processed because LEA requirements and use cases were not yet known and extended to issues such as providing descriptions of anonymisation/pseudonymisation techniques and information on artificial intelligence models to be used. Second, the information required within the WP9 ethics requirements was sometimes time-consuming to obtain. This was especially the case where partners were encouraged to contact their DPOs, such as for obtaining the 'Declaration of Compliance' with respective national legal frameworks. The information within the deliverables also overlapped to a significant extent, which meant that later deliverables reflected more updated versions of the earlier provided information, a feature that was understood as a contradiction by reviewers during the first EC ethics check (June 2020). While partner TRI experienced some benefits from the early Ethics Requirements in terms of highlighting early on the cruciality of ethics for partners to achieve a successful project, on balance, considering project efficiency and clarity, the EC may wish to consider subsuming the ethics requirements into three more substantial deliverables covering the processing of personal data (POPD), human research participation (H), and misuse (M), no earlier than month 12 of the project, particularly when processing of personal data is not planned for in the early part of the project.

4.2   Establishing the Legal Basis for LEA Processing of Closed Case File data

Establishing the legal basis of the LEAs intending to process closed case file data in the later stages of the Living Labs to test the INSPECTr platform has been a difficult and time-consuming legal issue within the project. This issue was handled by the TRI ethics manager and has three elements as follows:

- What type of case file data could be included within the project;
- What was the legal basis between the General Data Protection Regulation (GDPR)[5] and Law Enforcement Directive (LED)[6] for that type of case file data; and,

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[5] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 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), OJ L 119, pg 1-88.

[6] Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 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, OJ L 119, pg 89 – 131.

- Whether technical partners could access the LEA case file data within the project.

The nature of these issues is briefly explained in the subsections below. It should be noted that these issues constituted significant legal and ethical queries within the INSPECTr project and have been identified by TRI researchers as common among H2020 security projects. In an effort to contribute clarity to this important area, an academic article setting out the detailed findings and recommendations of TRI researchers working across H2020 security projects, including INSPECTr, on the legality of using LEA casefiles in security research, is forthcoming.[7]

4.2.1 Type of LEA case file data

The project partners discussed in the early stages of the project the respective merits of processing ongoing case file data versus closed case file data to test the INSPECTr platform. Arguments made in favour of using ongoing case file data concerned the benefit of having contemporary technologies rather than outdated technologies. Closed case files were considered to rely on older software with less encryption and cloud storage than present in ongoing casefiles, thereby devaluing the rigour of the test of the INSPECTr platform. Other arguments pertained to the legal obligation of LEAs to fight crime, which could be more effectively achieved if engaging with ongoing criminal activity.

The ethics arguments however, lay firmly in favour of relying only on closed case file data. It was considered even with a 'Chinese wall' (official and formal separation and restriction of communication) between INSPECTr LEA researchers and non-INSPECTr LEA investigators, the risks of using INSPECTr findings in an ongoing case were too high. As the subject of a research and development activity, the INSPECTr platform was also not considered to have sufficient maturity within the project to mitigate the risk of deployment on ongoing cases. Technical partners further identified that closed case files had the benefit of allowing the INSPECTr platform findings to be compared against the original closed casefile findings to assess the added value of the platform. Such a comparison would not be possible to the same extent where a case file investigation was ongoing since investigations would not yet have completed.

The firm decision to process closed case file data only to test the INSPECTr platform in the later project stages was agreed to by the EAB and EC ethics reviewers. This was subject to each LEA having first established a clear legal basis for the INSPECTr processing.

4.2.2 GDPR or LED

A significant point of legal discussion, also handled by the TRI ethics manager, pertained to whether the GDPR or the LED was the appropriate legal basis for processing closed case file data within the project.

During the early months of 2020, the TRI ethics manager engaged with a series of ethics events hosted by the EC and in discussions with the European Data Protection Supervisor (EDPS), the EC Ethics Helpdesk and the EAB to obtain clarity on this issue. In general, this issue evidenced a lack of legal clarity apart from two core messages: (i) H2020 security projects are 'research' projects; and (ii) the issue is ultimately determinable at the national level.

The TRI ethics manager encouraged each INSPECTr LEA intending to process closed case file data to engage with their organisational DPOs and provide the legal basis on which the LEA processes personal data for INSPECTr.

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[7] See Leanne Cochrane, Joshua Hughes, Krzysztof Garstka, David Barnard-Wills, Stergios Aidinlis, Agata Gurzawska, Richa Kumar, "Between the GDPR and the LED: demystifying data protection issues in security research" (forthcoming).

The LEAs were advised to approach the issue as falling under the GDPR unless their national legal provisions provided a clear basis otherwise. For all relevant LEA partners, this query initiated considerable internal discussion with DPOs and national DPAs.

The outcome of this engagement varied. One LEA identified that they did not have a legal basis and so will process only mocked case file data (i.e., no real closed case file data) in the Living Lab. Two LEAs identified that they would be processing under the GDPR subject to additional requirements in national law. The two final LEAs identified that they would be processing under national law implementing the LED.

The aforementioned TRI academic article details the complexity of the issues worked through by LEAs. One key finding within the project is that security research projects can, at least conceptually, fall under the LED because they constitute research for law enforcement purposes.

4.2.3   Technical partner access to LEA data

A further issue which resulted in extended deliberation between partners as well as consultation with the EAB was the personal data processing constellation within the project between technical partners and LEAs. Testing in the Living Labs on LEA closed case file data occurs only in the LEA local node to which only the respective LEA controls access. This limitation was an important part of security and authorisation controls around personal data processing. The query pertained to whether two technical partners, namely CCI and PHS, could access this data to assess system faults were considered necessary to resolve the issue.

The decision taken by the TRI ethics manager, in consultation with the EAB, was to pursue a controller-processor contract between each of the four LEAs (AGS, BFP, EPBG and IGPR) testing on closed case file data and the two technical partners. On the advice of the EAB, this contract will additionally recognise in its preamble the common shared purpose for the overall processing activities.

The decision to pursue individual controller-processor agreements for this activity and not a joint controller relationship was based on three rationales:

- Section 10.8(d) of the Consortium Agreement appears to favour a controller-processor format.
- LEAs processing under the LED (i.e., AGS and IGPR) cannot enter into joint controllerships with the technical partners as CCI and PHS are not 'competent authorities' under the terms of the LED.
- GDPR, article 10 refers to processing criminal convictions data 'only under the control of official authority' unless other Member State law applies.

The relevant LEAs have been aware of the need for a clear data sharing constellation for some time, and in December 2020 were formally asked to engage their DPOs to prepare the necessary controller-processor agreements. The TRI ethics manager will keep in touch with relevant parties to encourage continued progress on this issue. The contract must be in place before the LEA processes personal data as part of the project.

4.3   LEA Understanding of Technical Processes

As mentioned, four LEAs will process personal data in the later stages of the project to test the INSPECTr platform under task T1.3. During July to September 2020, AGS and BFP were asked to provide early DPIAs to share with EC ethics reviewers during the second ethics check (September 2020). While a DPIA webinar and a DPIA template were provided to LEAs by the TRI ethics manager (see section 2.2.4 above) and LEAs were encouraged to populate

the DPIA in consultation with their organisational DPOs, it became clear that the LEAs were not in a position to complete the DPIA without the assistance of technical partners. As described above in section 2.2.4 of this deliverable, two DPIA calls were arranged by the TRI ethics manager to include the LEAs and CCI, the main technical partner in the project. Working together, progress was made to populate the DPIA for T1.3 describing exactly how LEA personal data would be processed by the INSPECTr platform (see DPIA data flow diagrams).

It is of note that LEAs, as controllers of this personal data, do not always have the technical expertise in the project to understand, without project assistance, the nature of the personal data processing. Within INSPECTr, the exercise of doing a DPIA together with technical partners has played a very valuable role in terms of increasing the knowledge of LEAs participating in the project. This better enables LEAs to assert controllership over their data (as per section 4.2.3 above).

5 Conclusions

This deliverable is the first INSPECTR report on ethical governance and has set out the ethical management processes, tools, and issues encountered during the first 18 months of the project.

It outlines in section 4 areas of significant learning that are considered of value across H2020 security research projects, also looking ahead into Horizon Europe.