



# Intelligence Network & Secure Platform for Evidence Correlation and Transfer

## D8.4 Third Report on Ethical Governance

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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
NLP	Natural Language Processing
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 between months 18 and 24. This is an updated version of the report. The final version to be submitted at month 42 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
<b>DELIVERABLE</b>			
<i>D8.4 Third Report on Ethical Governance</i>	<i>A report documenting the ethical management processes and any ethical issues experienced during the project.</i>	<i>Sections 2, 3 and 4.</i>	<i>Sections 2 and 3 document the ethics management processes and tools used within these processes. Section 4 documents the ethical issues experienced between months 24 and 42 of the project.</i>
<b>TASKS</b>			
<i>ST8.1.1 Research Ethics</i>	<i>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.</i>	<i>Sections 2, 3 and 4.</i>	<i>Sections 2 and 3 document the ethics management processes and tools used within these processes. Section 4 documents the ethical issues experienced between months 24 and 42 of the project.</i>

## 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.

The above sections have been reviewed and updated since submission of the first report. This includes an update of meeting dates, and an update on how the ethics management process, and tools used for it, have been adapted to the needs of the project over months 24-42.

Section 4 sets out the main ethical issues experienced by Trilateral Research Ltd (TRI) between month 24 when the second report was submitted, and month 42 when this report is submitted.

## 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

The TRI Ethics Manager reviews the project on a weekly basis with colleagues. Within TRI, there are then monthly meetings between the TRI project team (i.e., TRI staff working across WP7 and WP8), as well as monthly project meetings between the project lead, the lead's line manager and one of the co-Heads of Innovation and Research Services. With TRI staff working in WP6, bi-weekly meetings take place to review progress between the project lead and Senior Software Development Manager. Where necessary meetings also include the Director of the Socio-Tech Group, the Chief Research Officer, and/or Chief Executive Officer. 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.

Note that meetings in June 2022 and February 2023 were combined with Project General Assembly meetings; however, discussion of ethics issues was still able to occur.

The following monthly consortium meetings have been attended by the TRI Ethics Manager (or their input was provided by other partners due to absence), with associated WP8 presentations delivered between months 24 and 42:

- 7<sup>th</sup> September 2021
- 5<sup>th</sup> October 2021
- 2<sup>nd</sup> November 2021
- 7<sup>th</sup> December 2021
- 4<sup>th</sup> January 2022
- 1<sup>st</sup> February 2022
- 1<sup>st</sup> March 2022

- 5<sup>th</sup> April 2022
- 3<sup>rd</sup> May 2022
- 6<sup>th</sup> June 2022
- 20<sup>th</sup> June 2022 (Project General Assembly)
- 19<sup>th</sup> July 2022
- 6<sup>th</sup> September 2022
- 4<sup>th</sup> October 2022
- 1<sup>st</sup> November 2022
- 6<sup>th</sup> December 2022
- 10<sup>th</sup> January 2023
- 7<sup>th</sup> February 2023
- 21<sup>st</sup> February 2023 (Project General Assembly)

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 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 between months 24 and 42 (note that for the May 2022 meeting, in order to save time, the TRI Ethics Manager reported on activities via email as there was information to be shared but there was no urgent need for discussion):

- 27<sup>th</sup> September 2021
- 25<sup>th</sup> October 2021
- 22<sup>nd</sup> November 2021
- 24<sup>th</sup> January 2022
- 28<sup>th</sup> February 2022
- 28<sup>th</sup> March 2022
- 25<sup>th</sup> April 2022
- 23<sup>rd</sup> May 2022 (email)
- 27<sup>th</sup> June 2022
- 25<sup>th</sup> July 2022
- 22<sup>nd</sup> August 2022
- 26<sup>th</sup> September 2022
- 24<sup>th</sup> October 2022
- 5<sup>th</sup> December 2022
- 23<sup>th</sup> January 2023
- 27<sup>th</sup> February 2023

### 2.1.3 Ethics Advisory Board Quarterly Meetings

Since October 2020, following the second ethics check, the EAB established standing quarterly EAB meetings to discuss and oversee ethical issues arising from the INSPECTr project. These meetings were 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.



Between M24 and M42, the EAB met formally only during November 2021 (M27). Following submission of D9.19 (2<sup>nd</sup> Report of the Ethics Advisory Board), the EAB did not feel the need to meet specifically as members were able to join WP8 meetings to raise any points for discussion and the final contracted deliverable for the Ethics Advisory Board had been delivered.

## 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 did attend these meetings at the request of the Coordinating Team. This opportunity was used by the TRI Ethics Manager as an opportunity to discuss ethics issues relating to law enforcement authorities (LEAs), as they may not always attend the monthly consortium meetings, or there is an ethics-related issue that the Coordinating Team want to bring to the attention of the LEA partners. Between months 24 and 42, these discussions have focussed on: advising LEA partners on the completion of data protection impact assessments (DPIAs) ahead of carrying out testing in the Living Labs (LLs), this has also involved TRI communicating directly with LEA Data Protection Officers (DPOs) and Data Protection Authorities to monitor progress of DPIAs; discussing the expected data processing relationships between LEAs and technical partners for the LLs in order to develop a template Data Controller-Processor contract for LEA partners to use to ensure consistency across contracts. To date, the following LSGs have been attended by the TRI Ethics Manager (or their input was provided by other partners due to absence), with regular presentations on progress of DPIAs and Controller-Processor Agreements between months 24 and 42:

- 8<sup>th</sup> September 2021
- 6<sup>th</sup> October 2021
- 8<sup>th</sup> December 2021
- 2<sup>nd</sup> February 2022
- 2<sup>nd</sup> March 2022
- 20<sup>th</sup> April 2022
- 25<sup>th</sup> May 2022
- 20<sup>th</sup> July 2022
- 7<sup>th</sup> September 2022
- 5<sup>th</sup> October 2022
- 2<sup>nd</sup> November 2022
- 7<sup>th</sup> December 2022
- 11<sup>th</sup> January 2022

### 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, and general project meetings. WP8 meetings were not happening as regularly as they did later in the project. Due to the existence of multiple other avenues for engagement, the TRI Ethics Manager does not now routinely attend the ongoing weekly technical meetings as technical partners have attended specific WP8 meetings to discuss ethical issues, and the Ethics Manager can attend technical meetings where requested. However, the TRI Ethics Manager has joined meetings sporadically Technical Meetings between months 24 and 42 to raise and advise on specific ethics issues related to technical development. 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, GoToMeeting, and RocketChat channels as needed.

## 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. Ahead of WP8 meetings, WP leads are invited to review the data management plan, log of international data transfers, the log of incidental findings, and the Ethics TouchPoint Table in case any updates need to be recorded.<sup>1</sup> Any updates are then discussed during the meeting. See Figure 1 below for a screenshot of the folder contents – the working documents within the folder are confidential to the project.

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<sup>1</sup> The Ethics TouchPoint Table is updated where there are any updates on processing of personal data, online personal data, international data transfers, AI modelling/discrimination risks, human participation, profiling or surveillance, or other ethics risks not previously mentioned.

Figure 1: Screenshot from INSPECTr OnlyOffice 'Ethics' subfolder (at 28<sup>th</sup> January 2023)

The screenshot displays the OnlyOffice interface for the 'Ethics' subfolder. The left sidebar shows a navigation menu with 'Documents' (64) selected, containing subfolders like 'INSPECTr', 'Deliverables', 'Ethics', 'Exploitation', 'H2020 documents', 'LEA Toolsets', 'Legislation Framework', 'Living\_Labs', 'Management', 'Meetings', 'Mid-term Review', 'Monthly Workpackage Update', 'Tech\_Team', 'Templates and Logos', 'Testing', and 'Work Packages'. The main content area shows a list of files and folders with columns for name, creator, creation date, document count, and subfolders. Files include spreadsheets, documents, and PDFs, many with version numbers and update dates.

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 flows 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.

### 2.3.4 Ethics reviews of deliverables

The TRI Ethics Manager conducts ethics reviews of deliverables that could contain information pertaining to ethical concerns, or information on tasks that have required ethics oversight, to ensure that the issues have been dealt with properly and are presented in an appropriate way. This is in addition to peer-reviews by other partners as part of the internal process in INSPECTr for the submission of deliverables. Generally, the result of these reviews is minor modifications to the presentation of information in the deliverables. However, ethics advice given during these reviews has resulted in changes to the INSPECTr tools; for example, recommendations to present confidences with image classification tools were incorporated into the technology itself.

### 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)<sup>2</sup> and how data will be curated and preserved in line with the H2020 Guidelines on FAIR Data Management (2016).<sup>3</sup> 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).

As mentioned above, 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.<sup>4</sup> 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. Partners were also advised to communicate directly with their organisational DPO in order to successfully complete their DPIA.

DPIAs have been completed for all tasks where they were recommended. Though some tasks, such as the web scraper, have changed meaning that the original high-risk processing envisaged did not actually take place during INSPECTr.

For T1.3, where DPIAs were conducted by LEAs for engaging in Living Labs using real closed case data, this required significant communication between the TRI Ethics Manager, LEA partners and the LEA DPOs to ensure

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<sup>2</sup> 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.

<sup>3</sup> 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](http://ec.europa.eu/research/participants/data/ref/h2020/grants_manual/hi/oa_pilot/h2020-hi-oa-data-mgt_en.pdf)

<sup>4</sup> 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.

sufficient completion of the assessments. Specific legal bases for each LEA who wished to process real closed case data were identified before the DPIA process began (LEA partner who were not able to identify an appropriate legal basis engaged in testing on mock or anonymous data). Of the 4 LEAs who wished to test INSPECTr tools on real closed case data in T1.3:

- AGS: A second iteration of a DPIA has been completed and discussed with the AGS Data Protection Unit who offered advice that was used to update the DPIA in collaboration between the TRI Ethics Manager and AGS. The proposed processing involved real closed case data.
- BFP: A DPIA was completed with the BFP DPO during the project for the processing of real closed case data.
- EPBG: A DPIA was completed with the EPBG DPO during the project for the processing of a mostly mocked dataset with some personal data that replicates a real closed case.
- IGPR: Due to the specific legal technicalities Romania, closed cases are held by the Romanian Courts who would not release a closed case file to IGPR for testing of INSPECTr until the ANSDPC (Romanian Data Protection Authority) had reviewed a DPIA and approved the suggested legal basis for processing. This DPIA could only be speculative in nature as the specific data protection risks could only be sufficiently understood once the closed case file was acquired and the data was reviewed. Despite significant collaboration between the TRI Ethics Manager, IGPR staff, the IDPR DPO and legal team, and repeated requests for clarification, the ANSDPC declined to provide approval of the proposed legal basis, or substantive comments on the DPIA conducted. As such, it was not possible for IGPR to demonstrate the lawfulness of the proposed testing to the Romanian Courts and gain access to a real closed case file for processing in INSPECTr.

As noted in the previous version of this report (D8.3 Second Report on Ethical Governance), because the INSPECTr technologies would not be completed during the testing phase, there could be a need for technical partners to provide assistance to LEAs during a LL, and this could involve exposure of real closed case data to the technical partners (though always staying within the secure INSPECTr network). This most appropriate way of dealing with this was discussed between the TRI Ethics Manager and EAB, and it was decided that Controller-Processor Agreements would be most appropriate as this would give LEAs control over how any exposed data was processed. The TRI Ethics Manager developed a template Controller-Process Agreement that was reviewed by the Legal Office at UCD. The status of Controller-Processor Agreements for the 4 LLs are:

- AGS: Not yet signed.
- BFP: fully executed between them and relevant technical partners.
- EPBG: Not yet signed.
- IGPR: Not applicable.

As the project progressed toward the end, the likelihood of LLs taking place on real closed case data declined and LL6 took place using mocked data. In any case, the benefits of testing INSPECTr technologies on real closed case data remain and completing the relevant legal steps to enable testing on real closed case data for some LEAs was a successful result, considering the challenges experienced from a data protection perspective.

### 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); this was annexed to previous versions of this deliverable. 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, two types of international data transfers have been logged: EU-UK international data transfers following the expiration of Brexit transition agreements and agreement of an Adequacy Decision by the EU; international data transfers to the US for an initial use of a mailing list service provider.

The International Transfer of Personal Data Log is a standing item in the WP8 monthly meetings. More details of the above-mentioned international data transfers are provided in Section 4.1 as a record of work by the Ethics Manager to ensure lawful transfers of personal data.

### 3.5 ILS INSPECTr Risk Assessment Tool

Partner ILS initially managed the INSPECTr risk assessment tool under task ST7.1.2, which was later managed by TRI but delegated to WP leaders. The risk assessment tool uses 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 successful completion of relevant WP9 Ethics Requirements.

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 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](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 project, and those 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 so far, 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’

Tasks	Potential Ethical issues												Addressing these issues
	Within Project						Beyond Project (Once operationalised by LEAs)						
	Personal Data & Start Date	Online Personal Data	EU<->non-EU data transfer	AI modelling/Discrimination risk	Human Research Participant	Other	Explanation.	Online Personal Data	EU<->non-EU data transfer	AI modelling/Discrimination risk	Profiling or surveillance risk	Other	



This project has received funding from the European Union’s Horizon 2020 research and innovation programme under the Grant Agreement No 833276.



## 4 Ethical Issues Experienced during M18-M24 of the INSPECTr Project

### 4.1 International Data Transfers

#### 4.1.1 Transfers of Personal Data to UK-based partners

The Second version of this report outlined steps taken to mitigate the impact of Brexit from a data protection perspective. This Third report explains how these steps were taken in practice.

Following Brexit, the EU has deemed the UK's data protection regime as providing an 'adequate' level of protection for EU data subjects,<sup>5</sup> meaning that international data transfers between EU and UK-based partners can continue unhindered under Art.45, GDPR. However, during discussions with the Ethics Advisory and Review Group, it was recognised that there is a potential chance that either the UK could attempt to alter its data protection regime, in which case the Adequacy Decision will no longer apply if such changes result in a less than adequate level of data protection,<sup>6</sup> or it could be subject to legal challenge and so be struck down by a court.<sup>7</sup> As such, the Ethics Manager explored back-up options.

Transfer Adequacy Assessments were conducted by the Ethics Manager and UK-based partners, and were discussed with the UCD legal team. These parties agreed that the most reliable back-up option would be Standard Contractual Clauses (SCCs) on a Controller-Controller basis, which would provide for continuing international data transfers under Art.46, GDPR between EU and UK-based partners in the project. These were signed by TRI at the point of the adequacy decision being implemented; this timing meant that the 'old' SCCs needed to be signed as the current versions did not then exist. PSNI (also UK-based) discussed the matter with their legal team.

As the relationship between the UK and EU continued, the chance of the current EU adequacy decision collapsing looked increasingly unlikely in the short term. As such, PSNI chose to rely on the adequacy decision as a transfer mechanism. The 'old' SCCs expired automatically on 31<sup>st</sup> December 2022, TRI chose not to replace them with current SCCs as the EU adequacy decision did not look to be at risk of immediate collapse for the remaining 2 months of the project. In any case, due to the nature of the data transferred by TRI and PSNI, these partners could also have potentially relied upon the 'contract' exemption under Art.49(1)(b), GDPR as a back-up option.

### 4.2 The potential impact of the EU's proposed AI regulation

The Second version of this report outlined some initial thoughts regarding the EU's proposed AI Act (AIA).<sup>8</sup> This Third report discusses some implications from the most recent revisions released in December 2022.

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<sup>5</sup> Commission Implementing Decision of 28.6.2021 pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council on the adequate protection of personal data by the United Kingdom, Brussels, 28.6.2021 C(2021) 4800

<sup>6</sup> Article 3, Commission Implementing Decision of 28.6.2021 pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council on the adequate protection of personal data by the United Kingdom, Brussels, 28.6.2021 C(2021) 4800

<sup>7</sup> Osal Stephen Kelly, 'The UK Adequacy Decision and the Looming Possibility of a Schrems III', KSLR EU Law Blog, 10.05.2021. Available at: <https://blogs.kcl.ac.uk/kslreuropeanlawblog/?p=1549>

<sup>8</sup> Proposal for a Regulation of the European Parliament and of the Council laying down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act) and amending Certain Union Legislative Acts COM/2021/206 final, 21.04.2021 (hereafter: Proposed AI Regulation). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1623335154975&uri=CELEX%3A52021PC0206>



This project has received funding from the European Union's Horizon 2020 research and innovation programme under the Grant Agreement No 833276.

The AIA proposal was made in April 2021, and is still under discussion. The TRI Ethics Manager believes it is very unlikely that the AIA will be agreed before the end of the project, and so would not be enforceable. The current version of the AIA provides to position of the EU Council on the original draft from the European Commission.<sup>9</sup>

Important changes and implications for INSPECTr include:

- The definition of an 'AI system' has been narrowed down. The INSPECTr technologies would still be considered as 'AI' and so would still be regulated by the AIA.
- Expands prohibitions to social scoring, which INSPECTr does not do and so would have no impact in this regard.
- Provides for real-time biometric identification systems to be used by LEAs in exceptional circumstances. The INSPECTr technologies are not used for real-time identification, and so this change would not be relevant.
- Adjustment of the 'high-risk' criterion to cover systems that pose a serious risk of violating fundamental rights. The INSPECTr technologies are likely to remain high-risk, but are not thought to present a serious risk of violating fundamental rights in their expected operating environment.
- Requirements for high-risk AI systems have been made less burdensome. This should make it easier for the INSPECTr technologies to fulfil a conformity assessment.
- Provisions have been added for 'general purpose AI' where one AI system can be used for many different purposes. Depending upon whether the INSPECTr platform is seen as a single AI system, or the technologies used on the platform are seen as separate and distinct AI systems, this could make compliance with the AIA for the INSPECTr platform much simpler. However, the way in which this would apply will require an implementing act, and so INSPECTr partners would need to wait for clarification on how best to approach compliance with the AIA from such an act.
- An explicit reference is made to exclude national security, defence, and military purposes from regulation under the AIA, mirroring the GDPR. Whilst INSPECTr has been developed with a focus on civil law enforcement, there could be scope for some INSPECTr technologies being used in these domains (this does not, however, mean that the INSPECTr technologies should necessarily be seen as 'Dual-Use' for the purposes of Regulation 428/2009, as amended). In any case, as any future development of INSPECTr is expected to focus on law enforcement domain, completion of conformity assessments can be expected.
- Research and development for non-professional purposes would fall outside of the AIA (although transparency obligations would still apply), meaning that any INSPECTr technologies that are specifically experimental could be exempt from many of the AIA requirements. Nevertheless, as the INSPECTr platform is intended to be used by LEAs eventually, it would not be useful to ignore the conformity assessment requirements during development.
- Safeguards for LEAs have been adapted to take account of confidentiality requirements of sensitive operational data. The INSPECTr platform, especially the Case Management System, has been developed with a view to taking highly-sensitive investigations (such as those that might be politically sensitive) into account. This is worth continuing to consider for future INSPECTr developments.
- Conformity assessments and market surveillance have been simplified, making compliance easier.
- The AI Board has been given greater autonomy, and the involvement for stakeholders has been increased. Thereby increasing the potential for INSPECTr to be affected by decisions of the Board and the input of societal groups in future.
- Penalties for infringements have been adapted to take account of the impact of fines on SMEs and start-ups. This could affect some of the partners involved in INSPECTr who could benefit in case of any infringement.

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<sup>9</sup> Council of the EU, 'Artificial Intelligence Act: Council calls for promoting safe AI that respects fundamental rights', 6 December 2022. Available at: <https://www.consilium.europa.eu/en/press/press-releases/2022/12/06/artificial-intelligence-act-council-calls-for-promoting-safe-ai-that-respects-fundamental-rights/>

- Transparency requirements have been increased, including public entities needing to register their high-risk AI systems. This would affect LEAs (and potentially some INSPECTr research and development partners that are universities/public research institutes) who would need to register such systems in an EU database. As noted in *D8.8 Guide on privacy and ethics-by-design in law enforcement technology*, this would benefit the public who would be more aware of the technologies they could be subjected to by LEAs.
- Obligations to inform people they are being exposed to emotion detection systems would affect the emotion detection tool that was researched in INSPECTr. This tool was not brought forward to be integrated in the INSPECTr platform, but research on the worth of the approach was conducted from a technical perspective (it should be noted that this research effort was not supported by the TRI Ethics Manager due to the limited robustness of scientific basis for classifying emotional expression). If such a tool could be developed, then persons subjected to it would need to be informed of this.
- Complaints to supervisory authorities are to be handled in line with the procedures of that authority. This would be positive for anyone affected by INSPECTr who wished to make a representation to such an authority.
- Greater support for innovation has been included in the text, which is positive for projects like INSPECTr. This includes regulatory sandboxes (which are controlled environments for the validation of AI systems with less regulatory requirements). Such an environment could allow for greater access to, and testing on, real closed case data, and so could lead to more validation exercises being conducted in future.
- Further, unsupervised real-world testing of AI systems, under specific conditions and safeguards, have been allowed to alleviate burdens on smaller companies. This is unlikely to be appropriate for technologies like those in INSPECTr, which are intended for highly-sensitive use-cases and unsupervised testing the 'real-world' is likely not appropriate.

The EU Council has provided its input on the proposed AIA, and has entered trilogue negotiations with the European Commission and European Parliament. The outcome of these negotiations will determine which of the above provisions are applicable and relevant to INSPECTr. In any case, it should be noted that, the European Commission has intended to formalise compliance with the AI HLEG high-level requirements for high-risk AI systems with the AIA. As such, because those requirements have already been considered in INSPECTr WP8, which developed recommendations to for technical partners to implement (see *D8.5 Ethical, Legal and Social requirements for the INSPECTr platform and tools*), the technologies developed in the project have already gone a significant way toward being compliant with the AIA before a final text has even been agreed. Of course, the AIA could change significantly before it is agreed and implemented.

### 4.3 Data breach

On 22<sup>nd</sup> September 2021, an INSPECTr partner discovered that personal data were present in files on INSPECTr project infrastructure that should not have been present. Under the GDPR, this could be seen as a 'data breach' due to being an unauthorised disclosure of personal data; according to the Article 29 WP, this type of incident should be referred to as a 'confidentiality breach.'<sup>10</sup>

An LEA partner had agreed to provide mocked evidence for a child sexual abuse material (CSAM) use case, including 'background' data to make the files more realistic; the 'background' data are intended to imitate other non-CSAM content that a suspect might have accessed using the same device. The file did contain mocked CSAM evidence (meaning completely innocent images not containing personal data that were labelled as CSAM for

<sup>10</sup> Article 29 Data Protection Working Party, Opinion 03/2017 on Guidelines on Personal data breach notification under Regulation 2016/679, 17/EN, WP250, Adopted 03 November 2017, p.6. [https://ec.europa.eu/newsroom/document.cfm?doc\\_id=47741](https://ec.europa.eu/newsroom/document.cfm?doc_id=47741)

research purposes). However, the ‘background’ data in the relevant file contained personal data collected from online sources and including benign real personal data in videos and images from publicly available online sources (e.g., YouTube, TikTok). The unauthorised disclosure of the personal data in the ‘background’ data to INSPECTr infrastructure is the subject of the confidentiality breach. These personal data were estimated to include 100+ data-subjects.

The data itself was not subject to in-depth analysis before discovery. The files had been opened unknowingly, and the data was subject to some initial processing prior to discovery. After being alerted to the incident, CCI discussed the incident with the TRI Ethics Manager who advised that, in the first instance, the data in question should be isolated and no further access should be provided, then the data should be deleted from project infrastructure and any related storage used by partners. This advice was followed. The data was under the controllership of the LEA partner and they were advised to discuss this with their internal DPO and follow their internal processes and decide whether to report it to their national Data Protection Authority. CCI also discussed the matter with their own Data Protection Officer.

The key determinant as to whether to report an incident of this nature to a Data Protection Authority is whether there is a ‘*risk to the rights and freedoms of the natural persons*’.<sup>11</sup> The TRI Ethics Manager advised that, as the data are already in the public sphere and were then contained and deleted from project infrastructure, the unauthorised disclosure of these data to INSPECTr infrastructure does not present such a risk. Indeed, the Article 29 Working Party provides an example of this nature in their guidance as an incident that would not require notification to a Data Protection Authority.<sup>12</sup> Consequently, the Data Protection Officer of the relevant LEA partner determined that the incident did not need to be reported to their national Data Protection Authority. The situation was discussed at a WP8 meeting including the chair of the project’s external Ethics Advisory and Review Group, and the advice provided was agreed to.

## 4.4 Assessments of datasets

The INSPECTr technologies using machine learning are data-driven, and so need significant amounts of data for training. All the INSPECTr technologies also need data for testing their capabilities. Consequently, the TRI Ethics Manager has been available throughout the project to discuss data protection considerations and obligations as they relate to datasets for training and testing.

For most datasets, this has involved holding discussions between the TRI Ethics Manager and technical partners about the nature of the data, its origin, and how it is intended to be processed. For the TRI Ethics Manager, this involves a substantial amount of ‘translating’ legal concepts and considerations into plain language so that they can be more easily understood and discussed with partners. These discussions change depending on the legal bases available to the partners, whether the data could be shared, and its level of sensitivity.

For each discussion, the project’s data management plan was updated to reflect the ‘new’ data situation, and ensure the document was current. This includes datasets that are intended to be used by multiple partners, for example, mocked case files that are intended to be used by all LEA partners for testing of the INSPECTr technologies.

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<sup>11</sup> Art. 33(1), GDPR

<sup>12</sup> Article 29 Data Protection Working Party, Opinion 03/2017 on Guidelines on Personal data breach notification under Regulation 2016/679, 17/EN, WP250, Adopted 03 November 2017, p.15. [https://ec.europa.eu/newsroom/document.cfm?doc\\_id=47741](https://ec.europa.eu/newsroom/document.cfm?doc_id=47741)

## 5 Conclusions

This deliverable is the third INSPECTr report on ethical governance and has set out the ethical management processes, tools, and issues encountered between months 24 and 42 of the project.

Sections 2 and 3 have been updated to cover the ethics governance process in INSPECTr, and the monitoring tools that are used.

Section 4 contains new information about the topics that have been considered and discussed as part of the ethics governance process between months 24 and 42.