D2.2 State of the art report for ethical, societal and RRI approaches in Border Control – Summary

The overall aim of this deliverable is, by examining the state of the art on ethical, legal, societal and RRI approaches, to open some room for considering how to address the issue of acceptability in BODEGA. In doing so it attempts to demonstrate the complexity of border control and advocates for the need to reconsider the usual analytical frameworks guiding current policies and research practices in the field. The text focuses on the transformations of the border space - the increasing technologisation and "smartisation" (using automation, biometrics, large databases, etc.) of the work of the border control authorities, the blurring distinctions between internal and external security, the growing importance of the private sector, the dense human flows of travelers, refugees, migrants and asylum seekers entitled with their respective rights, etc., in order to argue for a holistic and reflexive research approach on the matter. A holistic approach entails that border control as a social phenomenon cannot be restricted only to the identity verification process. If BODEGA is to propose adequate and acceptable solutions for a "smarter" border control it needs to employ a systemic perspective as a starting point of the analysis and take into account the complexity of the border control environment (identity management, security and law enforcement, surveillance, customs, protection of vulnerable people, rescue, etc.). A reflexive approach, on the other hand, means not only to put into critical examination dominant views on the nature and future of border control, but also to open room for alternative possibilities for action and change. Addressing acceptability requires to go beyond what seems to be the apparent context, the framework of which produces certain pictures of the "evident" complexity in the realm under scrutiny. This might lead to omission of important problems, non-obvious issues and considerations. This deliverable attempt to demonstrate that the opening up of the analytical framework for conceiving the border control problem in its systemic entirety, along with the reflexive examination of what the conventional construction of the context produces as problems and solutions, can reveal another picture about border control.

In the pursuit of that, the text takes the following steps: First, in Chapter 2 it explores the apparent complexity of the European border control process by focusing on its versatile nature, the main challenges it faces, the technological solutions it employs and the current legislative initiatives that aim to transform it so that it can handle the intensified migration and refugee flows, the increasing workload, and efficient identification of security threats, etc. Nowadays, the European borders are busy places, managing and filtering increasing flows of people willing to step in or out of a particular territory, legally or unauthorized, as regular travelers, asylum seekers, immigrants, alone or supported by smuggling operations, willingly or as victims of global human traffic channels. The preliminary overview of the problem demonstrated several important points: first, border control is a complex of versatile activities, which cannot be boiled down only to the border checks and the identity verification process. What is more, border control is entangled in the greater societal structure as a meeting ground of security, commercial, humanitarian, migration and law enforcement policies; second, the role of technology in the border control process is not unambiguously clear. It is perceived as a solution of the increasing complexity; nevertheless, it could contribute to the further com-plication of

the process. This does not mean that it has no place in improving border control. Quite the contrary. But finding the adequate and *acceptable* mode of using technology to enhance the process requires to address its ambivalent nature (both as a problem and a solution) in the analyses; third, the policy and governance responses (e.g. The Smart Borders Initiative) to this increasing complexity are based on this unreflexively constructed picture of the context and thus risk omitting important issues, which may later surface as problems with the public uptake of the solutions.

Second, for the purposes of BODEGA, examining what is usually construed as "the context" as to border control, is quite insufficient in grasping the complexity of the problem and being the source of adequate and acceptable solutions both for border control authorities and the public. That is why in Chapter 3 the text goes further and attempts to touch upon the deeper complexity of the issue by outlining some of the non-obvious problems related to the transformation of border control. It explores the following topics: the border as a meeting ground of conflicting normative appeals; border control as institutionalized relation to "the other"; connectivity and exclusion in border control; the prospects of pre-emptive law enforcement based on securitization, automation and big data analytics; biometrics and digitalization of identity in the border control process; the increasing role of the private sector in border control. By examining the case of the Smart Borders proposal, it demonstrates that the conventionally conceived analytical framework focusing only on the right balance between securitisation and facilitation of the border control process is quite insufficient in grasping the intricacy and the broader ethical, legal and societal implications of the border control transformations. And this is important both on the level of governance of border control and on the level of research and innovation on border control since it opens room for addressing the acceptability of the proposed solutions (which relate to the public uptake of those same solutions).

Third, the deliverable outlines some of the specifics of what constitutes a policy and governance response to the increasing complexity of border control (Chapter 4). It can be described as a legal compliance approach, one that puts at the heart of all ethical, legal and social concerns the issue of fundamental rights. On that particular level, addressing the complexity of the process and promoting the acceptability of the solutions (operational, organisational, and technological) is relying on the fundamental rights problematic and on a related with that re-interpretation of the notion for professional responsibility. What became clear is that there is a discrepancy between the normative requirements for providing border crossing individuals with the opportunity to enjoy their fundamental rights and the actual practices of border control, which sometimes cannot live up to the promises in the normative framework. Narrowing this gap is something that BODEGA can contribute to by ensuring the fundamental rights dimension in the solutions it will elaborate during its implementation.

Fourth, the text delineates four modes of challenging the complexity of the border control process and addressing the acceptability of the proposed solutions (technological determinism; ethical, legal and social issues (ELSI) awareness; legal compliance; and reflexivity. Chapter 5 provides an overview of existing practices in EU-funded border-control projects and examines how (on what level) they have approached the issue of the acceptability of

their work or of the technological solutions they have developed and promoted. A particular point of interest is if they had used the opportunities given by the Responsible Research and Innovation (RRI) framework to address the complexity of their research problems reflexively. It is concluded that there is a gradual opening up of technology-oriented projects towards additional concerns, related to the broader societal context; that technological determinism is nevertheless a strong presupposition with regard to acceptability; and that the prospects for reflexivity are still viable under the RRI framework.

Although BODEGA is designed to explore human factors this does not mean that there is no risk of non-reflexive stance to technology and its place in border control. It is very important that the project addresses the acceptability of its outcomes in the best possible way. This means that ELSI awareness and legal compliance will not be enough. They will ensure the basis, but the integration of knowledge, obtained through reflexive examination of the complexity and the context of border control, is another challenge. That is why the next step would be to construct a BODEGA-specific Responsible Research and Innovation methodology, which will attempt at outlining the necessary conditions to approach acceptability in a reflexive way.

Main author: Blagovesta Nikolova (UNamur)

Contributors: Philippe Goujon (UNamur)

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