Policy Framework for the Regional Biometric Data Exchange Solution

The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime

Policy Background Documents

Attachment 8 – Policy paper: Framework for Regional Biometric Data Exchange Solution
Attachment 9 – Privacy Impact Assessment
Attachment 8

Policy paper: Framework for Regional Biometric Data Exchange Solution

Executive Summary

There is a growing demand among Bali Process members for programmes to help build national and regional capacities in areas such as identification and verification of travelers’ identities, early detection of identity fraud, fraudulent documents, and sharing of immigration information. The identity verification process is a key component of managing the movement of people across borders, and biometric technology can be an integral component of this process. Members’ identity verification processes would be enhanced if they could exchange biometric data and utilize the resources and biometric databases of partnering members in a lawful manner that is consistent with international legal obligations and national privacy laws.

In this context, at the 8th meeting of Bali Process Ad Hoc Group Senior Officials, participants endorsed the Bali Process Strategy for Cooperation: 2014 and Beyond, which directed the Regional Support Office (RSO) to explore opportunities to expand the outcomes of existing bilateral and multilateral biometric data sharing arrangements.

Due to interest from Bali Process members to develop a biometric data exchange solution, the RSO has developed a policy framework for the Regional Biometric Data Exchange Solution (RBDES). The RBDES aims to facilitate harmonized, effective and timely exchange of biometric data, and biographical data where appropriate, among interested Bali Process members for identification and identity verification purposes, consistent with member state’s national laws and international standards.

This policy paper discusses the policy considerations related to the development of the RBDES, including the options for a policy framework (the Framework) to operationalize a technological system for exchange of biometric and biographical data between interested Bali Process members (the System).

While the System is aimed to be a simple and user-friendly channel of communication of biometric and biographical data, many technical, legal, policy and administrative issues need to be considered. These issues include developing a Framework that addresses complex legal and policy contexts that include international human rights obligations, diverse domestic legal systems, and international, regional and domestic privacy frameworks. These issues are discussed in separate sections of this paper.

Section one introduces the background to the development of the RBDES, the potential use of biometric data for identity verification within the Bali Process context and the biometric data exchange context that would apply to Bali Process members.
Section two summarizes different framework options available to implement the RBDES. Noting the voluntary and non-binding nature of the Bali Process, the Framework has been developed based on an analysis of numerous legal and policy considerations which are explored in detail in the “Policy and legal risk and mitigation” table provided at Attachment A. The proposed Framework consists of an overarching “Terms of Use” that sets out the minimum safeguards and technical requirements for participation in the RBDES. Secondary bilateral or multilateral arrangements will outline the specific details of data exchange arrangements between Participating Members. These arrangements, known as “Associated Arrangements”, will incorporate the Terms of Use, and establish any safeguards additional to the minimum safeguards set out in the Terms of Use.

The proposed Framework offers the following key benefits:

- a harmonized and consistent approach to biometric data exchange between members;
- flexibility to accommodate the specific diverse domestic contexts of member states and their relationships with each other. For example, depending upon the relationship between the members, arrangements may be bilateral or multilateral;
- minimum human rights and privacy safeguards that are consistent with international standards and obligations and will apply to all Participating Members; and
- reduction in duplication of agreements and negotiation time for bilateral or multilateral negotiations if common rules and minimum safeguards have already been agreed and endorsed.

Section three outlines the administrative and oversight arrangements for the Framework, including the establishment of an Oversight Committee supported by the RBDES Manager to be the primary body responsible for administrative and oversight of the RBDES.

Section four outlines the anticipated actions that will be taken in the further development of the Framework.
1. Introduction

1.1 Background

The identity verification process ordinarily involves assessing the authenticity of and consistency between an individual’s travel documents. This process can be enhanced by matching an individual’s biometric data against the biometric data contained in the individual’s travel documents or the biometric databases operated by the member.

However, members’ databases may not have sufficient information to verify the identity of the individual, particularly if it is the first time that individual has engaged with that members’ migration and biometric processes. Members’ identification and identity verification processes may be enhanced if members could exchange biometric and biographical data with each other in a lawful manner that is consistent with international legal obligations and national privacy laws. Biometric data exchange would utilize the resources and biometric databases of partnering members to enhance each other’s identification processes.

The exchange and matching of biometric data alone will not provide the complete solution to identification issues and identity fraud. However, exchange and matching between partnering members will provide a useful link for members for further cooperation and investigation. Within the migration context, potential uses of biometric data exchange for identification purposes include, but are not limited to:

- Checking of visa applicants, migrant workers, displaced persons, asylum seekers, residency applicants and transit passengers to confirm their identity;
- Checking of travelers or migrants to determine whether they are victims of human trafficking;
- Checking of visa applicants to determine whether known or suspected sex tourists/sex offenders, known or suspected terrorists (including foreign fighters), engaged in serious criminal activity or involved in funding/collecting donations for prescribed organizations;
- Checking of visa applicants and persons seeking protection to determine whether they are making asylum claims in multiple jurisdictions and are “forum shopping”;
- Assessing asylum seekers or displaced persons who have already received protection from a 3rd country (country of first asylum) or have been registered as a refugee by the United Nations High Commissioner for Refugees (UNHCR);
- Supporting Assisted Voluntary Return and Reintegration (AVRR) programs;
- Re-documenting genuine visa or passport holders who have had their travel document lost/stolen/withheld; and
- Checking of travel documents against white lists and black lists.

In this context, at the 8th meeting of Bali Process Ad Hoc Group Senior Officials, participants endorsed the Bali Process Strategy for Cooperation: 2014 and Beyond, which directed the RSO to explore opportunities to expand the outcomes of existing bilateral and multilateral biometric data sharing arrangements.

Due to interest from Bali Process members to develop a biometric data exchange solution, the RSO has developed a policy framework for the Regional Biometric Data Exchange Solution (RBDES) to regulate the exchange of biometric and biographical data between interested Bali Process members (Framework). This policy paper discusses the key considerations that were taken into account when developing the Framework, including the options for the structure of the policy framework, the legal and policy concerns that needed to be addressed, and the administration and oversight responsibilities of the Framework.
1.2 Approach to biometric data exchange within the Bali Process context

Before developing the structure and content of the Framework, the RSO considered the following threshold considerations: effectiveness of the RBDES, feasibility and achievability within the Bali Process, the diverse nature of the Bali Process membership, and the pre-existing data sharing mechanisms available to Bali Process members.

1.2.1 Effectiveness of the RBDES

For present purposes, the RBDES must be effective in addressing irregular migration, people smuggling, trafficking in persons and related transnational crime. More specifically, exchange of biometric and biographical data should be effective in providing interested Bali Process members with valuable information to enhance their identification and identity verification processes so as to not unduly burden Bali Process members’ resources and capacities.

Given the different language and cultural contexts of Bali Process members, the RBDES should be simple and user-friendly. Given the financial and other resource pressures faced by all Bali Process members, implementation and operation of the RBDES should be simple and inexpensive.

To maximize effectiveness, exchanges through the RBDES should initially be made on a high-value basis. High-value means members will exchange biometric and biographical data only where there is a high need or high likelihood of an outcome that is valuable to members. Participating Members can outline in their arrangements which high value circumstances biometric and biographical data will be exchanged, and the maximum number of exchanges expected to occur in one year. By concentrating on high-value exchanges, it is hoped that members will efficiently utilize their resources to achieve the most effective outcomes.

1.2.2 Feasibility and achievability within the Bali Process

While the RBDES should be developed to be as effective as possible in producing outcomes and enhancing members’ migration management capacities, the development of the RBDES is limited to what is feasible and achievable throughout the Bali Process membership.

The Bali Process is a voluntary, inclusive and non-binding forum for regional cooperation to address irregular migration, people smuggling, trafficking in persons and related transnational crimes. Practical arrangements for regional cooperation through the Bali Process are driven by the core principles and key considerations established through the Regional Cooperation Framework. Key considerations relevant to biometric and biographical data exchange arrangements include:

- Arrangements should seek to build capacity in the region to process mixed flows and where appropriate, utilize available resources, such as those provided by international organizations
- Arrangements should reflect the principles of burden-sharing and collective responsibility, while respecting sovereignty and the national security of concerned States.
- Arrangements should support and promote increased information exchange, while respecting confidentiality and upholding the privacy of affected persons.

In order for the RBDES to be potentially used by any Bali Process member, the RSO considered that the RBDES should be developed as a simple and robust mechanism that focuses on core features and capabilities. The core feature and capability of the RBDES is the exchange of biometric and basic biographical data between interested Bali Process members. The RBDES should not, at least
not initially, act as a comprehensive mechanism for members to address identity verification issues. In time, and with continued use, trust and confidence, the RBDES may be developed and refined to meet any changing or evolving needs of Bali Process members.

This approach reflects best practice. From the experience of other multilateral data sharing initiatives, mechanisms should be initially implemented as a focused and robust product, and over time developed and refined.

1.2.3 Diversity of the Bali Process membership

Due to the large membership of the Bali Process, any inclusive framework for biometric and biographical data exchange must balance the desire for a harmonized and consistent approach with the diverse and complex domestic contexts of member states. The domestic contexts of member states may have key variables that result in different approaches and policy considerations when exchanging biometric and biographical data. For example, member states would have varying uses and capabilities for biometric and biographical data for identification purposes.

There are also key variables within the legal contexts of Bali Process member states. Different immigration and law enforcement agencies may also have different legal authorities to collect, use and disclose biometric data and other immigration related information. The privacy and data protection systems of member states, including avenues for access and correction of personal information held by government agencies, vary greatly. These privacy and data protection systems may also operate within different regional and international privacy principle frameworks such as the UN Guidelines for the Regulation of Computerized Personal Data Files (UN Guidelines), EU Data Protection Directive (EU Directive), the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data (OECD Guidelines), and the APEC Privacy Framework.

Member states may also have varying international obligations including the non-refoulement principle and the Universal Declaration of Human Rights, and where applicable, the Refugee Convention, the International Covenant on Civil and Political Rights, the Convention Against Torture, the Convention on the Rights of the Child, and the UN Convention on Transnational Organized Crime.

The RSO’s development of the RBDES has taken these considerations into account and has involved a rigorous consultative process with the full Bali Process membership and relevant stakeholders.

1.2.4 Complementary with existing information exchange mechanisms

The RBDES will operate alongside existing data exchange mechanisms available to Bali Process members. Such arrangements include formal multilateral mechanisms such as Eurodac, Five Country Conference (FCC), Interpol’s i24/7 communication system and Automated Fingerprint Identification System (AFIS), ASEANAPOL’s electronic ASEANAPOL Database System (eADS), Agreement on Information Exchange and Establishment of Communication between some ASEAN countries, UNODC Voluntary Reporting System – Migrant Smuggling and Related Crime (VRS-MSRC), the APEC Regional Movement Alert System (RMAS), as well as informal and ad-hoc arrangements between countries.

The RBDES has been designed to complement these pre-existing arrangements to avoid duplication and ensure maximum efficiency and effectiveness for Participating Members. The RSO has analyzed how pre-existing mechanisms are used by members and ensured that the RBDES does not conflict with them.
Many of the existing mechanisms have limited reach within the Asia Pacific region. For example, the FCC is available to 3 Bali Process members, eADS is only available to ASEAN members, and Eurodac is only potentially available to one Bali Process member. A mechanism through the Bali Process will be available to 45 member States and 3 international organizations. Only the RMAS and Interpol’s databases have a reach that is as broad as the Bali Process.

There is no widespread mechanism used for exchange of data for irregular migration, people smuggling and trafficking in persons purposes. While Interpol has a membership that encompasses the Bali Process members, its use is restricted to criminal and law enforcement uses. While there may be a broad overlap between Interpol’s scope and the RBDES’s scope, the RBDES may additionally be used to verify identities for migration, refugee and resettlement purposes.

With regards to the type of data exchanged, there is no widespread formalized mechanism focused on exchange of biometric data. Biometric data forms part of the overall exchange under the FCC and Eurodac mechanisms, and is one of the types of information that can be sent through Interpol’s i24/7 communication system. Biometric data can be uploaded and searched, but not exchanged, through the Interpol’s centralized AFIS database. RMAS concentrates on lost and stolen databases, and VRS-MSRC concentrates on non-nominal information relating to migration trends. The RBDES would therefore be the only widespread mechanism solely concentrating on biometric data exchange between members.
2. Framework options and features

2.1 Framework options and recommendations

The RSO conducted a situational analysis of the frameworks that applied to the pre-existing information exchange mechanisms available to Bali Process members. The structures of the frameworks were divided based on two characteristics: whether they were legally binding or non-binding, and whether they were bilateral or multilateral. The following is a summary of the key benefits and challenges of various framework options available.

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<tr>
<th>Framework Options</th>
<th>Benefits</th>
<th>Challenges</th>
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| A legally-binding multilateral agreement, most likely a treaty, which provides legally binding procedural and legal obligations. | • A legally binding agreement ensures certainty, enforceability and maximum protection and safeguards  
• A multilateral agreement creates consistency | • Multilateral negotiations requiring agreement between many participants may be lengthy  
• Difficulties in addressing the needs of diverse legal and policy contexts within one agreement  
• Many member states may not be willing to enter into a legally binding agreement through the Bali Process |
| Non-binding multilateral arrangement, such as a Memorandum of Understanding (MOU). | • A non-binding agreement means more member states may be willing to participate  
• A multilateral agreement creates consistency | • A non-binding agreement means less certainty, enforceability and protections and safeguards  
• Multilateral negotiations requiring agreement between many participants may be lengthy  
• Difficulties in addressing the needs of diverse legal and policy contexts within one agreement |
| A network of binding bilateral treaties and agreements. | • A legally binding agreement ensures certainty, enforceability and maximum protection and safeguards  
• Bilateral agreements based on model agreements create some consistency while also providing flexibility to meet the needs of diverse bilateral relationships | • Complex system of bilateral agreements may result in too little consistency  
• System of bilateral agreements alone may create duplication of effort for members during negotiation and administration of the agreement  
• Some members may not be willing to enter into a legally binding agreement through the Bali Process |
A network of non-binding bilateral arrangements. This already exists through informal or ad-hoc arrangements between members.

Benefits:
- Non-binding agreements may mean member states are more willing to participate
- Bilateral agreements based on model agreements create some consistency while also providing flexibility to meet the needs of diverse bilateral relationships

Challenges:
- A non-binding agreement means less certainty, enforceability and protections and safeguards
- Complex system of bilateral agreements may result in too little consistency for one mechanism
- System of bilateral agreements alone may create duplication for members during negotiation and administration of the agreement
- Informal and ad-hoc arrangements provide less formality and transparency

The Framework developed by the RSO incorporates a combination of the features of the above framework options. Examples of such a combination are the arrangements under the FCC and the RMAS, which are non-binding and contain both multilateral and bilateral elements.

Under the FCC, an umbrella High Value Data Sharing Protocol establishes a consistent overarching framework in which biometric and biographical data is exchanged through one central system, the Secure File Sharing System. Supplementing this overarching framework is a network of secondary arrangements in the form of non-binding Memoranda of Understanding between each of the five FCC countries that addresses the specific dynamics of each bilateral relationship.

Similarly, under the RMAS, an umbrella Multilateral Framework establishes a consistent overarching framework for the exchange of lost and stolen travel documents between interested economies within the APEC membership. Supplementing the Multilateral Framework is a network of secondary bilateral arrangements in the form of memoranda of understanding between each of the participating economies (currently United States, Australia, New Zealand and the Philippines).

Within the non-binding, diverse context of the Bali Process, the structure of the Framework contains:
- an overarching multilateral set of rules known as the “Terms of Use” endorsed by the Bali Process membership that sets out the rules for exchange of biometric and biographical data, minimum safeguards for participation in the RBDES, and technical requirements for use of the System; and
- a network of secondary bilateral or multilateral arrangements between Participating Members that adopt the Terms of Use and add any specific details or additional safeguards relevant for each participating member, taking into account the diverse dynamics of each bilateral relationship.

Through the Terms of Use, a harmonized and consistent approach to biometric and biographical data exchange can be maintained between members. A Terms of Use setting out a consistent procedure for data exchange and minimum safeguards will also reduce duplication, time and effort when negotiating secondary bilateral arrangements. Further, any endorsed Terms of Use would contain minimum standards and safeguards that are consistent with international standards and obligations and will apply to all Participating Members.
Through a network of secondary bilateral or multilateral arrangements, flexibility and dynamism is created to accommodate the specific bilateral relationships and diverse domestic contexts of members. For example, depending upon the relationship between members, arrangements may be made between two members, or between more than two members. Arrangements may also be non-binding or binding.

### 2.2 Key features of the Framework

In developing the Framework, the RSO assessed policy and legal risks and developed key features into the Framework to mitigate these policy and legal risks.

These policy considerations and risks include ensuring the effectiveness of biometric data exchange to address irregular migration, people smuggling and human trafficking, and the effectiveness of exchanging information between different systems and standards of member states. Other policy considerations and risks include whether government agencies have lawful authority to collect and exchange biometric data, privacy and data protection, and international legal obligations including human rights and refugee protection. A table outlining these policy and legal considerations and the mitigations that have been taken is at Appendix A.

#### 2.2.1 Purpose and scope

The purpose of the RBDES should be to facilitate the voluntary exchange of biometric and biographical data between Participating Members through the System for identification and identity verification purposes, using a harmonized and consistent approach that respects the diversity of the Bali Process membership and the bilateral relationships between members, and provides minimum safeguards consistent with international standards and obligations. The scope of the RBDES should be limited to uses for the purposes of identification and identity verification as it relates to irregular migration, people smuggling, trafficking in persons and related transnational crime. Information shared through the System should only be used for to assist Participating Members in making migration or border management decisions, in investigating any offences relating to irregular migration, people smuggling, trafficking in persons and related transnational crime and as evidence in any related judicial and quasi-judicial proceedings.

#### 2.2.2 Participation

Participation is voluntary and non-binding, and Participating Members can commence, suspend or terminate their participation at any time. Even when members have commenced participation, they can decide on an individual case-by-case basis whether or not they wish to exchange or match biometric data.

#### 2.2.3 Biometric data exchange procedure

The procedure for biometric data exchange is based on a simple request and response process between Participating Members, and Participating Members will not upload any biometric data until there is a specific need to verify an individual’s identity.
2.2.4 Enforcement mechanisms

While the Framework is non-binding, appropriate enforcement mechanisms have been developed to address any misuse or breaches of the Framework. These include expectations on Participating Members to take appropriate action on their own users in the event of any breach, and for an Oversight Committee to publicly publish reports on any breach and to decide to suspend or cancel participation in the event of any breach.

2.2.5 Human rights safeguards

The human rights safeguards under the Framework relate to anti-discrimination, due process, general protection of vulnerable persons, and in particular, protection of the confidentiality of the information of asylum seekers, refugees and victims of torture, cruel, degrading and inhumane treatment. These safeguards are drawn from and are consistent with international legal obligations contained in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention relating to the Status of Refugees and its Protocol, the Convention Against Torture, and other international human rights instruments.

Information will only be exchanged with countries of origin or nationality in certain circumstances which protect the confidentiality of the information of asylum seekers, refugees and victims of torture, cruel, degrading and inhumane treatment. These certain circumstances arise where:

- there is express and specific written consent from the individual,
- the Participating Member, after taking a victim-centered screening process and specifically asking the individual whether they fear any harm from their country of origin or nationality, is satisfied that the individual has not expressed any fear of persecution or torture,
- there is a national asylum and complementary protection system and the Participating Member is satisfied that the individual has not made a claim of persecution or torture against the country of origin,
- there has been a legal determination under a national asylum and complementary protection system that the individual is not a refugee or a victim of torture, and all avenues for review have been exhausted, or
- the UNHCR has made a final determination that the individual is not a refugee, and all avenues for review have been exhausted.

2.2.6 Privacy and data protection safeguards

The privacy safeguards include requirements relating to notification of the purpose for collection and use of personal information, obtaining informed consent (unless otherwise authorized by domestic laws), data retention, data security, and data integrity. These privacy safeguards are drawn from the OECD Guidelines on the Protection of Transborder Data Flows and the APEC Privacy Framework and have been adapted from specifically for the RBDES. A Privacy Impact Assessment has been conducted to assess and minimize any privacy concerns to ensure that the Framework provides adequate privacy protection for individuals and their personal information.
3. Administration and Oversight of the RBDES

Any administration and oversight of the RBDES should ensure that the legal and policy risks continue to be assessed and mitigated throughout the lifetime of the RBDES. Technical administration of the System is best achieved through an independent and trusted partner within the Bali Process. Policy administration and general oversight is best achieved through continued and consistent oversight by an entity established through the Bali Process. The entity should be independent and have the functions and discretions that can audit, review and report on the RBDES. The entity may also have the ability to apply any enforcement mechanisms to address any breaches of the Framework.

Under the Framework, an Administrator will provide technical administration of the System and will act as a centralized and independent technical focal point. The responsibilities of the Administrator are outlined in the service arrangements of the Terms of Use and include managing user accounts, providing business support for the System, producing reports on transactions and usage, recording and managing security incidents, and applying specific business rules to reflect any requirements under Associated Arrangements.

Consistent with Bali Process practice, an Oversight Committee established by Senior Officials of the Bali Process Ad Hoc Group, consisting of five Bali Process members and supported by the RSO, will be the primary body responsible for policy administration and oversight of the Bali Process. The purpose of the Oversight Committee will be to govern the integrity and ongoing operation of the RBDES, provide a forum for review of the RBDES, provide a mechanism through which breaches of the Framework can be addressed, and provide recommendations regarding any amendments to the RBDES. The specific roles and responsibilities of the Oversight Committee are outlined in the Terms of Reference for the Oversight Committee.

Outside of these formal entities created under the Framework, Participating Members and National Accountability Officers of the System will continue to play a key role in the administration and oversight of the RBDES, particularly as it relates to their own use of the RBDES.

Finally, the RSO, as the entity that supports the Bali Process and assists in operationalizing the Regional Cooperation Framework, will continue to be involved to assist all relevant entities and members in all aspects of the administration and oversight of the RBDES.
4. Further development of the Framework

After the endorsement of the RBDES, the initial implementation stage is envisaged to be 12 months. During the implementation stage, the Oversight Committee, with support from the RBDES Manager, will continue to assess and review the ongoing implementation and operation of the RBDES. The RSO anticipates that there will be further development and refinement of the RBDES during and following this initial implementation stage and as more Bali Process members join in participating in the RBDES.

Through initial discussions with the Biometric Data Exchange Review Committee, future development of the Framework may include consideration of:

- amendments to strengthen safeguards, based on an assessment of how the human rights and privacy safeguards have been implemented in practice; and
- whether to incorporate the exchange of key immigration information other than basic biographical data through the System.

Procedures to amend the Framework should substantially follow the same procedure as the development of the Framework. That is, amendments should be recommended by the Oversight Committee following assessment and review and a rigorous consultation process. Endorsement of any amendments should rest with the Bali Process Ad Hoc Group Senior Officials. Given that amendments may need to be made more regularly than Bali Process Ad Hoc Group Senior Officials meetings, amendments recommended by the Oversight Committee will take effect 90 days after being notified to the Senior Officials, unless an objection has been raised by Senior Officials.
### Appendix A:

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<th>Policy consideration or risk</th>
<th>Mitigation</th>
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| The RBDES must be effective in addressing irregular migration, people smuggling, trafficking in persons and related transnational crime. Given the ongoing development of members’ technological capacity, data exchange should not unduly burden members’ resources and systems. | Data exchange will be high value to ensure that the data exchanged has maximum effectiveness.  
Associated Arrangements will allow Participating Members to flexibly determine the data exchange arrangements that are most effective for them. |
| Data exchange is effective only if the biometric data can be exchanged and understood by different countries and systems. | Standard formats (such as the NIST format for fingerprints) should be used wherever possible.  
The System will also be capable of interpreting different information, standards and formats and converting them for different Participating Members. |
| If the cost of using the RBDES is high, the use of the RBDES may be limited. | End user interfaces for Participating Members should remain relatively simple and cost effective to ensure there is a limited cost overhead for users, particularly in terms of both technology and training. |
| The RBDES must complement and not unduly overlap or conflict with pre-existing data exchange mechanisms. Otherwise, any inconsistencies and overlapping will undermine the effectiveness of both the RBDES and the pre-existing mechanisms. | The RBDES should act as a simple channel of communication to establish whether there are any biometric matches between Participating Members. The RBDES can be used as an initiating point for further investigation, cooperation and data exchange, which may take place through other arrangements outside of the System.  
The RBDES does not prejudice any other data exchange mechanism and should be used to complement and support those other mechanisms. |
| The RBDES will only be effective if it can be used within the diverse legal and policy contexts of members. Due to the diversity of these contexts, a uniform set of rules for the Framework may act to exclude some countries, either because they cannot meet the minimum standards of the Framework or because their legal and policy requirements are not consistent with the Framework. | The Framework will be flexible and dynamic wherever possible. While minimum standards and safeguards will be established through the Framework, the consultation process undertaken ensures that it is acceptable to all member states.  
Flexibility and dynamism can be achieved through members negotiating their own bilateral or multilateral Associated Arrangements for data exchange through the System.  
Any Associated Arrangement may provide additional safeguards, but must not be inconsistent with the minimum safeguards set out in the Terms of Use. Any individual arrangement must state that the minimum standards and safeguards will prevail to the extent of any inconsistency. |
| The effectiveness of the RBDES, and any trust or confidence developed, will be significantly undermined if the RBDES is misused for improper purposes. | The Terms of Use should provide the following minimum safeguards:  
- The System will only be used for the purpose of identification and identity verification as it relates to irregular migration, people smuggling and trafficking in persons purposes.  
- Accountability, enforcement and oversight mechanisms have been incorporated in the Framework.  
- Amendments to the scope and purpose of the Framework need to be endorsed by the Bali Process Ad Hoc Group, after consultation with the Oversight Committee and full Bali Process membership. |
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<td>There may also be concerns that, over time, there is a “function creep” where the RBDES is used beyond the original scope envisioned.</td>
<td>While the Bali Process is a voluntary, inclusive, and non-binding process, the exchange of biometric and potentially other personal information means that there should be a level of enforceability of any rules to mitigate the risk of improper use or breaches of the Framework.</td>
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| The Terms of Use should provide the following minimum safeguards:  
- The System will only be used for the purpose of identification and identity verification as it relates to irregular migration, people smuggling and trafficking in persons purposes.  
- Accountability, enforcement and oversight mechanisms have been incorporated in the Framework.  
- Amendments to the scope and purpose of the Framework need to be endorsed by the Bali Process Ad Hoc Group, after consultation with the Oversight Committee and full Bali Process membership. | Participating Members will participate in the RBDES in the spirit of good faith, collective responsibility and burden sharing. |
| Safeguards should be established to ensure that data exchange does not breach international human rights obligations, such as those under the non-refoulement principle and the Universal Declaration of Human Rights, and where applicable, the Refugees Convention, the International Covenant on Civil and Political Rights, the Convention Against Torture, the Convention on the Right of the Child, and the Convention on Transnational Organized Crime. The RBDES should also not be used to discriminate against groups of people without a legitimate basis. | The Terms of Use provides the following minimum safeguards:  
- Suspension or cancellation of participation if there is a breach of any rules.  
- Expectation that countries will take appropriate action against officials who misuse the RBDES. |
| The Terms of Use provides the following minimum safeguards:  
- Suspension or cancellation of participation if there is a breach of any rules.  
- Expectation that countries will take appropriate action against officials who misuse the RBDES. | The Terms of Use should provide the following minimum safeguards:  
- Safeguards are available to all individuals, regardless of whether they are a citizen or national of a member state.  
- Discrimination and due process protections.  
- Considerations for protection of the information of vulnerable persons, such as victims of trafficking, children, asylum seekers, refugees, victims of torture, and migrant workers.  
- Biometric data will not be exchanged with a country of origin or nationality unless certain circumstances exist. |
| Responsibilities, standards and safeguards under the Framework may lead to officials breaching domestic laws, for example data retention laws. | The Terms of Use should clearly establish that the use of the System will be subject to the domestic laws, policies, bilateral agreements and international obligations of participating members. |
| The bilateral elements of the Framework can flexibly accommodate member states’ different needs for legal authority. For example, depending on the member state’s circumstances, a bilateral agreement can be legally binding and act as a source of legal authority to collect, use and disclose biometric and biographical data. | Officials must have the domestic legal authority to collect, use and disclose biometric and biographical data to protect against the unlawful exercise of powers. |
Since personal information will be exchanged, there should be safeguards for personal privacy and data protection.

Safeguards will need to take into account domestic privacy and data protection laws and policy, while also ensuring that minimum safeguards are met.

The Terms of Use should include minimum privacy and data protection safeguards that are broadly consistent with privacy principles set out in the OECD Guidelines and the APEC Framework, the most widespread and accepted privacy principles in the region.

Additional safeguards can be added in Associated Arrangements to meet the needs of individual relationships between members.

The System was developed with a privacy-by-design approach and contain business rules that reflect privacy safeguards.

A Privacy Impact Assessment has been conducted to assess the privacy risks to individuals.

The risk of a breach of the system (for example through human error or hacking) is one of the most significant risks of data exchange. Unauthorized disclosure to third parties can also jeopardize the law enforcement function.

The Terms of Use should provide the following minimum safeguards:

- data security and accountability
- data should be retained for only the period necessary for identification purposes.

The Participating Member should notify the relevant Participating Member of any data, security or other breaches, and where appropriate, the individual concerned.

Some countries have avenues for third parties to access information through court processes and right to information law. Inquiries and royal commissions may also have powers to compulsorily obtain information. Release of information through these avenues may breach privacy protections.

The Terms of Use provides for disclosure to third parties in certain circumstances where there is consent from the individual/originating Participating Member, or where a law compels disclosure. Member states may consider inserting confidentiality obligations in Associated Arrangements to protect both the privacy of individuals and the integrity of the exchange process.