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JUSTICE

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Honourable Member,

I would like to thank for your letter of 21 July 2023, in which you asked the Commission to inform the European Parliament what actions it has taken regarding cooperation with the US in relation to the use of Pegasus and equivalent surveillance spyware, and the blacklisting of some EU companies by the US. You have also asked about the actions taken by the Commission following the PEGA Committee recommendation.

I would like to inform you that the Commission, on 8 September 2023, adopted its reply to the PEGA Committee recommendation, in which it provides European Parliament with a detailed overview of actions taken so far. The reply has been transmitted to the Parliament in November 2023.

With respect to the decisions of the US Department of Commerce Bureau of Industry and Security (BIS) to amend the Export Administration Regulations (EAR) by adding spyware firms to the Entity List, the Commission observes that these decisions are based on US national security considerations and foreign policy interests, and that the EU export control system does not provide for an “Entity List”.

Assessment of activities of NSO Group, and other entities mentioned in the PEGA report, is the responsibility of the competent authorities of the Member States and involves national security and foreign policy considerations. The Commission cannot act as a substitute for the Member States’ competent authorities in this regard. The Commission is taking action within the limits of its competence under the modernised Dual-Use Regulation that entered into force in September 2021,

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to support the development of cooperation on enforcement, and to prepare guidelines to support the application of controls on the export of cyber-surveillance technologies.

Regarding illegal use of the cyber spyware surveillance in the EU, as explained on earlier occasions, the Commission has been gathering information from Member States about the national legal frameworks governing the use of spyware, in particular in order to examine the interplay with EU data protection law. The Commission is carefully analysing the responses received. This exercise requires putting Member States responses in the context of their relevant national framework. On this basis the Commission is preparing a non-legislative initiative to help clarify the boundaries and the interplay between EU law, in particular the data protection and privacy acquis, and national security.

The Commission has also covered the use of spyware, where relevant, in the 2023 Rule of Law Report, from the perspective of the functioning of national checks and balances in this respect.

As regards your access to documents request, we have not identified any documents pertaining to contacts with the US on issues mentioned in your letter.

Your sincerely,

(e-signed)

Didier REYNDERS