



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MIGRATION AND HOME AFFAIRS

Directorate D – Internal Security
D.4 – Security in the Digital Age

Brussels
HOME.D.4/

Katinka Nehèz-Polony
iroda@npkata.hu

Dear Ms Nehèz-Posony,

Thank you for your complaint addressed to the European Commission on 24/01/2022, which was forwarded to the Directorate General for Migration and Home Affairs for a reply.

The European Commission is well aware of risks of unlawful surveillance notably by means of so called spyware that are easily accessible and potentially used against EU citizens. The Commission strongly condemns any illegal access to communication systems, and any form of unlawful interception of users' communications.

The EU has legislation to tackle unlawful surveillance and protect data privacy, including the General Data Protection Regulation¹ and the ePrivacy Directive². The ePrivacy Directive protects the confidentiality of communication and the terminal equipment of the user (e.g. PC or smartphone). This Directive requires consent for storing or accessing information in a user's terminal equipment, except where such access is necessary for transmitting a communication or for providing an information society service explicitly requested by a user. The monitoring and enforcement of the EU data protection and privacy rules fall primarily under the competence of the relevant competent national authorities and the courts.

Also, the Commission is currently working on a proposal for a European Cyber Resilience Act, which would mainly focus on setting out horizontal cybersecurity requirements for digital products and ancillary services. Such an act would contribute to making digital products more secure and therefore less vulnerable to the activities of actors seeking to install spyware on ICT devices.

I regret to inform you that under the Treaty on European Union and the Treaty on the Functioning of the European Union, the European Commission has no general powers to intervene in individual cases. Likewise, the European Commission has no law enforcement powers in criminal matters or the competence to intervene in the day-to-day business of the administration or the judiciary of any individual Member State.

¹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). OJ L 119, 4.5.2016, p. 1–88.

² Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) OJ L 201, 31.7.2002, p. 37–47.

For this reason, I regret to inform you that it is not possible for the Commission to pursue this matter.

If you believe that you are the victim of a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms, you should contact the European Court of Human Rights directly:

European Court of Human Rights
Council of Europe - F-67075 Strasbourg cedex
(Tel: 00 33 3 88 41 20 18 – fax: 00 33 3 88 41 27 62)

I must, however, draw your attention to the fact that you can bring an action in that Court only after you have exhausted all the domestic remedies available and you must do so within six months of the domestic decision becoming definitive.

Yours faithfully,

[E-Signed]
Cathrin BAUER-BULST
Head of Unit