

**From:** European Data Protection Supervisor  
[REDACTED]  
**To:** [REDACTED]  
**Sent at:** 23/05/22 13:39:16  
**Subject:** Our ref.: 2022-0566 - D(2022) 1298

Dear Sir,

Please find attached a letter signed electronically by Mr Wojciech Rafał WIEWIÓROWSKI for the above mentioned subject.

Kind regards,

---

**EDPS Secretariat**



| Tel. (+32) 228 31900 | Fax +32(0)22831950 | >  
Email [edps@edps.europa.eu](mailto:edps@edps.europa.eu)

**European Data Protection Supervisor**

Postal address: Rue Wiertz 60, B-1047 Brussels

Office address: Rue Montoyer 30, B-1000 Brussels

 [@EU\\_EDPS](https://twitter.com/EU_EDPS)  [www.edps.europa.eu](http://www.edps.europa.eu)

This email (and any attachment) may contain information that is internal or confidential. Unauthorised access, use or other processing is not permitted. If you are not the intended recipient please inform the sender by reply and then delete all copies. Emails are not secure as they can be intercepted, amended, and infected with viruses. The EDPS therefore cannot guarantee the security of correspondence by email.



EDPS  
EUROPEAN DATA PROTECTION SUPERVISOR

WOJCIECH RAFAŁ WIEWIÓROWSKI  
SUPERVISOR

Mr Gorka KNÖRR BORRÀS  
Representative of the Government of  
Catalonia to the EU  
Rue de la Loi 227  
B-1040 Brussels

Brussels, 23 May 2022

WRW/JP/vm/ D(2022) 1298 C 2022-0566  
Please use [edps@edps.europa.eu](mailto:edps@edps.europa.eu) for all  
correspondence

**Subject: Letter to the EDPS concerning the use of Pegasus spyware**

Dear Mr Knörr Borràs,

Thank you for your letter concerning the use of Pegasus spyware in which you draw specific attention to allegations concerning the use of spyware tools against members of the Catalan Parliament as well as other individuals linked to the Catalan independence movement.

The EDPS is following particularly closely the recent disclosures and developments concerning the use of modern spyware technology and has outlined its concerns as regards the interference with fundamental rights, including data protection and privacy, in a set of preliminary remarks published on 15 February 2022.<sup>1</sup>

As set out in those remarks, I share your serious concerns regarding the unprecedented risks posed by this type of surveillance technology, the deployment of which severely interferes with the essence of fundamental rights of individuals enshrined in the EU Charter, in particular the right to privacy. Its use against opposition leaders, journalists and activists constitutes furthermore a threat to the very functioning of European democracies. The EDPS considers that, with the possible exception of specific cases implying a situation of very serious threat, the deployment of Pegasus spyware would not be compatible with the EU legal order.

This is why the EDPS believes there should be a ban levied on the development and deployment of spyware with the capability of Pegasus in the EU. Where such tools are applied in exceptional circumstances, the EDPS has put forward a set of measures that

---

<sup>1</sup> EDPS Preliminary Remarks on Modern Spyware, 15 February 2022: [https://edps.europa.eu/data-protection/our-work/publications/papers/edps-preliminary-remarks-modern-spyware\\_en](https://edps.europa.eu/data-protection/our-work/publications/papers/edps-preliminary-remarks-modern-spyware_en)

should be implemented both at EU and national levels, in order to safeguard against its unlawful use. First among those measures is to strengthen democratic oversight by EU Member States in order to ensure meaningful and effective ex ante and ex post scrutiny of the use of surveillance tools.

It is my full expectation therefore that the Member States concerned by the Pegasus disclosures, including the allegations you detail in your letter, undertake all necessary measures to investigate alleged breaches of the law concerning the use of spyware tools under their jurisdiction.

I take note of your request that the EDPS examine the alleged interferences to the fundamental rights to privacy and data protection implied by the use of these surveillance measures. I would like to underline that the EDPS is, in accordance with Article 52 of the Regulation 2018/1725<sup>2</sup>, competent to supervise the processing of personal data by European Union institutions or bodies i.e. Thus the EDPS' investigatory powers would primarily be invoked in cases where allegations concern the deployment of such tools by those EU institutions and bodies.

As regards the European Data Protection Board (EDPB), established by Regulation 2016/679 (the GDPR)<sup>3</sup>, this authority is competent in the matter of the alleged use of Pegasus software if, and in so far as, it is deployed for purposes under the GDPR and the Law Enforcement Directive (LED). However, the EDPB does not have the same competences, tasks and powers as national data protection supervisory authorities: its tasks include the promotion of cooperation and effective bilateral and multilateral exchange of information between the supervisory authorities pertaining to matters subject to the cooperation and consistency mechanisms set out in the GDPR and the LED. At national level, the assessment of alleged infringements of the GDPR, LED or other regulatory instrument under the data protection framework falls within the competence of the responsible national supervisory authority.

On this note, let me inform you that the use of Pegasus and the respective competences of data protection authorities thereof, including the EDPS over EU institutions, agencies and bodies, have been discussed on 19 May 2022 with Meritxell Borràs i Solé, Director of the Catalan Data Protection Authority, on the margins of the 30th European Conference of Data Protection Authorities.

---

<sup>2</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001.

<sup>3</sup> 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.

Let me therefore re-iterate my expectation that allegations of data protection and privacy infringements linked to the use of Pegasus surveillance tools, or other forms of modern spyware, are subject to thorough investigation by the competent authorities of the Member States concerned and that, where breaches are identified, justice and the rule of law will be upheld.

Yours sincerely,

*[e-signed]*

Wojciech Rafał WIEWIÓROWSKI