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*Plenary sitting*

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**B9-0467/2023**

20.11.2023

## MOTION FOR A RESOLUTION

to wind up the debate on the statement by the Commission

pursuant to Rule 132(2) of the Rules of Procedure

on the lack of legislative follow-up by the Commission to the PEGA resolution  
(2023/2988(RSP))

**Dominik Tarczyński, Ryszard Antoni Legutko, Anna Fotyga, Elżbieta  
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on behalf of the ECR Group

**European Parliament resolution on the lack of legislative follow-up by the Commission to the PEGA resolution (2023/2988(RSP))**

*The European Parliament,*

- having regard to the Treaty on European Union and in particular Article 4(2) thereof,
- having regard to the Treaty on the Functioning of the European Union (TFEU),
- having regard to Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items<sup>1</sup> ('Dual-Use Regulation'),
- having regard to Council Decision (CFSP) 2019/797 of 17 May 2019 concerning restrictive measures against cyber-attacks threatening the Union or its Member States<sup>2</sup> as amended by Council Decision (CFSP) 2021/796 of 17 May 2021<sup>3</sup>,
- having regard to Decision 95/167/EC, Euratom, ECSC of the European Parliament, the Council and the Commission of 6 March 1995 on the detailed provisions governing the exercise of the European Parliament's right of inquiry<sup>4</sup>,
- having regard to Decision (EU) 2022/480 of the European Parliament of 10 March 2022 on setting up a committee of inquiry to investigate the use of the Pegasus and equivalent surveillance spyware, and defining the subject of the inquiry, as well as the responsibilities, numerical strength and term of office of the committee<sup>5</sup>,
- having regard to the Charter of the United Nations and the United Nations Guiding Principles on Business and Human Rights,
- having regard to Europol's 2021 Serious and Organised Crime Threat Assessment (SOCTA) entitled 'A Corrupting Influence: the Infiltration and Undermining of Europe's Economy and Society by Organised Crime',
- having regard to its resolution of 12 March 2014 on the US NSA surveillance programme, surveillance bodies in various Member States and their impact on EU citizens' fundamental rights and on transatlantic cooperation in Justice and Home Affairs<sup>6</sup>, and in particular to the recommendations contained therein on strengthening IT security in the EU's institutions, bodies and agencies,
- having regard to the report of its Committee of Inquiry to investigate the use of the

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<sup>1</sup> OJ L 206, 11.6.2021, p. 1.

<sup>2</sup> OJ L 129 I, 17.5.2019, p. 13.

<sup>3</sup> OJ L 174 I, 18.5.2021, p. 1.

<sup>4</sup> OJ L 78, 6.4.1995, p. 1.

<sup>5</sup> OJ L 98, 25.3.2022, p. 72.

<sup>6</sup> OJ C 378, 9.11.2017, p. 104.

Pegasus and equivalent surveillance spyware (A9-0189/2023),

- having regard to its recommendation of 15 June 2023 to the Council and the Commission following the investigation of alleged contraventions and maladministration in the application of Union law in relation to the use of Pegasus and equivalent surveillance spyware<sup>7</sup>,
- having regard to Rule 132(2) of its Rules of Procedure,
- A. whereas the recommendations proposed by the Parliamentary Committee of Inquiry to investigate the use of the Pegasus and equivalent surveillance spyware ('PEGA Committee') are based on its report on the use and abuse of spyware in EU countries;
- B. whereas the only evidence of surveillance was often the testimony of institutions (and initiatives) with questionable reputations and political connections, such as the Pegasus Project (suspected of having connections with Edward Snowden), CitizenLab (an organisation with a clearly left-wing profile) and AI (which was disgraced by a pro-Russian report on the situation in Ukraine);
- C. whereas spyware exploits vulnerabilities in smartphone operating systems to install malware; whereas spyware, owing to its structure, makes it very difficult to detect its use; whereas it is almost impossible to trace the sources of such surveillance, which makes any conclusions speculative;
- D. whereas the PEGA report is biased and treats individual countries unequally, sometimes condemning the same solutions it at other times deems appropriate;
- E. whereas the committee's recommendations, owing to their wide scope, touch on EU Treaty issues, thus going beyond the mandate of the PEGA Committee;
- F. whereas under the Treaties, matters of national security remain the exclusive competence of the Member States;
- G. whereas the recommendations aim to deprive the Member States of their freedom to act on issues of national security;
- H. whereas Member States are deeply (and justifiably) averse to any attempt to limit their competences;
- I. whereas EU countries are at risk from spyware from third countries, which can be used both used by the services of these countries and by their own services;
- J. whereas the rules on the export of spyware and dual-use items may need to be strengthened;
- K. whereas there is a serious risk of spyware surveillance of senior EU politicians and officials, including Commissioners;

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<sup>7</sup> Texts adopted, P9\_TA(2023)0244.

- L. whereas spyware often falls into the hands of criminal groups;
  - M. whereas knowledge about vulnerabilities in software systems is illegally and directly traded between parties or through intermediaries; whereas non-state actors and criminal organisations are involved in this trade;
  - N. whereas the investigation of the PEGA Committee shows that Member States should develop their own independent spyware for defence purposes and the fight against organised crime;
  - O. whereas the provisions of the Treaties should set the limits for the discussion of proposals to regulate spyware;
1. Emphasises that the PEGA report and recommendations were not the result of a sound assessment of the situation, but the product of a specific and politically motivated point of view which was not devoid of prejudices and stereotypes;
  2. Notes that – at least in part – the report and recommendations were prepared in the context of upcoming or ongoing electoral process in Poland, Greece and Spain;
  3. Emphasises the fact that the authors of the report and recommendations used unreliable and biased sources, which distorted the description of the situation;
  4. Draws attention to the lack of balance and equal criteria in the description of the situation in individual countries, which raises doubts about the reliability of the recommendations;
  5. Is of the opinion that PEGA's recommendations go beyond its mandate and sphere of competence and that, therefore, the Member States and the Commission cannot be expected to implement them;
  6. Is also of the opinion that the thrust of the proposed changes is inconsistent with the spirit (and often with individual provisions) of the Treaties and therefore that the recommendations should be seen as means to exercise pressure in the ongoing discussion on amending the Treaties;
  7. Strongly believes that matters of national security should continue to remain the exclusive competence of the Member States and that any attempt to interfere in these matters at EU level – through detailed regulation of spyware or by setting limits to issues of national security – is an attack on Member States' rights enshrined in the Treaties;
  8. Stresses that while spyware poses many threats, including to civil liberties and human rights, its use is in some cases indispensable; is of the opinion that this applies primarily to intelligence, national defence and combating organised crime; points out, furthermore, that in times of hybrid conflicts it is impossible to clearly demarcate the abovementioned areas;
  9. Is therefore of the opinion that the use of spyware by Member State services should be limited to a minimum and that decisions on this matter should always be made by the

sovereign Member States, as they all have democratic systems, legal systems and institutions that can counteract possible abuses;

10. Warns that any Commission proposals to implement the recommendations proposed by the PEGA Committee will certainly meet with strong resistance from the Council, as Member States will perceive them as an attack on their rights and competences;
11. Notes that basing the legal changes proposed in the recommendations on the provisions of Chapter 4 of Title V of the TFEU means in practice the need to achieve unanimity among the Member States, which seems completely unrealistic;
12. Shares, however, the PEGA Committee's concerns about the risks associated with the use of spyware of foreign origin, especially from third countries; is of the opinion that the best solution to this problem will be for Member States to develop their own spyware technologies – under the control of their services and within the framework of their own laws;
13. Shares, further, concerns about the export of spyware from the EU to third countries; points out that regulations on exports (including the export of so-called dual-use goods) could be strengthened and should be properly implemented and supervised;
14. Believes that better regulation at EU level on the import of spyware and dual-use products (for example to prevent their purchase by criminal groups) seems justified but extremely difficult to implement and enforce;
15. Emphasises the need to increase the level of protection against spyware for senior European politicians and officials; draws attention to the threats arising from possible surveillance of key European politicians and officials by foreign powers, especially during the ongoing Russian war of aggression against Ukraine;
16. Stresses the great risks associated with the use of spyware by non-state actors; calls on the Member States to closely monitor the trade in spyware and points out that Europol's assistance could be used in this area, especially for the cross-border dimension of this issue;
17. Strongly opposes, at the same time, any attempt to give Europol the power to act without Member States' knowledge and consent and thus to overrule them; recalls that Europol's role should be to provide support coordination;
18. Recommends, in conclusion, that the Commission adopt a very cautious approach to the PEGA Committee recommendations ; stresses the need to take into account the political context of these recommendations, their partial incompatibility with the Treaties and their partial impracticability, both for legal and political reasons;
19. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.