

Chairperson of the PEGA Committee of the  
European Parliament  
Member of the European Parliament (MEP)  
Mr Jeroen Lenaers  
Copy: LIBE Committee Secretariat

### Follow-up information from Europol

Dear Mr Lenaers,

Following up to my letter of 13 October 2022, I would like to provide you with an update on Europol's activities in relation to supporting possible criminal investigations by Member States into the unlawful use of intrusive surveillance and interception software, in line with the amended Europol Regulation.

As you know from my previous letter, Europol had contacted five Member States in order to ascertain whether there is relevant information available at the national level for Europol and whether there is an ongoing or envisaged criminal investigation (or, instead, another inquiry under the applicable provisions of national law), which could be supported by Europol.

To date, four of the five Member States have responded. None of them has relevant information that is available for Europol. However, as already mentioned in my first letter, one Member State had confirmed the initiation of criminal investigations under the oversight of the competent judicial authorities, which was verified by Eurojust.

In the meantime, a second Member State informed Europol that one criminal procedure was initiated in connection with the suspected unlawful use of Pegasus software which meanwhile was closed by the responsible judicial authorities in that country.

A third Member State notified Europol that pre-trial proceedings have been opened in one instance at the regional level. This Member State also inquired whether Europol holds information on the use of Pegasus software in the respective country, of relevance to the pre-trial proceedings. After checking available information, Europol responded that it does not hold information on the use of Pegasus software or similar surveillance and interception tooling in that Member State.

The fourth Member State informed Europol that there is no criminal investigation ongoing or envisaged. However, it stressed that judicial investigations had been initiated, concerning which information could be requested through the corresponding cooperation channels. Against this background, Europol has reached out to Eurojust to obtain any relevant complementary information.

In concluding, Europol takes note that all of the four Member States, at one point in time, initiated a criminal or judicial investigation procedure in connection with the suspected unlawful use of surveillance and interception software in their country. Beyond one request to check whether relevant information was available in

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Europol's data repositories in the case referred to above, no further support from Europol was requested. Regarding the fifth Member State, Europol has reminded the competent authorities of the pending response.

Europol will continue to monitor the situation and remains available to support national authorities as required. While Article 6 of the amended Europol Regulation determines that Europol may *propose* to the competent authorities of the Member State concerned the initiation, conduct or coordination of criminal investigations, Europol's competencies in the amended Europol Regulation are subject to the overall requirements of Article 88(3) of the Treaty on the Functioning of the European Union (TFEU), following which *any operational action* by Europol must be carried out in liaison and *in agreement* with the authorities of the Member State concerned, with the application of *coercive measures* being the *exclusive responsibility* of the *competent national authorities*.

In this context, Europol notes recent media reporting concerning ideas put forward by some representatives of the European Parliament (EP) with a view to expanding Europol's tasks.

Europol continues to monitor the developments and remains available to any further question you might have.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'C. De Bolle', with a long horizontal line extending to the right.

Catherine De Bolle