PRIVACY INTERNATIONAL

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Directorate-General for Migration and Home Affairs
European Commission
1049 Bruxelles/Brussel
Belgium

London, 18 September 2019

Dear Madam or Sir,

In accordance with Article 15(3) of the consolidated version of the Treaty on the Functioning of the European Union and Article 42 of the Charter of Fundamental Rights of the EU, implemented through Regulation (EC) No 1049/2001, Privacy International[1] and Ioannis Kouvakas[2] would hereby like to jointly request a copy of the following documents that have been produced between 1 January 2017 and 31 August 2019 and are held by you:

1. Documents relating to any kind of transfer (including sharing, disclosing, storing or otherwise making available) of personal data processed in surveillance, police, migration or biometric databases maintained by EU bodies and/or EU member states to authorities of third countries. For each transfer, please provide all documents that relate to the agreements between the Agency and the third country regarding the transfer to and/or the further processing by the third country, including:

a. all provisions that ensure that the Agency and the authority or authorities of the third country would have abided by and would abide by the principles enshrined in Article 4 of Regulation (EC) No 45/2001 and Article 4 of EU Regulation 2018/1725, respectively;
b. a precise description of the exact categories of the personal data transferred and/or further processed by third countries, including whether these include personal data revealing nationality, information contained in asylum applications or applications for international protection, racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or

[1] Established in 1990, Privacy International is a non-profit, non-governmental organization based in London dedicated to defending the right to privacy around the world. Privacy International undertakes research and investigations into state and corporate surveillance with a focus on the technologies that enable these practices. We litigate or intervene in cases implicating the right to privacy in courts around the world. To ensure universal respect for the right to privacy, Privacy International advocates for strong national, regional and international laws that protect this right. We also strengthen the capacity of partner organizations in developing countries to identify and defend against threats to privacy. https://privacyinternational.org/

[2] This same request is also submitted by Ioannis Kouvakas, Legal Officer at Privacy International, in his private capacity.

data concerning a natural person's sex life or sexual orientation, data revealing criminal convictions or offences;

c. the exact authority or authorities of the third country that were the recipients of the personal data;
d. the legal basis and the exact purpose of each transfer, including reference to the legal mechanism that allowed for the transfer;
e. the original sources of this personal data, in case it has not been provided by data subjects;
f. all security measures taken by the Agency and/or the authority or authorities of the third country to protect the personal data;
g. whether any of the personal data has been subject to a data breach and, in case it has, the potential risks to which personal data was exposed, and the procedures that the Agency and/or third country authorities followed to mitigate these risks;
h. whether Data Protection Impact Assessments were conducted in the context of transfer agreements and/or for each transfer, in accordance with Regulation 2018/172 or any other previous instrument. Please provide copies of all relevant documents containing an assessment or evaluation of the impact of the envisaged transfer on the protection of personal data, as well as the documents containing information about the risks posed by the further processing by the authority or authorities of third countries and how these were mitigated.

2. Documents relating to any kind of direct or indirect transfer (including via exporting, leasing, selling, donating or any other transaction) of surveillance, cyber-surveillance, policing or border control equipment to third countries. The equipment mentioned in the previous sentence should include, but not be limited to, items specially designed to enable the covert intrusion into information and telecommunication systems with a view to monitoring, extracting, collecting and analysing data and/or incapacitating or damaging the targeted system, such as mobile telecommunication interception equipment, intrusion software, intrusion hardware, monitoring centres, lawful interception systems and data retention systems, digital forensics, audio bugs, GPS tracking devices, cameras, drones, probes and fibre taps, malware, spyware, IMSI catchers, state trojans, facial recognition technology, voice recognition technology, software that monitors social media activity etc. **For each transfer, please provide all documents** that contain information about any of the following:

a. the specific authority and the third country to which the transfer relates;
b. whether the transfer involved any private entities. In that case please provide documents containing details about the private entities' involvement in these transfers;
c. the specific equipment that was transferred, including equipment specifications and manufacturer;
d. whether the equipment was provided in the context of any official or unofficial security, financial or any other assistance from the Agency and/or EU member states and/or EU bodies to the third country. Please provide documents that inform about the specific assistance programme that each transfer falls under, together with the relevant documents authorising it;

e. the legal basis under which the transfer took place;
f. all internal and external, official and unofficial communications and agreements between the Agency and the authority or authorities of the third country regarding the purposes and uses of the equipment, including all provisions that could ensure that the Agency and the authority or authorities of the third country would adhere by EU principles and/or would not use the equipment contrary to EU human rights law standards. In particular, please provide all documents that contain information about whether any risk and/or due diligence assessments, evaluations or audits were conducted, and, in case there were, all documents containing specific information about the type and content of these risk and/or due diligence assessments, evaluations or audits;
g. considering that such equipment transfers could result in high-scale processing of personal data, whether Data Protection Impact Assessments were conducted, in accordance with Regulation 2018/172 or any other previous instrument. Please provide copies of all relevant documents containing an assessment or evaluation of the impact of the envisaged transfer on the protection of personal data, as well as the documents containing information about the risks posed by the further processing by the authority or authorities of third countries and how these were mitigated.

3. Documents relating to any kind of official or unofficial training provided by the Agency and/or EU Member States and/or EU bodies to third countries. The training mentioned in the previous sentence should include any training in the use of any of the technologies listed in point 2 above, as well as training in investigative techniques, cyber and online investigative techniques, interrogations and interviews of third country nationals, leadership and core competencies, general education courses on security and/or intelligence. For each training, please provide all documents that contain information about any of the following:

a. the training schedule which includes start and end date, the course title, the agency providing the training, the unit or persons receiving the training, as well as information about any other persons participating in the training, their unit/department affiliation and their country of origin;
b. all education materials which were provided to participants before, during or after the training;
c. objectives and expected outcomes of the training;
d. whether the training was facilitated, wholly or partially, by any private entities, and, in that case, details about the private entity's involvement in the training;
e. the legal basis under which the training was provided;
f. all internal and external, official and unofficial communications and agreements between the Agency and the authority or authorities of the third country regarding the purposes of the training, including all provisions that could ensure that the Agency and the authority or authorities of the third country would adhere by EU principles and/or would not use the techniques, knowledge or information provided during the training in a manner that would be contrary to EU human rights law standards. In particular, please provide all documents that contain information about whether any risk and/or due diligence assessments, evaluations or audits were conducted, and, in case

there were, all documents containing specific information about the type and content of these risk and/or due diligence assessments, evaluations or audits;

g. whether the training was provided in the context of any official or unofficial security, financial or any other assistance from the Agency and/or EU member states and/or EU bodies to the third country. Please provide documents that inform about the specific assistance programme that each transfer falls under, together with the relevant documents authorising it.

4. Documents relating to any kind of financing provided to third countries. The operations and procurement financing mentioned in the previous sentence should include, but not be limited to, any payment to any public or private entity, both within or outside the EU, or third country authority for purchasing any of the technology mentioned in point 2 above, and/or any payment of salaries, reimbursement, benefits and travel expenses for any officials or employees of any public or private entity, both within or outside the EU, or of any third country authority, who are involved in surveillance or border control activities, as well as any payment to any public or private entity, both within or outside the EU, or third country authority and/or agency for purchasing basic equipment such as It infrastructure and software, vehicles, buildings etc. **For each financing activity, please provide all documents** that contain information about any of the following:

a. the specific authority or agency and the third country to which the financing relates;
b. whether the financing involved any private entities. In that case please provide documents containing details about the private entities' involvement in the financing with precise information about the payments received and the purposes for which these payments were facilitated;
c. whether the payment was provided in the context of any official or unofficial security, financial or any other assistance from the Agency and/or EU member states and/or EU bodies to the third country. Please provide documents that inform about the specific assistance programme that each payment falls under, together with the relevant documents authorising it;
d. the legal basis under which the financing took place;
e. all internal and external, official and unofficial communications and agreements between the Agency and the authority or authorities of the third country regarding the purposes and uses of the provided funds, including all provisions that could ensure that the Agency and the authority or authorities of the third country would adhere by EU principles and/or would not use the payments obtained contrary to EU human rights law standards. In particular, please provide all documents that contain information about whether any risk and/or due diligence assessments, evaluations or audits were conducted, and, in case there were, all documents containing specific information about the type and content of these risk and/or due diligence assessments, evaluations or audits.

5. Documents relating to the involvement of the Agency and/or EU Member States and/or other EU bodies in the negotiation, promotion, abolition or adoption of any laws or frameworks that seek to regulate intelligence sharing, communications data retention, communications surveillance, equipment interference, interception of

communications or any other investigatory powers framework in a third country. The involvement mentioned in the previous sentence should include, but not be limited to, any legal and/or technical assistance provided by the Agency and/or EU Member States and/or other EU bodies, such as observations, remarks, case-studies, legal assessments, risk assessments, policy briefs, policy positions, statistics, public consultation documents, country positions, Agency positions, recommendations, communications and emails, notes, minutes and meeting documents, impact assessments, audits and evaluation documents.

Clarifications

(i) For the purposes of this request, documents shall include but not be limited to: all official and unofficial, electronic and hard-copy documents, working arrangements, templates, databases, reports, studies, guidance or policy documents, reviews, minutes, statistics, directives, instructions, circulars, service notes, contracts, agreements, receipts, audits, risk and impact assessments, statistics, forms, requests, letters, emails, decisions.

(ii) If possible, please provide the documents requested for each of the six (6) points mentioned above separately.

(iii) Please provide all requested documents in English, and, if not possible, in French or German or Italian or Greek or Spanish.

(iv) Please provide the documents in an electronic format to both [redacted] and [redacted].

If it is not possible to provide all the above documents, we would kindly ask you to advise on how to refine our request so as to ensure that it falls within the appropriate limits.

Please do not hesitate to contact us should you require any further clarifications.

Thank you very much for your consideration. We look forward to your response.

Yours faithfully,

Ilia Siatitsa
Legal Officer
Privacy International
[redacted]

Ioannis Kouvakas
Legal Officer
Privacy International
[redacted]