Dear Mr Fanta,

Subject: Your application for access to documents – GESTDEM 2022/4211

We refer to your e-mail of 20 July 2022 in which you make a request for access to documents, registered on 21 July 2022 under the above mentioned reference number. The only relevant document in our possession we could identify is the contribution below, which was made for a document still being finalised:

“In its contacts with export control authorities from Member States, the aim of the Commission was to exchange views on the reports of misuse of NSO’s Pegasus spyware in violation of human rights and examine the scope for developing a possible common approach with respect to export from the EU of cyber-surveillance items relating to Pegasus-type spyware.

In its contacts with Israeli authorities in the framework of the EU-Israel Subcommittee on Industry, Trade and Services of the Association Agreement between the EU and Israel, the aim of the Commission was to raise with the competent export control authorities concerns about these reports and seek indications on any related mitigating measures that competent Israeli export control authorities could consider taking in the future. To date, the Commission has not yet received any such indications from the competent Israeli export control authorities.

The Commission exchanged views with Member States’ export control authorities on the reports of misuse of NSO’s Pegasus spyware in violation of human rights and on the scope for developing a possible common approach with respect to export from the EU of cyber-surveillance items relating to Pegasus-type spyware.

This discussion took place on two occasions; first, at a meeting of the Council’s Dual Use Working Party on 25 October 2021 and, secondly, the issue was raised a second time on 12 July 2022 in a short discussion at a meeting of the Surveillance Technology Expert Group.

In its contacts with export control authorities from Israel in the above-mentioned framework, the Commission raised concerns about these reports and sought indications on any related mitigating measures that competent Israeli export control authorities could consider taking in the future. To date, the Commission has not yet received any such indications from the competent Israeli export control authorities.
Some Member States shared their views on the prospects for developing a common approach with regard to the control of export from the EU of such technologies, e.g. regarding the technical assessment of items exported to third countries, such as Israel, as well as regarding the assessment of related risks. The discussions with export control authorities of Member States did not address the import of such technologies, which falls outside their area of responsibility and outside the competence of the abovementioned groups.

The Israeli authorities shared general information on the procedure and identification of the competent national authorities for controlling exports from Israel of sensitive cyber-surveillance technologies, such as the Pegasus software, and preventing their misuse in violation of human rights. To date, the Commission has not yet received any indication from competent Israeli export control authorities about mitigating measures taken or planned in relation to NSO and Pegasus.

Further to the two earlier discussions so far, there is no follow-up planned to the contacts with Member States export control authorities. With regards to the Israeli export control authorities, the Commission intends to return to the issue of possible mitigating measures at the next meeting of the EU-Israel Subcommittee on Industry, Trade and Services of the Association Agreement.

Any request to release the agenda of the meeting with Member States export control authorities in the context of the Dual-Use Working Party (DUWP) on 25 October 2021 should be addressed directly to the Council. The Commission’s current view is that releasing those minutes would threaten the protection of information provided on a confidential basis and hence undermine the security of the EU and of Member States because it would reveal Member States export control authorities’ assessment of export controls related to sensitive items, which are subject to foreign and security policy considerations, including human rights.

As regards the agenda and minutes of the meeting with Member States cyber-technology experts in the context of the Surveillance Technology Expert Group meeting of 12 July 2022, set up under the framework of the Dual-Use Regulation, the Commission considers that releasing such documents would also threaten the protection of information provided on a confidential basis by Member States’ export control authorities and, hence, undermine the security of the EU and of Member States by revealing assessments related to sensitive items and linked risks, which are subject to foreign and security policy considerations, including human rights.

The Commission cannot release the minutes of the meeting with Israel of 6-7 December 2021 in the above-mentioned framework, which are still pending finalization with the Israeli authorities. Any future release of these minutes will have to be agreed with Israel, and subject to a further assessment regarding any impact that such release could have on the international relations of the EU as there remains a clear interest for the EU in ensuring that third countries do not release reports of meeting with the EU without our prior agreement.”

Please note that this document is a preliminary draft, which does not reflect the position of the Commission and cannot be quoted as such.

Yours faithfully,

Julien MOUSNIER
Head of Unit