

## **How the European External Action Service (EEAS) assesses the potential human rights risk and general impact before providing assistance to non-EU countries to develop surveillance capabilities**

Case opened

**Case 1472/2022/MHZ - Opened on 05/10/2022 - Decision on 17/11/2023 - Institution concerned** European External Action Service ( No further inquiries justified ) |

High Representative of the Union for Foreign Affairs and Security Policy

European External Action Service (EEAS)

Dear High Representative,

On 4 August 2022, I received a complaint concerning the EEAS, submitted by six civil society organisations (Privacy International; Access Now; the Border Violence Monitoring Network; Homo Digitalis; International Federation for Human Rights, and Sea-Watch).

I have decided to open an inquiry into the complainants' concerns that the EEAS failed to ensure that the CSDP civilian missions carry out human rights risk and impact assessments (HRIA) before they:

(i) engage in providing support in drafting laws in relation to surveillance, cybercrime and cyber enabled crime, and

(ii) transfer tools and equipment relevant for surveillance to, and share intelligence with, non-EU countries.

I am not inquiring into the complainants' concerns about the *2016 Security Package to be carried out in the Neighbourhood South countries* which the second annex to the complaint relates to.

I would appreciate receiving a written reply from the EEAS to the following questions:



1. The 2017 Guidelines on legislative drafting do not include a recommendation for the CSDP civilian missions to carry out a prior HRIA before they engage in providing support in drafting the laws.. Would it be possible for the EEAS to remedy this by updating the Guidelines, recommending a HRIA and providing a template for a prior HRIA?
2. In accordance with the 2017 Guidelines, prior to taking part in working groups set up to draft legislation, the missions must prepare a strategy and identify the personnel to be part of the process. Does such a strategy include human rights considerations, including the involvement of the mission's human rights specialist (if there is one)?
3. The 2017 Guidelines provide that the missions should seek to ensure that the process of legislative reform is inclusive. The Guidelines give examples as to whom the host State authority should consult. Human rights organisations/defenders are not mentioned. Is it possible to explain why not?
4. In January 2020, the European Parliament criticised the lack of suitable indicators used by the EEAS to monitor the outcome of the EUCAP Mali and Niger civilian missions. Does the EEAS now have such indicators in place in relation to all civilian missions? What is the indicator relating to transfer of surveillance capabilities? In the 2017 Guidelines on legislative drafting the EEAS says that the missions must develop 'indicators' to be able to assess 'whether the legislative initiative has been carried out successfully'. Is there also an indicator covering implementation of laws in compliance with human rights?

In addition, I would appreciate it if the EEAS could arrange for my inquiry team to inspect, by electronic means, the following documents (the EEAS did not disclose these documents to Privacy International) [1] :

- MofU concluded between EUBAM Libya and the International Centre for Migration Policy Development.
- Six-monthly reports and intermediate reports of EU CSDP civilian missions in Palestine, Somalia, Niger, Mali, Libya, and Iraq.
- The EEAS Guidelines for the EU CSDP missions on capacity building.

Please note that I am likely to send your reply and related enclosures to the complainants for comments [2] . We may also decide to publish your reply.

I would be grateful to receive your reply by the end of December 2022. If, in the course of this inquiry, the EEAS becomes involved in court proceedings concerning the same subject matter as this complaint, I would ask you to let us know.

Should you require any further information or clarifications, including how to arrange for the inspection of documents, please do not hesitate to contact Marta Hirsch-Ziembinska, Principal adviser on Charter compliance, who is responsible for the inquiry.

Yours sincerely,



Emily O'Reilly European Ombudsman

Strasbourg, 05/10/2022

[1] If the material we have asked to inspect contains any classified information, we would ask the EEAS to contact the person responsible for this inquiry in advance.

[2] If you wish to submit documents or information that you consider to be confidential, and which should not be disclosed to the complainant, please mark them 'Confidential'. Encrypted emails can be sent to our dedicated mailbox. Information and documents of this kind will be deleted from the European Ombudsman's files shortly after the inquiry has ended.