

Questionnaire from the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. David Kaye**A. Information concerning the domestic regulatory frameworks that may be applicable to the development, marketing, export, deployment, and/or facilitation of surveillance technologies by private companies, such as:****1. Laws, administrative regulations, judicial decisions, or other policies and measures that impose regulations on the export, import or use of dual-use surveillance technology;**On the export of dual-use surveillance items:

Council Regulation (EC) No 428/2009 of 5 May 2009 (EC dual-use Regulation) is the basic legislation regarding the control of exports of dual-use items (including cyber-surveillance items). The Regulation is directly applicable in all Member States of the European Union. Annex I of the Regulation lists items for which an export authorization is required. The list of items includes certain cyber-surveillance items such as

- intrusion software,
- mobile telecommunications interception or jamming equipment
- Internet Protocol (IP) network communications surveillance systems or equipment

Furthermore, Germany has in 2015 introduced additional national legislation in order to control certain cyber-surveillance items. According to amendments to the German Foreign Trade Ordinance, in effect since 8 July 2015, companies which export certain products that are used for cyber-surveillance purposes in mobile radio and terrestrial networks are subject to mandatory export license requirements. Authorization requirements apply to:

- Monitoring Centres (Law Enforcement Monitoring Facilities) for Lawful Interception Systems
- Retention systems or devices for event data.

The relevant items have been placed under control because they can be misused for violating human rights by means of (targeted) surveillance, tracing and tracking.

In addition to the controls for hardware, software and technology, also the supply of certain technical assistance by a German citizen in third countries requires an authorization. Technical assistance includes actions related to the development, engineering, manufacture, assembly, testing, repair, maintenance, or other technical services in relation to the controlled items. Technical assistance can take the form of instruction, training, passing on practical knowledge or skills or advisory services. Sections 52 a and b of the German Foreign Trade Ordinance, also in effect since 8 July 2015, introduced authorization requirements for the supply of technical assistance with regard to certain cyber-surveillance items.

2. Remedies available in the event of illicit export or use of private surveillance technology;

In the event of unauthorized exports of dual-use items (including certain cyber-surveillance items), criminal consequences according to Sections 18 and 19 of the German Foreign Trade can apply.

B. Information concerning the use of such surveillance technologies:

The German Government adopted its National Action Plan for Business and Human Rights (NAP) in December 2016. The NAP serves to implement the UN Guiding Principles on Business and Human Rights (UNGPs) in the German context.

Among other things, the NAP lays down German companies' responsibility to respect human rights in a fixed framework: The German Government expresses its firm expectation that companies adhere to their human rights responsibilities and respect human rights along supply and value chains, in Germany and globally. This expectation applies to all companies in all sectors. The NAP has translated the UNGPs into a system of five core elements of human rights due diligence. These comprise: (1) a human rights policy statement, (2) a procedure for the identification of actual and potential adverse impacts on human rights, (3) measures and effectiveness tracking, (4) Reporting, (5) grievance mechanisms. The German government has established a comprehensive NAP implementation tracking instrument which will evaluate until 2020 to what extent German companies of all sectors will have put the five core elements of human rights due diligence into practice.