

Summary of OECD Complaints

Privacy International, along with fellow organisations, the European Centre for Constitutional and Human Rights (“ECCHR”), Reporters Without Borders, Bahrain Center for Human Rights, and Bahrain Watch, are filing a complaint with the UK National Contact Point for the OECD Guidelines for Multinational Enterprises (NCP) against Gamma International UK Ltd (“Gamma”), a company potentially in breach of the OECD Guidelines for Multinational Enterprises. A parallel complaint against Trovicor GmbH is being filed by ECCHR at the German NCP.

The complainants are to put forward evidence which they consider provides grounds to investigate whether Gamma and Trovicor have exported intrusive surveillance software and training to Bahrain. If the OECD proceeding should come to the conclusion that both companies did in fact export surveillance software, and are continuing to maintain these technologies for use by Bahraini authorities, this should be qualified in the view of the complainants as aiding and abetting the Bahraini government in its perpetration of human rights abuses, including violation of the right to privacy, arbitrary arrest, torture, and suppression of free speech. In so doing, it is suggested that the companies would be in breach of several of the OECD Guidelines concerning human rights. In the case of Gamma, it is suggested that the example of Bahrain may be illustrative of a more widespread practice by Gamma of exporting surveillance technology to repressive regimes abroad.

The complaints outline: i) details concerning the defendant companies and their surveillance products, ii) the human rights situation in Bahrain, iii) evidence suggesting possible use of surveillance products in Bahrain and their link to human rights abuses, and iv) alleged violations of the OECD Guidelines.

i) **The defendant companies and their technologies**

Both Gamma and Trovicor manufacture and supply surveillance technology which can be used in relation to computers and mobile devices to intensively monitor communications, and store and analyse data. In the case of Gamma these products are known as ‘FinFisher’ or ‘FinSpy’ products, and, according to media and expert reports, are capable of infecting computer and phone devices such that they are able to intercept the target user’s emails, social media messages, and Skype calls, take screen shots, and transmit records of every keystroke. The FinFisher portfolio of products is led by Martin Muench, managing director of Gamma’s Munich-based unit, Gamma International GmbH.

Trovicor, a technology company which originally developed out of a business unit of Siemens, develops and supplies similar surveillance technologies, which are capable of analysing large amounts of data and tracking individuals via emails, fax, SMS, phone calls and bank transfer data. Trovicor’s technology also supports the integration of trojans such as those developed by Gamma, and both Gamma and Trovicor refer to each other’s products in their marketing materials.

It has been confirmed by the UK Department for Business Innovation and Skills that Gamma's FinFisher products are on the list of dual-use goods under the Dual-Use Regulation, and thus require a licence to be exported outside the EU. The Treasury Solicitors have confirmed that Gamma has not sought any such licence.

ii) **The human rights situation in Bahrain**

Since the latter half of 2010 there has been a brutal crackdown on pro-democracy protestors in Bahrain, in the wake of pro-democracy uprisings across the Middle East. The complaints detail various repressive laws and practices in Bahrain, such as the restriction of press and internet freedom, the practice of torture, and the lack of due process and an independent judiciary. The complaints also detail Bahraini laws on communications surveillance, in particular the Lawful Access Regulation, which allows for intensive communications monitoring, as well as surveillance practices in Bahrain, which include heavy censorship of the internet and the frequent shutting down of websites that offend the government.

The report by the Bahrain Independent Commission of Inquiry ('BICI'), as well as reports by various human rights organisations, have established a clear connection between the suppression of free expression, systematic and widespread surveillance of telecommunications, and the arbitrary detention and torture of dissidents by the Bahraini government.

iii) **The evidence of use of surveillance products in Bahrain and their link to human rights abuses**

The complaints cite examples of Bahraini political activists who have been subject to communications monitoring, arbitrary arrest, and interrogation accompanied by torture. Both complaints cite the case of Abdul Ghani Al-Khanjar, a human rights activist who was arrested and tortured by Bahraini authorities in 2010, and who has stated that during his interrogation he was shown transcripts of text messages and mobile phone calls dating back to 2009. Mr Khanjar was unaware that government officials had access to these private communications.

The Gamma complaint examines the cases of three individuals, Ala'a Shehabi, Husain Abdulla and Shehab Hashem, whose computer and mobile devices were subject to detailed study by security researchers and were found to be infected with malware that bore the hallmarks of FinFisher products. It is on this basis that the complainants consider there to be substantial grounds to investigate whether Gamma's products have been used by Bahraini authorities to target political activists and dissidents.

iv) **Potential violations of OECD Guidelines**

The complaints state that if it is confirmed that Gamma and Trovicor supplied and

maintained technologies that are used for mass surveillance by Bahraini authorities, they may have violated several OECD Guidelines, including: Chapters II. A. 2 and IV. 1, which maintain that enterprises should respect internationally recognised human rights of those affected by their activities (both complaints identify arbitrary arrest, torture and extrajudicial killings as human rights abuses. The Gamma complaint focuses also on violation of the right to privacy as the right that may be most directly infringed by the company's malware products); Chapters II. A. 11 and 12 and IV. 2 and 3, which state that enterprises should try to prevent or mitigate adverse human rights impacts linked to their operations and products; Chapters II. A. 10 and IV. 5, which suggest that enterprises carry out due diligence, including human rights due diligence; Chapter II. A. 13, which states that enterprises should encourage responsible business conduct by business partners; Chapter IV. 4, which states that enterprises should have a human rights policy commitment; Chapter IV. 6 which states that enterprises should co-operate in the remediation of adverse human rights impacts; and II. B. 1 which maintains that enterprises should support efforts to promote Internet Freedom.

The complaints discuss how the companies are alleged to have (i) *caused* human rights abuses by enabling and/or exacerbating and/or facilitating the human rights abuses; (ii) *known or should have known* of the likelihood that their products would result in human rights abuses, and (iii) how the companies were likely to have been *proximate* to the principal perpetrators both in time, space and relationship. The Gamma complaint suggests that even if the company is found not to be guilty of complicity, it still may have violated several OECD Guidelines.

The complaints end by outlining the complainants' expectations towards both the defendant company and the NCP. It is expected that the defendant companies, if the complaints are upheld, should i) cease relations with Bahrain and cease maintaining surveillance technologies for the Bahraini government, ii) implement a human rights policy and incorporate Human Rights Impact Assessment into their operations, iii) disclose contracts selling surveillance products to foreign governments, and iv) integrate security mechanisms into future technologies they develop. The NCPs have been asked to investigate whether or not the defendant companies are involved in human rights abuses in Bahrain, issue final statements on whether OECD Guidelines have been breached, if so provide recommendations to the defendant companies on how to avoid further breaches of the Guidelines, and make follow-ups regarding the defendant companies' compliance with their recommendations.