

Mandate of the Special Rapporteur on the right to privacy

REFERENCE:
OL OTH 35/2019

13 June 2019

Dear Sir,

I have the honour to address you in my capacity as Special Rapporteur on the right to privacy, pursuant to Human Rights Council resolution 37/2.

I am sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information I have received. Special Procedures mechanisms can intervene directly with governments and other stakeholders on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.¹

In this connection, I want to express my concern for the **upcoming adoption of the Draft Interpretive Note to Financial Action Task Force (FATF) Recommendation 15, at the plenary meeting of the FATF in Orlando, United States of America, on 16-21 June 2019.**

According to the information received:

Paragraph 7b of the Draft Interpretive Note for Recommendation 15 of the FATF requires all virtual asset service providers to “obtain and hold required and accurate originator information and required beneficiary information on virtual asset transfers, submit the above information to beneficiary VASPs and counterparts (if any), and make it available on request to appropriate authorities”. This obligation would not require any suspicion of a crime, and would be mandatory for all cases and customers transferring any virtual asset.

¹ Further information about the communication procedure is available at:
<http://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>

Despite concerns expressed by civil society organizations and private sector entities, the FATF has announced that the Interpretive Note “will be formally adopted as part of the FATF Standards in June 2019”.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would therefore be grateful for your observations on the following matters:

1. Please provide information on the compatibility of the Draft Interpretive Note to FATF Recommendation 15 with international standards on the right to privacy, including article 17 of the International Covenant on Civil and Political Rights.
2. Please provide information on the consultations held with expert and civil society organizations on the Draft Interpretive Note to FATF Recommendation 15 to ensure that their concerns are considered in its adoption process; and on the steps taken to see to it that these concerns have been taken into account
3. Please provide information on any assessment that the FATF has conducted on the privacy impact of the Draft Interpretive Note to FATF Recommendation 15.

Given its potential adverse impact on the right to privacy, I respectfully request the FATF to postpone any decision on the adoption of the Draft Interpretive Note in order to allow sufficient time for an in-depth evaluation of all the privacy and data protection implications of such a decision. I remain at the FATF’s disposal for any technical assistance it may require in this regard.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from the FATF, will be made public on the communications reporting website and the website page for the mandate of the Special Rapporteur on the right to privacy within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept the assurances of my highest consideration.

Joseph Cannataci
Special Rapporteur on the right to privacy