

Virtual CTED Launch Event

CTED Trends Report on “The State of International Cooperation for Lawful Access to Digital Evidence: Research Perspectives”

Wednesday, 16 February 2022, 9.00 a.m.–11.00 a.m. EST / 3.00 p.m.—5.00 p.m. CET

Concept Note

I. Context

1. As terrorists and organized criminals increasingly use the Internet, social media and encrypted messaging apps to advance their terrorist objectives, securing evidence is vital. Electronic evidence (e-evidence) stored by service providers can prove where a crime was committed, disclose incriminating communications and determine the location of offenders. Obtaining this e-evidence can ensure the right individual is prosecuted and those who perpetrate serious offences are brought to justice. Legal access to data also raises important human rights issues, in particular the right to privacy, but also freedom of thought, conscience and religion. Practitioners are required to ensure that their requests are made in compliance with international law, in particular international human rights law, and their applicable domestic legal frameworks. Corporate service providers also have a responsibility to respect human rights.

2. In resolutions 2322 (2016), 2331 (2016), 2341 (2017) and 2396 (2017), the Security Council called upon Member States to collect and preserve evidence so that investigations and prosecutions may occur to hold those responsible for terrorist attacks accountable. Resolution 2322 (2016) specifically noted the significant increase in requests for cooperation in gathering digital data evidence from the Internet and stressed the importance of considering the re-evaluation of methods and best practices, as appropriate, in particular related to investigative techniques and e-evidence. In resolution 2395, the Council recognized CTED’s work on countering use of the internet and social media in furtherance of terrorist purposes, while respecting human rights and fundamental freedoms and taking into account Member State compliance with applicable obligations under international law, and taking note of the need to preserve global connectivity and the free and secure flow of information facilitating economic development, communication, participation and access to information, and stresses the importance of cooperation with civil society and the private sector in this endeavour.

3. In accordance with the aforementioned resolutions and the *Addendum to the guiding principles on foreign terrorist fighters* (2018), the Counter-Terrorism Committee Executive Directorate (CTED), the United Nations Office on Drugs and Crime (UNODC) and the International Association of Prosecutors (IAP) are jointly implementing the Global Initiative on “Strengthening the Capacity of Central Authorities and Counter-Terrorism Prosecutors and Investigators in Obtaining Digital Evidence from Private Communications Service Providers (CSPs) in Cross-Border Investigations, with a Particular Focus on Counter-Terrorism Matters”. Since the launch of the Global Initiative, in December 2017, CTED, UNODC and IAP have facilitated the delivery of a number of tailored activities and tools aimed at enhancing the capacity

of central authorities, prosecutors and investigators to obtain electronic evidence in a timely manner, including through interaction with CSPs.

4. Under this Global Initiative and within the framework of its efforts to analyze emerging issues, trends and developments in accordance with Security Council resolution 2617 (2021) and other relevant Council resolutions, the Counter-Terrorism Committee Executive Directorate (CTED) has prepared a trends report on “the State of International Cooperation for Lawful Access to Digital Evidence: Research Perspectives”, which builds on CTED’s engagement with Member States, and also benefits from insights collected from various sources, including privacy- and data-protection agencies, and representatives of the private sector and civil society organizations (CSOs) from around the world, as well as members of relevant international and regional institutions working on cross-border data reforms. The production of the trends report was made possible through funding provided by Germany.

5. The present report offers a snapshot of the regulatory reform landscape as of late 2021 and its main objective is to identify some of the major trends that contribute to the current overall cross-border situation in this area. There are currently several major reform initiatives under way to ensure that law enforcement authorities have access to foreign-held data. In addition to regional initiatives such as that of the European Union and major reforms being introduced in States such as Brazil, China, India, the Russian Federation, and the United States, there are two major multilateral initiatives: the draft United Nations Convention on Countering the Use of Information and Communications Technologies for Criminal Purposes and the recently adopted Second Additional Protocol to the Council of Europe Convention on Cybercrime (‘Budapest Convention’) on enhanced co-operation and the disclosure of electronic evidence.

6. Each of these initiatives promises to resolve some aspect of the problems associated with access to electronic evidence. However, there are issues around data residency, a strong chance of fragmentation, and the likelihood that several competing and overlapping regimes on cross-border evidence will be established. There are also concerns about a potential reduction in protections for basic human rights, including due process, freedom of expression, and privacy, which must be addressed in step with reform efforts.

II. Objective

7. CTED will launch its trends report at a virtual event to be held on Wednesday, 16 February 2022, during which participants will discuss ongoing reform efforts and related issues concerning the lawful access to digital evidence and the cross-border sharing of electronic evidence. Panelists will also discuss the need for compliance with international human rights law and fundamental freedoms, particularly the right to privacy. Panelists will consider options for ensuring interoperability between the various initiatives and other ways forward to enhance access to digital evidence, to include expanding capacity-building efforts aimed at addressing the various challenges identified in the report.

III. Format

8. The launch event will be held in English and streamed live via Microsoft Teams on

Wednesday, 16 February 2022, from 9.00 a.m. to 11.00 a.m. EST / 3.00 p.m. to 5.00 p.m. CET.
No interpretation services will be available. The event will be recorded.

9. Those wishing to attend the event are requested to complete the registration form by 12.00 noon EST on Tuesday, 15 January 2022.

Registration Link: <https://forms.office.com/r/thsjXaA50T>

10. An email with log-in details will be provided to persons registered for the event by 6.00pm on Tuesday, 19 January 2022.