3rd expert group meeting (EGM) on
“Lawful Access to Digital Data Across Borders

“Towards the Standardization of Requests for Digital Data across Borders in Counter-Terrorism and Organized Crimes Cases”

United Nations Headquarters, New York, 14-15 November 2019

Concept note

A. Background

The transnational nature of the Internet has brought significant new challenges for law enforcement, central authorities and prosecutors involved in countering terrorism and organized crime, as well as for service providers dealing with “terrorist” content on their platforms. These various stakeholders cannot respond alone to such challenges and must therefore work collaboratively to ensure the effective preservation, collection, handling, transfer and admissibility of cross-border electronic evidence. This requires a thorough understanding of criminal, privacy and human rights law; data protection policies; and mutual legal assistance (MLA) channels, as well as effective engagement with communications service providers (CSPs).

In this context, and pursuant to Security Council resolutions 2322 (2016) and 2396 (2017) 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) have been jointly implementing the global initiative on “Strengthening the Capacity of Central Authorities and Counter-Terrorism Prosecutors and Investigators in Obtaining Digital Evidence from Private CSPs in Cross-Border Investigations, with a Particular Focus on Counter-Terrorism Matters” since 2017. Within this framework, CTED, IAP and UNODC have facilitated the delivery of three regional workshops for South and South-East Asia, one workshop for Latin America, one regional workshop for Sub-Saharan Africa, and one national workshop in Pakistan, aimed at enhancing the capacity of central authorities, prosecutors and investigators to obtain electronic evidence in a timely manner, including through interaction with CSPs. A regional workshop for Central Asian States will be held in December 2019. CTED, IAP and UNODC have also developed activities to support CSPs, including by hosting a meeting for the private sector on “Lawful Access to Digital Data Across Borders: Implications of the CLOUD Act and GDPR”, on 12 July 2018 in San Francisco, which served to facilitate interactive discussion with representatives of large CSPs, smaller Internet platforms, and start-ups on challenges and good practices for cross-sector and cross-border cooperation on digital evidence. Lastly, two expert group meetings (EGMs) were held in Vienna, in 2018, for relevant stakeholders and experts of selected States.
These various meetings and a series of consultations led by the global initiative resulted in the publication, in January 2019, of the Practical Guide for Requesting Electronic Evidence Across Borders, which was developed in collaboration with EUROMED Justice and EUROMED Police and aims to support the efforts of law-enforcement agencies to identify ways to gather, preserve and share electronic evidence and ensure effective cross-border cooperation, including through direct contact with service providers, police-to-police cooperation, and mutual legal assistance (MLA) requests. It includes a mapping of country-specific focal points and CSPs and is available in English, French, Portuguese, Russian and Spanish, as well as on the UNODC Sherloc Platform and the IAP platform.

B. Cooperation with the Internet & Jurisdiction Policy Network

The global initiative has partnered with the Internet & Jurisdiction Policy Network, a multi-stakeholder organization established to address the tension between the cross-border Internet and national jurisdictions. Since 2012, its Paris-based Secretariat has facilitated a global policy process that now engages over 300 key entities from Governments, the world’s largest Internet companies, technical operators, civil society groups, academia and international organizations, from over 50 States. This partnership will further develop a growing network and brings additional expertise and perspectives for designing solutions that aim to strengthen cooperation between public authorities and private actors. Its Data & Jurisdiction Contact Group will participate in the third EGM. In April 2019, it produced concrete proposals for operational norms, criteria, and potential modalities for cooperation, covering, in particular, formats and transmission modalities of direct cross-border requests/orders for electronic evidence.

C. Third EGM

The third EGM will consist of two days of consultations among practitioners, law-enforcement officials, prosecutors, representatives of CSPs, civil society and key partners within international and regional organizations. It will provide an opportunity to initiate new partnerships or strengthen established partnerships. The presentations and discussions will aim to further strengthen participants’ understanding of current issues relating to electronic evidence, take stock of the global initiative’s impact thus far, and strengthen engagement between the public and private sectors and coordination across jurisdictions. The primary goal of the third EGM will be to discuss the adoption of a common template that would facilitate the process of requesting digital data across borders and strengthen cooperation between the relevant sectors and jurisdictions, in accordance with national legislation and international human rights law. In this regard, participants are invited to share good practices, illustrate ongoing challenges, and provide inputs on the feasibility of standardizing requests and on enhancing cooperation between law-enforcement agencies, central authorities, prosecutors and CSPs.