

08.06.2022

### **First group of questions**

1-3. Since the matter in question is jurisdiction to prescribe, which generally falls under substantive law, it would be appropriate to cover it in the General Provisions or in Criminalization, rather than in Procedural Provisions.

The Provisions on Jurisdiction should:

- identify mandatory and discretionary grounds for the establishment of jurisdiction by the States;
- distinguish between territorial jurisdiction (in particular, according to the whereabouts of the offender or the victim at the time when the crime was committed or their end-point ICT devices used in the crime) and extraterritorial jurisdiction based on the classical principles – active personality, passive personality principle, universal, protective and *aut dedere aut judicare*. Furthermore, following the model of other universal conventions, provisions related to the protective principle (implying that the offence is targeted against the interests of the State) should place special emphasis on offences against diplomatic and consular missions and other government bodies abroad that are typically most vulnerable to crime, including ICT-related crime;
- contain indications as to the procedure for settlement of positive jurisdictional conflicts through consultations.

At the same time, Procedural Provisions will also contain rules that determine the grounds for jurisdiction to enforce.

The use of cloud computing and anonymizers creates problems with data localization – loss of information about the location of data, including situations when such information is unavailable to service provider; situations where data comprising a unified whole (an information resource) is spread across different jurisdictions in a fragmented and/or dynamic state or has multiple mirror copies in different jurisdictions.

In this context, procedural jurisdiction of a State over data flows is established based on the location of the service provider or their operations. For the purposes of the convention, such jurisdiction is defined in relation to the requested State: such is the State in which the service provider possessing or controlling the data is located or established or otherwise acts from that State by storing, transmitting or otherwise processing the data.

4. See yesterday's response, Item 6.

5. Among other things, relevant powers and procedures related to the application of the so-called coercive or compulsory measures affecting fundamental (constitutional) human rights, such as personal privacy or secrecy of communication, for example obtaining information on traffic and content of communication, typically require judicial authorization or authorization equivalent to judicial or subsequent judicial confirmation and, as related to collection of electronic evidence in real time, imposition of time limits for its implementation with a possibility of extension. Apart from that, provisions should be envisaged for situations when the service provider of the subscriber is prohibited from or has to postpone default notifications to the subscriber on collection of his data for law enforcement purposes.

6. In our view, it is acceptable to reference only universal human rights instruments in the draft universal convention. We do not consider acceptable reference to the principles of necessity and proportionality, which are not enshrined in such treaties.

### **Second group of questions**

1. Data retention; providing subscriber information, including the type of equipment they use, their correspondence with the provider's technical support service; obtaining information about connections between subscribers and/or subscriber devices (stored traffic, including geolocation); obtaining stored data about the content of messages; receiving (intercepting) traffic and content in real time; search and seizure of information stored or processed in electronic form.

2-3. Answered above. Please see the First group of questions, Item 5.

4. Provisions should be made to enable the storage of information for the necessary time not exceeding the period specified in national legislation, and a possibility of extending such a period.

5. It would be appropriate to address the differences in terminology during the discussion of definitions.

6. The definition of subscriber information is indispensable. All the terms and definitions should be organized in one section, rather than dispersed throughout the text of the convention.

7. Since the convention should be applicable not only to reactive but also to proactive investigations, suspicion that a crime was committed should also serve as the basis for such investigative actions (coercive measures).

8. It would be justified to provide for the possibility to make statements and reservations to procedural provisions.

### **Third group of questions**

1. The degree of detail in the provisions related to asset recovery should correspond to the object and purpose of the convention and cover all the stages of the procedure.

2-3. We do not object to carrying over relevant norms of UNTOC into the document.

### **Fourth group of questions**

1. As a general rule, setting standards for the collection and admissibility of digital evidence is the prerogative of the national legislator.

At the same time, it is important that the convention stipulates the following non-self-executing norms related to legal force, as well as certification and authentication of digital evidence collected on its basis:

- related to the functions of the 24/7 Network established by the convention for the preservation of electronic evidence, the transmission of requests for legal assistance, and electronic evidence itself;

- considering the possibility for the participating States to create platforms and channels for transmission of legally valid requests for legal assistance aimed at the collection of electronic evidence and electronic evidence itself solely in paperless form based, *inter alia*, on mutual recognition of digital signatures and stamps and other means of identification and authentication of inter-State electronic document flow with a possibility of integrating such platforms and channels into the 24/7 Network.

2-4. We support reproducing the mentioned UNTOC provisions in the convention, to the exclusion of the provision regarding the establishment of criminal record in another State (Article 22 of UNTOC).