



Statement of CSISAC regarding the Trusted Government Access to Private Sector Data Ministerial Declaration

Gran Canaria, Spain
Wednesday, December 14, 2022

Civil society at OECD — CSISAC — thanks the OECD Committee on Digital and Economic Policy for welcoming our participation and engagement in the OECD Ministerial in Gran Canaria as we discuss the most pressing issues of our time. We also thank the OECD for welcoming CSISAC in its work through the decades that we have been working cooperatively with the CDEP.

In our work at the OECD, we treasure the formal multi-stakeholder procedures in place at CDEP which ensure due process is available to civil society for difficult conversations. These processes ensure openness, fairness, and non-dominance regarding OECD materials and efforts. We receive documents in advance and are given opportunity to comment. We are invited to discuss the issues with other stakeholders and give feedback at meetings, and we are invited to join in a rich dialogue around complex challenges.

This is why we are particularly concerned about the lack of these procedural guardrails for the Trusted Government Access (TGA) to Private Sector Data process at the CDEP. The TGA process began as an open process per procedure, but then after just one meeting in 2021, the TGA process was closed to civil society abruptly and remain closed save for one briefing in the summer of 2022. CSISAC saw an unfinished version of the text with which we had meaningful concerns, but we never received the final document in advance, nor were we invited to provide comments on it under embargo. The first time we are seeing the final TGA document is upon its publication at the Ministerial.

The removal of civil society's voice in one of the most sensitive and important projects at OECD sets a dangerous precedent.

We have considered this problem deeply. CSISAC recognizes the sensitivity of negotiations involving members of the intelligence community. However, after the negotiations for the TGA were agreed upon, there was not a legitimate reason to continue to exclude civil society. Involving other stakeholders into the discussions would have provided an opportunity to strengthen the process and the final product itself. The final output of this process was not intended to be secret, in fact, it has become public, but without meaningful and robust analysis from a diversity of viewpoints.

We call on the OECD to ensure that any future similarly sensitive discussions, such as national security, have an agreed upon and formal procedure in place that ensures that due process for civil society and other stakeholders is present. We call on the CDEP to work cooperatively with CSISAC and other stakeholders to create these procedures to ensure that there are no closed processes that create secrecy and a lack of meaningful stakeholder engagement at the OECD.

OECD can solve this problem by acting to create an updated set of procedural guidelines that address what happened in the TGA process and ensure it never happens again. We again request that OECD work with all of its stakeholder partners including CSISAC to craft these procedures. CSISAC will reflect on the final Ministerial Declaration and we will provide our thoughts and analysis in respect to international human rights standards and principles in the coming weeks.

There is no doubt in our minds that all of us are living in a time of profound change; a time that will likely be regarded by future historians as an important watershed. We must retain that which we know from our shared human history that makes us strong against such challenges: openness, cooperation, and mutuality of work. Civil society stands ready to assist OECD in such mutuality of work, and hopes that together we are able to swiftly resolve the procedural defects which have led us to this moment. It is in all of our interests, and those of broader society, to do so, and to ensure that closed processes lacking formal procedural protections for meaningful civil society participation do not become the norm at OECD.

Respectfully submitted,

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