

*Eticas Foundation's Oral Intervention on Chapter IV, International Cooperation
Delivered By Tanja Fachathaler on behalf of Eticas Foundation
Fifth Session - 11 to 21 April 2023*

As held

Madam Chair,
Honourable Delegations,

Allow me to focus on Art 57 dealing with data protection because the article as drafted needs significant strengthening in order to allow for a meaningful protection of personal data. As was explained last week with regard to human rights in general, this is not to weaken the future Convention but rather the opposite: it would allow for more effective and secure cooperation.

Cluster 1:

Article 57: Data protection

- **Paragraph 1:**
 - The use of personal data should be limited to only those **proceedings that are strictly related to the original request**. Thus the word "strictly" should be added before "directly". This would also clarify that personal data can be used to prevent an imminent and serious threat to life and safety of a person.
 - The term "**public safety**" **should be deleted**. It often is too vague and may lead to overly broad interpretations of the scope and limits of the present article.
 - State Parties shall ensure that the **personal data are maintained with accuracy and completeness**.
- **Paragraph 3:** An obligation should be included to promptly take **appropriate action to mitigate any harm and to notify the transmitting State Party once a security incident has been discovered** in which there is a **significant risk of physical or other harm** to individuals or to the other Party.
- **May I now propose a few additions that we consider essential:**
 - Firstly, State Parties shall keep a **record of the data received and their processing**.
 - Secondly, **appropriate safeguards** shall be in place when processing **personal data so as to prevent risks of unwarranted prejudicial impact to the persons concerned, including unlawful discrimination**.
 - It shall further **not be possible** that decisions which produce a significant adverse effect on the relevant interests of the person to whom the personal data relates be based **solely on automated processing of personal data**. This shall only be possible if set out by domestic law and with appropriate safeguards in place that include the possibility to **obtain human intervention**.
 - Any person whose personal data have been received shall be entitled to seek and **obtain access to their personal data as well as information regarding available options for redress and rectification** when the data on the person are inaccurate or have been improperly processed.
 - If access or rectification is denied or restricted, State Parties shall provide to the person concerned without undue delay a **response informing that person of the denial or restriction as well as the grounds** for such and provide information about **available options for redress**.

- In line with this, State Parties shall have in place **effective judicial and non-judicial remedies** to provide redress for violations of the data protection provisions.
- Furthermore, one or more public authorities shall be in place in State Parties to exercise **independent and effective oversight functions and powers** with respect to the safeguards in this article. The functions and powers shall include **investigation powers, the power to act upon complaints and the ability to take corrective action.**
- Finally, it shall be ensured that personal data received shall **not be shared with a third State Party or international organisation without the prior written authorisation** of the State Party that transmitted the data.

Thank you, Madam Chair.