

Eticas Foundation's Oral Intervention on the Zero Draft, Covering Groups 11-15

**Delivered By Tanja Fachathaler on behalf of Eticas Foundation
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Mister Vice-Chair,
Excellencies,
Honourable Delegates,

Representing Eticas Foundation, we appreciate the opportunity to once again intervene in the Plenary and I would like to make the following remarks on Group 11 covering mutual legal assistance:

First of all, let me start by saying that we are pleased that many of the controversial provisions proposed in the CND's chapter on international cooperation were not included in the Zero Draft. However, the chapter on mutual legal assistance as it currently stands still shows significant gaps and leaves room for improvement in order to ensure a smooth and secure functioning of the proposed Convention.

On Article 40 setting out the general principles and procedures related to mutual legal assistance: We urge delegations to explicitly expand the grounds for refusal in mutual legal assistance on the basis of human rights.

Further, we strongly recommend not to expand the surveillance powers under this Convention to serious crimes and offences covered by the very vague provision of Article 17. We generally find it problematic to discuss cooperation mechanisms when not even the scope and the offences covered by the future Convention are clearly defined and agreed upon. We therefore urge to delete such broad provisions and instead stick to core cyber-dependent crimes only as there seems to be some potential for agreement.

If the scope were maintained broader, the future Convention should, at the very least, be confined to "serious crimes", as defined in Article 2 of the UNTOC and should explicitly and clearly include the principle of dual criminality.

Further, we strongly recommend the deletion of the provisions on real time interception of content and traffic data in Articles 29 and 30 and, by the same token, the international cooperation as suggested in Articles 45 and 46. These powers constitute significant privacy infringements and necessary and appropriate safeguards as referred to in more detail in previous interventions are still lacking and – as it seems – far from reaching consensus. As a bare minimum, these powers must be balanced with the principles of legality, proportionality and necessity. As concerns the categories of data: there is an urgent need to be clearly and narrowly defined in the Convention. There must not be a blanket data access! Access to traffic data is equally dangerous, so there must not be lower safeguards.

If Articles 45 and 46 were to remain in the text, we support the suggestion to not include them as obligations but on a voluntary basis to cooperate only.

Mister Vice-Chair, let me point out once again that in order to make these provisions in the future Convention work, it is of paramount importance that sufficient safeguards are in place to ensure that the human rights of the persons concerned by the far-reaching powers granted by the Convention are respected and sufficiently protected.

These should contain an explicit reference to the principles of legality, necessity and proportionality, including by explicitly requiring prior independent (preferably judicial) authorisation before any interference with privacy can occur, and based on strong evidentiary showing and clear limitation of the scope and the duration of such power. The articles should require independent oversight bodies with the authority to conduct audits and spot checks, along with adequate notification and access to effective redress mechanisms. Powers and procedures provided for in this Convention should not undermine the security and integrity of digital communications and services. These amendments are all the more critical in the context of mutual legal assistance.

We hope to continue the discussion on these issues and remain available for further input on the individual provisions during the negotiations.

Thank you.