

Eticas Foundation's Oral Intervention on Chapter II, Criminalisation (2nd Round)

Delivered By Tanja Fachathaler on behalf of Eticas Foundation Fourth Session - 9 January to
20 January 2023

As held

Madam Chair,
Honourable Representatives,

We are delighted to contribute to the discussion on the provisions in more detail and we look forward to the upcoming days of further discussion and exchange in these matters.

We all share the aim of a trustworthy digital environment that respects human rights. But this can only be achieved if this Convention is **narrow in scope** and in order not to criminalise **the vital work of security researchers, journalists or whistleblowers – acting in good faith**.

We have not had the opportunity to speak in the first round on criminalisation, so I would like to point out now that we are of the view that the Convention's **scope should be limited to Cluster 1 only**.

It is crucial that the criminalisation provisions be amended and a **standard of criminal intent and harm be introduced in all the provisions that in the end are going to be included in the Convention so as to avoid the criminalisation of legitimate conduct**.

The requirement of an „intentional“ commission of a crime is not consistent throughout the CND, as has been highlighted by many speakers this morning. We agree that Clusters 5 and 7 in this regard are to be treated differently, as has already been discussed by the States' Representatives today.

However, as regards Cluster 1 – and if it were to remain in the final test of the Convention, also Cluster 2 - recommend to carefully examine the provisions in that regard and add the requirement of „**criminal or fraudulent intent**“ everywhere where it is missing at the moment. It is in our opinion not enough to include standards such as „without authorisation“ or „unlawfully“ which were discussed by Member States delegates, at least not without further definition. Such wording **risks allowing the criminalisation of acts carried out with beneficial intent**, such as security research. We thereby risk prosecuting behaviour that did not or could not have been expected to cause harm or damage.

Also, a requirement of criminal or fraudulent intent should be included in Arts 13 and 14 and other Articles which are currently discussed in informal co-facilitation and which will be discussed here at a later stage.

Madam Chair, as closing remarks, please allow me to once more highlight the open letter signed by 79 NGOs from more than 45 countries that raise alarm about the human rights implications of the current draft of the treaty under negotiation.

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

Thank you.