

USCIB Intervention
Article 36: Protection of Personal Data
August 25, 2023

Thank you, Madame Chair.

I am speaking on behalf of the U.S. Council for International Business – or USCIB – and we would like to associate ourselves with the comments of the International Chamber of Commerce, Microsoft and the Cybersecurity Tech Accord.

We would like to make the following points focused on protection of personal data:

We are pleased to see an article of the Convention focused on the Protection of Personal Data, which stipulates that any transfer of personal data must comply with the applicable laws of State Parties. As we emphasized in our statement on 22 August, by aligning with existing instruments and data protection standards, we can avoid confusion, delays, increased costs, and a potential cooperation breakdown related to the pursuit of law enforcement objectives.

However, we feel that the principles of necessity and transparency should be better reflected throughout the chapter.

As my business colleagues have noted, many states will refuse requests for access to data -- especially data related to their own nationals -- if they don't believe that the requesting state has sufficiently robust protections in place to safeguard personal privacy and human rights.

Ensuring that the Convention embodies the minimum protections that would allow all states to provide access to the data necessary for effective international cybercrime cooperation is therefore not just important, it is fundamental to whether this Convention will be successful.

Concretely, we propose to include the following additional elements to Article 36:

1. That where the source of the data is a data custodian, that this entity be entitled to give users notice, especially when doing so does not interfere with or otherwise compromise an ongoing investigation or prosecution. In addition, data custodians should be authorized to periodically publish the number of requests and the state parties who have made them. This will ensure full transparency;
2. That data custodians are granted the right to challenge government demands for data on behalf of users, including based on potential conflicts of law; and
3. That the article is without prejudice to a State Party's domestic legal framework where it imposes conditions on the transfer of person data to other states. This is very important to ensure conflicts of laws problems do not frustrate cooperation; in such cases the relevant States Parties should consult one another to see if a resolution can be found.

Thank you.

394 words.