USCIB Intervention
General Provisions
August 22, 2023

Madame Chair, distinguished delegates, the U.S. Council for International Business – or USCIB - joins other stakeholders in expressing sincere thanks to you, Madame Chair, for your efforts supporting stakeholders' participation in the 6th session.

USCIB 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 that cover the articles on scope and safeguards:

We believe that the success of the negotiations and effective implementation of the convention hinge on a clearly and narrowly defined scope of the Convention agreed to by consensus. The convention should focus on a concrete set of serious cyber-dependent criminal offences, where dual criminality can be established.

The Convention should also align with existing instruments and data protection standards to avoid conflict of laws, confusion, delays, increased costs, and potential cooperation breakdown.

We note the draft currently includes expansive provisions for government access to personal data related to a wide variety of cyber-enabled crimes not defined in this convention without appropriate safeguards. Combined with the lack of clarity on jurisdiction for this category of crimes, data custodians will have no way of determining whether government requests for data access are reasonable and proportional.

It is critical the Convention aligns with data protection standards to avoid jurisdictional disputes, conflict of laws, confusion, delays, increased costs, and potential cooperation breakdown.

Concretely, we propose to include the following safeguards in article 24:

- **The right for data custodians to give users notice,** especially when doing so does not interfere with or otherwise compromise an ongoing investigation or prosecution;
- **The right of data custodians to challenge government demands for data** on behalf of users, including based on potential conflicts of law;
- **And the inclusion of data protection clause** to ensure that states' data protection frameworks are not overridden by this convention and that end users are adequately protected against potential misuse or unauthorized dissemination of their data.

In this respect, we commend to UN member States the OECD Declaration on Government Access to Personal Data Held by Private Sector Entities, adopted in December 2022, as that framework aims to clarify how national security and law enforcement agencies can access personal data under existing legal frameworks.

Thank you.