

## IOE Comments on Article 12 of the third revised draft treaty

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Chair

International assistance and cooperation are important to promote human rights and access to remedy. Countries must undertake more efforts to support each other through technical cooperation, peer learning and the exchange of experience to strengthen judicial systems.

With regards to article 12.5: The list of proposed actions here to promote cooperation between States such as: "executing searches and seizures"; "examining objects and sites"; and "facilitating the freezing and recovery of assets" are not appropriate as they are not subject to legal due process. These wide-ranging examples could enable politically motivated abuse and frivolous prosecutions against business, as well as compound existing problems in a number of States in relation to other bad-faith or harassing actions against companies.

With regards to article 12.10: Under international law, an important check on a foreign court's adjudicative jurisdiction has always been the power of a national court to refuse to recognise the enforcement of that foreign court's decision. This is an important safeguard that allows a national court to reject a foreign court's decision to exercise jurisdiction over a defendant located in the country of the national court. However, this important safeguard continues to be removed by this draft as it still mandates that all State Parties recognise and enforce another State Party's court order – with very limited exceptions. This could result in the State creating a breach of their obligation to protect their own citizens human rights.

Thank you