

Council of Europe Convention on Access to Official Documents

Tromsø, 18.VI.2009

Explanatory Report
Français

Preamble

The member States of the Council of Europe and the other signatories hereto,

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Bearing in mind, in particular, Article 19 of the Universal Declaration of Human Rights, Articles 6, 8 and 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the United Nations Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus, 25 June 1998) and the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981 (ETS No. 108);

Bearing in mind also the Declaration of the Committee of Ministers of the Council of Europe on the freedom of expression and information, adopted on 29 April 1982, as well as recommendations of the Committee of Ministers to member States No. R (81) 19 on the access to information held by public authorities, No. R (91) 10 on the communication to third parties of personal data held by public bodies, No. R (97) 18 concerning the protection of personal data collected and processed for statistical purposes, No. R (2000) 13 on a European policy on access to archives and Rec(2002)2 on access to official documents;

Considering the importance in a pluralistic, democratic society of transparency of public authorities;

Considering that exercise of a right to access to official documents:

- i provides a source of information for the public;
- ii helps the public to form an opinion on the state of society and on public authorities;
- iii fosters the integrity, efficiency, effectiveness and accountability of public authorities, so helping affirm their legitimacy;

Considering, therefore, that all official documents are in principle public and can be withheld subject only to the protection of other rights and legitimate interests,

Have agreed as follows:

Section I

Article 1 – General provisions

1 The principles set out hereafter should be understood without prejudice to those domestic laws and regulations and to international treaties which recognise a wider right of access to official

documents.

2 For the purposes of this Convention:

a i “public authorities” means:

- 1 government and administration at national, regional and local level;
- 2 legislative bodies and judicial authorities insofar as they perform administrative functions according to national law;
- 3 natural or legal persons insofar as they exercise administrative authority.

ii Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that the definition of “public authorities” also includes one or more of the following:

- 1 legislative bodies as regards their other activities;
- 2 judicial authorities as regards their other activities;
- 3 natural or legal persons insofar as they perform public functions or operate with public funds, according to national law.

b “official documents” means all information recorded in any form, drawn up or received and held by public authorities.

Article 2 – Right of access to official documents

1 Each Party shall guarantee the right of everyone, without discrimination on any ground, to have access, on request, to official documents held by public authorities.

2 Each Party shall take the necessary measures in its domestic law to give effect to the provisions for access to official documents set out in this Convention.

3 These measures shall be taken at the latest at the time of entry into force of this Convention in respect of that Party.

Article 3 – Possible limitations to access to official documents

1 Each Party may limit the right of access to official documents. Limitations shall be set down precisely in law, be necessary in a democratic society and be proportionate to the aim of protecting:

- a national security, defence and international relations;
- b public safety;
- c the prevention, investigation and prosecution of criminal activities;
- d disciplinary investigations;
- e inspection, control and supervision by public authorities;
- f privacy and other legitimate private interests;
- g commercial and other economic interests;
- h the economic, monetary and exchange rate policies of the State;
- i the equality of parties in court proceedings and the effective administration of justice;
- j environment; or
- k the deliberations within or between public authorities concerning the examination of a matter.

Concerned States may, at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that communication with the reigning Family and its Household or the Head of State shall also be included among the possible limitations.

2 Access to information contained in an official document may be refused if its disclosure would or would be likely to harm any of the interests mentioned in paragraph 1, unless there is an overriding public interest in disclosure.

3 The Parties shall consider setting time limits beyond which the limitations mentioned in paragraph 1 would no longer apply.

Article 4 – Requests for access to official documents

1 An applicant for an official document shall not be obliged to give reasons for having access to the official document.

2 Parties may give applicants the right to remain anonymous except when disclosure of identity is essential in order to process the request.

3 Formalities for requests shall not exceed what is essential in order to process the request.

Article 5 – Processing of requests for access to official documents

1 The public authority shall help the applicant, as far as reasonably possible, to identify the requested official document.

2 A request for access to an official document shall be dealt with by any public authority holding the document. If the public authority does not hold the requested official document or if it is not authorised to process that request, it shall, wherever possible, refer the application or the applicant to the competent public authority.

3 Requests for access to official documents shall be dealt with on an equal basis.

4 A request for access to an official document shall be dealt with promptly. The decision shall be reached, communicated and executed as soon as possible or within a reasonable time limit which has been specified beforehand.

5 A request for access to an official document may be refused:

- i if, despite the assistance from the public authority, the request remains too vague to allow the official document to be identified; or
- ii if the request is manifestly unreasonable.

6 A public authority refusing access to an official document wholly or in part shall give the reasons for the refusal. The applicant has the right to receive on request a written justification from this public authority for the refusal.

Article 6 – Forms of access to official documents

1 When access to an official document is granted, the applicant has the right to choose whether to inspect the original or a copy, or to receive a copy of it in any available form or format of his or her choice unless the preference expressed is unreasonable.

2 If a limitation applies to some of the information in an official document, the public authority should nevertheless grant access to the remainder of the information it contains. Any omissions should be clearly indicated. However, if the partial version of the document is misleading or meaningless, or if it poses a manifestly unreasonable burden for the authority to release the remainder of the document, such access may be refused.

3 The public authority may give access to an official document by referring the applicant to easily accessible alternative sources.

Article 7 – Charges for access to official documents

1 Inspection of official documents on the premises of a public authority shall be free of charge. This does not prevent Parties from laying down charges for services in this respect provided by archives and museums.

2 A fee may be charged to the applicant for a copy of the official document, which should be reasonable and not exceed the actual costs of reproduction and delivery of the document. Tariffs of charges shall be published.

Article 8 – Review procedure

1 An applicant whose request for an official document has been denied, expressly or impliedly, whether in part or in full, shall have access to a review procedure before a court or another independent and impartial body established by law.

2 An applicant shall always have access to an expeditious and inexpensive review procedure, involving either reconsideration by a public authority or review in accordance with paragraph 1.

Article 9 – Complementary measures

The Parties shall inform the public about its right of access to official documents and how that right may be exercised. They shall also take appropriate measures to:

- a educate public authorities in their duties and obligations with respect to the implementation of this right;
- b provide information on the matters or activities for which they are responsible;
- c manage their documents efficiently so that they are easily accessible; and
- d apply clear and established rules for the preservation and destruction of their documents.

Article 10 – Documents made public at the initiative of the public authorities

At its own initiative and where appropriate, a public authority shall take the necessary measures to make public official documents which it holds in the interest of promoting the transparency and efficiency of public administration and to encourage informed participation by the public in matters of general interest.

Section II

Article 11 – Group of Specialists on Access to Official Documents

1 A Group of Specialists on Access to Official Documents shall meet at least once a year with a view to monitoring the implementation of this Convention by the Parties, notably:

- a reporting on the adequacy of the measures in law and practice taken by the Parties to give effect to the provisions set out in this Convention;
- b
 - i expressing opinions on any question concerning the application of this Convention;
 - ii making proposals to facilitate or improve the effective use and implementation of this Convention, including the identification of any problems;
 - iii exchanging information and reporting on significant legal, policy or technological developments;
 - iv making proposals to the Consultation of Parties for the amendment of this Convention;
 - v formulating its opinion on any proposal for the amendment of this Convention made in accordance with Article 19.

2 The Group of Specialists may request information and opinions from civil society.

3 The Group of Specialists shall consist of a minimum of 10 and a maximum of 15 members. The members are elected by the Consultation of Parties for a period of four years, renewable once, from a list of experts, each Party proposing two experts. They shall be chosen from among persons of the highest integrity recognised for their competence in the field of access to official documents. A maximum of one member may be elected from the list proposed by each Party.

4 The members of the Group of Specialists shall sit in their individual capacity, be independent and impartial in the exercise of their functions and shall not receive any instructions from governments.

5 The election procedure of the members of the Group of Specialists shall be determined by the Committee of Ministers, after consulting with and obtaining the unanimous consent of the Parties

to the Convention, within a period of one year following the entry into force of this Convention. The Group of Specialists shall adopt its own rules of procedure.

Article 12 – Consultation of the Parties

- 1 The Consultation of the Parties shall be composed of one representative per Party.
- 2 The Consultation of the Parties shall take place with a view to:
 - a considering the reports, opinions and proposals of the Group of Specialists;
 - b making proposals and recommendations to the Parties;
 - c making proposals for the amendment of this Convention in accordance with Article 19;
 - d formulating its opinion on any proposal for the amendment of this Convention made in accordance with Article 19.
- 3 The Consultation of the Parties shall be convened by the Secretary General of the Council of Europe within one year after the entry into force of this Convention in order to elect the members of the Group of Specialists. It shall subsequently meet at least once every 4 years and in any case, when the majority of the Parties, the Committee of Ministers or the Secretary General of the Council of Europe requests its convocation. The Consultation of the Parties shall adopt its own rules of procedure.
- 4 After each meeting, the Consultation of the Parties shall submit to the Committee of Ministers an activity report.

Article 13 – Secretariat

The Consultation of the Parties and the Group of Specialists shall be assisted by the Secretariat of the Council of Europe in carrying out their functions pursuant to this Section.

Article 14 – Reporting

- 1 Within a period of one year following the entry into force of this Convention in respect of a Contracting Party, the latter shall transmit to the Group of Specialists a report containing full information on the legislative and other measures taken to give effect to the provisions of this Convention.
- 2 Thereafter, each Party shall transmit to the Group of Specialists before each meeting of the Consultation of the Parties an update of the information mentioned in paragraph 1.
- 3 Each Party shall also transmit to the Group of Specialists any information that it requests to fulfil its tasks.

Article 15 – Publication

The reports submitted by Parties to the Group of Specialists, the reports, proposals and opinions of the Group of Specialists and the activity reports of the Consultation of the Parties shall be made public.

Section III

Article 16 – Signature and entry into force of the Convention

- 1 This Convention shall be open for signature by the member States of the Council of Europe.
- 2 This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
- 3 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which 10 member States of the Council of Europe have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 2.

4 In respect of any Signatory State which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the expression of its consent to be bound by the Convention in accordance with the provisions of paragraph 2.

Article 17 – Accession to the Convention

1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, after consulting the Parties to this Convention and obtaining their unanimous consent, invite any State which is not a member of the Council of Europe or any international organisation to accede to this Convention. The decision shall be taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by unanimous vote of the representatives of the Parties entitled to sit on the Committee of Ministers.

2 In respect of any State or international organisation acceding to the Convention under paragraph 1 above, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 18 – Territorial application

1 Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.

2 Any State may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration for whose international relations it is responsible. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 19 – Amendments to the Convention

1 Amendments to this Convention may be proposed by any Party, the Committee of Ministers of the Council of Europe, the Group of Specialists or the Consultation of the Parties.

2 Any proposal for amendment shall be communicated by the Secretary General of the Council of Europe to the Parties.

3 Any amendment shall be communicated to the Consultation of the Parties, which, after having consulted the Group of Specialists, shall submit to the Committee of Ministers its opinion on the proposed amendment.

4 The Committee of Ministers shall consider the proposed amendment and any opinion submitted by the Consultation of the Parties and may approve the amendment.

5 The text of any amendment approved by the Committee of Ministers in accordance with paragraph 4 shall be forwarded to the Parties for acceptance.

6 Any amendment approved in accordance with paragraph 4 shall come into force on the first day of the month following the expiration of a period of one month after the date on which all Parties have informed the Secretary General that they have accepted it.

Article 20 – Declarations

Any Party may, at the time of the signature or when depositing its instrument of ratification, acceptance, approval or accession, make one or more of the declarations provided for in Articles

1.2, 3.1 and 18. It shall notify any changes to this information to the Secretary General of the Council of Europe.

Article 21 – Denunciation

1 Any Party may at any time denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

2 Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General.

Article 22 – Notification

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe and any State and international organisation which has acceded or been invited to accede to this Convention of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Convention in accordance with Articles 16 and 17;
- d any declaration made under Articles 1.2, 3.1 and 18;
- e any other act, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Tromsø, this 18th day of June 2009, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to any State and international organisation invited to accede to this Convention.