



PRESS RELEASE

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COUNCIL OF EUROPE SPECIALISTS REFUSE TO CONSIDER PROPOSALS TO IMPROVE DRAFT TREATY ON ACCESS TO DOCUMENTS

CONCERNS RAISED BY CIVIL SOCIETY, OSCE & INFORMATION COMMISSIONERS DISMISSED WITHOUT FURTHER DISCUSSION

Strasbourg, October 15 — A group of 14 country specialists¹ meeting on 9-12 September in Strasbourg refused to consider proposals to bring the future European Convention on Access to Official Documents into line with the prevailing standards in the 47 countries of the Council of Europe.

In a 10 to 4 vote, the specialists rejected further consideration of key aspects of the right to information such as the right to request access to all documents held by the judicial and legislative branches of government. They also dismissed further discussion of the right to appeal administrative failures to respond to an access request – a common problem in many countries. These provisions are currently not included in the draft Convention.

The specialists had before them specific drafting proposals submitted by 245 civil society groups from across Europe and around the world. They had received similar calls to improve the draft treaty from the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Slovenian government, and the information commissioners of six European countries – Germany, Hungary, Serbia, Slovenia, and the United Kingdom, along with Macedonia which joined the civil society submission.

The OSCE submission characterized the current draft of the convention as containing “substantial deficiencies” and urged the group to address them.

Further improvements were, however, rejected without any discussion on the substance. The Group’s meeting report notes the reluctance to reopen discussions on a text that “as it stands represents a compromise between very polarised views that exist among member states”. One member of the group stated that “what we have done is to produce a proposal for minimum standards; but this is not something that we had an explicit task to do.”

In the same vein, a majority of the Group also decided to set no limits on reservations that can be entered by States Parties. This means that a State can sign the Convention but then is free to enter reservations on any aspect of it. This decision goes against a clear tendency in human rights treaty-making. Other Council of Europe human rights treaties, such as the Torture and Trafficking

¹ Countries participating in the Group of Specialists and present at the 9-12 October meeting were Belgium, Bulgaria, Denmark, France, Italy, the Netherlands, Norway, Poland, Portugal, Slovenia, Spain, Sweden, Turkey and the UK.

conventions and the Minority Languages charter, allow for no or very limited reservations on specific provisions that do not impinge upon the core of the right at issue.

Helen Darbishire, Director of Access Info Europe, who was present as an observer at the discussions, commented: "It is very disappointing that a Group dominated by the established democracies of Western Europe should refuse to even consider some very concrete language that would have ensured that the world's first treaty on access to information sets acceptable minimum standards."

"Rather than acting as independent specialists, a number of members of the Group have openly stated that they have instructions from their governments to ensure that the future Convention requires no changes to domestic law. The result is a draft treaty that accommodates the flaws and idiosyncratic features of the domestic legislation of countries represented in the Group, and hence falls below prevailing standards. This is a betrayal of the Group's mandate."

The draft treaty will now pass to the Council of Europe's Steering Committee on Human Rights (CDDH) for consideration on 8 November 2007. Access Info Europe, ARTICLE 19 and the Open Society Justice Initiative are calling on the CDDH not to adopt the treaty as it stands. They urge the CDDH either to introduce the proposed improvements itself or return them to the Group of Specialists for further consideration.

Notes for Editors

The current draft of the treaty has a number of problems:

1. The treaty fails to require governments to give access to all official documents held by legislative bodies and judicial authorities, seriously limiting the scope of the right to information;
2. The treaty fails to guarantee a right of access to official documents relating to public functions which are performed by private bodies – a particular concern in the era of privatization and outsourcing of government functions; and
3. The treaty will not specify a minimum set of information that governments should make available proactively, without the need for requests, such as basic organisational and financial information, or data on public procurement processes.
4. The treaty does not protect the right of requestors to challenge violations in the processing of their requests such as administrative silence, refusal to receive requests, or excessive costs for copies.
5. The treaty fails to guarantee that requestors will have a right to appeal to an independent body (court, commissioner, or similar) that can issue a binding decision and order release of a requested document.
6. The treaty fails to establish that states should set maximum time limits for answering requests.
7. There are flaws in the definition of certain exemptions, such as the failure to ensure that only *legitimate* commercial interests can be a valid ground for withholding official documents.

The Group of Specialists which has been tasked with drafting the European Convention on Access to Official Documents began work in January 2006 and its mandate runs out at the end of 2007. The recent meeting (9-12 October) was the last scheduled. The draft treaty requires approval from the Council of Europe's Steering Committee on Human Rights and Council of Ministers before it can be opened for signatures and ratification. It is likely that other Committees and possibly the Parliamentary Assembly of the Council of Europe will be consulted before finalization of the Convention.

The civil society open letter with details on the full range of concerns can be downloaded at <http://tinyurl.com/yr4fnr>. The OSCE letter can be accessed at <http://tinyurl.com/2xpaaZ> and the draft Convention is available in Appendix III of the Council of Europe meeting reports at <http://tinyurl.com/2vjtoo>.

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