

News update, 11 December 2007:

Campaign on European Treaty

Government responses

The Council of Europe's main Human Rights Committee decided on Wednesday 7 November 2007 to postpone until April 2008 the adoption of the draft European Convention on Access to Official Documents in order to give member states time for consideration of outstanding problems with the draft text.

Serious concerns about the treaty were presented to the meeting by over 250 civil society organisations, the Information Commissioners of eight member states¹, the Slovenian Government, and the Organization for Security and Cooperation in Europe (OSCE). The concerns include that the proposed Convention establishes a right of access to information but limits the right to administrative information, excluding other information held by the judicial and legislative branches and by private bodies performing public functions from the mandatory part of the treaty. Other major concerns include that there is no right to appeal administrative silence, and no right of recourse to a body empowered to order release of requested information if it decides in favour of the applicant.

At the meeting of the Steering Committee on Human Rights (CDDH) in Strasbourg on 7 November, a number of countries expressed concern that the treaty had been drafted by only 15 of the 47 member states of the Council of Europe with virtually no input from the other 32 states. Leading the call for more time to discuss setting higher standards were representatives of Slovenia and Norway, joined by representatives of Romania, Macedonia, Croatia, Serbia, Hungary, Latvia, Ireland, Austria and Portugal.

Some other states, including the UK, urged that the 15 country specialists who had prepared the draft text of the Convention should finish the Explanatory Memorandum (which explains how the Convention should be interpreted) before discussing where improvements are needed. The CDDH directed the specialists to complete the Explanatory Memorandum by February 2008 to permit consideration of both the treaty text and the Memorandum at the Committee's next plenary meeting in April 2008.

States arguing most strongly for keeping the current text with no changes included Denmark, France, Germany, Belgium, Bulgaria, and Poland. Reasons given included that not all states have laws that meet the higher standards and that the current draft's "minimum standards" approach is necessary to encourage ratifications by the largest possible number of member states. Responding to this, the Latvian representative noted that by setting standards in the Convention too low, ratifications would be easy, but the treaty would, in effect, be a dead letter.

Helen Darbshire, Executive Director of Access Info Europe who addressed the 7 November meeting also on behalf of the Open Society Justice Initiative, Article 19, the FOI Advocates Network and the other NGOs who had signed the letter to the Council of Europe, welcomed the decision to postpone further discussion on the Convention until there had been more time for consultations.

Ms Darbshire noted “The paradox is that it’s the new democracies which have joined traditionally open states like Norway in calling for a strong Convention, over the objections of several older democracies. The countries of Eastern Europe know better than any the dangers of closed societies and see the importance of a strong Convention on access to information accompanied by a strong monitoring mechanism in order to defend the right in future years.”

Notes for Editors

1. In October 2007, the Information Commissioners of Estonia, Germany, Hungary, Ireland, Serbia, Slovenia, and the UK sent submissions to the Council of Europe calling for the draft Convention to be improved; the Macedonian Commissioner supported the same points by joining the letter sent by 250 civil society groups and 270 individuals.
2. The future European Convention on Access to Official Documents will be the world’s first binding instrument on this right and will be open for signature by all 47 member states of the Council of Europe. It will set standards on the right to information globally. The treaty will also be open to signature by international organizations such as the Council of Europe Secretariat or in due course the European Union.
3. The seven main problems with the current draft text of the Convention are:
 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;
 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;
 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.

In addition, ratifying states will be able to enter reservations to any provision of the treaty.

For more information, please contact

- Helen Darbshire, Executive Director, Access Info Europe
+ 34 667 685 319 helen@access-info.org
- Daniel Simons, Legal Officer, ARTICLE 19,
+ 44 20 7239 1192 daniel@article19.org
- Darian Pavli, Legal Officer, Open Society Justice Initiative
+ 1 646 247 4504 dpavli@justiceinitiative.org