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STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

**GROUP OF SPECIALISTS ON ACCESS TO OFFICIAL
INFORMATION (DH-S-AC)**

3rd meeting
Strasbourg, 9-12 March 1999

REPORT

Introduction

1. The Group of Specialists on access to official information (DH-S-AC) held its third meeting from 9-12 March 1999 at the Palais de l'Europe, Strasbourg, with Ms Helena JÄDERBLOM (Sweden) in the Chair.
2. The list of participants is set out in Appendix I. The agenda as adopted appears in Appendix II, with references to the working documents.
3. During this meeting the DH-S-AC in particular:
 - further examined the basic elements ([DH-S-AC \(98\) 6](#), Appendices III and IV) identified at the previous meetings (see item 2 of the agenda). The texts chosen as a basis for discussion at the next meeting appear in Appendices III and IV to this report;
 - adopted a draft opinion, for submission to [the CDDH](#), on the draft recommendation on a European policy on access to archives (see item 3 of the agenda). The draft opinion is set out in Appendix V to this report;
 - held an exchange of views on its contribution to the "monitoring" exercise which the Ministers' Deputies had asked the CDDH to conduct on national rules and practices concerning secrecy of and access to public information;
 - held an exchange of views on the contribution it might make to preparations for the next [European Ministerial Conference on Human Rights](#) (Rome, 3 and 4 November 2000), whereby the CDDH intended to associate itself with the celebrations of the 50th anniversary of the [European Convention on Human Rights](#).

Item 1 of the agenda: Opening of the meeting and adoption of the agenda

4. See the introduction.

Item 2 of the agenda: Further examination of the elements to provide a basis for discussion on the future work of the DH-S-AC

The DH-S-AC continued its examination of a number of elements which could provide a basis for discussion on its future work. The starting point was the elements appearing in Appendices III and IV of the report on the previous meeting (document DH-S-AC (98) 6).

6. The discussion focused on the restrictions which member States might impose on the right of access to public documents (Principle 2 set out in Appendix IV to document DH-S-AC (98) 6). In this connection, the DH-S-AC held an in-depth exchange of views on the definition of "official documents" contained in the previously cited Appendix. It also identified a number of elements which should be included in the explanatory memorandum on the future recommendation.

Definition of "official documents "

7. A number of experts thought it necessary to give a more precise definition of what was meant by "official documents", in so far as the concept directly affected the scope of the future recommendation.

8. According to some experts, the concept did not cover documents which had not yet been approved by the authorities. In other words, a document became public only once the relevant public authority had finalised it by approving it. For instance, a draft regulation could be regarded as “official” as soon as the relevant authority had approved it in draft form, even if discussions on its subject matter continued. Other experts were of the opinion that all finalised documents should be treated as official documents.

9. In principle, only official documents can be communicated. Views differed, however, as to whether it was necessary to wait until the end of discussions to which a document related before communicating it, or whether, on the contrary, for example a document might already be communicated in draft form, in order to involve the public in the decision-making process. The DH-S-AC noted that traditions and practices in Europe differed in this respect. It decided to exclude from the definition of "official documents" only documents still being drafted, a concept which would be explained in the explanatory memorandum.

Possible derogations from the right of access to official documents

10. The DH-S-AC continued its discussion of the limits which member States might place on access to official documents with the aim of protecting other legitimate rights and interests. The discussion was based on the list of possible limitations communicated by the UK expert, appearing as paragraph 1 of principle 2 in Appendix IV to document DH-S-AC (98) 6.

11. The DH-S-AC amended and supplemented this list in the course of the discussion. In particular, it referred to the limits which states might place on access to documents in order to protect: privacy and other legitimate interests such as inviolability of the person; commercial interests and other economic interests, whether public or private; nature (communication of some items of information might, for instance, endanger protected species); the government's financial, monetary and exchange policies (communication of some items of information would constitute a risk at certain stages in their discussion), and so on. The UK expert supported the proposal to delete point viii on the list (“information supplied to public authorities in confidence”), but suggested to deal with this issue under another principle. The DH-S-AC agreed to put this point into a footnote of the draft instrument and to come back to this at a later stage. The list adopted as a basis of discussion for the group's future work is set out in principle 2 of paragraph 1 of Appendix IV.

12. The DH-S-AC drew attention to the exhaustive nature of the list and to the need for public authorities to impose restrictions only as an exceptional measure. The rule must be free access to documents and confidentiality the exception, in cases where other legitimate interests took precedence. When a public authority decided to restrict access to a document on one of the grounds given in the list it must assess any damage that would be done by refusing to communicate that document. In other words, a measure restricting access to a document should be proportionate to the overriding interest which it was supposed to serve. Furthermore, any restriction must be applied according to narrow criteria.

13. One expert drew attention to the need to envisage restrictions on access in order to protect third party interests. However, it was pointed out that such interests could be covered by making reference to other grounds already on the list, such as protection of privacy, prevention of crime or protecting economic interests.

14. Furthermore, the DH-S-AC discussed whether it was appropriate to envisage restricting access in order to safeguard the confidentiality of government debate. It had in mind the fact that in many countries members of the government were jointly liable and any internal conflict

preceding a government decision must not be revealed. In this connection, one expert was against any restriction which would prevent the media from reporting on debates of importance to society. Conversely, other experts thought that confidentiality allowed dispassionate debate and served society's interests. Some experts would accept the idea of confining a restriction to central government debate alone, whereas others thought it logical that such a restriction should also apply to local and regional government.

15. Following the request of the UK expert, the DH-S-AC decided to revert on the issue of State obligations following the receipt of documents entrusted to it confidentially.

16. Moreover, the DH-S-AC held an exchange of views on the usefulness of indicating that national legislations should foresee a "harm-test" which could arise from the eventual disclosure of a document or of the information therein. After a debate, the DH-S-AC decided to include a new second paragraph to Principle 2 according to which access may be refused only if the disclosure of the document or of the information contained therein risks to harm the interests mentioned in paragraph 1 of Principle 1 and taking into account public interest attached to the disclosure.

17. Finally, the DH-S-AC decided to mention, in a new Principle 3, the question of time limits concerning the restrictions mentioned in Principle 2. It retained the following wording: "Unless exceptional cases demand otherwise, member States should set maximum time limits for the restrictions mentioned in Principle 2." In this context, the DH-S-AC decided to explain what is being understood as "exceptional cases" by mentioning some examples of the practice of certain Member States in the Explanatory Memorandum. Thus, in the Netherlands, all documents have to be accessible after twenty years, the only possible exceptions being the protection of privacy and the national interest.

Item 3 of the agenda: Preparation of a draft opinion, for the CDDH, concerning the draft Recommendation on a European Policy on Access to Archives

18. Further to the decisions taken by the CDDH, the DH-S-AC drew up a draft opinion, for the CDDH, concerning the draft recommendation on a European policy on access to archives being prepared within the Culture Committee (CC-Cult) of the Council for Cultural Co-operation (CDCC). The discussion was based on the most recent version of the draft recommendation (21 January 1999), resulting from an informal working meeting in Paris on 19 January 1999, in which representatives of the archivists' profession, of CC-Cult, of the DH-S-AC, and of their respective secretariats had taken part.

19. A number of representatives of the Archives sector and of CC-Cult were present at this meeting of the DH-S-AC in order to inform the group of specialists of their concerns about the future of the compromise text adopted in Paris. It had not been possible to discuss that text within the International Council on Archives and it therefore could not be considered to reflect their official approach. In particular, a number of representatives felt that the new text fundamentally changed the scope of the draft recommendation, in so far as it would not cover documents not yet in the archives but destined to be archived at some future date.

20. The representatives of the Archives sector felt that the main problem at present was the difficulties encountered by individuals, in particular people doing research, in obtaining access to archived documents of particular importance to an understanding of their country's historical reality. This problem arose in particular in certain central and eastern European countries. It was desirable that a draft recommendation from the [Council of Europe](#) should give the governments of these states a number of guiding principles in the field.

21. The DH-S-AC was aware of this difficulty and thanked the representatives of the Archives sector for having clarified the nature of the work in progress. In the opinion of the DH-S-AC it was important to bear in mind that rules governing access to archives could not be laid down separately from rules governing access to official information, no matter where such information was kept - in Archives or elsewhere. Insofar as the DH-S-AC has to define the exact rules concerning the access to official documents and insofar as the work has not been achieved yet, it seems preferable to the Group to recommend that the CC-Cult wait for the finalisation of the DH-S-AC work before finalising any draft instrument on the issue of access to archives.

22. Should the CC-Cult decide to continue its work without waiting any further, the DH-S-AC thought that a number of matters raised in the draft recommendation should be considered in greater depth, since the DH-S-AC's main concern was to avoid any incompatibility with the principles which it was discussing. The DH-S-AC made special mention of the problems which might be posed by:

- i. The definition of the scope of the draft recommendation;
- ii. Definitions of the terms used in the recommendation, in particular the concept of personal data;
- iii. Whether a distinction could be drawn between users, in particular for research purposes;
- iv. Partial access to documents;
- v. The nature of the right conferred on individuals - was it a human right, a civil right or an administrative right?
- vi. Acceptable restrictions on the right of access.

23. Moreover, the DH-S-AC took the view that, at a later stage, the draft recommendation should be subjected to a careful examination from a purely legal point of view.

24. The DH-S-AC recognised the usefulness of guidelines at a European level on the issue of *access to documents added to Archives for permanent conservation*, especially given the need for individuals to have an objective perception of historical events within their countries. Therefore, the DH-S-AC did not object to the work being pursued within the CC-Cult on the specific issue of access to documents added to Archives for permanent conservation.

25. The representatives of the archives sector present at the meeting thought this was a reasonable approach

26. Following this exchange of views, the DH-S-AC adopted the draft opinion set out in Appendix V to this report. It proposed to the CDDH that, in a spirit of co-operation with the CDCC, the latter should be invited to appoint an observer to take part in the DH-S-AC's future work.

27. Lastly, the DH-S-AC asked Mr Yves GOUNIN (France) to continue to represent it at forthcoming meetings of CC-Cult.

Item 4 of the agenda: _____

Other business

Monitoring exercise on the freedom of expression and information

28. With regard to the "monitoring" exercise on freedom of expression and information, the Group discussed the instructions of the CDDH which consist in making proposals on the way in which the CDDH could evaluate existing rules and practices in the member States concerning secrecy and of access to official information (see [CDDH \(98\)15](#), paragraphs 13-16. See also [CDDH \(98\) 22](#), paragraphs 23-25).

29. The DH-S-AC held a very instructive "tour de table" which reflects notably the trend towards a greater transparency which underlies the legal reforms currently being carried out in certain member States. It envisages to continue this kind of "tour de table" at its forthcoming meetings and asked the Secretariat to collect existing information such as a study undertaken in the context of the co-operation between states of the Baltic Sea area. However, the Group was reluctant to draw up a questionnaire addressed to all member States at this stage. The DH-S-AC underlined that it should concentrate on the accomplishment of its formal mandate which consists of drafting a legal text on the access to official documents. In this context, it drew attention to the fact that it was obliged, during a considerable part of its last meetings, to deal with the work being done within the CC-Cult. The DH-S-AC noted that its Chairperson will participate at the 46th meeting of the CDDH (22-25 June 1999) in order to present the work of the Group and that she will ask the CDDH for some additional guidelines on the priority tasks of the DH-S-AC.

Eventual contribution of the DH-S-AC concerning the preparation of the next European Ministerial Conference on Human Rights (Rome, 3-4 November 2000)

30. The DH-S-AC welcomed the decision of the CDDH to organise a European Ministerial Conference on Human Rights (Rome, 3-4 November 2000) on the occasion of the 50th anniversary celebration of the European Convention on Human Rights. The DH-S-AC thought that the contents of its terms of reference being very important could, if necessary, be one of the themes of the Conference.

Item 5 of the agenda:

Date of next meeting

31. The DH-S-AC decided to hold its next meeting from Tuesday 5 to Friday 8 October 1999.

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Annexe I**LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS**BULGARIA/BULGARIE

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European Committee for Legal cooperation/Comité européen de coopération juridique

Mr Pekka NURMI, Director General, Ministry of Justice, PL 1, 00131 HELSINKI (Finland)

Mme Teresa GÓRZIŃSKA, Chargée de recherches, Institut des Sciences Juridiques de l'Académie polonaise des Sciences, rue Nowy Swiat 72, 00330 VARSOVIE (Patac Staszica)

Steering Committee on Mass Media/Comité directeur sur les moyens de communication de masse (CDMM)

Apologised/excusé

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Invited guests/Invités spéciaux

Mr P. CADELL, Keeper of the Records of Scotland, Scottish Record Office, H.M. General Register House, P.O. Box 36, GB - EDINBURGH EH1 3YY

M. Bruno GALLAND, Archives Nationales de France, Section Ancienne, 60 rue des Francs Bourgeois, 75141 PARIS CEDEX 03

M. Charles KECSKEMETI, Ancien Secrétaire Général du Conseil international des Archives, 16, rue des Morteaux, F-92160 ANTONY

* * *

European Commission/Commission européenne

M. Pierre BISCHOFF, Administrateur, Commission européenne - Direction Générale XIII, Bureau EUFO 1165 - L-2920 LUXEMBOURG

* * *

Secretariat/Secrétariat

M. Alfonso DE SALAS, Principal Administrator/Administrateur Principal, Secretary to the Group of Specialists/Secrétaire du Groupe de Spécialistes

M. Giuseppe VITIELLO, Special Adviser, New Technologies (books and archives), Directorate of Education, Culture and Sport/Chargé de Mission, Nouvelles technologies (livres et archives), Direction de l'Enseignement, de la Culture et du Sport

Mr Philipp MITTELBERGER, Counsellor/Conseiller, Directorate of Human Rights/Direction des Droits de l'Homme

Mme Michèle COGNARD, Administrative Assistant/Assistante administrative

Ms Bethan HARVEY, Administrative Assistant/Assistante administrative

Interpreters/Interprètes

Mme Nadine KIEFFER

Mr Didier JUNGLING

Mr Philippe QUAINÉ

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Appendix IIAGENDA

- 1. Opening of the meeting and adoption of the agenda**
- 2. Further examination of the elements to provide a basis for discussion on the future work of the DH-S-AC**
 - Elements already identified by the DH-S-AC
[DH-S-AC \(98\) 6](#) Appendix IV
 - Proposals which have not yet been discussed
DH-S-AC (98) 6 Appendix III
- 3. Preparation of a draft opinion, for the CDDH, concerning the draft Recommendation on a European Policy on Access to Archives**
 - Revised Draft Recommendation (21 January 1999) further to the meeting of the informal working group (Paris, 19 January 1999)
cc/livre (97) 7rev.
 - Comparative table of the latest revisions (document of 21 January 1999)
 - Observations sent on 23 February 1999 by the Keeper of the Records of Scotland
[DH-S-AC \(99\) 3](#)
- 4. Date of next meeting and organisation of forthcoming work**
- 5. Other business**

Working documents

- Report of the 2nd meeting of the DH-S-AC (21-23 October 1998)
[DH-S-AC \(98\) 6](#)
- Extracts of the report of the 52nd meeting of the Bureau of the CDDH (16 October 1998) and of the 45th meeting of the CDDH (3-6 November 1998)
DH-S-AC (99) 4

Information documents

- Terms of reference of the Group of Specialists (as approved by the Ministers' Deputies at their 613th meeting, 18-19 and 23 December 1997)
[DH-S-AC \(98\) 1](#)
- Green Paper from the European Commission on Public Sector Information in the Information Society
COM (1998) 585
- [Recommendation No R \(81\) 19](#) on the access to information held by public authorities

- [Recommendation No R \(91\) 10](#) on the communication to third parties of personal data held by public bodies

- Collection of reports on official secrets law and free access to public records (reports prepared by national partners of the Programme on Security Services in a Constitutional Democracy)
DH-S-AC (98) 2 and Addendum

(Helsinki Foundation for Human Rights, December 1997)

- Icelandic law on public access to information
MM-S-AC (97) 3

- Italian law on access to administrative documents
MM-S-AC (97) 4 (French only)

- The Swedish approach to the issue of access to public documents
MM-S-AC (97) 5

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Appendix III

PROPOSALS DISCUSSED BY
THE GROUP OF SPECIALISTS ON ACCESS TO OFFICIAL INFORMATION
(MM-S-AC) AT ITS 3RD MEETING (5-7 MAY 1997)

(document MM-S-AC (97) 6)

PRINCIPLE	PROPOSALS DISCUSSED
<p>Principle 1: Reasons for the preparation of a legal instrument on access to official information 1</p>	<p>The preamble of Recommendation No. R (81) 192 could be used as a basis for explaining why a legal instrument on access to information is deemed necessary. The reasons for the preparation of an instrument would, inter alia, be:</p> <ul style="list-style-type: none"> -the importance for the public in a democratic society to obtain adequate information on public issues; -access to information by the public is likely to strengthen confidence of the public in the administration; -efforts should be made to ensure the fullest possible availability to the public of information held by public authorities.
<p>Principle 2: Scope of a legal instrument</p>	<p>(i) Public authorities covered:</p> <ul style="list-style-type: none"> -The term public authorities would include national, regional and local level administration. The following definition of public bodies provided in Recommendation No. R (91) 103 could be used as a basis in this respect: <p>"Any administration, institution, establishment or other body which exercises public service or public interest functions as a consequence of it being attributed with public powers".</p> <ul style="list-style-type: none"> -Private bodies performing public functions or

¹ Members of the MM-S-AC are invited to consider whether the term "public information" would be more suitable than "official information".

² Recommendation No. R (81) 19 of the Committee of Ministers to member States on the access to information held by public authorities

³ Recommendation No. R (91) 10 on the Communication to Third Parties of Personal Data held by Public Authorities.

	<p>financed with public funds would therefore fall under the scope of application.</p> <p>-On the other hand, the principle of access would not apply to information held by parliaments and courts.</p> <p>(ii) Information covered:</p> <p>-The Group has not reached a final decision on the definition of the term "official information", but has agreed on what should be excluded from the notion:</p> <ul style="list-style-type: none"> -oral information (information on public matters which has no documentary basis, eg. information given in a television programme); -preparatory documents (administrative documents which are in a preparatory stage and are still subject to change); -non-administrative documents (for instance, documents concerning political or personal activities of public authorities);
	<p>-information held by public authorities concerning personal data of individuals, since access to this type of information is governed by rules on data protection. [The Group should discuss what would be applicable if the information requested concerns a public affair but also contains personal information].</p> <p>-The most suitable notion of "official information" seems to be the one which refers to "documents" or "materials" held by public authorities. Should the Group agree with this approach, it might wish to discuss the type of documents/material that the right of access applies to. For example, the right could apply to all "administrative documents related to public matters, such as reports, letters (incoming/outgoing mail), drawings, maps, microfilms, computer stored information, etc."</p> <p>-As regards inventories/registers/records of public documents, eg. records of incoming and outgoing mail, the Group has not yet decided whether such inventories should be covered by the concept of official information, and thus be made available to individuals upon request.</p> <p>-After the definition of official information, a clause stipulating that "other acts/regulations granting a more</p>

	extensive right of access will remain in force" could be added.
<p>Principle 3: Restrictions to the right of access to official information</p>	<p>-The Group discussed the advisability of placing the restriction clause after the provision granting the general right of access to public information, so as to highlight that limits to the right are also necessary.</p> <p>-A restriction clause based on principle V of Recommendation No. R (81) 19 could be included in an instrument along the following lines:</p> <p>"The right of access to information shall be subject to such limitations and restrictions as are necessary in a democratic society for the protection of legitimate public interests -such as national security, public safety, public order, the economic well-being of the country, the prevention of crime, or for preventing the disclosure of information received in confidence-, and for the protection of privacy and other legitimate private interests."</p> <p>-The Group discussed whether States should enjoy a degree of discretion to determine which documents/materials should be excluded from the right of access. The Group is invited to re-examine this issue.</p> <p>-A possibility could be to list certain types of documents/materials which would be excluded from the right of access, such as, for example: minutes of cabinet meetings, materials falling under secrecy or confidentiality acts, working documents prepared by a public authority for internal use only, etc.</p>
<p>Principle 4: Access after a specific period of time</p>	<p>-The Group could discuss the possibility of introducing a provision stipulating that after a specific period of time, certain materials which have been protected by a limitation clause would also become accessible.</p>
<p>Principle 5: Beneficiaries of the right of access to official information</p>	<p>-The Group has agreed that the right of access to documents/materials should be applicable to all persons, irrespective of their nationality, citizenship, place of residence, etc, given that any other approach would be discriminatory and difficult to enforce in practice.</p> <p>-On the other hand, the Group was against granting the media a privileged right of access to official information. However, if a general right of access is recognised, it would also apply to media professionals</p>

	<p>[Remark: in practice, in countries where legislation on access to information already exists, it is generally the media that make use of this right, as compared to individual requests for information].</p> <p>-Special arrangements for media access to public meetings/events organised by public authorities might be considered. This could include free supply of documents or advance distribution of "embargoed" documents to the media. The Group is invited to discuss whether any provisions should be included in this respect in a legal instrument.</p>
<p>Principle 6: Disclosure of official information</p>	<p>-Access to information should be provided on the basis of a request from an individual.</p> <p>-The disclosure of information on official initiative of public authorities could be included in a legal instrument, but such an approach should be complementary to the individual right of access (if the disclosure of information was left to the official initiative of public authorities only, the whole principle of access would be questioned and subject to administrative discretion).</p>
<p>Principle 7: The exercise of the right of access to official information</p>	<p>-The Group agreed that requests for information should meet certain minimum procedural requirements. Some standards discussed were:</p> <ul style="list-style-type: none"> -the request should be made in writing or by electronic means (oral requests for information would be denied); -the request should not be anonymous; -the request for information should specify the materials/documents to be examined (to be discussed by Group); -the person requesting information should state/prove a legitimate interest (to be discussed by Group).
<p>Principle 8: Forms of access to official information</p>	<p>-The Group should discuss the nature of the right of access, ie, whether it confers the right to inspect the original documents, to inspect and photocopy these or only to obtain copies of the original documents. The means of accessing materials other than documents (drawings, maps, pictures, microfilms, computer stored information, etc.) would also have to be examined.</p>

<p>Principle 9: Cost of access to official information</p>	<p>-The Group agreed that the fundamental principle should be to provide access to official documents/materials free of charge. If the right of access confers the right to photocopy documents, and a large number of documents were concerned, the Group should discuss whether the requesting party should pay the copying costs involved.</p>
<p>Principle 10: Time-limits for dealing with requests of access to information</p>	<p>-The Group discussed whether a specific time-limit would have to be indicated in the possible instrument. A possibility could be to provide that requests for access to information should be answered by the relevant public body "as quickly as possible" or "within a reasonable time".</p>
<p>Principle 11: Decision refusing access to information</p>	<p>-The Group discussed the possibility of a provision stipulating that negative replies to a request for information should be given in "an appropriate form" by the public authority concerned. The Group is invited to re-examine this issue and to decide whether:</p> <ul style="list-style-type: none"> -public authorities could be obliged to give their refusal in writing or by electronic means (depending on how the request was made); -the decision should provide the reasons for the refusal and indicate any appeals/remedies available; -a provision prohibiting "administrative silence" (public authorities not taking a decision) would be convenient.
<p>Principle 12: Appeal against refusal of access</p>	<p>-The Group agreed that a provision ensuring a right of appeal against the refusal of a public authority to grant access to information could be included in an instrument.</p> <p>-The Group considered that the appeal body should be independent, but not necessarily a court.</p>
<p>Principle 13: Access to archives</p>	<p>-The Group decided that a separate provision for archives would not be necessary. General access rules should apply to archives, and information held in these should not be more difficult to access than other materials held by public authorities.</p>

Appendix IV

ELEMENTS IDENTIFIED BY THE DH-S-AC
TO PROVIDE A BASIS FOR DISCUSSION
ON THE FUTURE WORK OF THE GROUP OF SPECIALISTS

Introduction

This appendix lists a number of elements, which emerged from discussions of the Group of Specialists on access to official information (DH-S-AC), during its first, second and third meetings (4-6 March 1998 and 21-23 October 1998, 9-12 March 1999).

For practical reasons, the elements are set out in the form of a draft recommendation. However, the DH-S-AC has not taken a position on the final legal form to be taken by the instrument that is in preparation. In particular, it has not ruled out the possibility of moving, at a later stage, towards drafting a binding instrument such as a convention. It is awaiting guidance from [the CDDH](#) on this point.

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Preamble

[*A reference in the preamble shall be made to certain key legal instruments adopted by the Council of Ministers in the field of information policy; namely: The Convention on the protection of individuals with regard to automatic procession of personal data of 28 January 1981 (ETS no 108); The Declaration on the freedom of expression and information adopted by the Committee of Ministers on the 29 April 1982; [Recommendation No. R \(81\) 19](#) on the access to information held by public authorities; [Recommendation No. R \(91\) 10](#) on the communication to third parties of personal data held by public bodies; [Recommendation No. R \(97\) 18](#) concerning the protection of personal data collected and processed for statistical purposes.

i. Considering the importance in a pluralistic, democratic society of adequate information for the public on issues of common interest;

ii. [Considering that the public's right of access to official information should be analysed in human rights terms, particularly in the light of Articles 8 and 10 of [the Convention for the Protection of Human Rights and Fundamental Freedoms](#) and the case-law pertaining thereto];

[*A study of the relevant case-law concerning Article 10 and 8 has to be made before deciding whether this text should be deleted or not.]

iii Considering the importance of transparency in public administration;

iv. Considering the wide access to official documents, on a basis of equality and in accordance with clear rules:

- allows the public to have an adequate view of, and to form a critical opinion on, the state of the society in which they live and on the authorities that govern them, encourages responsible participation by the public in matters of common interest;

- encourages internal control within administrations and helps maintain its integrity by avoiding the risk of corruption;

- contributes to affirming the legitimacy of administrations as public services and to reinforcing citizens' confidence in public authorities;

v. Considering therefore that the utmost endeavour should be made to ensure the fullest possible availability to the public, subject to the protection of other legitimate rights and interests, of documents;

vi. Stressing that the principles set out hereafter constitute a minimum base, and that they should be understood without prejudice to domestic laws and regulations which already recognise a wider right of access to official documents;

Definitions

For the purposes of this recommendation:

- "public authorities" shall mean:

[*Concerning the definition of "public authorities" the group decided to consult other legal instruments of the Council of Europe. The term will be further elaborated in the Explanatory memorandum.]

i. national, regional or local administration;

[*It was decided to explore the concept of "governments", both in its political and administrative notion, in the Explanatory memorandum

ii. natural or legal persons performing public functions or public administrative functions insofar as they perform on this capacity or exercise administrative authority under national law; [unless excluded by national law]

[*It was decided to develop this principle further in the Explanatory memorandum.]

- "official documents" shall mean all information recorded in any form, held by public authorities and linked to any public function, with the exception of documents under preparation;

[*The Explanatory Memorandum could indicate that:

Documents under preparation are being understood as being documents (drafts, proposals etc.) which were not yet approved definitely by the public authorities.

It has to be recalled that there are different traditions and practices in member States concerning the qualification of documents as "official documents". In principle, a document is "official" only after it has been finally approved. This being the case, there are certain countries which declare documents as being official which have not been officially approved, such as draft proposals and regulations, with a view to notably associating the public opinion to the decision process.

Private letters and letters received by members of the administrations in their capacity as politicians are also excluded from the notion of “official documents” in the sense of this recommendation.”]

Scope

This recommendation concerns only official documents held by public authorities as defined above. However, the member States should examine, in the light of their domestic law and practice, to what extent the principles of this recommendation could be applied to information held by legislative and judicial authorities.

[* The Explanatory Memorandum could indicate that the concept of "official information" (informations publiques) covers all recorded information held by the various public authorities. This means essentially documents in the broad sense: printed documents, computerised documents in a retrievable form, documents recorded on audio or video tape, etc. The documents may contain texts, images etc.]

Principle 1

The member States should guarantee the right of everyone to obtain, on request, official documents held by public authorities.

[* At this stage the DH-S-AC decided to limit the scope to documents that are requested for. The group will further examine whether the scope shall be extended to cover also the individuals right to receive public information]

Principle 2

1. Member States may derogate from the right of access to official documents. Limitations or restrictions must be applied sparingly, set down precisely in the law, be necessary in a democratic society and be proportionate to the aim of providing protection on:

[*The DH-S-AC is working towards the preparation of an exhaustive list. For the moment, the list of elements in Principle 2 is intended to be provisional, as a basis for discussion. The Group agreed to delete the relation to “information supplied to governments in confidentiality” in this context and come back to this under another Principle.]

- i. national security, defence and international relations;
- ii. public safety
- iii. prevention, investigation and prosecution of criminal activities;
- iv. personal privacy and other legitimate private interests, in particular the protection of personal integrity;
- v. commercial and other economic interests, be they private or official;
- vi. equality of parties concerning court proceedings;
- vii. nature

- viii. inspection, control and supervision by public authorities;
- ix. governmental economic, monetary and exchange rate policy;
- x. confidentiality of governmental deliberations (on local, regional or national level).

Note: The DH-S-AC decided to revert on the issue of state obligations following the receipt of documents entrusted to it confidentially.

2. Access may be refused only if the disclosure of the document or of the information contained therein risks to harm the interests mentioned in paragraph 1 of Principle 1 and taking into account the public interest attached to the disclosure.

Principle 3:

Unless exceptional cases demand otherwise, Member States should set maximum time limits for the restrictions mentioned in Principle 2.

[*As regards the “exceptional cases” mentioned in Principle 3, the Explanatory Memorandum could indicate that the Group preferred to limit itself to mention the practice of certain member States: Thus, in the Netherlands, all the documents have to be accessible after twenty years, the only possible exceptions being the protection of privacy and the national interest.]

[*The Explanatory Memorandum could indicate that, with regard to documents classified as confidential, the public authorities should ensure that they are made accessible as soon as circumstances permit or, if the law sets a time limit on confidentiality, as soon as that limit is reached;

* * *

[*Moreover, the Explanatory Memorandum could indicate, in a convenient place, that, with regard to registers or inventories of documents, the public authorities should ensure that they are always made available, this being a prerequisite for the exercise of the right of access to official information. It is, however, open to public authorities to determine the type of information to be included in such registers or inventories, with the aim of protecting legitimate interest and, in particular, respect for private life].

* * *

Appendix V

**Draft Opinion
to be submitted to the CDDH
on the draft Recommendation
on a European policy on access to archives**

[Note for the CDDH: At its 3rd meeting (9-12 March 1999), the Group of Specialists on Access to Official Information (DH-S-AC) elaborated this draft opinion for the CDDH concerning the draft Recommendation on a European policy on access to archives, elaborated within the framework of the Committee of Culture (CC-Cult) of the Council for Cultural Co-operation (CDCC). This draft opinion concerns the latest version of the draft Recommendation (21 January 1999) resulting from the informal meeting held in Paris on 19 January 1999. The draft opinion was prepared by the DH-S-AC bearing in mind, in particular, the [fruitful] exchange of views it held during its 3rd meeting with a number of representatives of the CC-Cult].

* * *

“The CDDH appreciates the considerable work done in recent years by the professionals of Archives to set up a number of European principles on access to archives. However, the CDDH draws attention to the fact that rules on access to archives cannot be elaborated separately from those on access to official documents, regardless of where such documents are stored, in Archives or elsewhere.

Noting that the work currently being done by its Group of Specialists on Access to Official Information (DH-S-AC) has a direct impact on the issue of access to archives, the CDDH recommends that the Committee of Culture (CC-Cult) wait for the finalisation of the DH-S-AC work before finalising any draft instrument on the issue of access to archives.

This being said, the CDDH recognises the usefulness of guidelines at a European level on the issue of *access to documents added to Archives for permanent conservation*, especially given the need for individuals to have an accurate perception of historical events within their countries. Therefore, the CDDH does not object to the work being pursued within the CC-Cult on the specific issue of access to documents added to Archives for permanent conservation.

The main concern of the CDDH is to make sure that any recommendation on access to archives is compatible with the principles it is currently discussing.

In the spirit of co-operation between the CDCC and the CDDH, the latter invites the CC-Cult to designate an observer to attend the DH-S-AC meetings”.