



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 7 June 2006

DH-S-AC(2006)007

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

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

ABRIDGED REPORT

**13th meeting
Strasbourg, 31 May – 2 June 2006**

Introduction

1. The Group of Specialists on access to official documents (DH-S-AC) held its 13th meeting in Strasbourg from 31 May to 2 June 2006, with Mr Frankie SCHRAM (Belgium) in the chair. The list of participants appears in Appendix I. The agenda, as adopted, is reproduced in Appendix II.

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2. In the course of the meeting, the DH-S-AC began the preparatory work necessary to draft a free-standing legally binding instrument establishing the principles of access to official documents. The result of its work appears in Appendix III and reflects the state of discussions at the end of the meeting. This appendix will provide a basis for future work

3. On the specific subject of the list of limitations on access to public documents (Article 4, paragraph 1 of the draft convention), the DH-S-AC took note of the offer from the representatives of the Open Society Justice Initiative and Article XIX to prepare a comparative study on national legislation and practice, in particular the limitations to the principle of access in the Council of Europe member states not represented on the Group of Specialists. The DH-S-AC accepted this offer. The study will be forwarded to members of the Group in due course, before the next meeting. The DH-S-AC asked those states which were represented to send to the Secretariat (mikael.poutiers@coe.int), as soon as possible and at the latest on 15 October 2006, any information about legislation and practice which would not be in accordance with the principles retained in the preliminary draft convention, in particular the limitations provided for by their national legislation which did not appear on the list included in the preliminary draft. Finally, the DH-S-AC considered that it would be useful if its members sent to the Secretariat, within the same deadlines, any suggestion to amend the preliminary draft convention in order to be in a position to discuss them at its next meeting.

4. The DH-S-AC also held an exchange of views with the representatives of Mexico's Federal Institute of Access to Public Information (IFAI), particularly on the functioning of the system the Institute had set up to process requests for information (the SISI system). On behalf of the DH-S-AC, the Chair thanked them for their very interesting contribution.

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5. The DH-S-AC noted that, in accordance with the timetable adopted by the CDDH, the 14th meeting of the Group of Specialists would take place from 15 to 17 November 2006. The Group's 15th meeting will take place during the first three months of 2007.

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Appendix I

List of participants

(a) Member States Representatives / Représentants des Etats membres

BELGIUM / BELGIQUE

M. Frankie SCHRAM, Secrétaire de la Commission d'accès aux documents administratifs, Service Public fédéral « Intérieur » - Secrétariat CADA, Rue des Colonies 11, B-1000 BRUXELLES (Président du DH-S-AC)

BULGARIA / BULGARIE

Ms Diana MEHANDJIYSKA, State Expert, Human Rights and International Humanitarian Organizations Directorate, Ministry of Foreign Affairs, 2 Alexander Zhendov Str., 1113 SOFIA

DENMARK / DANEMARK

Mr Mohammed AHSAN, Ministry of Justice, Head of Section, Constitutional Law Division, Slotholmsgade 10, 1216 KØBENHAVN K

FRANCE

M. Laurent VEYSSIERE, 1. Conservateur du patrimoine, Directeur-adjoint des Archives de Paris, 18 boulevard Sérurier, F-75019 Paris ; 2. Rapporteur, Commission d'accès aux documents administratifs, 35 rue Saint-Dominique, F-75007 PARIS

GERMANY / ALLEMAGNE

Dr. Serge-Daniel JASTROW, Federal Ministry of the Interior, Alt Moabit 101D, D-10559 BERLIN

ITALY / ITALIE

Apologised / excusé

THE NETHERLANDS / PAYS-BAS

Ms Diana van DRIEL, Senior Legal Adviser, Constitutional Affairs and Legislation, Ministry of the Interior and Kingdom Relations, P.O. Box 20011, 2500 EA THE HAGUE

NORWAY / NORVEGE

Ms Tonje RUUD, Higher Executive Officer, Legislation Department, Ministry of Justice, Postbox 8005 Dep., N-0030 OSLO

POLAND / POLOGNE

Ms Monika EKLER, Second Secretary, Legal and Treaty Department, Ministry of Foreign Affairs, Al. Szucha 23, PL-WARSAW 00-580

PORTUGAL

M. João Pedro MIRANDA, Conseiller juridique, membre de la Commission d'Accès aux Documents Administratifs (CADA), Rua de São Bento, 148, 2º, 1200-821 LISBOA

RUSSIAN FEDERATION / FEDERATION DE RUSSIE

M. Vladislav ERMAKOV, Conseiller du Département de la coopération humanitaire et des droits de l'homme, Ministère des affaires étrangères de la Fédération de Russie, 32/34 Smolenskaya-Sennaya sq., 121200 MOSCOW

SPAIN / ESPAGNE

M. Ignacio BLASCO LOZANO, *Abogado del Estado-Jefe, Agente de Espana ante TEDH, Abogacia del Estado ante del TEDH*, Ministry of Justice, c/Marqués del Duero, 4, 28001 MADRID

SWEDEN / SUEDE

Ms Helena JÄDERBLOM, Chief Judge, Länsrätten, Box 2293, SE-103 17 STOCKHOLM

TURKEY / TURQUIE

Apologised / excusé

UNITED KINGDOM / ROYAUME-UNI

Mr Paul BOYLE, Head of Policy, Department for Constitutional Affairs (DCA), Information Rights Division, Constitution Directorate, Selborne House, 54 Victoria Street, LONDON SW1E 6QW

Ms Belinda LEWIS, Department for Constitutional Affairs, Selborne House, 54 Victoria Street, LONDON SW1E 6QW

Mr James GEORGE, Lawyer, Department for Constitutional Affairs, Selborne House
54 Victoria Street, LONDON SW1E 6QW

* * *

(b) Observer State / Etat Observateur :

MEXICO / MEXIQUE

Mr José JARERO, Director de Asuntos Internacionales, Instituto Federal de Acceso a la Información Pública / Federal Institute of Access to Public Information (IFAI), Av. México # 151, piso 4, Col. Del Carmen Coyoacán, C.P. 04100, Del. Coyoacán, MEXICO, D.F.

Mr Alfonso HERNÁNDEZ, General Director of Studies and Investigation, Instituto Federal de Acceso a la Información Pública / Federal Institute of Access to Public Information (IFAI), Av. México # 151, piso 4, Col. Del Carmen Coyoacán, C.P. 04100, Del. Coyoacán, MEXICO, D.F.

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(c) Observers / Observateurs :

1. European Commission / Commission européenne

M. Marc MAES, Administrateur Principal, Secrétariat Général, Chef adjoint de l'Unité « Transparence, relations avec les groupes d'intérêt et les organisations extérieures », B-1049 BRUXELLES, Belgique

2. European Committee on Legal Co-operation / Comité européen de coopération juridique (CDCJ)

Mme Teresa GÓRZYŃSKA, Maître de Conférence, Institut des Sciences Juridiques, Académie polonaise des Sciences, Nowy Świat 72, PL - 00-330 VARSOVIE, Pologne

Mr Pekka NURMI, Director General, Legislative Department, Ministry of Justice, PO Box 25, FIN-00023 Government, HELSINKI, Finland

3. Steering Committee on the Media and New Communication Services / Comité directeur sur les médias et les nouveaux services de communication (CDMC)

Mrs Sebnem BILGET, Head of International Relations Department, Radio and Television Supreme Council, Bilkent Plaza B-2 Blok, 06530 Bilkent, ANKARA, Turkey

4. Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data [ETS 108] (T-PD) / Comité consultatif de la Convention pour la protection des personnes à l'égard du traitement automatisé des données à caractère personnel [STE 108] (T-PD) /

Mr Paul BOYLE (voir sous Royaume-Uni)

5. International Council on Archives (CIA) / Conseil International des Archives

Apologised / excusé

6. Article XIX

Mr Daniel SIMONS, Legal Officer, 6-8 Anwell Street, LONDON EC1R 1UQ, United Kingdom

7. Open Society Justice Initiative

Ms Helen DARBISHIRE, Executive Director of Access Info Europe, Calle Principe de Anglona 5, 2º centro, 28005 MADRID, Spain

OTHER PARTICIPANTS/AUTRES PARTICIPANTS

M. Daniele CANGEMI, Service du Conseil juridique et Bureau des traités du Conseil de l'Europe, Direction générale I – Affaires juridiques

SECRETARIAT

**Directorate General of Human Rights - DG II / Direction Générale des Droits de l'Homme – DG II, Council of Europe/Conseil de l'Europe, F-67075 Strasbourg Cedex
Fax number : 0033 3 88 41 27 93**

M. Alfonso DE SALAS, Head of the Human Rights Intergovernmental Cooperation Division / Chef de la Division de la coopération intergouvernementale en matière de droits de l'homme,

M. Mikaël POUTIERS, Administrator / Administrateur, Human Rights Intergovernmental Cooperation Division / Division de la coopération intergouvernementale en matière de droits de l'homme, Secretary of the DH-S-AC / Secrétaire du DH-S-AC

Mme Michèle COGNARD, Assistant / Assistante, Human Rights Intergovernmental Cooperation Division / Division de la coopération intergouvernementale en matière de droits de l'homme

Interprètes

Mme Christine CHARCOT
Mr Philippe QUAINÉ
Mr Robert SZYMANSKI

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Appendix II**Agenda****Item 1: Opening of the meeting and adoption of the agenda****Item 2: Elaboration of a draft legally binding
instrument on access to official documents**Working documents

- First elements prepared by the Secretariat DH-S-AC(2006)005
- Report of the 12th meeting of the DH-S-AC (18-20 January 2006) (which includes also the terms of reference of the DH-S-AC and the interim report of the DH-S-AC on the content, form and follow-up mechanism of the legal instrument) DH-S-AC(2006)004
- Extracts from the report of the 62nd meeting of the Steering Committee for Human Rights (CDDH) (4-7 April 2006) DH-S-AC(2006)006
- Recommendation Rec (2002) 2 of the Committee of Ministers to member states on access to official documents and Explanatory Memorandum DH-S-AC(2002)003

Item 3: Organisation of future work

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Appendix III**First elements prepared with a view to elaborate a draft
European Convention on Access to Official Documents**

(state of progress of the work at the end of the 13th meeting of the DH-S-AC, 31 May – 2 June 2006)

Note from the Secretariat:

This working document reflects the state of discussions at the end of the 13th meeting of the DH-S-AC (31 May – 2 June 2006). It is in no way binding in relation to the final text to be adopted by the DH-S-AC.

The parts prepared by the Secretariat (see document DH-S-AC(2006)005) and not examined by the DH-S-AC have been left in this document so that it may be read as a whole. They nevertheless appear in smaller characters in order to differentiate them from the parts examined by the Group.

The different sources from which these parts have been drawn are systematically indicated in footnotes using the abbreviations below. These parts concern either the content relating to access to public documents (Rec(2002)2) or to typical conventional formulae (other references).

Rec(2002)2: Recommendation Rec(2002)2 of the Committee of Ministers to member states on access to official documents (adopted by the Committee of Ministers on 21 February 2002 at the 784th meeting of the Ministers' Deputies)

Frame-conv N° 157: Framework Convention for the Protection of National Minorities (Strasbourg, 1st February 1995, CETS No.: 157).

Terr.Conv N° 196: Council of Europe Convention on the Prevention of Terrorism (Warsaw, 16 May 2005, CETS No.: 196).

Preamble¹

¹ Rec(2002)2, Preamble:

*“The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,
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 European Convention on 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 (adopted in Aarhus, Denmark, on 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); the Declaration on the freedom of expression and information adopted on 29 April 1982; as well as
Recommendation No. R (81) 19 on the access to information held by public authorities, Recommendation No.*

1. The Parties to this Convention;
2. 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;
3. Bearing in mind, in particular, Article 19 of the Universal Declaration of Human Rights, Articles 6, 8 and 10 of the European Convention on 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 (adopted in Aarhus, Denmark, on 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);
4. Bearing in mind also the Declaration on the freedom of expression and information adopted on 29 April 1982; as well as 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; Recommendation No. R (2000) 13 on a European policy on access to archives and Recommendation Rec (2002) 2 on access to official documents;
5. Considering the importance in a pluralistic, democratic society of transparency of public administration and of the ready availability of information on issues of public interest;
6. Considering that wide access to official documents, on a basis of equality and in accordance with clear rules, (i) 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, whilst encouraging informed participation by the public in matters of common interest; (ii) fosters the efficiency and effectiveness of administrations and helps maintain their integrity by avoiding the risk of corruption; (iii) contributes to affirming the

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 and Recommendation No. R (2000) 13 on a European policy on access to archives;

Considering the importance in a pluralistic, democratic society of transparency of public administration and of the ready availability of information on issues of public interest;

Considering that 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, whilst encouraging informed participation by the public in matters of common interest;*
- *fosters the efficiency and effectiveness of administrations and helps maintain their integrity by avoiding the risk of corruption;*
- *contributes to affirming the legitimacy of administrations as public services and to strengthening the public's confidence in public authorities;*

Considering therefore that the utmost endeavour should be made by member states to ensure availability to the public of information contained in official documents, subject to the protection of other rights and legitimate interests;

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

Considering that, whereas this instrument concentrates on requests by individuals for access to official documents, public authorities should commit themselves to conducting an active communication policy, with the aim of making available to the public any information which is deemed useful in a transparent democratic society,

Recommends the governments of member states to be guided in their law and practice by the principles set out in this recommendation.”

legitimacy of administrations as public services and to strengthening the public's confidence in public authorities;

7. Considering therefore that the utmost endeavour should be made by the Parties to ensure availability to the public of information contained in official documents, subject to the protection of other rights and legitimate interests;

~~8. Stressing that the principles set out hereafter constitute a minimum standard, and that they should be understood without prejudice to those domestic laws and regulations which already recognise a wider right of access to official documents;~~

9. Considering that, whereas this convention concentrates on requests by individuals for access to official documents, public authorities should commit themselves to conducting an active communication policy, with the aim of making available to the public any information which is deemed useful in a transparent democratic society,

Have agreed as follows:

Section I - General provisions

Article 1² - Terminology

For the purposes of this Convention:

1. "public authorities" means:
 - (i.) government and administration at national, regional or local level;
 - [(ii.) legislative bodies and judicial authorities insofar as they perform administrative functions as provided for by national law;]**
 - [(iii.) natural or legal persons insofar as they perform public functions or exercise administrative authority and as provided for by national law;]
 - [(iv.) the secretariats of international organisations.]
2. "official documents" means all information recorded in any form, drawn up or received and held by public authorities and linked to any public or administrative function, with the exception of documents under preparation.

Article 2³ - Scope

² Rec(2002)2, Preamble:

"For the purposes of this recommendation:

"public authorities" shall mean:

- i. government and administration at national, regional or local level;*
- ii. natural or legal persons insofar as they perform public functions or exercise administrative authority and as provided for by national law.*

"official documents" shall mean all information recorded in any form, drawn up or received and held by public authorities and linked to any public or administrative function, with the exception of documents under preparation."

³ Rec(2002)2, Principle II (Scope) :

"1. This recommendation concerns only official documents held by public authorities. However, 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 bodies and judicial authorities.

- [1. This Convention concerns only official documents held by public authorities. However, the Parties shall ~~examine~~ **decide, bearing in mind the public interest and**, in the light of their domestic law and practice, to what extent the ~~principles provisions~~ of this Convention could be applied to:
- (i.) ~~information~~ **official documents** held by legislative bodies and judicial authorities;
 - (ii.) **official documents held by natural or legal persons referred to in Article 1, paragraph 1.]**
- ~~2. This Convention does not affect the right of access or the limitations to access provided for in the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.~~
2. **The principles set out hereafter constitute a minimum standard and should be understood without prejudice to those domestic laws and regulations and to international treaties which already recognise a wider right of access to official documents⁴.**

~~[Article 3⁵ -- Purpose~~

~~The purpose of this Convention is to ensure that Parties take appropriate measures with a view to:~~⁶

- ~~i. guarantee the right of everyone to have access, on request, to official documents held by public authorities;~~
- ~~ii. set up progressively an active communication policy, with the aim of making available to the public any information which is deemed useful in a transparent democratic society]~~⁷

~~2. This recommendation does not affect the right of access or the limitations to access provided for in the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data."~~

⁴ Rec(2002)2, Preamble, para. 8:

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

⁵ See Terr.Conv N° 196, Article 2 (Purpose):

"The purpose of the present Convention is to enhance the efforts of Parties in preventing terrorism and its negative effects on the full enjoyment of human rights, in particular the right to life, both by measures to be taken at national level and through international co-operation, with due regard to the existing applicable multilateral or bilateral treaties or agreements between the Parties."

⁶ Terr.Conv N° 196, Article 3 (1) (National prevention policies):

"Each Party shall take appropriate measures, (...) with a view to (...)."

⁷ The Secretariat notes that it is common practice to have a provision "Purpose" in this kind of instrument. Nevertheless, since the first principle of the instrument (Article 4 below) concerns the general principle of access to official documents, the necessity of such a provision can be raised.

Section II – [Principles]

Article 4–3⁸ - Individual right of access to official documents

1. Each Party shall guarantee the right of everyone to have access, on request, to official documents held by public authorities. ~~2. This principle right shall apply without discrimination on any ground [,-including that of national origin].~~
2. **Each Party shall take the necessary measures in its domestic law to give effect to the principles for access to official documents set out in this section⁹.**
3. **These measures shall be taken at the latest at the time of entry into force of this convention in respect of that Party¹⁰.**

Article 5-4¹¹ - Possible limitations to access to official documents

⁸ Rec(2002)2, Principle III (General principle on access to official documents):

“Member states should guarantee the right of everyone to have access, on request, to official documents held by public authorities. This principle should apply without discrimination on any ground, including that of national origin.”

⁹ Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) (Article 4 – Duties of the Parties, para. 1):

“1 Each Party shall take the necessary measures in its domestic law to give effect to the basic principles for data protection set out in this chapter.”

¹⁰ Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) (Article 4 – Duties of the Parties, para. 2):

“2 These measures shall be taken at the latest at the time of entry into force of this convention in respect of that Party.”

¹¹ Rec(2002)2, Principle III (Possible limitations to access to official documents):

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

- i. national security, defence and international relations;*
- ii. public safety;*
- iii. the prevention, investigation and prosecution of criminal activities;*
- iv. privacy and other legitimate private interests;*
- v. commercial and other economic interests, be they private or public;*
- vi. the equality of parties concerning court proceedings;*
- vii. nature;*
- viii. inspection, control and supervision by public authorities;*
- ix. the economic, monetary and exchange rate policies of the state;*
- x. the confidentiality of deliberations within or between public authorities during the internal preparation of a matter.*

2. Access to a document may be refused if the disclosure of the information contained in the official document 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. Member states should consider setting time limits beyond which the limitations mentioned in paragraph 1 would no longer apply.”

- [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:
- i. national security, defence and international relations;
 - ii. public safety;
 - iii. **[the smooth course of]** the prevention, investigation and prosecution of criminal activities;
 - iv. privacy and other legitimate private interests;
 - v. commercial and other economic interests, be they private or public;
 - vi. the equality of parties concerning court proceedings **[and the smooth functioning of Justice];**
 - vii. nature;
 - viii. inspection, control and supervision by public authorities;
 - ix. the economic, monetary and exchange rate policies of the state;
 - x. the confidentiality of deliberations within or between public authorities ~~during~~ **concerning** the internal ~~preparation~~ **examination** of a matter;
 - [xi. the holding of possible disciplinary procedures]; or,**
 - xii. [communication of the government with the Royal Family and the Royal Household].]**

[2.

Option 1:

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

Option 2:

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

Option 3:

Access to **information contained in** ~~a~~ **an official** document may be refused if ~~the~~ **their** disclosure ~~of the information contained in the official document~~ 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] **[may set] [shall set]** time limits beyond which the limitations mentioned in paragraph 1 would no longer apply. **[They shall regularly reconsider the length of these time limits with a view to reducing them.]**

Article 6-5¹² - 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. Formalities for requests [~~are~~ **shall be kept to a minimum**] [**do not exceed what is essential in order to process the request**]. [**An applicant for an official document shall not be obliged to give his or her identity except when essential to process the request.**]

Article 7-6¹³ - 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 [**competent**] public authority holding the document.
- ~~3.~~ Requests for access to official documents shall be dealt with on an equal basis.
- ~~3-4.~~ A request for access to an official document shall be dealt with [promptly] [**as soon as reasonably possible**]. The decision shall be reached, communicated and executed **as soon as possible or** within any time limit which shall have been specified beforehand.

¹² Rec(2002)2, Principle V (Requests for access to official documents):

- “1. An applicant for an official document should not be obliged to give reasons for having access to the official document.
2. Formalities for requests should be kept to a minimum.”

¹³ Rec(2002)2, Principle VI (Processing of requests for access to official documents):

- “1. A request for access to an official document should be dealt with by any public authority holding the document.
2. Requests for access to official documents should be dealt with on an equal basis.
3. A request for access to an official document should be dealt with promptly. The decision should be reached, communicated and executed within any time limit which may have been specified beforehand.
4. If the public authority does not hold the requested official document it should, wherever possible, refer the applicant to the competent public authority.
5. The public authority should help the applicant, as far as possible, to identify the requested official document, but the public authority is not under a duty to comply with the request if it is a document which cannot be identified.
6. A request for access to an official document may be refused if the request is manifestly unreasonable.
7. A public authority refusing access to an official document wholly or in part should give the reasons for the refusal.”

4-5. If the public authority does not hold the requested official document it shall, wherever possible, refer the **application or the** applicant to the competent public authority.

~~[5. The public authority shall help the applicant, as far as possible, to identify the requested official document, but the public authority is not under a duty to comply with the request if it is a document which cannot be identified.]~~

[6. A request for access to an official document shall be refused:
(i) if, despite the assistance from the public authority, the request remains too vague to enable the document to be identified; or
(ii) if the request is manifestly unreasonable; or
[(iii) if the request requires the creation of a new document].]

7. A public authority refusing access to an official document wholly or in part shall give the reasons for the refusal. **[The applicant may require a written refusal from this public authority.]**

Article 8-7¹⁴ - Forms of access to official documents

1. When access to an official document is granted, the public authority should allow inspection of the original or provide a copy of it, taking into account, as far as possible, the preference expressed by the applicant.
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, 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 9-8¹⁵ - Charges for access to official documents

1. Consultation of original official documents on the premises should, in principle, be free of charge.

¹⁴ Rec(2002)2, Principle VII (Forms of access to official documents):

“1. When access to an official document is granted, the public authority should allow inspection of the original or provide a copy of it, taking into account, as far as possible, the preference expressed by the applicant.

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, 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.”

¹⁵ Rec(2002)2, Principle VIII (Charges for access to official documents):

“1. Consultation of original official documents on the premises should, in principle, be free of charge.

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 incurred by the public authority.”

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 incurred by the public authority.

Article ~~10~~¹⁶ - Review procedure

1. An applicant whose request for an official document has been refused, whether in part or in full, or dismissed, or has not been dealt with within the time limit mentioned in Article 7, paragraph 3 should have access to a review procedure before a court of law or another independent and impartial body established by law.
2. An applicant should always have access to an expeditious and inexpensive review procedure, involving either reconsideration by a public authority or review in accordance with paragraph 1 above.

Article ~~11~~¹⁷ - Complementary measures

1. The Parties should take the necessary measures to:
 - i. inform the public about its rights of access to official documents and how that right may be exercised;
 - ii. ensure that public officials are trained in their duties and obligations with respect to the implementation of this right;
 - iii. ensure that applicants can exercise their right.
2. To this end, public authorities should in particular:
 - i. manage their documents efficiently so that they are easily accessible;
 - ii. apply clear and established rules for the preservation and destruction of their documents;
 - iii. as far as possible, make available information on the matters or activities for which they are responsible, for example by drawing up lists or registers of the documents they hold.

Article ~~12~~¹⁸ - Information made public at the initiative of the public authorities

¹⁶ Rec(2002)2, Principle IX (Review procedure):

*“1. An applicant whose request for an official document has been refused, whether in part or in full, or dismissed, or has not been dealt with within the time limit mentioned in Principle VI.3 should have access to a review procedure before a court of law or another independent and impartial body established by law.
2. An applicant should always have access to an expeditious and inexpensive review procedure, involving either reconsideration by a public authority or review in accordance with paragraph 1 above.”*

¹⁷ Rec(2002)2, Principle X (Complementary measures):

*“1. Member states should take the necessary measures to:
i. inform the public about its rights of access to official documents and how that right may be exercised;
ii. ensure that public officials are trained in their duties and obligations with respect to the implementation of this right;
iii. ensure that applicants can exercise their right.
2. To this end, public authorities should in particular:
i. manage their documents efficiently so that they are easily accessible;
ii. apply clear and established rules for the preservation and destruction of their documents;
iii. as far as possible, make available information on the matters or activities for which they are responsible, for example by drawing up lists or registers of the documents they hold.”*

¹⁸ Rec(2002)2, Principle XI (Information made public at the initiative of the public authorities):

A public authority should, at its own initiative and where appropriate, take the necessary measures to make public information which it holds when the provision of such information is in the interest of promoting the transparency of public administration and efficiency within administrations or will encourage informed participation by the public in matters of public interest.

Section III – Application of the Convention

Article 13-12¹⁹ - Undertakings

1. Each of the Parties undertakes²⁰:
 - a. to consider itself bound by at least x of the following y articles of the Convention: Articles and;
 - b. to consider itself bound by an additional number of articles or numbered paragraphs of the Convention which it may select, provided that the total number of articles or numbered paragraphs by which it is bound is not less than z articles or zz numbered paragraphs.

“A public authority should, at its own initiative and where appropriate, take the necessary measures to make public information which it holds when the provision of such information is in the interest of promoting the transparency of public administration and efficiency within administrations or will encourage informed participation by the public in matters of public interest.”

¹⁹ European Social Charter (revised), Part III, Article A (Undertakings):

“1 Subject to the provisions of Article B below, each of the Parties undertakes:

a to consider Part I of this Charter as a declaration of the aims which it will pursue by all appropriate means, as stated in the introductory paragraph of that part;

b to consider itself bound by at least six of the following nine articles of Part II of this Charter: Articles 1, 5, 6, 7, 12, 13, 16, 19 and 20;

c to consider itself bound by an additional number of articles or numbered paragraphs of Part II of the Charter which it may select, provided that the total number of articles or numbered paragraphs by which it is bound is not less than sixteen articles or sixty-three numbered paragraphs.

2 The articles or paragraphs selected in accordance with sub paragraphs b and c of paragraph 1 of this article shall be notified to the Secretary General of the Council of Europe at the time when the instrument of ratification, acceptance or approval is deposited.

3 Any Party may, at a later date, declare by notification addressed to the Secretary General that it considers itself bound by any articles or any numbered paragraphs of Part II of the Charter which it has not already accepted under the terms of paragraph 1 of this article. Such undertakings subsequently given shall be deemed to be an integral part of the ratification, acceptance or approval and shall have the same effect as from the first day of the month following the expiration of a period of one month after the date of the notification.

4 Each Party shall maintain a system of labour inspection appropriate to national conditions.”

European Charter for Regional or Minority Languages, Article 2 (Undertakings):

“1 Each Party undertakes to apply the provisions of Part II to all the regional or minority languages spoken within its territory and which comply with the definition in Article 1.

2 In respect of each language specified at the time of ratification, acceptance or approval, in accordance with Article 3, each Party undertakes to apply a minimum of thirty-five paragraphs or sub-paragraphs chosen from among the provisions of Part III of the Charter, including at least three chosen from each of the Articles 8 and 12 and one from each of the Articles 9, 10, 11 and 13.”

²⁰ To be adapted depending of the final presentation of the text of the Convention.

2. The articles or paragraphs selected in accordance with sub paragraphs a and b of paragraph 1 of this article shall be notified to the Secretary General of the Council of Europe at the time when the instrument of ratification, acceptance or approval is deposited.
3. Any Party may, at a later date, declare by notification addressed to the Secretary General that it considers itself bound by any articles or any numbered paragraphs of the Convention which it has not already accepted under the terms of paragraph 1 of this article. Such undertakings subsequently given shall be deemed to be an integral part of the ratification, acceptance or approval and shall have the same effect as from the first day of the month following the expiration of a period of one month after the date of the notification.

Article 14-13²¹ - Correspondence to the European Convention on Human Rights

The rights and freedoms flowing from the principles enshrined in the present Convention, in so far as they are the subject of a corresponding provision in the Convention for the Protection of Human Rights and Fundamental Freedoms or in the Protocols thereto, shall be understood so as to conform to the latter provisions.

Article 15-14²² - National policies

1. Each Party shall take appropriate measures, particularly in the field of training of public authorities, and in the fields of education, culture, information, media and public awareness raising, with a view to make easier the individual exercise of the right of access to official documents, as well as informed participation by the public in matters of common interest.
2. Each Party shall take such measures as may be necessary to improve and develop the co-operation among national authorities with a view to facilitate the enforcement of paragraph 1 by, inter alia:
 - a. exchanging information;

²¹ Frame-conv N° 157, Article 23:

“The rights and freedoms flowing from the principles enshrined in the present framework Convention, in so far as they are the subject of a corresponding provision in the Convention for the Protection of Human Rights and Fundamental Freedoms or in the Protocols thereto, shall be understood so as to conform to the latter provisions.”

²² Terr.Conv N° 196, Article 3 (National prevention policies):

“1 Each Party shall take appropriate measures, particularly in the field of training of law enforcement authorities and other bodies, and in the fields of education, culture, information, media and public awareness raising, with a view to preventing terrorist offences and their negative effects while respecting human rights obligations as set forth in, where applicable to that Party, the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, and other obligations under international law.

2 Each Party shall take such measures as may be necessary to improve and develop the co-operation among national authorities with a view to preventing terrorist offences and their negative effects by, inter alia:

- a exchanging information;*
- b improving the physical protection of persons and facilities;*
- c enhancing training and coordination plans for civil emergencies.*

3 Each Party shall promote tolerance by encouraging inter-religious and cross-cultural dialogue involving, where appropriate, non-governmental organisations and other elements of civil society with a view to preventing tensions that might contribute to the commission of terrorist offences.

4 Each Party shall endeavour to promote public awareness regarding the existence, causes and gravity of and the threat posed by terrorist offences and the offences set forth in this Convention and consider encouraging the public to provide factual, specific help to its competent authorities that may contribute to preventing terrorist offences and offences set forth in this Convention.”

- b. improving appropriate infrastructures;
 - c. enhancing training and coordination plans for exceptional situations.
3. Each Party shall promote informed participation by the public in matters of common interest involving, where appropriate, non-governmental organisations and other elements of civil society.
 4. Each Party shall endeavour to promote public awareness regarding the existence of the right of access to official documents and the means to assert such a right towards public authorities.

Article 16-15²³ - International co-operation

Parties shall, as appropriate and with due regard to their capabilities, assist and support each other with a view to enhancing their capacity to fulfil the right of access to official documents, including through exchange of information and best practices, as well as through training and other joint efforts of a preventive character.

Article 17-16²⁴ - Consultation of the Parties

1. The Parties shall consult at least every five years with a view to:
 - a. making proposals to facilitate or improve the effective use and implementation of this Convention, including the identification of any problems and the effects of any declaration made under this Convention;
 - b. making proposals for the amendment of this Convention in accordance with Article 25;
 - [c. formulating their opinion on any proposal for the amendment of this Convention which is referred to them in accordance with Article 25, paragraph 3;]
 - d. expressing an opinion on any question concerning the application of this Convention and facilitating the exchange of information on significant legal, policy or technological developments.

²³ Terr.Conv N° 196, Article 4 (International co-operation on prevention):

“Parties shall, as appropriate and with due regard to their capabilities, assist and support each other with a view to enhancing their capacity to prevent the commission of terrorist offences, including through exchange of information and best practices, as well as through training and other joint efforts of a preventive character.”

²⁴ Terr.Conv N° 196, Article 30 (Consultation of the Parties):

“1 The Parties shall consult periodically with a view to:

a making proposals to facilitate or improve the effective use and implementation of this Convention, including the identification of any problems and the effects of any declaration made under this Convention;

b formulating its opinion on the conformity of a refusal to extradite which is referred to them in accordance with Article 20, paragraph 8;

c making proposals for the amendment of this Convention in accordance with Article 27;

d formulating their opinion on any proposal for the amendment of this Convention which is referred to them in accordance with Article 27, paragraph 3;

e expressing an opinion on any question concerning the application of this Convention and facilitating the exchange of information on significant legal, policy or technological developments.

2 The Consultation of the Parties shall be convened by the Secretary General of the Council of Europe whenever he finds it necessary and in any case when a majority of the Parties or the Committee of Ministers request its convocation.

3 The Parties shall be assisted by the Secretariat of the Council of Europe in carrying out their functions pursuant to this Article.”

2. The Parties shall be assisted by the Secretariat of the Council of Europe in carrying out their functions pursuant to this Article.

Article ~~18~~-17²⁵ - Implementation mechanism

1. The Committee of Ministers of the Council of Europe shall monitor the implementation of this Convention by the Contracting Parties.
2. The Parties which are not members of the Council of Europe shall participate in the implementation mechanism, according to modalities to be determined.

Article ~~19~~-18²⁶ - Information from the Parties

1. Every five year following the entry into force of this Convention [in respect of a Contracting Party, the latter] [each Party] shall transmit to the Secretary General of the Council of Europe full information on the legislative and other measures taken to give effect to the principles set out in this Convention.
2. Whenever the Committee of Ministers so requests, each Party shall transmit to the Secretary General any further information of relevance to the implementation of this Convention.
3. The Secretary General shall forward to the Committee of Ministers the information transmitted under the terms of this Article.

Article ~~20~~-19²⁷ - Follow-up to the Convention

1. The assessment of the adequacy of the measures taken by the Parties to give effect to the principles set out in this Convention shall be made in the framework of a [five-year] meeting of experts representing the Parties to this Convention. An activity report shall be submitted to the Committee of Ministers after this meeting, possibly together with general policy recommendations.

²⁵ Frame-conv N° 157, Article 24:

“1 The Committee of Ministers of the Council of Europe shall monitor the implementation of this framework Convention by the Contracting Parties.

2 The Parties which are not members of the Council of Europe shall participate in the implementation mechanism, according to modalities to be determined.”

²⁶ Frame-conv N° 157, Article 25:

“1 Within a period of one year following the entry into force of this framework Convention in respect of a Contracting Party, the latter shall transmit to the Secretary General of the Council of Europe full information on the legislative and other measures taken to give effect to the principles set out in this framework Convention.

2 Thereafter, each Party shall transmit to the Secretary General on a periodical basis and whenever the Committee of Ministers so requests any further information of relevance to the implementation of this framework Convention.

3 The Secretary General shall forward to the Committee of Ministers the information transmitted under the terms of this Article.”

²⁷ Frame-conv N° 157, Article 26:

“1 In evaluating the adequacy of the measures taken by the Parties to give effect to the principles set out in this framework Convention the Committee of Ministers shall be assisted by an advisory committee, the members of which shall have recognised expertise in the field of the protection of national minorities.

2 The composition of this advisory committee and its procedure shall be determined by the Committee of Ministers within a period of one year following the entry into force of this framework Convention.”

2. The preparation of the five-year meeting shall be entrusted to a limited group of specialists whose members shall have recognized competencies in the field of access to official documents. This group shall meet at least once a year.

Section IV – Final provisions

Article ~~21~~-20²⁸ - Opening to signature of the Convention

This Convention shall be open for signature by the member states of the Council of Europe. Up until the date when the Convention enters into force, it shall also be open for signature by any other state [and by any international organisation] so invited by the Committee of Ministers. It 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.

Article ~~22~~-21²⁹ - Entry into force of the Convention

1. 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 [x member states of the Council of Europe] [x Signatories, including at least y member states of the Council of Europe] have expressed their consent to be bound by the Convention in accordance with the provisions of Article ~~21~~-20.
2. In respect of any member 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 deposit of the instrument of ratification, acceptance or approval.

Article ~~23~~-22³⁰ - Accession to the Convention

²⁸ Frame-conv N° 157, Article 27:

“This framework Convention shall be open for signature by the member States of the Council of Europe. Up until the date when the Convention enters into force, it shall also be open for signature by any other State so invited by the Committee of Ministers. It 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.”

²⁹ Frame-conv N° 157, Article 28:

“1 This framework 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 twelve member States of the Council of Europe have expressed their consent to be bound by the Convention in accordance with the provisions of Article 27.

2 In respect of any member State which subsequently expresses its consent to be bound by it, the framework 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 deposit of the instrument of ratification, acceptance or approval.”

Terr.Conv N° 196, Article 23 - Signature and entry into force:

“(…)

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 six Signatories, including at least four 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 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.”

³⁰ Frame-conv N° 157, Article 29:

“1 After the entry into force of this framework Convention and after consulting the Contracting States, the Committee of Ministers of the Council of Europe may invite to accede to the Convention, by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe, any non-member

1. After the entry into force of this Convention and after consulting the Contracting states, the Committee of Ministers of the Council of Europe may invite to accede to the Convention, by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe, any non-member state of the Council of Europe which, invited to sign in accordance with the provisions of Article ~~21~~²⁰, has not yet done so, as well as any other non-member state [and international organisation].
2. In respect of any acceding Party, 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 deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article ~~24~~²³ - Territorial application

1. Any Party may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories for whose international relations it is responsible to which this Convention shall apply.
2. Any Party 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. In respect of such territory the framework 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 ~~25~~²⁴ - Amendments to the Convention

State of the Council of Europe which, invited to sign in accordance with the provisions of Article 27, has not yet done so, and any other non-member State.

2 In respect of any acceding State, the framework 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 deposit of the instrument of accession with the Secretary General of the Council of Europe.”

³¹ Frame-conv N° 157, Article 30:

“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 for whose international relations it is responsible to which this framework 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 framework Convention to any other territory specified in the declaration. In respect of such territory the framework 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.”

³² Terr.Conv N° 196, Article 27 (Amendments to the Convention):

“1 Amendments to this Convention may be proposed by any Party, the Committee of Ministers of the Council of Europe 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.

1. Amendments to this Convention may be proposed by any Party, the Committee of Ministers of the Council of Europe or the group of specialists.
2. Any proposal for amendment shall be communicated by the Secretary General of the Council of Europe to the Parties.
3. Moreover, any amendment proposed by a Party or the Committee of Ministers shall be communicated to the [Consultation of the Parties] [group of specialists], which 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 group of specialists 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 thirtieth day after all Parties have informed the Secretary General of their acceptance thereof.

Article 26-25³³ - 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 27-26³⁴ - Notification

3 *Moreover, any amendment proposed by a Party or the Committee of Ministers shall be communicated to the Consultation of the Parties, which 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 thirtieth day after all Parties have informed the Secretary General of their acceptance thereof."*

³³ Frame-conv N° 157, Article 31:

"1 Any Party may at any time denounce this framework 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."

³⁴ Frame-conv N° 157, Article 32:

"The Secretary General of the Council of Europe shall notify the member States of the Council, other signatory States and any State which has acceded to this framework 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 framework Convention in accordance with Articles 28, 29 and 30;

d any other act, notification or communication relating to this framework Convention.

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

The Secretary General of the Council of Europe shall notify the member states of the Council, other signatory Parties and any Party which has acceded 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 framework Convention in accordance with Articles ~~22, 23 and 24~~ **21, 22 and 23**;
- d. 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, this day of, 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 sign or accede to this Convention.

* * *

Done at Strasbourg, this 1st day of February 1995, 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 invited to sign or accede to this framework Convention.”