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Council of Europe Access Info Group (AIG)

Comments submitted by Estonia on the AIG's Baseline Evaluation Report on the implementation of the Council of Europe Convention on Access to Official Documents (CETS No.205) in respect of Estonia

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Estonia is very thankful for the Council of Europe Group on Access to Information (AIG) for providing the Baseline Evaluation Report on Estonia's Implementation of the Council of Europe Convention on Access to Official Documents (CETS No. 205) dated 11 June 2024 with reference no AIG(2024)04. The report is and will remain an invaluable input to Estonia in our efforts to increase access to public information. Hereby we would kindly take the opportunity to make final comments on the report as follows.

As for the definition of official documents, the AIG has noted that the qualification "upon performance of public duties provided by law" is not provided by Article 1, paragraph 2, subparagraph b of the Convention and may be perceived to unduly limit the scope of the Public Information Act. However, according to the Explanatory Report to the Convention "[a] clear distinction should be made between documents received by public officials in the course of their duties and those received by them as private persons and which are not connected to their duties. This last category of documents falls outside the definition of official documents in the Convention." The qualification under question explicitly refers to the distinction that according to the Explanatory Report should clearly be made.

The AIG refers that the system of proactive classification of information as internal might preempt an evaluation of harm by a public authority when they receive a request for access to an official document. The proactive classification of information on the one hand strengthens legal clarity and transparency, while it does not preclude individual evaluation of requests for access. According to PIA, each request for access to public information must be solved individually, and the requester must be given explanations if access to information is not granted (PIA § 23-3). This is strengthened by the obligation to invalidate a restriction on access if the reasons for establishment thereof cease to exist (PIA § 41-1). The latter also requires the holder of information to re-evaluate previous classification of information upon receiving a request for information. Also, the individual evaluation of each request is strengthened by the requirement to release the part of information (document) that has no applicable restrictions (PIA § 38-2) - to do so, each request for access of public information must be given a careful individual consideration.

The AIG has suggested that the legislator has not carried out balancing of interests in application of rules of balancing between the public interest to access an official document against the public interest protected by the limitation (p. 31). As explained before, § 35-1 of PIA distinguishes the absolute grounds of limiting access from the ones which have a requirement for harm or damage. The reasons for introducing new provisions to the grounds of restrictions to PIA (or other acts) must always be justified during legislative proceedings, both at the governmental and parliamentary level bearing in mind the overarching principle of PIA according to which the publicity/openness of public information is a rule, and access restrictions of public information the exception.