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Council of Europe Access Info Group (AIG)

Comments submitted by Ukraine 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 Ukraine

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Ukrainian's comments regarding the Baseline Evaluation Report on the implementation of the Council of Europe Convention on access to official documents

Ukraine received the Baseline Evaluation Report on the implementation of the Council of Europe Convention on access to official documents (CETS No. 205 –Tromsø Convention

We would like to thank the AIG for the high assessment of Ukraine's national legislation. At the same time, we would like to provide some comments.

1. The definition of public information contained in the Law on Access to Public Information (Article 1) includes information recorded in any form that is drawn up or received by public authorities in the process of their performance of their duties or information which is in the possession of the public authorities. The qualification "in the process of their performance of their duties" is considered by the Party as intending to obligate public authorities to collect or create information in the performance of their duties and to provide all information that they receive or create to an applicant requesting access to it.

In accordance with Part 2 of Article 19 of the Constitution of Ukraine, state authorities and local self-government bodies, as well as their officials, are obliged to act solely on the basis of, within the scope of, and in the manner prescribed by the Constitution and laws of Ukraine.

That is why the definition of public information contained in the Law on Access to Public Information includes the qualification "in the process of their performance of their duties".

In the 13 years since the implementation of Ukraine's the Law on Access to Public Information over 1 084 000 requests have been considered by executive authorities.

The law fully complies with the Convention and works in practice. The mentioned clarification is in line with the Constitution of Ukraine and simply helps applicants understand which government body they should approach.

2. The grounds for limiting the right of access to official documents laid down in the Law on Access to Public Information (Article 6(2)) and in the Law on Information (Article 6(2)) correspond to all the legitimate aims provided for in Article 3, paragraph 1 of the Convention, except that the protection of reputation or rights of others may go beyond the limitations provided for in Article 3. Furthermore, the AIG considers that the restrictive ground concerning the prevention of the disclosure of information received in confidence does not fully correspond to the legitimate limitation grounds set out in the Convention and recommends that the Party examines the possibility of amending this restrictive ground in order to ensure compliance with the Convention. The provisions of the Law on Access to Public Information and in the Law on Information meet the requirements of the harm test and public interest test of Article 3, paragraph 2, of the Convention.

According to the Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Part 2 of Article 1 of the Law of Ukraine "On Access to Public Information" stipulates that all public information is open except in cases established by law. Restricting access to public information (official documents in the sense of the Council of Europe Convention on Access to Official Documents) is possible only if the "three-part test" provided for in part 2 of Article 6 of the Law of Ukraine "On Access to Public Information" is applied.

That is why the Law of Ukraine "On Access to Public Information" fully complies with part two of Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and thus the grounds for limiting access to official documents, as outlined in the Law on Access to Public Information and the Law on Information, align with the legitimate aims of Article 3, paragraph 1, of the Convention, while also meeting the requirements of the harm test and public interest test under Article 3, paragraph 2, of the Convention. As a conclusion Ukrainian law fully aligned with the Convention.

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and Information Security Department
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