

TC-CP(2024)01
3 October 2024

Consultation of the Parties

Council of Europe Convention on Access to Official Documents (CETS No. 205)

Conclusions and recommendations on the implementation of the Council of Europe Convention on Access to Official Documents by Bosnia and Herzegovina

The Consultation of the Parties to the Council of Europe Convention on Access to Official Documents (CETS No. 205) (hereinafter referred to as “the Convention”), acting under the terms of Article 12, paragraph 2, sub-paragraphs a and b, of the Convention;

Bearing in mind the provisions of Article 11, paragraph 1, of the Convention concerning the role of the Council of Europe Access Info Group (AIG) in monitoring the implementation of the Convention;

Bearing in mind the overarching obligation under Article 2, paragraph 2, of the Convention on each Party to take the necessary measures in its domestic law to give effect to the provisions for access to official documents set out in this Convention;

Having regard to the Rules of Procedure of the Consultation of the Parties;

Having examined the baseline evaluation report concerning the implementation of the Convention by Bosnia and Herzegovina adopted by the AIG at its 6th meeting (29-31 May 2024) which focuses on the Law on Freedom of Access to Information at the level of institutions of Bosnia and Herzegovina (hereinafter the LFAI of Bosnia and Herzegovina), the Law on Freedom of Access to Information of the Federation of Bosnia and Herzegovina (hereinafter referred to as the LFAI of the Federation) and the Law on Freedom of Access to Information of the Republika Srpska (hereinafter referred to as the LFAI of Republika Srpska);

Having examined the comments of the Government received on 15 July 2024;

1. Welcomes the following elements of the LFAI of Bosnia and Herzegovina, the LFAI of the Federation and the LFAI of Republika Srpska:

- 1.1. the inclusion within their scope of application of executive and legislative authorities regarding the information that they hold in compliance with Article 1, paragraph 2, sub-paragraphs a, i, 1 and 2 and sub-paragraphs a, ii, 1 and 2, of the Convention;
- 1.2. guaranteeing the right of access to official documents held by public authorities to everyone, on request, without discrimination in compliance with Article 2, paragraph 1, of the Convention;
- 1.3. the compliance of the limitations on the right of access with the grounds provided for in Article 3, paragraph 1, of the Convention;
- 1.4. the general compliance of limitations on the right of access laid down in these laws with the harm test and the overriding public interest test of Article 3, paragraph 2 of the Convention;
- 1.5. the implementation of the requirements of Article 4 of the Convention regarding requests for access to official documents;
- 1.6. guaranteeing the right to receive a copy of the requested document in accordance with Article 6, paragraph 1, of the Convention;
- 1.7. the compliance of the principles of the LFAI of the Federation and the LFAI of Republika Srpska with Article 7 of the Convention regarding charges for access to official documents;
- 1.8. the implementation of the requirements of Article 8 of the Convention regarding review procedures;
- 1.9. the compliance with Article 9, paragraph 1, of the Convention regarding information

to the public about its right of access to official documents and how that right may be exercised;

2. Recommends that Bosnia and Herzegovina provide the necessary information to the AIG on the issues on which the latter has reserved its position due to incomplete provision of information to it, namely:
 - 2.1. the application of the LFAI of Bosnia and Herzegovina to the administration at the local level and to other entities carrying out administrative and other law-based procedures, as well as to judicial authorities in so far as they perform administrative functions (paragraph 78 of the AIG report);
 - 2.2. the application of the LFAI of the Federation and the LFAI of Republika Srpska to legal persons who exercise administrative authority (paragraph 79 of the AIG report);
 - 2.3. what information is excluded from the LFAI of Bosnia and Herzegovina as being secret under its Article 2(2), what information is subject to limitations under Article 19 sub-paragraphs (4)a and b and sub-paragraph 7(a) (paragraphs 15, 19, 22, 80 and 84 of the AIG report);
 - 2.4. the fees for access to official documents set by the Government under LFAI of Bosnia and Herzegovina (paragraphs 87 and 90 of the AIG report);
 - 2.5. measures taken at the State and Entities' level to implement Article 10 of the Convention (paragraphs 76-77; 93 of the AIG report);
3. Recommends that Bosnia and Herzegovina take the following measures identified on the basis of the AIG's report:
 - 3.1. bring the LFAI of Bosnia and Herzegovina in line with the obligations of Article 5 of the Convention, notably by introducing the duty of the public authority receiving a request for access to help the applicant, ensuring in Article 23(1) the duty of the public authority holding the requested document to deal with a request for access or to refer it to the competent public authority, ensuring in Article 26(2) that repeated requests for the same document are denied only when these are manifestly unreasonable and ensuring in Article 25 the duty of the public authority refusing access to give reasons for the refusal (paragraphs 37-41, 46-47, 50, 88 of the AIG report);
 - 3.2. bring Articles 10 of the LFAI of the Federation and the LFAI of Republika Srpska respectively in line with the principle of Article 6, paragraph 2, of the Convention that omissions of information following the application of partial limitations of access should be clearly indicated (paragraphs 55 and 89 of the AIG report);
4. Requests the government of Bosnia and Herzegovina to provide the AIG with the information under point 2 of the present conclusions at the latest by 4 November 2024;
5. Requests the government of Bosnia and Herzegovina to report to the Consultation of the Parties on the measures taken to improve the implementation of the Convention pursuant to point 3 of the present conclusions, by 6 October 2025.