

TC-CP(2024)02
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 Estonia

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 Estonia adopted by the AIG at its 6th meeting (29-31 May 2024) which focuses on the Public Information Act as well as the comments of the Government received on 12 July 2024;

1. Welcomes the following elements of the Public Information Act:

- 1.1. its application to the widest range of public authorities covered by the Convention and to all information held by them;
- 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. its compliance of the limitations on the right of access with the grounds provided for in Article 3, paragraph 1, of the Convention;
- 1.4. its implementation of the requirements of Article 4 of the Convention regarding requests for access to official documents;
- 1.5. its general compliance with the obligations of Article 5 of the Convention regarding the processing of requests for access to official documents;
- 1.6. guaranteeing the access to official documents in accordance with the requirements and obligations of Articles 6 and 7 of Convention respectively on forms of and charges for access to official documents;
- 1.7. its compliance with the requirements of Article 8 of the Convention regarding review procedures;
- 1.8. its measures to comply with Articles 9 and 10 of the Convention respectively on complementary measures and documents made public at the initiative of the public authorities;

2. Recommends that Estonia takes the following measures identified on the basis of the AIG’s report:

- 2.1. reconsider the qualification of “upon performance of public duties provided by law” in the definition of public information in §3(1) of the Public Information Act with a view to ensuring compliance with Article 1, paragraph 2, sub-paragraph b, of the Convention (paragraphs 11-12, 57 of the AIG report);
- 2.2. revise the system of proactive classification of information as internal under §35(1) of

the Public Information Act with a view to fully implementing the harm test principle and the overriding public interest principle in compliance with Article 3, paragraph 2, of the Convention (paragraphs 27-31, 60 of the AIG report);

- 2.3. ensure full compliance of §21(3) of the Public information Act with Article 5, paragraph 2, of the Convention as regards the duty of legal or natural persons which perform specific administrative tasks to transfer requests for access to competent authorities and of §23 (2) (6) of the Public Information Act with Article 5, paragraph 5, of the Convention as regards refusal of access on grounds of legal incapacity of the applicant (paragraphs 36, 39 and 62 of the AIG report);
3. Requests the government of Estonia to report to the Consultation of the Parties on the measures taken to improve the implementation of the Convention pursuant to point 2 of the present conclusions by 6 October 2025.