



AIG(2025)02  
17 January 2025

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

### **Council of Europe Access Info Group**

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**[draft] Annual report 2024**

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## I. Introduction

1. The number of Council of Europe member States having signed and ratified the Convention continued to grow in 2024. North Macedonia and Latvia respectively ratified and signed the Convention. This year was also marked by the entry into force of Convention in respect of Spain, bringing the number of Parties to 15 at year's end.<sup>1</sup>
2. The Council of Europe Access Info Group (AIG), which is responsible for monitoring the implementation of the Convention by the Parties, has focused on adopting the baseline evaluation reports in respect of the first 11 Parties of the Convention. It also began the process of drafting an opinion on the definition of "official documents" according to Article 1, paragraph 2, sub-paragraph b, of the Convention.
3. The present report is prepared pursuant to Rule 25 of the AIG's Rules of Procedure according to which it shall submit to the Consultation of the Parties and the Committee of Ministers an annual report on its activities containing, *inter alia*, information on the organisation and internal workings of the Group and on its activities.

## II. Activities in 2024

### 5th meeting – 22 January 2024

4. The AIG examined and approved the draft baseline evaluation reports concerning Bosnia Herzegovina, Lithuania and the Republic of Moldova, having regard to the Parties' replies to the Group's questions. In this context, the AIG considered the comments it had received from Access Info Europe ([AIG/Inf\(2023\)22](#)) on these Parties' national legislative frameworks.
5. The AIG invited Spain to reply to its questionnaire ([AIG\(2022\)01](#)) in the context of preparing its report on the implementation of the Convention pursuant to Article 14, paragraph 1, of the Convention.
6. The President informed the Group about her exchange of views with the Council of Europe Group of States against Corruption (GRECO) on 30 November 2023. GRECO had referred to the Convention in some of its monitoring reports and expressed willingness to cooperate with the Group in the future.

### 6th meeting – 29-31 May 2024

7. The AIG adopted baseline evaluation reports on the implementation of the Convention in respect of the following Parties: Bosnia and Herzegovina ([AIG\(2024\)02](#)); Estonia ([AIG\(2024\)04](#)); Finland ([AIG\(2024\)05](#)); Hungary ([AIG\(2024\)06](#)); Iceland ([AIG\(2024\)07](#)); Lithuania ([AIG\(2024\)08](#)); the Republic of Moldova ([AIG\(2024\)09](#)); Montenegro

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<sup>1</sup> The Convention will enter into force in respect of North Macedonia on 1 March 2025. Latvia ratified the Convention on 17 January 2025. The Convention will enter into force in respect of Latvia on 1 May 2025. The other Parties to the Convention are Albania, Armenia, Bosnia and Herzegovina, Estonia, Finland, Hungary, Iceland, Lithuania, Republic of Moldova, Montenegro, Norway, Slovenia, Spain, Sweden and Ukraine.

(AIG(2024)10); Norway (AIG(2024)11); Sweden (AIG(2024)12); and Ukraine (AIG(2024)13). The reports were published on the Council of Europe website on 16 July 2024, together with the comments on them sent by the Parties at the AIG's invitation.

8. The reports focus on the freedom of information laws of the Parties. The AIG has found that, for each of the 11 Parties concerned, these laws apply to all central and local government authorities, judicial and legislative authorities as regards their administrative functions, as well as to private entities which exercise administrative authority. Many Parties have extended the application of their laws also to the judiciary and the legislative bodies regarding all of their functions and to publicly funded entities or companies managing public services such as utilities. One question on which the AIG reserved its position is the extent to which the notion of "drawn up" contained in Article 1, paragraph 2, sub-paragraph b, of the Convention includes drafts and working documents. The AIG decided to adopt an interpretative opinion on this provision of the Convention after its first baseline evaluation.
9. Generally speaking, in all Parties restrictions of the right to access official documents were found by the AIG to pursue the legitimate interests listed in the Convention as permissible grounds for limiting the right of access. The AIG has only occasionally identified restrictive grounds which are not provided for by the Convention. In these cases, it recommended that the Parties concerned re-consider them. While accepting that absolute statutory exemptions of access to official documents are permissible under the Convention,<sup>2</sup> the AIG has noted that they must apply only to extremely sensitive information and be kept to a minimum.
10. As regards access to a review procedure in cases of denials of access, the AIG found that review procedures before a court are guaranteed in all of the Parties examined, and that they are, generally speaking, expeditious and inexpensive.

#### **7th meeting – 13-15 November 2024**

11. Helena JÄDERBLOM and Tetyana OLEKSIYUK were re-elected as respectively President and Vice-President of the AIG, both for a second term ending on 31 March 2026.
12. The AIG approved the draft baseline evaluation reports concerning Albania (AIG(2024)21) and Armenia (AIG(2024)22), and decided to transmit them to the relevant Parties for comments. It also invited Access Info Europe and Article 19 to provide comments on these draft baseline evaluation reports.
13. The Group held a thematic discussion on issues related to the definition of official documents according to the Convention, having previously reserved its position on the concept of "drawn up" for in Article 1, paragraph 2, of the Convention. It came to the conclusion that the Parties must be allowed a certain margin of appreciation to define official documents and thus decide on the remits of their freedom of information laws. Nevertheless, limits to the Parties' discretion should be identified, having regard to all the requirements of the Convention.
14. An exchange of views was held with the Chair of the Consultation of the Parties to the Convention, Kristi VÂRK, who reported that the Consultation of the Parties had adopted

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<sup>2</sup> Exemptions which are not subject to an evaluation of harm that the release of the requested information would cause and an evaluation of whether there is still an overriding public interest in its disclosure in accordance with Article 3, paragraph 2, of the Convention.

recommendations and conclusions on the basis of the AIG's baseline evaluation reports in respect of the 11 concerned Parties (TC-CP(2024)LD4). She also conveyed some common questions among the Parties, regarding uncertainties about the application of the Convention to draft documents and about the implementation of the overriding public interest test provided for by Article 3 of the Convention.

15. The AIG also exchanged views with Alina TATARENKO, Head of the Division for Cooperation on Freedom of Expression. She presented the Council of Europe's technical assistance and capacity-building activities with national authorities in various member States of the Council of Europe and non-member States, as well previous activities helping some member States prepare their process of ratification of the Convention.

### **Promoting the Convention**

16. The Vice-president of the Group, Tetyana OLEKSIYUK, took part in a Council of Europe regional conference on "Euro-Mediterranean Approaches on Access to Information" held in Rabat on 22 April 2024, where she presented the Convention standards and the work of the AIG.
17. The Vice-president and another member of the Group, Inge LORANGE BACKER, participated in the XV Edition of the International Conference of Information Commissioners, held in Tirana (3-5 June 2024). The Convention and the work of the Group were presented in a plenary session of the Conference and in a dedicated workshop in which various stakeholders participated, including the German Federal commissioner for Data Protection and Freedom of Information, a representative of the EU Ombudsman Office, and a representative of Article 19. Participants discussed the progress made and the challenges faced in the implementation of the Convention, as well as possible strategies to further compliance with the Convention.
18. The Vice-President of the group and the Secretary of the Tromsø Convention bodies also held bilateral meetings with a number of representatives of national information commissioners to discuss their position on the Convention. Most of these expressed their support for their country's ratification of the Convention, and on occasion reported that they had recommended such ratification to their respective governments.