

Ladies and gentlemen,  
Thank you for having taken the initiative to hold this debate.

I hope that this discussion will encourage positive reflections on the Tromsø Convention.

Why is this Convention important and what is its added value? Why should Council of Europe Member States ratify it?

I will address these questions in turn.

The principal added value of the Tromsø Convention lies in its advanced access to information standard and its peer-based monitoring mechanism.

The Tromsø Convention guarantees a general stand-alone right of access to information held by public authorities. This is what distinguishes it from other treaties, including the European Convention on Human Rights and its developed take on freedom of information. The Tromsø Convention is a treaty about transparency, accountability, and good governance in public bodies, all of which are necessary attributes of a democratic society governed by the rule of law.

This has been acknowledged in the Reykjavik Declaration and the importance of freedom of information is re-affirmed in the Secretary General's report on a New Democratic Pact for Europe, as well in other European instruments, such as the EU regulation (2001/1049) on access to EU institution documents.

In conversations with stakeholders - such as the CDDH – the AIG highlights the special features of the Tromsø Convention and addresses some of the questions and misconceptions about its standards.

A common misunderstanding is that the Convention requires complete and unlimited transparency in the sense that once a State becomes a Party to it, all information held by government entities exercising public authority must be disclosed to the public. In fact, the Convention is about achieving the optimal level of transparency that is consistent with respect for the protection of private and public interests, and not about absolute disclosure of all State-held information; limitations of access are permissible in order to protect valid interests.

The approach of the AIG when monitoring the implementation of the Convention fully incorporates this inherent duality of the Convention.

After fruitful consultation with each of with the Parties to the convention through questions and requests for clarifications the AIG has completed its first baseline evaluation round for 15 of the 17 Parties. And we are now elaborating the draft reports in respect of the two remaining Parties.

In the evaluations we examined the basic domestic laws that regulate freedom of information and access to official documents.

I would like to highlight two main learnings the Group took from this evaluation round.

First, none of the Parties evaluated so far was found to be in fundamental breach of the Convention. Of course, we have noted some areas for improvement, but the overall picture across the Parties examined so far is positive.

Secondly, a variety of national approaches to ensuring access to official documents can be consistent with the requirements of the Convention. Albeit that it's evident that some states have been inspired by the structure of the convention in drafting their legislation, the AIG does not consider the Convention to be a model law for its Parties.

For example, we have noted that balancing the harm test and the public interest principle are framed in different ways in different laws of the Parties. Some of the laws provide that this is carried out on a case-by-case basis for every individual request. In others the legislator has evaluated the harm and the overriding public interest already when regulating access to certain types of information. The AIG found both approaches acceptable under the Convention.

The AIG has now started its first thematic evaluation round. This focuses on measures taken by Parties to the Convention to efficiently manage their official documents and to ensure their preservation or destruction according to clearly established rules. The Parties have provided useful information to a questionnaire and we are now processing their replies.

Furthermore, the AIG has in an opinion addressed the issue of defining which documents that are covered by the notion of “official documents” in respect of documents held and produced by the authorities, the so called drawn up documents. The AIG has also recently begun to look into the issue of the meaning of the overriding public interest principle.

Another aspect of the Convention is the peer-based monitoring mechanism. As you may know, it is the Consultation of the Parties which considers the reports of the Group of experts and in turn formulates and addresses recommendations to the Parties concerned.

The AIG and the Consultation of the Parties have built a solid and constructive cooperation framework, of course, each in their roles and responsibilities.

The Consultation of the Parties has based its recommendations and conclusions to the Parties on our reports. They also oversee the follow-up that the Parties have given to its recommendations and has invited our Group to provide comments in this context.

In the AIG's meeting in March this year we considered the reports provided by nine Parties, and to which extent they have addressed the recommendations of the Consultation of the Parties. While more work remains to be done in the follow-up phase, it can already be said that this phase has been also fruitful in terms of the direct co-operation with the Parties.

Moreover, the Chair of Consultation of the Parties has exchanged views with the AIG on several occasions and I have been invited to exchange views with the Consultation of the Parties.

I am also happy to inform you that our reports, the Parties reports, and their comments, are now accessible and searchable on the Tromsø Convention database.

Finally, some words on the important issue of ratification of the Convention.

In the AIG we have tried to understand why the number of Council of Europe member States which have ratified the Convention remains relatively low – 17 out of 46. Although we do not have a full picture of the reasons for all member States, we have some indications.

As examples can be mentioned that domestic legislation is considered as already complying with the Convention, and in some cases that national rules go further in terms of guarantees for the right of access and even – incomprehensibly - that it might restrict the rights of journalists. Another one is the lack of harmonisation between the legislation of different regions within a country.

However, none of these reservations should be a barrier to ratifying the Convention. If a country's legislation is already compliant with the Tromsø Convention, there is all the more reason to ratify because there would probably be a relatively low administrative burden to do so and to comply with it, but above all the point being benefiting from peer-learning and contributing to international development.

Political disruption across Europe comes with risks of eroding democratic standards established by national legislation. Ratifying the Tromsø Convention help ensure these standards are upheld at both the national and the international level.

Our secretariat is always eager to provide clarifications and to support States interested in ratification and I would encourage all of you who represent countries who have not ratified the Tromsø Convention to consider bringing these messages back home in your conversations with colleagues in the government institutions responsible for freedom of information issues.