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Council of Europe Access Info Group (AIG)

Comments submitted by Slovenia 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 Slovenia

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The Republic of Slovenia received the Baseline Evaluation Report on the implementation of the Council of Europe Convention on Access to Official Documents (CETS No. 205 – Tromsø Convention) from 16 May 2025.

We are very thankful to the Council of Europe Group on Access to Information (AIG) for providing the Report. It is a valuable contribution to our ongoing efforts to improve access to public information. We will give due consideration to the AIG's recommendations, and we remain strongly committed to further enhancing the transparency and accessibility of official documents.

We would also like to take this opportunity to submit final comments on the Report as follows.

1. ***The AIG recommends that Slovenia reconsider the exemption for "information from the document drawn up in connection with internal operations or activities of bodies, and the disclosure of which would cause disturbances in the operations or activities of the body" set out in Article 6(1)(11) of the Information Access Act (the Act) in order to bring it in line with the Convention.***

The AIG considers that the phrasing of the provision in question is too wide and goes beyond the aim of Article 3, paragraph 1, sub-paragraph k, of the Convention. The aim of this paragraph is to protect the confidentiality of proceedings and to preserve the quality of the decision-making process by allowing a certain free "space to think". The AIG, therefore, recommends that the Party reconsider this exemption in order to bring it in line with the Convention.

As stated in the Report in Slovenia this exemption relates to documents for the internal use of a public authority which sets out its procedure or way of working and its internal policies. The purpose of this exemption is to prevent, in a reasonable manner and on a case-by-case basis, damage to the quality of the authority's decision-making and internal deliberations. The notion of "disturbances in the operations or activities of the public body" means that the quality of such operations and activities would be substantially decreased if the requested document were to be disclosed.

With respect to this exemption, we would like to point out that both the Information Commissioner and the Administrative Court of Slovenia have in their respective jurisprudences adopted a restrictive interpretation of the notion of "information constituting internal official deliberations." They have also affirmed that the burden lies with that authority to prove beyond reasonable doubt that the disclosure of the requested information would disrupt the internal operations of a public authority.

We would like to add that in practice this exception has always been interpreted narrowly and has not been highlighted as problematic.

2. ***The AIG recommends that the Party revises the general time limit in Article 23 of the Act for deciding on access requests with a view to ensuring that when public authorities do not rely on legal exemptions of access, they decide on them as soon as reasonably practicable.***

The AIG considers that the requirement of Article 23 of the Act that access requests are dealt with without delay is in line with Article 5, paragraph 4, of the Convention. However, it should be reasonably practicable to decide in a shorter time than 20 working days on requests for access to documents which are not voluminous or when the public authority does not rely on the exemptions of access laid down in Articles 5(a) or 6(1) of the Act. Therefore, the AIG

recommends that the Party revises the general time limit for deciding on access requests with a view to ensuring that when public authorities do not rely on legal exemptions of access, they decide on them as soon as reasonably practicable.

Article 23 of the Act provides that the authority shall decide on the applicant's request without delay, but no later than within 20 working days from the date of receipt of the complete request. Thus, the authority must as a general rule decide on the request of the applicant without delay, as the law primarily requires the authority to decide on the request without delay, i.e. within the shortest possible time frame, or within 20 working days of receipt of the request.

The time limit for deciding on the applicant's request must be based on the fact that the authority is obliged to decide on the applicant's request in the context of the administrative procedure. In an administrative procedure, the authority is bound by the principle of ascertaining the material truth, the documentation on which it decides may be very extensive, kept in archives, and it must invite third parties (e.g. companies whose headquarters may be abroad) to participate in the procedure if the disclosure of the information could affect their legal position (e.g. a possible business secrecy exception). The documentation must be carefully reviewed for partial access and to ensure that sensitive information (e.g. personal data of individuals) is covered. All this takes time, and this time limit allows the authority to review the requested documentation and make it ready for inspection. The requests under the Act may also apply to very extensive documentation, which in each individual case must be examined very carefully to see whether it contains protected information, which is a time-consuming task. Time for review is also needed if access is fully granted and it is not necessary to protect the protected information. The statutory time limit for decision-making under the Act therefore protects the authority against errors and protects the interests of data subjects against unlawful disclosure of protected information, which could occur because a time limit that is too short for deciding on a request would not allow the authority to conduct a thorough review of the documentation. It should also be noted that the 20-day time limit is more than just indicative, as its non-compliance leads to a legal fiction of a negative decision and allows the applicant to appeal against the silence of the person liable**.**

We further commit to encouraging public authorities to make decisions on access to public informationon as soon as reasonably practicable.

3. The AIG concludes that charging fees for inspecting in the premises of a public authority a copy of a document to which only partial access is permitted (Article 34 of the Act) is not in line with the first paragraph of Article 7 of the Convention.

As stated in the Report in Slovenia, inspection of official documents on the premises of the public authority is in principle free of charge. However, when partial access is granted to a document due to the application of limitations of access (e.g. personal data protection etc), inspection may incur the costs of copying the document made ready for inspection (Article 34(1) of the Act). When access is granted by means of providing a transcript, photocopy or electronic record, the public authority may charge the applicant for the material costs of transmission; no fees will be charged if the costs of providing the information do not exceed EUR 20 (Article 34(2) of the Act).

In practice, cases where the applicant is charged are rare, as applicants often do not request such a number of documents that the cost of partial access would exceed EUR 20 (that would mean more than 300 A4 pages). The authority is also obliged to warn the applicant in advance of the payment of the costs and to inform him or her in advance of the amount of the costs it will charge for providing public information (Article 36(3)). This gives the applicant the possibility to request less information or to adapt the request if necessary and avoid paying

costs. The applicant has the right to appeal against the charges to the IP, and the IP received only 3 complaints in 2024 concerning the charging of costs, of which only 1 was justified.

In conclusion, we would like to add that the Republic of Slovenia will once again examine the proposed AIG's recommendations and conclusions in close cooperation with the Information Commissioner of the Republic of Slovenia, in the scope of the next process of preparation of amendments to national legislation.