



CDDH(2019)34

22/11/2019

STEERING COMMITTEE FOR HUMAN RIGHTS (CDDH)

Access to official documents

Briefing note

Introduction

The present note recalls briefly the state of the discussions within the CDDH. It also contains:

- (i) The chart of signatures and ratifications of the Council of Europe Convention on Access to Official Documents (CETS n° 205)¹, treaty elaborated by the CDDH and opened for signature at Tromsø (Norway) on 18 June 2009 (**Appendix I**);
- (ii) Information on the side-event to the 1339th meeting of the Ministers' deputies organised by the Finnish Presidency of the Committee of Ministers, in co-operation with the CDDH, on the Council of Europe Convention on Access to Official Documents (**Appendix II**).

¹ See the text of the [Convention](#) and the [Explanatory report](#).

Reminder of the state of the discussions

1. On 18 June 2009, the Council of Europe Convention on Access to Official Documents (CETS n° 205) was opened for signature and ratification in Tromsø (Norway).
 - (i) This Convention was prepared by the Group of Specialists on access to official information (DH-S-AC).
 - (ii) The principle which governed the work was that all official documents are in principle public and should only be withheld in order to protect other rights and legitimate interests.
2. At its 87th meeting (June 2017), the CDDH highlighted the need for a rapid entry into force of this instrument, which will enter into force following ten ratifications.
 - (i) Currently, 9 member States² have ratified it and 8 others have signed but not ratified it. The Committee of Ministers has charged the CDDH with the follow-up to this treaty. been assigned to by the
 - (ii) The CDDH therefore decided to organise an event which would, *inter alia*, allow member States to make their positions on this Convention known and also involve civil society.
3. At the 89th CDDH meeting, several delegations reiterated their interest in raising awareness of the Tromsø Convention.
4. At its 90th meeting (27-30 November 2018), the CDDH further exchanged views on this issue. It noted that Georgia intends to organise, during its future Chairmanship, a Conference on the environment, a topic where access to public information held by public authorities remains important.³
5. On 6 March 2019, the Finnish Presidency of the Committee of Ministers organised a side-event to the 1339th meeting of the Ministers' deputies, in co-operation with the CDDH, on the Council of Europe Convention on Access to Official Documents (see Appendix II below).

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6. For information purposes, it should be recalled that the European Union adopted Regulation (EC) No 1049/2001 which lays down the general principles and limits on the right of access to documents of the EU institutions, bodies, offices provided for in Article 15 of the TFEU. It aims to ensure that citizens can exercise their right of access in the easiest

² As of 22 November 2019, the Convention has been signed by Belgium, Georgia, Iceland, North Macedonia, San Marino, Serbia, Slovenia and Ukraine, and ratified by Bosnia and Herzegovina, Estonia, Finland, Hungary, Lithuania, Montenegro, Norway, Republic of Moldova and Sweden. 10 ratifications are required for it to enter into force.

³ See for further information on the high-level Conference on *Environmental Protection and Human Rights*, organised under the aegis of the Georgian Chairmanship of the Committee of Ministers on 27 February 2020 in Strasbourg document CDDH(2019)32.

possible way. Access can be requested to all documents drawn up or received by an institution, in all areas of EU activities.

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Appendix I

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

Chart of signatures and ratifications

Treaty open for signature by the member States and for accession by non-member States and by any international organisation

Opening for signature

Place: Tromsø
Date : 18/06/2009

Entry into force

Conditions: 10 Ratifications.
Date : //

Status as of: 22/11/2019 (as it appears on the Treaty Office website)

Total number of signatures not followed by ratifications	8
Total number of ratifications/accessions	9

Member States of the Council of Europe

	Signature	Ratification	Entry into Force	Notes	R.	D.	A.	T.	C.	O.
Albania										
Andorra										
Armenia										
Austria										
Azerbaijan										
Belgium	18/06/2009									
Bosnia and Herzegovina	01/09/2010	31/01/2012								
Bulgaria										
Croatia										
Cyprus										
Czech Republic										
Denmark										
Estonia	18/06/2009	28/01/2016								
Finland	18/06/2009	05/02/2015								
France										
Georgia	18/06/2009									
Germany										
Greece										
Hungary	18/06/2009	05/01/2010				D.				
Iceland	16/05/2019									
Ireland										
Italy										
Latvia										
Liechtenstein										
Lithuania	18/06/2009	26/07/2012				D.				
Luxembourg										
Malta										
Monaco										
Montenegro	18/06/2009	23/01/2012								

	Signature	Ratification	Entry into Force	Notes	R.	D.	A.	T.	C.	O.
Netherlands										
North Macedonia	18/06/2009									
Norway	18/06/2009	11/09/2009				D.				
Poland										
Portugal										
Republic of Moldova	21/12/2010	02/09/2016								
Romania										
Russian Federation										
San Marino	16/05/2019									
Serbia	18/06/2009									
Slovak Republic										
Slovenia	18/06/2009									
Spain										
Sweden	18/06/2009	19/04/2010			R.					
Switzerland										
Turkey										
Ukraine	12/04/2018									
United Kingdom										

Notes:

a: Accession; s: Signature without reservation as to ratification; su: Succession; r: Signature "ad referendum".

R.: Reservations; D.: Declarations, Denunciations, Derogations; A.: Authorities; T.: Territorial Application;

C.: Communication; O.: Objection.

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Appendix II

Access to official documents**Information on the event organised by the
Finnish chairmanship of the Committee of Ministers
(6 March 2019)⁴**

1. On 6 March 2019, a side-event to the 1339th meeting of the Ministers' deputies was organized by the Finnish Presidency of the Committee of Ministers, in co-operation with the Steering Committee for Human Rights (CDDH), on the Council of Europe Convention on Access to Official Documents (CETS No. 205).
2. The aim of this side-event was to raise awareness of this legal instrument, with a view to obtain the tenth ratification soon, to allow its entry into force.
3. It gathered representatives of member states and observers, representatives of relevant sectors within the Council of Europe, representatives of civil society and leading experts in the field.
4. The programme of this event could be found [here](#).
5. The event was open by Mr Christophe Poirel, Director, DG, who welcomed all the participants, and thanked the Finnish Chairmanship for its initiative to organise this event and for making this topic one of its priorities. He also thanked Ambassador Walaas from Norway for her introduction, and recalled that the Council of Europe Convention on this matter is the first binding international legal instrument to recognise a general right of access to official documents held by public authorities. He recalled that the principle of the confidentiality of information was the principle and disclosure the exception. The message of the Convention is to replace this by the principle of transparency and the exception of confidentiality.
6. The right of access to official documents was first developed in the Nordic European States and spread, little by little, to many other European countries. Today, access to official documents is widely considered as a central element of democratic governance, in Europe and beyond. He thought that there was no need to underline the importance of this at a time when the lack of trust in these institutions is unfortunately growing in Europe. If access to official documents is widely accepted today, there is certainly still room for improvement when it comes to anchoring it into the domestic law and practice of States.
7. The first keynote speaker, Mr Darian Pavli, intervened in a double capacity. He is judge at the European Court in respect of Albania, but he was also one of the members of the CDDH working group which drafted the Convention on access to official documents.

⁴ See already document CDDH(2019)13.

He presented the history of the Convention and the evolving jurisprudence of the European Court of Human Rights in this respect.

8. The second speaker was Ms Helen Darbshire, who is the Executive Director of Info Access Europe, who has been actively promoting access to information throughout Europe for many years. She recalled the history of this right. She insisted that the direct link between access to information, participation, accountability and, indeed, the fight against corruption: all very relevant issues for the Council of Europe today. She provided a number of positive impacts the Convention had, although it is not in force.
9. Having the treaty in force with its monitoring body would enable us to contribute to promoting not only this right but the full range of other human rights that the Council of Europe is committed to defend. And that is why it should be a priority for all governments here present, for all member states of the Council of Europe to sign and ratify the Convention, and I hereby call on you to do so!
10. The last keynote speaker was Ms Katrien Meuwissen, from the European Network of National Human Rights Institutions. She recalled that NHRIs are state-mandated bodies, independent of government, with a broad constitutional or legal mandate to protect and promote human rights at the national level. Through their work, NHRIs also contribute to the right to access of information of rights holders and non-governmental organisations active in the area of human rights.
11. She thought that the ratification and entry into force of the Council of Europe Convention on Access to Official Documents would further support NHRIs to carry out their human rights work in an effective manner. Once the Convention enters into force, NHRIs can also play a role in providing advice to state authorities on implementation of the Convention and in providing information on the national situation to the CDDH Group of Specialists on Access to Official Documents.
12. As reflected in the 2018 Recommendation of the Committee of Ministers on civil society space, access to information, including official documents, is of key importance for the effective enjoyment of human rights in the Council of Europe. Member states are encouraged to provide good practices on the implementation of the Recommendation, so that its implementation can be evaluated again in 5 years' time.
13. The members of the secretariat of GRECO and the Data Protection Unit presented the work that is conducted in their respective sectors in relation to the topic.
14. GRECO is looking at the specific issue of access to official documents in the context of its recently started 5th evaluation round. As a reminder, this round focuses on corruption prevention in respect of central governments, including the top executive functions, and law enforcement. In about a third of the ten 5th Round Evaluation Reports adopted thus far GRECO dealt with the issue of access to official documents. As underlined by Ms Darbshire, the right of access to information is not only about fighting corruption and exposing wrongdoing. It is also a right that helps improve the quality of public debate on important issues and strengthen participation in decision making.
15. In his concluding remarks, Mr Poirel thanked all the participants and keynote speakers for the lively exchange, which confirmed the importance and relevance of the issue of

access to official documents. Promoting such access is perhaps even more important today than before, at a time when large numbers of people in our countries are questioning the legitimacy of public authorities, no longer trust them and tend to place their confidence in other sources of information, which they believe are more reliable. One way of combating the dissemination of fake news, which is a very sad illustration of this very worrying trend, is probably to promote greater openness and transparency in the provision of information by public authorities.

16. He concluded that the Council of Europe Convention on access to official documents keeps all its relevance, and expressed his hope that this event will be an opportunity for those States which have not yet done so to reflect on the interest of acceding to the Convention.