

For Immediate Release
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Council of Europe Accused of Secrecy Over Convention on Transparency

Public kept in the dark on world's first international treaty on access to information

London, Madrid -- Human rights organisations working on government transparency filed a request last week with the Council of Europe for information about the Convention on Access to Official Documents. The convention, still in draft form, has been heavily criticised and is being finalized under a shroud of secrecy.

"It's more than a little ironic that the world's first international treaty on access to information is being decided upon behind closed doors", said Helen Darbishire, Executive Director of Access Info Europe. "The public has the right to know what is being discussed, and what positions our governments are taking on the treaty", commented Darbishire, whose organization, along with the Open Society Justice Initiative and Article 19, is leading civil society efforts to promote a stronger treaty that fully protects the right of access to information.

The Parliamentary Assembly of the Council of Europe, which is composed of delegations from the national parliaments of the 47 countries, adopted an unusually critical opinion of the treaty in October. It identified numerous problems with the draft convention and called for the Council of Europe to allot more time for redrafting.

On 12 November, the Council of Europe reportedly considered whether or not to act on the Parliamentary Assembly's opinion of the treaty, but did so without notifying the public of their conclusions. Neither elected representatives nor civil society received any information about what was discussed or how the meeting might impact treaty negotiations. An information request was therefore filed on 14 November with Terry Davis, Secretary General of the Council of Europe, asking for information about what happened in the meeting (see www.access-info.org for the text of the information request).

The Committee of Ministers, chaired by Sweden's Foreign Minister Carl Bildt, will vote on the convention's adoption on 27 November. Civil society groups have called on Minister Bildt to ensure that their concerns are discussed before any vote is scheduled. Sweden became the first country in the world to grant its citizens a right to access information in 1776.

"Sweden's reputation as an advocate of transparency will be substantially tarnished if Minister Bildt allows the treaty to be adopted in its current form without adequate attention to the concerns raised by civil society, information commissioners, and governments", said Sandra Coliver of the Open Society Justice Initiative.

The Parliamentary Assembly's opinion identified a number of problems in the treaty, including the narrow range of public bodies to which the right applies, shortcomings in the definition of documents, the absence of maximum time-limits for answering requests, the failure to give requestors a right to appeal to an independent body or court that can order disclosure of information, and the failure to restrict the reservations that states may make to the convention's provisions, which is highly unusual for a Council of Europe human rights treaty.

“There are double-standards at play here”, said Toby Mendel of Article 19. “The Council of Europe is promoting a convention on access to information as a tool for public participation in decision making, but at the same time blocking such participation in the discussion over the draft Convention by withholding information about the decision-making process.”

Notes for Editors:

1. Parliamentary Assembly of the Council of Europe, Opinion of 3 October 2008 (Opinion No. 270/2008) is available at:
<http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta08/EOPI270.htm>
2. Concerns advanced in that opinion have been raised over the past year by more than 250 NGOs; Information Commissioners from nine countries (Estonia, Germany, Hungary, Latvia, Macedonia, Serbia, Slovenia, Switzerland and the UK); and the OSCE’s Representative on Freedom of the Media. These bodies were not formally consulted on the draft Convention and the issues they raised were not fully considered on their merits.
3. Drafting the convention was delegated to a group of government appointees dominated by countries from north-west Europe, many of whose access to documents laws date back to rules on administrative procedures adopted in the 1970s and early 1980s. Countries of central and eastern Europe were underrepresented in the drafting process; several of these have expressed concerns that the standards being set fell below those of their more modern access to information laws and risk undermining recent advances in the right to information.
4. A major reason given by those involved in the drafting process for not wanting to consider revisions to the current treaty text is that the process has already taken 10 years. This is not strictly the case. Talk about drafting a Convention only started in 2002 upon the Council of Europe’s adoption of a Recommendation on Access to Official Documents. Actual drafting began only in January 2006 and the main text of the Convention was completed by July 2007.
5. Only three human rights organisations working on access to information – Access Info, Article 19 and the Justice Initiative -- were invited to participate in the drafting sessions. There was no attempt to engage in wider consultation with civil society, the public or experts in this area such as Information Commissioners from across Council of Europe Member States.
6. If the Council of Europe were to adopt a stronger treaty it would undoubtedly require some ratifying states to introduce changes to national law upon ratification. This is normal for human rights treaties whose entire purpose is to motivate states to bring their law and practice into line with the standards defined in the treaty; if this were not the case, there would be little point in bodies such as the Council of Europe adopting such treaties.

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