

10 November 2008

Mr. Carl Bildt
Minister for Foreign Affairs, Sweden,
and Chairman of the Council of Europe Committee of Ministers
Ministry for Foreign Affairs
Gustav Adolfs torg 1
SE-103 39 Stockholm
e-mail: registrator@foreign.ministry.se
Fax +46 8 723 11 76

Your Excellency,

We are writing to you as Chairman in Office of the Council of Europe to urge the Council of Europe to give further time to reconsider the draft Convention on Access to Official Documents in light of heavy criticism from the Parliamentary Assembly of the Council of Europe (PACE), as well as from the OSCE Special Representative on Freedom of the Media, the Information Commissioners from nine European countries, more than 250 civil society organizations, and the Council of Europe's own Steering Committee on the Media and New Communication Services.

The problems with draft treaty identified by PACE in its Opinion adopted on 3 October 2008 (Opinion No. 270/2008) are very similar to those we have raised since work on this Convention began in January 2006 (see attachments). Very similar concerns have also been raised by Information Commissioners from Estonia, Germany, Hungary, Latvia, Macedonia, Serbia, Slovenia, Switzerland and the UK and by the OSCE's Representative on Freedom of the Media. These bodies were not formally consulted on the draft and the issues they raised were not fully considered on the merits.

The main text of this treaty was drafted over a period of just 1.5 years (January 2006 to July 2007) and that meetings of the drafting group during this period totalled only 14.5 days. Only a small number of civil society organisations were able to participate in these meetings, our contributions were not fully considered on their merits, and there was no attempt to engage in wider consultation with civil society, the public or experts in this area such as Europe's Information Commissioners, something which is particularly problematic given that (as the Explanatory Memorandum of the Convention itself states) the right of access to official documents is essential for participatory democracy.

In meetings in Strasbourg, a significant number of states pointed to the possibility of adopting a stronger Convention given that their law and practice already establishes a higher level of protection for the essential democratic right of access to information. According to these statements and our comparative analysis, addressing many of the shortcomings of the current draft Convention would pose little risk of reducing the number of future ratifications. Ignoring these concerns will, at a minimum, result in a Convention that is of dubious added value for the 39 Council of Europe members that already have access to information laws, and might encourage some countries to lower existing standards.

Strengthening the treaty will undoubtedly require some ratifying states to introduce changes to national law. 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. For the future Convention to have real standard-setting value, it must define this core democratic right in a manner that is consistent with better European practice and international law in this field.

We note that Sweden's stated goals for its Chairmanship of the Committee of Ministers include to "intensify the work of the Council of Europe for promotion of democracy" and "transparency and efficiency in the Council of Europe". Consistent with these goals, Sweden should promote a strong treaty on the right of Access to Official Documents, and ensure that the process by which it is adopted is fully open and consultative.

We consider that the grave concerns expressed by PACE and a wide range of other actors, as well as respect for the democratic process, requires a proper reassessment of the draft treaty. We urge you, in your role as Chairman of the Committee of Ministers and as Foreign Minister of Sweden, which has a long tradition of open government having been the first country in the world to adopt an access to information law, to take the decision to give further time for reconsideration of the provisions in the draft that have been most heavily criticised.

Yours sincerely,



Helen Darbishire, Executive Director, Access Info Europe
Toby Mendel, Senior Director for Law, ARTICLE 19
Sandra Coliver, Senior Legal Officer, Open Society Justice Initiative