

ACCESS TO INFORMATION PROGRAMME

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MEMORANDUM OF THE PARTICIPANTS IN THE SEMINAR ACCESS TO INFORMATION - PRACTICES AND LOCAL REGIME

The seminar was organised by the 'Access to Information Program' Foundation
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This paper contains the recommendations to the legislators in reference to the impending adoption of the Access to Public Information Act, as commonly agreed on by the members of the Rousse local government, NGO representatives and journalists having worked together in the 'Access to Information - Practices and Local Regime' seminar.

1. The Definition of Public Information

The definition given in Article 2 is pivotal as it identifies the subject and scope of the



Bill and spells out its rationale. However, not only does the wording fail to specify the type of accessible information, but it also embodies potential limitations to the right of access. An interpretation of the text reveals that neither ‘information of no public significance’ nor information that is irrelevant to ‘the public life of the Republic of Bulgaria’, would be disclosed. The Bill does not designate the authority that would have the discretion to pass such judgements. Let’s consider the scenario where access to information has been refused on the grounds of the ‘public insignificance’ of the requested information and has been appealed in court. The court would have to weigh the information for its degree of significance or insignificance, for its relevance to the public life in the country, etc. Apparently, this is an impractical solution. The definition should be of maximum clarity and precision and rest on the tenet that “All information held by the state authorities shall be accessible, except for such, as is subject to the limitations enumerated in this Act’.

Recommendation:

Reword the definition entirely and exclude the use of subjective criteria such as ‘public significance’ to define accessible information.

2. Persons, Obligated under the Act

The Access to Public Information Bill covers the authorities of the state power (apparently also including the authorities of the executive, legislature and the judiciary branch), as well as other persons. The right of the citizens to information of the state authorities has its legal grounds: first, this is the right of the constituents to know how they are being governed; second, this is the taxpayers’ concern to learn what use is made of their money. The state owes information to the citizens based on these two reasons.

The legislators do not provide clear justification for expanding the scope of obligated persons.

Recommendation:

Only the state authorities to be obligated under the Act.

3. Partial Access to Information

Article 7 (2) provides for partial access to documents. What the legislators may have intended to accomplish is the possibility for disclosure of unclassified parts of otherwise secret documents. However, this provision opens the risk for the administration to only disclose parts of documents that are not at all secret.

Recommendation:

The provision should explicitly state that it applies to making accessible the unclassified parts of otherwise secret documents.

4. The Lack of Legal Limitations

The Bill fails to shed any light on access-protected information. Its text mentions the institutes of the state and office secret without identifying neither their subject nor scope. This ambiguity enables the administration to decide on their content at its own discretion. Such a possibility should be ruled out.

Furthermore, Article 13 gives the administration the power to disclose or classify certain categories of information at its own discretion, a measure that is completely impermissible.

Recommendation:

It is absolutely essential that a separate chapter titled “Limitations to the Right to Information’ be incorporated in the Act, giving a specific and exhaustive description of all protected interests which the legislator intends to give precedence over the right to access to information. In that way the possibility of the administration or other legislation to add new protected interests to the list would be ruled out.

We propose that Article 13 be eliminated.

5. Storage of records

The Bill does not explain how and for how long would records, drawn by the administration related to its competence, be stored. As the existing legal regimes do not settle this issue, we think that the Bill should do it.

Recommendation:

The Bill should draw procedures and set a time limit for the storage of records by the administration.

6. The Need of Administrative Control

The Bill provides only for court control over refusals to access to information. The possibility for administrative control to be exercised would better guarantee the access right and relieve the courts at the same time.

Recommendation:

The Bill should by all means set out provisions for procedures ensuring effective administrative control - appeal before a higher standing administrative authority.

A list of participants in the seminar:

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