

Tromsø Convention provisions as the legal guarantees for accessing official digital information.

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Abstract

The Council of Europe Convention on Access to Official Documents (*Tromsø* Convention), developed in 2009, enshrines the right of everyone to access official information, which includes the state-owned digital data pools and public registers. *Tromsø* Convention offers provisions that could enhance public access to government digital data and improve the efficiency of government digitalization processes. Three critical elements of the Convention support this positive outcome, including its comprehensive definition of "official documents," the requirement for governments to manage their documents in a manner that facilitates easy access, and the obligation of public authorities to take steps to promote transparency and efficiency in public administration by making official documents available to the public. Making access to official information digital will help to promote openness and transparency of state institutions and will improve the level of trust between society and government. However, the challenge lies in changing the approach from the current system of paper document management to a digital one inside state and local authorities. This reframing of the current paradigm is not only about modernizing administrative practices and document flow but also about embracing the concept of openness of official information by design. The practitioner's paper reflects the author's experience – the Vice President of Access Info Group (the international group of independent experts aimed at monitoring the implementation of the provisions of the *Tromsø* Convention) – in evaluating the regulations of the *Tromsø* Convention in promoting free access to official information. The main objective of this paper is to explore whether the *Tromsø* Convention provisions can facilitate the accessibility of government digital data to the public and promote the effectiveness of the government's digitalization processes.

Keywords

Council of Europe Convention on Access to Official Documents, *Tromsø* Convention, access official information, state-owned digital data, openness by design.

1. Introduction

Ensuring free and prompt access to official documents is an inevitable part of all democratic mechanisms, and the right to freedom of information became widely recognized worldwide during the last decade. The right of access to information the government holds provides citizens with the powerful instrument to engage and participate in democratic decision-making processes.

During the last 20 years, many European countries introduced legislation on access to official information (or access to official documents or access to public information – according to different jurisdictions), as the Global RTI Rating illustrates [1]. Numerous UN bodies, for instance, UNESCO and UNDP, contribute their efforts in promoting the right to information all over the world, in particular within the framework of Sustainable Development Goals [2]. As the next logical step, the Council of Europe

Convention on Access to Official Documents, [3] also known as the *Tromsø* Convention, entered into force in 2020 for 10 European countries. This event introduced the recognition of the right to information at the level of an international treaty. Now the Council of Europe established all the bodies envisaged by the Convention (*the Consultation of the Parties* [4] and *Access Info Group* [5]) and focused on ensuring its implementation and monitoring.

The *Tromsø* Convention's notable importance is attributed to recognizing the universal right to access official information, irrespective of personality or purpose. Previously, protection of the right to access official information was only extended to specific groups such as journalists, civil activists, and scientists who acted as intermediaries and disseminated information to the public. With the *Tromsø* Convention, approaches have changed. Everyone could demand equal and non-discriminatory access to information collected and stored by state bodies and has the right to free reuse and distribution of official information. States, accordingly, have the duty to ensure such a right, including through proactive publication. Such a change in approaches has a significant impact on the use of data in digital formats, the openness of public registers, and the publication of open data created by public authorities, which will be discussed further. At its core, public access to official information means the obligation of the state to provide everyone with trusted data at the right time and in accessible formats. Nowadays, it is less about providing paper copies of the documents and more about opening state data pools, collected in machine-readable form to use publicly accessible data for researching and developing new business solutions, as, for instance, the experience of the Publications Office of the European Union illustrates [6]. Digitalization of this sphere opens brand-new opportunities to ensure prompt and free access to the official data pools.

Mentioned above are the important steps toward a better level of transparency and accountability of the governments, but the progress goes faster. Analyzing the implication of the provisions of the international treaties, it is essential to verify if they fit the requirements of the modern digital era and identify the approaches and trends which should be reflected in the future.

Even though the provisions of the *Tromsø* Convention were developed for the document-oriented system, the principles enshrined in this international treaty could be a solid background for developing a new set of rules for digitalizing the governments' information management. This paper aims to address the challenges of implementation of the *Tromsø* Convention provisions, which can help to make the government's digital data more accessible to the community and to boost the process of digitalization of the governments. Three main components of the *Tromsø* Convention should be taken into account, namely: (1) a broad definition of "official documents," (2) the obligation of the governments to manage their documents efficiently so that they are easily accessible and (3) the obligation of public authority to take necessary measures to make public official documents in the interest of promoting the transparency and efficiency of public administration.

2. Broad definition of official documents

The debate about the correlation between the terminology "document" and "information" has been ongoing among legal scholars for a long time [7]. Similarly, for the purposes of administrative and judicial practice, it is crucial for practitioners to find out whether these terms are identical to solve, for example, the problem of distinguishing between the form and the content when it comes to official documents and information.

The discussion on In Article 1, the Council of Europe Convention on Access to Official Documents prescribes that "*official documents*" means all information recorded in any form, drawn up or received and held by public authorities." The Explanatory Report clarifies this provision to the Convention which says that "it is a very wide definition: "*official documents*" are considered to be any information drafted or received and held by public authorities that are recorded on any sort of physical medium whatever be its form or format (written texts, information recorded on a sound or audiovisual tape, photographs, emails, information stored in electronic format such as electronic databases, etc.)" [8]

For the purposes of this study, we will not analyze the definition of public information and the scope of this definition in all countries that ratified the *Tromsø* Convention; their reports containing relevant data can be found on the official website of the Convention. We only note that, according to the national legislation of almost all countries that submitted reports to the *Tromsø* Convention implementation bodies, the definition of official documents includes digital data administrated by state bodies. In general, this once again emphasizes the claim that the universal right to receive official information from governments is already guaranteed at the level of international agreements. Undoubtedly, the right to access official information is subject to certain limitations, which must be imposed in compliance with legal procedures, be necessary to protect other legitimate interests, and not be disproportionate or excessive. The general rule generally meets the needs of modern digital governance. However, the Explanatory Report to the *Tromsø* Convention underlines some challenges as well: “*While it is usually easy to define the notion concerning paper documents, it is more difficult to define what is a document when the information is stored electronically in databases. Parties to the Convention must have a margin of appreciation in deciding how this notion can be defined. In some Parties to the Convention, access will be given to specific information as specified by the applicant if this information is easily retrievable by existing means. In some Parties, compilations in databases of information that logically belong together are seen as a document.*” [9]

Indeed, both at the European and national levels, the debate about the belonging of many categories of digital data to official information does not subside, such as the case regarding access to electronic messages of officials of European institutions. Nevertheless, in general, official information in digital formats falls under the protection of the *Tromsø* Convention, which guarantees broad access to information by different means and in different forms, including digital.

3. Obligation to manage official documents efficiently

Machine-readable, interoperable, and accurate official data are a background for modern investigative journalism, the development of applications that help people increase their media literacy and fact-checking. Many examples from the Parties of the *Tromsø* Convention can illustrate this. In Finland, the Public Information Management Act was developed as a component of the implementation of the *Tromsø* Convention for “efficient exploitation of the datasets of authorities” [10]; in Moldova, a unified platform of government information infrastructure (McCloud platform) was established to operate the consolidated data infrastructure based on cloud computing technology [11].

In Article 9 on the complementary measures, the *Tromsø* Convention provides that the Parties “*shall take appropriate measures to: ... c) manage their documents efficiently so that they are easily accessible and d) apply clear and established rules for the preservation and destruction of their documents*”. This provision is reflected in many legislations worldwide, primarily via introducing the obligation of the government to establish a well-structured and easily accessible document management system: “*it is necessary that Parties to the Convention provide for measures to set up effective systems for the management and storage of the public authorities’ documents.*” [12]

It is a good baseline for the purposes of digitalization due to opening the possibility for the national governments to implement good practices and create a climate of *openness by design*. The concept of *openness by design* was developed in the UK Information Commissioner’s Office Strategic Plan [13] and was actively discussed among freedom of information experts. Implementing this concept into national legislation and administrative practice takes time and effort. Still, it fundamentally changes the level of citizens’ access to official information: from access to documents upon request to proactive disclosure via websites and further to the unrestricted use of digital data that government bodies collect in open registers within the process of performing their functions and at the expense of taxpayers’ funds. *Openness by design* makes it possible to introduce effective use of government data by scientists and businessmen and, most importantly, allows journalists and public activists to analyze government data and develop democratic innovations.

4. Obligation to make official documents public

The obligation to publicize official documents is a critical component of open government and transparency, especially regarding digital information administered by the state authorities. This obligation requires government entities and officials to provide access to information related to their operations, decision-making processes, and other matters of public interest. The objective of this obligation is to ensure that citizens can hold their government accountable, participate in democratic processes, and make informed decisions.

This obligation of public authorities is stipulated by Article 10 of the *Tromsø* Convention and is set in the interest of promoting the transparency and efficiency of public administration. The Explanatory Report to *Tromsø* Convention provides that “*any policy which seeks to make official documents of general interest public without the need for individual requests must ensure that citizens are able to form an opinion on the authorities that govern them and to become involved in the decision-making process. National rules on proactive publication are thus encouraged.*” [14]

In many countries nowadays, the obligation to make official documents and digital data pools public is enshrined in national laws, regulations, or policies. These legal frameworks typically establish a presumption of openness, which means that government information is presumed to be accessible to the public unless it falls within specific exemptions or limitations. Exemptions may include matters of national security, personal privacy, ongoing investigations, and other sensitive matters, as is mentioned, for instance, in Article 3 of the *Tromsø* Convention.

The scope of the obligation to make official documents public varies depending on the jurisdiction and the type of information involved. In the reports [15] of the Parties of the *Tromsø* Convention, we can see a great variety of measures implemented by the national governments to promote free digital access to their official data pools and documents. As the study shows, the benefits of the obligation to make official documents public are manifold [16]. Firstly, it promotes transparency and accountability, which are essential for preventing corruption, ensuring effective governance, and fostering public trust in government institutions. Secondly, it enables citizens to participate in democratic processes by giving them the information they need to make informed decisions, engage in public debates, and hold their representatives accountable. Thirdly, it supports the rule of law by ensuring that government actions are subject to scrutiny and review by the public and independent institutions.

By the Explanatory Report to the *Tromsø* Convention, the governments of the Parties are encouraged to publish their official digital information proactively: “*In some countries, public authorities are required by law to publish, on their own initiative, information about their structures, staff, budget, activities, rules, policies, decisions, delegation of authority, information about the right of access and how to request official documents, as well as any other information of public interest. This is done regularly and in formats including the use of new information technologies (for example, web pages accessible to the public) and in reading rooms or public libraries, in order to ensure easy, widespread access.*” [17]

Despite its benefits, the obligation to make official documents public can face significant challenges and obstacles. These may include resistance from government entities and officials, lack of resources, insufficient legal frameworks, and limited public awareness and engagement. In addition, the digital age has created new challenges, such as balancing access to information with privacy concerns, the proliferation of misinformation and disinformation, and the growing use of algorithms and artificial intelligence in decision-making processes.

To address these challenges, governments, civil society organizations, and other stakeholders must work together to promote the right to access information and ensure that the obligation to make official documents public is effectively implemented. This may involve developing and strengthening legal frameworks, building capacity among government officials and the public, investing in technology and infrastructure, and fostering a culture of transparency and openness.

5. Conclusions

Free access to official information is a vital element of digital transformation, openness, and transparency of the state institutions, and as a result, a higher level of trust between society and government. The main challenge in this sphere is to change the approach from the current document management system to a digital one inside the state and local authorities. This is not only about modernization and digitalization of the administrative practices and documents flow but also about reframing the current paradigm from the old-fashioned approach when the state authorities are the owners of the official documents to the concept of openness of the official information by default and accessibility of the official information by design.

The *Tromsø* Convention offers standards and principles to boost public access to official information and encourages government institutions to expand the free flow of government digital data. By publishing official digital data proactively and implementing the concept of *openness by design*, the state authorities can reduce the number of individual requests for information and improve the efficiency of state institutions.

Implementing a proactive publication approach requires adopting open data standards and establishing user-friendly platforms or portals for accessing and searching published information. These platforms should be designed with user needs in mind, ensuring ease of navigation, advanced search capabilities, and the ability to download and reuse the data in various formats. Additionally, clear guidelines and policies should be developed to define what information should be proactively published and how often it should be updated. This ensures consistency, helps maintain a culture of openness and transparency within government institutions, and unlocks, in its turn, the full potential of official information to contribute to the digital transformation and openness of state institutions.

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