



**Doc. 13293 – Compendium of written amendments**

**(Final version)**

**National security and access to information**

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## A. Draft Resolution

1. The Parliamentary Assembly recalls the importance of the principle of transparency, including access to information held by public authorities, for democracy and good governance in general and for the fight against corruption in particular.
2. It welcomes the fact that the Council of Europe was the first intergovernmental organisation to elaborate an international legal instrument on access to information, namely the Council of Europe Convention on Access to Official Documents (CETS No. 205), whilst recalling its Opinion 270 (2008) on the draft convention in which the Assembly had encouraged the Committee of Ministers to improve the text with a view to ensuring even greater transparency. The convention still requires four ratifications in order to enter into force.
3. The Assembly considers legitimate, well-defined national security interests as valid grounds for withholding information held by public authorities. At the same time, access to information forms a crucial component of national security, by enabling democratic participation, sound policy formulation and public scrutiny of State action.
4. Recalling its Resolution 1838 (2011) on abuse of State secrecy and national security: obstacles to parliamentary and judicial scrutiny of human rights violations and its Resolution 1675 (2009) on the state of human rights in Europe: the need to eradicate impunity, the Assembly stresses the need to place reasonable limits upon the invocation of national security as grounds to restrict access to information.
5. In particular, the Assembly reconfirms its position, expressed in paragraph 4 of Resolution 1838 (2011), that information concerning the responsibility of State agents who have committed serious human rights violations such as murder, enforced disappearance, torture or abduction does not deserve to be protected as secret. Such information should not be shielded from judicial or parliamentary scrutiny under the guise of "State secrecy".

### **Amendment 3 Tabled by the Committee on Culture, Science, Education and Media**

*In the draft resolution, after paragraph 3, insert the following paragraph:*

*"Recalling the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, the Assembly strongly confirms that the systematic violation of human rights undermines true national security and may jeopardise international peace and security. A State responsible for such violation shall not invoke national security as a justification."*

### **Amendment 4 Tabled by the Committee on Culture, Science, Education and Media**

*In the draft resolution, after paragraph 5, insert the following paragraph:*

*"Public authorities may access private information, communication or personal data on grounds of national security only, where this has been prescribed by law, an overriding requirement of the need for such access is established and the concrete measure is necessary in a democratic society in order to protect the existence of the nation or its territorial integrity or political independence against force or threat of force. Public authorities must not delegate this power to private persons or*

*companies contracted to work for the protection of national security otherwise. Measures applied in this context must be open to administrative or judicial review."*

6. The Assembly welcomes the adoption, on 12 June 2013, by a large assembly of experts from international organisations, civil society and academia and of national security practitioners, of the "Global Principles on National Security and the Right to Information" ("the Global Principles"), which are based on existing standards and good practices of States and international institutions. The Global Principles are designed to give guidance to legislators and relevant officials throughout the world with a view to reaching an appropriate balance between public interests both in national security and in access to information.
7. The Assembly supports the Global Principles and calls on the competent authorities of all member States of the Council of Europe to take them into account in modernising their legislation and practice concerning access to information.
8. The Assembly wishes to stress, in particular, the following principles:
  - 8.1. As a general rule, all information held by public authorities should be freely accessible; in addition, business enterprises, including private military and security companies, have the responsibility to disclose information in respect of situations, activities or conduct that may reasonably be expected to have an impact on the enjoyment of human rights.
  - 8.2. Exceptions from the rule of free access to information which are based on national security, or other equally important public interests such as the protection of international relations, health and safety or the environment, or on privacy interests, must be provided by law, pursue a legitimate purpose and be necessary in a democratic society.
  - 8.3. Limitations to the rule of free access to information, including the rule of the neutrality of the Internet, should be interpreted restrictively. The burden of demonstrating the legitimacy of any restriction rests with the public authority seeking to withhold information.

**Amendment 5**  
**Tabled by the Committee on Culture, Science, Education and Media**

*In the draft resolution, paragraph 8.1, after the words "should be freely accessible", insert the following words: "by the public, where such information is of public concern, or by an individual who has the right to receive information such as personal data".*

**Amendment 6**  
**Tabled by the Committee on Culture, Science, Education and Media**

*In the draft resolution, paragraph 8.2, delete the following words: "such as the protection of international relations, health and safety or the environment, or on privacy interests".*

**Amendment 7**  
**Tabled by the Committee on Culture, Science, Education and Media**

*In the draft resolution, at the end of paragraph 8.3, add the following sentence: "The neutrality of the internet requires that public authorities, internet providers and others abstain from using invasive wiretapping technologies, such as deep packet inspection, or from otherwise interfering with the data traffic of internet users."*

- 8.4. Rules on the procedure for the classification and declassification of information and the designation of persons authorised to perform this task should be clear and publicly accessible. Information may be withheld on national security grounds for only as long as is necessary to protect a legitimate national security interest.
- 8.5. As a safeguard against overly broad exceptions, access to information should be granted even in cases normally covered by a legitimate exception, where public interest in the information in question outweighs the authorities' interest in keeping it secret. An overriding public interest can typically be found where the publication of the information in question would:
- 8.5.1. make an important contribution to an ongoing public debate;
- 8.5.2. promote public participation in political debate;
- 8.5.3. expose serious wrongdoings, including human rights violations, other criminal offences, abuse of public office and deliberate concealment of serious wrongdoing;
- 8.5.4. improve accountability for the running of public affairs in general and the use of public funds in particular;
- 8.5.5. benefit public health or safety.
- 8.6. Information about serious violations of human rights or humanitarian law should not be withheld on national security grounds in any circumstances.
- 8.7. A person who discloses wrongdoings in the public interest (whistle-blower) should be protected from any type of retaliation, provided he or she acted in good faith and followed applicable procedures.

**Sub-amendment 1 to amendment 7**  
**Tabled by the Committee on Legal Affairs**  
**and Human Rights**

*In amendment 7, replace the words "at the end of paragraph 8.3, add the following sentence" with the following words: "before paragraph 9, insert the following paragraph".*

**Amendment 8**  
**Tabled by the Committee on Culture,**  
**Science, Education and Media**

*In the draft resolution, at the end of paragraph 8.4, add the following sentence: "Public archives containing secret information should periodically review whether the legitimacy of secrecy still exists on national security grounds."*

**Amendment 9**  
**Tabled by the Committee on Culture,**  
**Science, Education and Media**

*In the draft resolution, delete paragraphs 8.5.1 and 8.5.2.*

**Amendment 10**  
**Tabled by the Committee on Culture,**  
**Science, Education and Media**

*In the draft resolution, after paragraph 8.7, insert the following paragraph:*

*"Recalling Recommendation (2000) 7 of the Committee of Ministers, the Assembly reiterates that the following measures should not be applied if their purpose is to circumvent the right of journalists not to disclose information identifying a source: (i) interception orders or actions concerning communication or*

correspondence of journalists or their employers, (ii) surveillance orders or actions concerning journalists, their contacts or their employers, or (iii) search or seizure orders or actions concerning the private or business premises, belongings or correspondence of journalists or their employers or personal data related to their professional work."

**Sub-amendment 1 to amendment 10**  
**Tabled by the Committee on Legal Affairs**  
**and Human Rights**

*In amendment 10, replace the words "after paragraph 8.7" with the following words: "before paragraph 9".*

- 8.8. Requests for access to information should be dealt with in a reasonable time. Decisions to refuse access should be duly motivated, open to appeal before an independent body and ultimately subject to judicial review. Upon receipt of a request for information, a public authority should in principle confirm or deny whether it holds the requested information.

**Amendment 11**  
**Tabled by the Committee on Culture,**  
**Science, Education and Media**

*In the draft resolution, paragraph 8.8, second sentence, replace the words "an independent body" by the following words: "a national authority".*

**Sub-amendment 1 to amendment 11**  
**Tabled by the Committee on Legal Affairs**  
**and Human Rights**

*In amendment 11, before the words "national authority", insert the following word: "independent".*

**Amendment 1**  
**Tabled by Mr Volodymyr ARIEV, Mr Giorgi**  
**KANDELAKI, Mr Pavlo RYABIKIN, Mr Gergely**  
**GULYÁS, Mr Emanuelis ZINGERIS**

*In the draft resolution, at the end of paragraph 8.8, insert the following words: "In no way should there be any restrictions on the information pertaining to financial statements of state officials, persons holding positions and civil servants, as well as pertaining to spending made by state officials or public institutions, persons holding positions and civil servants in the execution of their functions."*

- 8.9. Public oversight bodies in charge of overseeing the activities of the security services should be independent from the executive and have relevant expertise, robust powers of investigation and full access to protected information.

9. The Assembly calls on all the member States of the Council of Europe which have not yet done so to sign and ratify the Council of Europe Convention on Access to Official Documents and to implement and, in due course,

**Amendment 2**  
**Tabled by Mr Davit HARUTYUNYAN, Mr**  
**Armen RUSTAMYAN, Ms Arpine**

further improve the convention in the spirit of the Global Principles.

**HOVHANNISYAN, Mr Philippe MAHOUX, Mr Kimmo SASI**

*In the draft resolution, after paragraph 9, insert the following paragraph:*

*"The Assembly is worried about recent disclosures on massive surveillance of communications by secret services and resolves to follow up this important issue in due course."*

## **B. Draft Recommendation**

1. The Assembly refers to its Resolution ... (2013) on national security and access to information and invites the Committee of Ministers to:
  - 1.1. examine ways and means to promote the entry into force and speedy implementation of the Council of Europe Convention on Access to Official Documents (CETS No. 205);
  - 1.2. to review the Council of Europe's own policies regarding access to information and classification and declassification of documents in light of the Assembly's resolution;
  - 1.3. encourage member States of the Council of Europe to take into account the "Global Principles on National Security and the Right to Information," adopted on 12 June 2013 by an assembly of experts from international organisations, civil society, academia and national security practitioners, in particular concerning the points highlighted in the above-mentioned resolution, in modernising their legislation and practice.