

# Serbia: Expected outcome of the amended Law on Free Access to Information of Public Importance

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*On 3 November 2021, the Serbian Parliament adopted amendments and additions to the Law on Free Access to Information of Public Importance. The changes introduced were the result of the government's response to improving transparency of public policy making by removing proven limitations of the previous law. This should improve the accessibility of information on public expenditure and enable timely evaluation of public social spending.*



## Description

The right to free access to information held by public authorities is a constitutional right in Serbia. The legal basis for the protection of this right was secured by the 2004 Law on Free Access to Information of Public Importance. The main limitation of the Law was the inadequacy of the compliance mechanisms for effective enforcement. Evidence shows that in a number of cases public bodies did not respond appropriately to the requests for information. The 2019 report by the Commissioner for Information of Public Importance and Personal Data Protection reveals that out of the total number of complaints received (5,188), 88.7% were due to the authorities ignoring the requests or refusing to provide information. In 2020, out of the total number of complaints (3,584), 53.2% were for the same reasons. (The 2021 report will be submitted in March 2022.) According to the Commissioner's statements, substantial obstacles were recorded in the implementation of his powers. In 2007, civil society organisations and a group of citizens joined in the Coalition for Free Access to Information and submitted a proposal for a new law to the Parliament. However, this proposal was never discussed.

The ongoing COVID-19 pandemic has had a negative impact on the accessibility of information. Public debates have been restricted and government administrative capacities have been reduced due to telework, which has delayed the processing of requests for information. At the same time, the mitigation policies have introduced a range of social and economic measures never applied before: in 2020

and in 2021, the central budget and the budgets of the social security institutions were amended twice to cover new expenditure. The public showed great interest in how these resources were allocated, especially those related to healthcare protection, social care and job preservation. As it considered public trust in these measures to be a condition for successfully tackling the pandemic, the government decided to reform the 2004 Law to improve the transparency of decision-making processes. The suggested reform was put to public debate in June 2021, and several proposals previously made by the Coalition for Free Access to Information were included in the proposal. On 7 October, the government adopted a proposal containing amendments and additions to the 2004 Law, and on 3 November 2021 these were adopted by the Serbian Parliament.

The lawmakers' justifications for the proposed amendments and additions concerned two main areas: 1) inadequate effectiveness of compliance mechanisms; and 2) standardisation of procedures for the publication of reports on public spending.

The most important amendments to the 2004 Law relate to the following: 1) proactive publishing of reports and updates on public spending; 2) publication of reports in a user-friendly format; 3) increased jurisdiction and powers of the Commissioner in charge; 4) stronger punitive provisions with a clear definition of the responsibility of public officials; and 5) removal of Article 13 of the 2004 Law, which allowed denial of the right to information in cases of "abuse of rights". The Law has been harmonised with the EU Directive 2019/1024 on open data and the re-use of public sector information.

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## Outlook and commentary

The pandemic highlighted the importance of information in times of crisis, and the significance of public trust in government decisions during emergencies. The Serbian government realised the importance of public trust at the onset of the crisis. The government decree issued on 29 March 2020 on centralisation of all public information on the COVID-19 outbreak was revoked three days later, following strong opposition from the general public. The 2021 Law brings about positive changes in free access to information. Ministries have responded promptly to the need for proactive publication of documents. Indeed, a review of the websites of all ministries, conducted one week after the adoption of the Law, reveals that out of 21 ministries only two did not publish the updated directory reports, and by the end of December 2021 these ministries had also published the updated reports.

The 2021 Law is an instrument to enhance accountability of public sector bodies and to increase both societal involvement in decision-making and the effectiveness of public spending. The adoption of these amendments was appraised as positive by civil sector organisations. However, some of the shortcomings they pointed out were not addressed in the amended law. The main remarks of the Coalition for Free Access to Information relate to the increased number of grounds upon which information can be held back. It is indeed impossible to file a complaint to the Commissioner in

cases when information is denied by the Government and its services, the National Assembly, the President, the Supreme Court, the Constitutional Court or the Republic Public Prosecutor's Office. The inclusion of the National Bank of Serbia in the list of public authorities protected from complaints to the Commissioner was also mentioned as problematic.

Finally, the government's role does not end with the adoption of the Law. There is a need for an integrated strategy to improve administrative capacities and empower citizens to exercise their rights to information and to participation in the monitoring and evaluation of public policies.

### Further reading

[Government proposal for the "Law on Amendments and Additions to the Law on Free Access to Information of Public Importance"](#)

Law on Amendments and Additions to the Law on Free Access to Information of Public Importance

The Coalition for Free Access to Information, official web site (visited on 5 January 2022)

[Reports from the Commissioner for Information of Public Importance and Personal Data Protection](#)

[Directive \(EU\) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information](#)

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