

Comments related to the draft Commission Decision on records management and archives

1. Article 3, Definitions. We suggest including the definitions as provided in the current implementing rules.
2. Article 13, point 3. It is not clear what should be understood by the “responsibility over the intellectual content”. This concept is also used in the implementing rules (point 12.12).
3. Article 14, point 4 on personal files. The disposition are not conform current practices and need to be discussed with the corresponding lead departments.
4. Article 15 on processing of personal data contained in the historical archives
 - a. This Article does not provide for derogations of the data subject based on Article 25(3) of the Regulation 2018/1725 (historical research purposes), but refers only to derogations based on Article 25(4) of the Regulation 2018/1725 (archiving purposes in the public interest).
 - b. For sake of clarity and consistency, we suggest referring to the exact wording of the Regulation 2018/1725.
 - c. Regarding the application of the restrictions foreseen in Article 25(3) and (4) of the Regulation 2018/1725, the EDPS did not yet published their specific guidelines on Article 25(3) and (4) as announced in their general guidance on Article 25 (see footnote 9 “*The specific derogations that may be provided for where personal data are processed for scientific or historical research purposes, statistical purposes and archiving purposes in the public interest will be addressed in a separate paper (Articles 25(3) and (4) of the new Regulation)*”). We draw your attention on the principles set out in Article 25(5) and recommend - if this has not already been done - **to inform the DPO of the Commission and to consult the EDPS on the basis of Article 42 of Regulation 2018/1725.**
5. Article 16 on the deposit to the EUI.
 - a. We do not understand the reason why this is included in the decision since the main elements related to these activities are governed by the archives regulation and the framework partnership agreement (subject to change regularly). This is also relevant for point 14 of the implementing rules.
 - b. Besides this general comment, points 5 and 6 should be written in accordance to the current legal dispositions and responsibilities (on the management of classified information and personal data).

Comments related to the Implementing Rules on the Commission Decision on records management and archives

1. Point 3 on electronic signatures. Various types of electronic signatures are considered (simple, advanced, qualified) without defining them and how they should be used. This is also of importance in the context of their preservation. As it is not clear what form these signatures take, hence it is neither clear how it will be possible to long term preserve them digitally (cf. also point 12.6).
2. Point 11 on electronic file repository.

- a. There is some confusion on the nature of this (or these) repository (ies). Is just one repository considered (a “common” one) or several? Are Hermes and/or a-REP concerned or are other repositories to be considered?
 - b. There is an obligation on the preservation of metadata of eliminated files and records. It is not made clear who has responsibility over this metadata and how it should be preserved.
3. Point 12.1 on the CRL. In the text, this is very much based on the RM approach of information organised in files and records. It should be noted that the intention is to use also the CRL to appraise records being stored in any other relevant information system. This point should be written in such a way that it could take this approach also into account (cf. digital preservation strategy).
4. Point 12.8 on appraisal and transfer and 12.9 on appraisal.
 - a. Both points should be merged.
 - b. These rules do not make clear the possible different approaches for files and record conforming the “edomec” standard and those that do not.
 - i. It is to be noted that significant quantities of non-edomec paper files are still being managed at DG level awaiting to be processed (appraisal and transfer).
 - ii. It should be taken into account that the concepts of first review and second review are related to the “edomec” rules and are not in all cases relevant for the paper archives transferred from before approx. 2008 which have undergone no review at all until now.
5. Following the previous comment (different approaches depending the “edomec” compliance), it becomes clear that the rules/procedures set out in points 12.10 (on sampling and selection) and 12.11 (on elimination) are not (or cannot be) applied in the same way.
6. Point 12.12 on transfer
 - a. To check in how far this is to be merged with point 12.8 also on transfer
 - b. The first paragraph has been modified in the interest of the transferring services. It is of the utmost importance that the HAS is involved as soon as possible in the transfer process in order to guide the services through the different steps (avoiding unnecessary work and especially unnecessary transfer of archives that should be eliminated).
7. Point 13 (10) and (11) on the second review process. It is not clear how the cooperation aspect for second review should be organised.