



Brussels, **XXX**
[...](2019) **XXX** draft

COMMISSION DECISION

of **XXX**

on records management and archives

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 131 thereof,

Having regard to Council Regulation (EEC, Euratom) No 354/83¹, as amended by Council Regulation (EC, Euratom) No 1700/2003² and Council Regulation (EU) No 2015/496³,

Having regard to Regulation (EU) No 910/2014⁴ of the European Parliament and of the Council,

Having regard to Commission Decision (EU, Euratom) 2015/443⁵,

Having regard to Commission Decision (EU, Euratom) 2015/444⁶,

Having regard to Commission Decision (EU, Euratom) 2017/46⁷,

Having regard to Regulation (EU) 2018/1725⁸ of the European Parliament and of the Council,

Having regard to Regulation (EC) No 1049/2001⁹ of the European Parliament and of the Council,

Whereas:

¹ Council Regulation (EEC, Euratom) No 354/83 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community (OJ L 43, 15.2.1983, p. 1).

² Council Regulation (EC, Euratom) No 1700/2003 amending Regulation (EEC, Euratom) No 354/83 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community (OJ L 243, 27.9.2003, pp. 1-4).

³ Council Regulation (EU) 2015/496 of 17 March 2015 amending Regulation (EEC, Euratom) No 354/83 as regards the deposit of the historical archives of the institutions at the European University Institute in Florence (OJ L 79, 25.3.2015, pp. 1-5).

⁴ Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, pp. 73-114).

⁵ Commission Decision (EU, Euratom) 2015/443 on security in the Commission (OJ L 72, 17.3.2015, pp. 41-52).

⁶ Commission Decision (EU, Euratom) 2015/444 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, pp. 53-88).

⁷ Commission Decision (EU, Euratom) 2017/46 on the security of communication and information systems in the Commission (OJ L 6, 11.1.2017, pp. 40-51).

⁸ Regulation (EU) 2018/1725 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision 1247/2002/EC (OJ L 295, 21.11.2018, pp. 39-98).

⁹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, pp. 43-48).

- (1) The records held by the European Commission are the basis for the functioning of the institution and its daily work. They form part of the Commission's assets and are also intended to preserve its memory, facilitate the exchange of information, provide evidence of actions carried out, and meet the legal obligations incumbent on the Commission. As a result, they must be managed in accordance with effective rules applicable to all Directorates-General and equivalent departments.
- (2) Effective records management and archiving help fulfil transparency obligations, in particular by promoting efficient public access to documents.
- (3) The records management and archiving policy should take account of the Commission's digital transformation¹⁰, legal provisions on information security¹¹ and the need to ensure a high level of security for sensitive information¹², as well as data protection¹³.

HAS ADOPTED THIS DECISION:

Chapter I General provisions

Article 1 Purpose

This Decision:

1. defines the principles of records and archives management, in order to ensure:
 - the creation, receipt and proper preservation of records, and their consultation and communication,
 - the authenticity, integrity and legibility over time of records and the metadata accompanying them,
 - the development, maintenance and updating of the structure of the Commission's records and archives management systems, its electronic repository system and its repositories for paper or other analogue media, intended to cover the lifecycle of its records, whatever their medium,
 - the identification of each record by means of a unique identifier, together with the extraction and allocation of metadata, so that it can be filed, searched and is easily traceable,

¹⁰ Communication to the Commission C (2018) 7118 on the European Commission Digital Strategy. See also Commission Communication C (2016) 6626, which sets out the general orientations of the internal policy for data, information and knowledge management at the Commission.

¹¹ Commission Decision (EU, Euratom) 2015/443 on security in the Commission (OJ L 72, 17.3.2015, p. 41).

¹² Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for the protection of EU classified information, (OJ L 72, 17.3.2015, pp. 53-88).

¹³ Regulation (EU) 2018/1725 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision 1247/2002/EC (OJ L 295, 21.11.2018, pp. 39-98).

Commented [1]: ECFIN would need to have clarity from the outset that the decision is compliant with the data protection regulation. In particular in terms of implementation at the level of the services

Following Article 10, information should be made as widely accessible as possible whilst it should be in proportion to the sensitivity of their content

Following the SN, "Personal data should **generally** be considered as sensitive non-classified and marked, in which case the most relevant marking must be applied in accordance with this security notice "

ARES holds a lot of personal data in the metadata and documents themselves. Does it mean that all documents should be marked in order to be compliant?

If information not considered SNC is made accessible to the whole of the Commission (as per SG request) but still contains personal data (e.g. email addresses of experts or citizens etc.), would that still comply with the GDPR? Is accessibility to the whole Commission generally compliant with the GDPR? Clear guidance on this point is essential to avoid data breaches and it should not entail the need to make any redaction from documents

- the preservation of the Commission's memory, the maintenance of the evidence of its activities and the fulfilment of the legal obligations incumbent on its services,
- consistency with the principles, development, governance, policy and practice of the Commission's data and information management,
- the making available, exchanging, sharing and disseminating of data, information and records,
- compliance with the Commission's transparency obligations,

2. provides the rules for implementing the obligations to preserve and open the archives to the public and to deposit the historical archives at the European University Institute (EUI) in Florence.

Article 2 Scope

This Decision shall apply to records held by the Commission and to its archives, irrespective of their form, medium, date and location.

It may also apply to data and information management, while taking into account its specific characteristics and purposes.

It may apply, by means of a convention, to records and archives held by other entities entrusted with the application of certain Union policies or to records exchanged using telematic networks between administrations in which the Commission takes part.

Article 3 Definitions

For the purposes of this Decision, the following definitions shall apply:

1. 'record': information, received and created in the form of a document, a collection of data or other types of digital or analogue information that are created, received, captured and managed in the course of the Commission activities and maintained as evidence and as an asset by the Commission, in pursuit of its legal obligations or in the transaction of its activities. Any set of information, regardless of its structure or form, can be managed as a record;
2. 'metadata': any data describing the context, content and structure of records and their management over time for the purposes of discovery, research, re-use and other purposes, as laid down in the rules giving effect to this Decision;
3. 'digitisation of records': the process of transforming a record on paper or any other traditional medium into an electronic image. Digitisation concerns all types of documents and can be carried out from various media such as paper, microforms (microfiche, microfilms), photographs, video or audio cassettes, films and others;
4. 'electronic seal': a data set in electronic form which is attached to, or logically associated with, other data in electronic form, to ensure the origin and integrity of the data;
5. 'official electronic repository of records': an electronic system, recognised and approved by the Secretariat-General, in which records held by the Commission are kept;

Commented [2]: Perhaps add "reuse/reusing" (following art 10) as to ECFIN - it seems part of the purpose

Commented [3]: What about
i) 'file', 'data', 'data set', 'information', 'archives', etc or perhaps such 'secondary' or 'linked' definitions (or references to other Decisions)
ii) Adding/moving (part of) this section to the implementing rules to further revise subsequent changes in the future (e.g. technological changes, other Decisions, etc)?

6. 'capture': insertion of a record into an electronic repository by means of the combination of a unique identifier and metadata to clearly and reliably identify it, ensure its traceability and make it available to other users through filing or other means of aggregation of records throughout their life cycle;¹⁴
7. 'unique identifier': sequence of figures and/or letters assigned to a record by a machine or person in a unambiguous manner, by which it is identified in a single and separate manner from any other record;
8. 'register': electronic records management system in which any record to be registered is formally captured and associated with metadata that uniquely identifies it and attests to the receiving or sending status and administrative management, thus putting it into the institution's documentary resources from an administrative and legal point of view;
9. 'filing plan': instrument with hierarchical and logical structure, which takes the form of a tree structure composed of a specific number of interlinked headings and which allows for the intellectual organisation of files (or other aggregation of records) and their linking to the context in which they were drawn up on the basis of the functions, activities and working processes;
10. 'preservation': all technical processes and operations which make it possible to keep, over time, records (whatever their medium) to maintain their integrity and guarantee access to their content.

Chapter II

Records management

Article 4

Automated processes and systems

Save where required by the applicable legislation, the Commission services keep and manage their records by means of computerised processes and computerised systems and structures with interfaces to ensure access to and recovery of records.

Article 5

Validity of records and procedures

1. A record created or received by the Commission satisfies the validity and/or admissibility criteria if the person from whom it emanates is duly identified, if the production context of the record is considered to be reliable and the record fulfils the conditions that guarantee its integrity. In addition, for electronic records, they must be created in such a way as to guarantee the integrity and usability of their content and the accompanying metadata.
2. The digital document created following the digitisation of an analogue document received by the Commission satisfies the validity or admissibility criteria if:
 - no signature is required by a provision of Union law or the law of a Member State or third country concerned

¹⁴ The concept of 'capture' can be found in the international standard ISO 15489-1:2016, in particular at the point 9.3 'Capturing records'.

and

- its format offers guarantees of durability, readability over time and ease of access to the information contained therein.

In all cases where a signed original is not required, such a digital document may be used for any exchange of information and for any internal procedure within the Commission.

3. Any record shall be valid if it complies with the formal requirements laid down in the applicable Union or national law.
4. Where a provision of applicable Union or national law requires a signed original of a record, a record drawn up or received by the Commission shall also satisfy that requirement if that record in question contains:
 - one or more handwritten signatures,
 - or
 - one or more qualified electronic signatures,
 - or
 - one or more electronic signatures offering equivalent guarantees with regard to the functions assigned to a signature.
5. Electronic seals, if necessary, combined with an electronic time stamp, may be used by the Commission's services to guarantee the origin and integrity of records in electronic form belonging to its documentary resources.
6. In cases where a procedure specific to the Commission requires the signature of an authorised person or the approval of a person at one or more stages of the procedure, the procedure may be managed by IT systems, provided that each person is clearly and unambiguously identified and that the system in question provides guarantees that the contents are not altered, including as regards the stages of the procedure.
7. Where a procedure involves the Commission and other entities, and requires the signature of an authorised person or the approval of a person at one or more stages of the procedure, the procedure may be managed by IT systems where use conditions and technical warranties are determined by agreement.

Commented [4]: This means with the example of ARES that "sign & lock" should no longer be optional but compulsory?

Article 6 Creation

1. Some records must meet formality requirements in their drafting, in accordance with the rules laid down for specific types of records.
2. Any newly created record shall be subject to analysis in order to determine its management with respect to the electronic management system, the repository system, registration and preservation.
3. The Commission's records are, in principle, created as electronic records and are kept in its electronic repositories.
4. Records shall be drawn up or stored on a different medium than electronic where a provision of applicable Union or national law so requires, or for protocol or practical reasons.

5. Records on analogue media entering the Commission's documentary resources are systematically digitised. Digitised documents resulting from such digitisation procedures and captured into the Commission's documentary resources, replace the correspondent original analogue record from that moment onward.
6. The procedural and technical details of digitisation, the applicable exceptions and the fate of analogue record following their digitisation are laid down in the implementing rules.

Article 7

Capture

1. Each Directorate-General or equivalent department shall regularly analyse the typology of records produced as part of its activities in order to identify which records are to be created and captured and, taking account of the production context, to organise their management throughout their life cycle.
2. The captured records shall no longer be altered and may be removed or replaced by subsequent versions.

Commented [5]: This process is equal to "Save"ing a document in Ares? If not, what would be the difference?

Commented [6]: It is not clear to us how this would be put into practice?

Article 8

Registration

1. Records drawn up or received by a Commission department are registered when they contain important information which is not short-lived and/or may involve action or follow-up by the Commission or one of its departments.
2. Official registers are set up to contain the unique identifiers of the registered records and the representation of digital documents stored in an official electronic repository. Any official register shall be connected to one or more official electronic repositories. Exceptions can be made for security reasons.

Article 9

Filing plan

The Secretariat-General maintains the Commission's filing plan. This filing plan, accessible electronically, is associated to a common nomenclature defined for all Commission departments. This nomenclature shall form part of the Commission's activity-based management.

Article 10

Provision on data and information within the Commission

1. Data and information shall be made available and shared as widely as possible within the Commission in order to facilitate the collaborative working of its staff and the searchability and reuse of data and information, and to promote the synergy of its resources and improve efficiency, unless legal obligations or clearly defined reasons of other nature require a more limited and targeted access based on the need-to-know principle, which shall be implemented in a uniform and rigorous manner.
2. In the interest of information sharing, Directorates-General and equivalent departments shall ensure the widest visibility of their files, in proportion to the sensitivity of their content.

Article 11
Data and information protection

Records shall be managed in accordance with the security rules applicable in the Commission to the protection of information. To this end, records, files, IT systems, electronic repositories, networks and means of transmission, and archives are protected by adequate security measures for the management of classified information, management of sensitive non-classified information, protection of information systems and protection of personal data.

Classified information shall be processed in accordance with the rules in force on security.

Chapter III
Preservation and historical archives

Article 12
Preservation and storage

1. Records must be stored for the duration required under the following conditions:
 - (a) records shall be stored in the form in which they were created, sent or received or in a form which preserves the integrity of their content and of the accompanying metadata, according to the substitute retention principle;
 - (b) the contents of records and their relevant metadata must be readable throughout their storage period by any person who is authorised to have access to them;
 - (c) in the case of records sent or received electronically, the information to determine its origin and destination, as well as the date and time of dispatch or receipt, shall form part of the minimum metadata to be stored;
 - (d) for electronic procedures managed by IT systems, information concerning the formal stages of the procedure must be stored under such conditions as to ensure that those stages and the authors and participants can be identified.
2. The Secretariat-General, in cooperation with the Historical Archives Service, shall put in place a digital preservation strategy to ensure long-term access to electronic records on the basis of the retention lists set out in Article 13(1) of this Decision. The strategy shall ensure that processes, tools and resources are in place to ensure the authenticity of records and their accessibility for the time necessary.

Commented [7]: Shouldn't we refer to "data retention" in this section pursuant to the rules on data protection?

Article 13
Appraisal and transfer to the Historical Archives Service

1. The retention period for the various categories of files and, in certain cases, records, is defined for the whole Commission using instruments with a regulatory value, such as the common retention list for the Commission as a whole, or one or more specific retention lists drawn up on the basis of the administrative rules and legal obligations, in accordance with the implementing rules.
2. The department responsible for records management shall at regular intervals carry out an appraisal of records and files likely to be transferred to the Commission's Historical Archives referred to in Article 14, or eliminated.

Some metadata of records and files are nevertheless kept in order to keep track of them and to be able to respond to internal search requirements and to requests for access to documents that have been eliminated.

3. The responsibility of a Directorate-General or equivalent service for the intellectual content of any file continues after the transfer to the Historical Archives Service.

Article 14 *Historical Archives Service*

The mission of the Historical Archives Service is to:

- ensure the authenticity and integrity of the records, files and archives of the Commission which have been transferred to it in accordance with the rules,
- ensure the material protection and integrity of the metadata of records and files provided by the transferring departments,
- make records and files available on request to the Directorates-General or equivalent departments,
- deposit the historical archives with the EUI, in order to make records more than 30 years old available to the public, while taking into account the cases of records covered by exceptions relating to the privacy and integrity of individuals, as well as those concerning the commercial interests of a natural or legal person, including intellectual property, as referred to in Article 2 of Council Regulation (EC, Euratom) No 1700/2003.

Article 15 *Processing of personal data contained in the historical archives*

1. In accordance with Article 25, paragraph 4, and Recital 33 of Regulation (EU) 2018/1725, derogations from the rights of data subjects are possible where such derogations are necessary to achieve the archiving purposes in the public interest. The derogations specified in Article 25, paragraph 3 of that Regulation are necessary to preserve the integrity of the historical archives.
2. The following exceptions shall apply to the rights of data subjects as defined in Regulation (EU) 2018/1725 of the European Parliament and of the Council where their personal data are processed for archiving purposes in the public interest:
 - exception to the right to be informed, based on Article 16(5)(b) of the Regulation, since the provision of such information would prove impossible or would involve a disproportionate effort,
 - exception to the right of rectification, based on Article 19(3)(d) of the Regulation, since the Commission's processing for archiving purposes in the public interest is necessary in order for it to be in conformity with the legal obligations laid down in this Chapter and for the conduct of activities in the public interest,
 - exception to the right to restriction of processing on the part of the controller, based on the exception in Article 20(2) of the Regulation, since processing for archiving purposes is part of the retention concept.

3. This Decision provides for limitations to the following rights of data subjects where personal data are processed for archiving purposes in the public interest:
 - the data subject's right of access,¹⁵
 - the right to rectification, where the personal data are incomplete or inaccurate,¹⁶
 - the obligation to notify the rectification or erasure of personal data or restriction of processing,¹⁷
 - the right to data portability,¹⁸
 - the right to object to the processing.¹⁹
4. The above limitations are subject to conditions and safeguards in accordance with Article 13 and Recital 33 of the Regulation. Processing for archiving purposes in the public interest provides for several safeguards, including:
 - the files to be transferred to the historical archives are selected following a case-by-case assessment according to the Commission's common retention list, and the other files are eliminated. In addition, structured personal data files, such as personal and medical files, are never transferred to the historical archives, but are eliminated at the end of the administrative retention period,
 - for certain categories of files, for well-defined reasons, including the protection of personal data, the common retention lists provide for the administrative elimination of certain types of records belonging to those files before the end of the administrative retention period and, consequently, these types of records are not processed for archiving purposes in the public interest,
 - prior to processing for archiving purposes in the public interest, the Directorate-General or equivalent department shall report the potential presence of sensitive personal data in the files destined for the transfer to the Historical Archives,
 - prior to the opening to the public of any Commission file, the Historical Archives Service shall review it in order to verify the possible presence of sensitive personal data, including on the basis of the signposting referred to in the previous paragraph with the aim of protecting personal data, while ensuring that the files are made available to the public.

Article 16

Deposit of the historical archives to the European University Institute (EUI)

1. Responsibility for the physical protection of the archives on analogue media deposited there shall be entrusted to the EUI in accordance with the standards laid down in Article 8(6) of Council Regulation (EEC, Euratom) No 354/83.
2. The Historical Archives Service shall provide the EUI with access to digitised copies of records on an analogue medium, where possible, in order to promote the online consultation of the historical archives.

¹⁵ Regulation (EU) 2018/1725 of the European Parliament and of the Council, art. 17.

¹⁶ Regulation (EU) 2018/1725 of the European Parliament and of the Council, art. 18.

¹⁷ Regulation (EU) 2018/1725 of the European Parliament and of the Council, art. 21.

¹⁸ Regulation (EU) 2018/1725 of the European Parliament and of the Council, art. 22.

¹⁹ Regulation (EU) 2018/1725 of the European Parliament and of the Council, art. 23.

3. The EUI shall be the access point to the Commission's historical archives that are open to the public, without the Commission being excluded from the right to provide direct access to its historical archives.
4. The Historical Archives Service shall forward the description of the archives that are the subject of the deposit to the EUI. In order to facilitate the exchange of metadata with the EUI, interoperability shall be used in accordance with international standards.
5. The Historical Archives Service cooperates with the EUI in the declassification of records under 30 years of age that originate from the Commission, when the classified records concerned are part of 'private archives' deposited at the EUI by individual persons or entities.
6. The Historical Archives Service provides the necessary instructions for the processing of personal data contained in the deposited archives by the EUI and monitors its performance.

Chapter IV

Governance and implementation

Article 17

Governance at Commission level

1. Each Director-General or Head of Department shall put in place the necessary organisational, administrative and physical structure and provide the staff required for the implementation of this Decision and the implementing rules by his departments.
2. The Secretariat-General is responsible for ensuring that this Decision and its implementing rules are implemented.

Article 18

Network of Document Management Officers

The role of the Network of Document Management Officers, chaired by the Secretariat-General, is to:

- ensure the correct and uniform application of this Decision and its implementing rules within the services,
- deal with any issues which may arise from their application,
- relay the requirements of Directorates-General and equivalent departments as regards training and support measures.

Article 19

Information, training and support

The Secretariat-General, in close cooperation with the Directorate-General for Informatics, the Directorate-General for Human Resources and Security and the Historical Archives Service, shall put in place the information, training and support measures necessary to ensure the implementation and application of this Decision within the Directorates-General and equivalent departments.

Article 20
Implementing rules

This decision is accompanied by implementing rules. They shall be regularly updated taking account in particular of:

- developments regarding records and archives management and results of academic and scientific research, including the emergence of related standards,
- information and communication technologies' development,
- the applicable rules on the probative value of electronic records,
- the Commission's obligations as regards transparency, public access to documents and the opening to the public of archives,
- new obligations by which the Commission may be bound,
- harmonisation in the presentation of records from the Commission and its departments.

Article 21
Repeal of previous acts

Commission Decision 2002/47/EC, ECSC, Euratom and Commission Decision 2004/563/EC, Euratom are repealed.

[Article 22
Entry in force

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.]

Done at Brussels,

For the Commission
[...]

The President