



Brussels, 5 March 2020

sj.f(2020)1578557

**NOTE FOR THE ATTENTION OF ILZE JUHANSONE  
SECRETARY GENERAL**

**Subject: Interservice Consultation on the draft Decision and Implementing Rules on Records Management and Archives - ISC/2020/00857**

**Ref.: Your note of 14/02/2020- Ares(2020) 961770**

The Legal Service welcomes the current interservice consultation and can provide a favourable opinion subject to the taking into account of the comments expressed hereinafter. The Legal Service would also welcome, given the number and nature of comments and proposed changes in the text of the draft Decision, to review in due course a modified version of the draft Decision.

Preliminarily, we would like to clarify that the comments provided concern only the draft Decision. We would like to invite your services to reconsider the current proposal to adopt a Commission Decision with an Annex containing Implementing Rules. That would make the Decision and its Annex having the same legal value and subject to the same publicity requirements. However, the draft Annex describes internal administrative processes and contains detailed technical measures which need to be updated regularly and which do not have to be formally adopted and made publicly available in the same way as the rules contained in the draft Decision. Therefore, it appears more appropriate to convert the draft Annex containing Implementing Rules into an internal guidance document provided by the Secretary General to the Commission Services as was the document *“Implementing Rules for the Decision 2004/47/EC Document Management and for the Decision 2004/563/EC Electronic and Digitised documents”* (SEC(2009)1643) from which the content of the proposed Implementing Rules is derived. In case there are certain elements from these Implementing Rules you would want to have the same legal value as the Decision itself, such elements should be introduced into the Decision itself.

With regard to the draft Commission Decision:

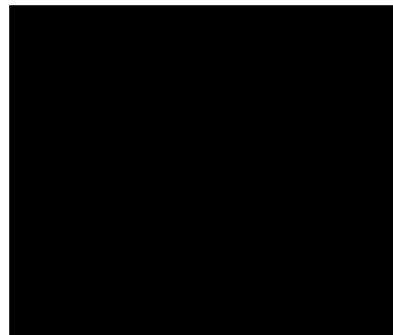
- we would recommend to improve the language used to define and clearly distinguish the technical terms used throughout the text (for example, the term *“capture”* at Art. 3(6) and the *“registration”* at Article 8),

- the very rationale for the adoption of the Decision being to set clear and unambiguous rules concerning the management of records, including their creation and preservation, general statements such as “*Any record shall be valid if it complies with the formal requirements laid down in the applicable Union or national law*” currently contained at Article 5 (3) of the draft Decision do not seem to be appropriate in this document, .
- with regard to the proposed derogations and limitations from the rights of data subjects for the processing of personal data for archiving purposes in the public interest contained in Article 15 of the draft Decision, the Commission’s Data Protection Officer and the European Data Protection Supervisor must be consulted in order to guarantee full compliance with the requirements set in Article 25 of Regulation (EU) 2018/1725, in particular with regard to the content of the specific provisions referred to in paragraph 2 of Article 25.

Additional comments and drafting suggestions have been provided, also with the assistance of our colleagues in the Quality of Legislation Team (LEG), in track changes in the attached document.

Finally, it is important to stress that the subject matter of the Decision concerning rules for the management of records is inextricably linked to the obligations to provide access to documents held by the Commission in accordance with the principles, modalities and limits laid down in Regulation (EC) No 1049/2001. It is, therefore, suggested that you make it clear in the text that the scope of the rules contained in the Decision and the scope of the rules in Regulation (EC) No 1049/2001 are perfectly aligned. In particular, according to the legal interpretation of document in Article 2 of Regulation (EC) No 1049/2001, any record, “*registered*”, “*captured*” or otherwise “*held*” by the Commission would be a “document” subject to transparency rules. This would have a destabilizing effect on the current administrative practice aiming at rationalizing the scope of documents falling into the scope of Regulation (EC) No 1049/2001 by stating that “[...] *provided the registration criteria are applied correctly, only registered documents fall under the scope of Regulation (EC) No 1049/2001*” (cfr.: “*Guidelines on document registration*” Ref. Ares (2018) 5874624).

We hope that the above is helpful and remain available should you wish to receive any additional assistance.



Annexes: Comments and drafting suggestions on the draft decision