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NOTE FOR THE ATTENTION OF THE DIRECTORS-GENERAL,
HEADS OF SERVICE AND DIRECTORS OF OFFICES

Subject: Transmission of guidelines for the registration of e-mails in the framework of the Electronic Archiving and Document Management Policy of the European Commission (e-Domec)

In the framework of its policy on document management and electronic archiving (e-Domec), the Commission took two important decisions:

- the decision 2002/47/EC, ECSC, Euratom of 23 January 2002 concerning provisions on document management;
- The decision 2004/563/EC, Euratom of 7 July 2004 concerning Commission's provisions on electronic and digitised documents.

Both decisions were followed by implementing rules adopted by the Secretary-General, after interservice consultations. These implementing rules are applicable to all Commission's Directorates-General/Services, including the cabinets, executive offices, delegations and executive agencies.

Over the period April 1st to July 15th 2005, a review of the document management in the DG's aiming at evaluating the implementation of the first two implementing rules "*Registration and keeping registers of the Institution's documents*" and "*Filing and the management of the Institution's files*" was carried out at the request of the e-Domec Steering Committee.

The results of this review, done in agreement with DG IAS and the IAC's of the DG's, shown that there is a need for clear guidelines from the Secretariat-general concerning the registration of e-mails, in order to ensure an homogenous treatment of this type of documents throughout the Commission.

You will find in annex those guidelines to be applied from now on in your Directorate-General or Service.

I thank you in advance for your cooperation.

Catherine DAY

Annex: SEC(2006) 353
Cc : Heads of Cabinets



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

The Secretary-General

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**GUIDELINES FOR THE REGISTRATION OF E-MAILS
IN THE FRAMEWORK OF THE ELECTRONIC ARCHIVING
AND DOCUMENT MANAGEMENT POLICY
OF THE EUROPEAN COMMISSION (E-DOMEC)**

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I. EXECUTIVE SUMMARY

A review of document management in the DG's, which was carried out in 2005 at the request of the e-Domec Steering Committee, shows that there is a need for clear guidelines from the Secretariat-General concerning the registration of e-mails, to ensure a homogenous treatment of this type of documents throughout the Commission.

I.1. Characteristics of e-mails

E-mail is both a medium and content and it is important that the one is not confused with the other. E-mail is a very important tool for the Commission and its staff. It is rapid, flexible and easy to use. This facility of use has led to the replacement of much oral communication, such as telephone calls, by the written medium of e-mail and also made informal written cooperation between colleagues very frequent. At the same time, more and more formal communication is carried out using e-mail, both for internal and external exchanges. In conclusion, e-mail is a frequently chosen medium for both informal and more formal communication, internally as well as externally.

I.2. E-mails are documents

Taken together, the definitions of “document” and “electronic document” contained respectively in Regulation (EC) No 1049/2001, in Commission Decision 2002/47 and in Commission Decision 2004/563 clearly confirm that e-mails are documents just as any other type of document, provided that they concern a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility.

I.3. Transmission of documents by e-mail

The transmission of documents by e-mail to the Commission and by the Commission is explicitly covered by the Commission's decision 2004/563. The transmission by e-mail may, more and more often, be the communication technique best adapted to the circumstances.

I.4. Frontier between official and incidental personal use of e-mail

The guidelines for the registration of e-mails in the framework of the e-Domec policy will ensure that the Commission, in its dual capacity as a European institution and European public administration, shall comply with its legal obligations as regards the proper management of its documents, records and files, while preserving the protection of the individuals with regard to personal data.

I.5. Registration and public access to e-mails

Registration of an e-mail does not directly mean that it will become public. A request for access by the public for any type of document does not automatically lead to access being given. The Commission may refuse access to protect a number of interests, including the institution's need for “space to think”. The exceptions under which access may be refused are of no relevance whatsoever when deciding whether or not to register an e-mail.

I.6. Determining whether or not an e-mail must be registered

As a matter of routine, all e-mails must be considered for registration, the same as any other document drawn up or received by the Commission. When considering whether or not to register an e-mail, the decision must always be based on an analytic evaluation of content and context (“person A has sent me content B concerning matter C, therefore...”).

E-mails should not be registered unnecessarily, and must never be registered indiscriminately.

Any e-mail containing important information, which is not short-lived and which is likely to require action, follow-up or a reply from the Commission or one or more of its departments or to involve the responsibility of the Commission or one or more of its departments must be registered.

E-mails exchanged between two or several members of staff informally and in good faith in the “space to think” should not be registered. E-mails exchanged between two or several members of staff, and which constitute a major step in the procedure of finalising a document in the framework of the departments’ activities, must always be registered.

I.7. Principles of a tacit or explicit agreement between sender and receiver whether an e-mail is registered or not

An agreement between members of staff to exchange e-mail in good faith does not have to be formalised, and may be tacit. If it is important to either party to make it explicit that the exchange is made informally and in good faith, an agreement should, if possible and/or practicable, be made beforehand. The sender may initiate such an agreement by introducing the e-mail with the following disclaimer: *“This is an informal e-mail which should not be registered”*. A sender can never prevent a receiver from registering an e-mail, but the intentions and wishes of the sender in this respect should be taken into account as far as possible.

II. INTRODUCTION

Between April 1st and July 15th 2005, a review of the document management in the DG's was carried out at the request of the e-Domec Steering Committee to evaluate the application of the implementing rules on *registration* and *filing*. These and other e-Domec rules are applicable to all Commission's Directorates-General and Services, including cabinets, executive offices, delegations and executive agencies.

The results of this review show that there is a need for clear guidelines from the Secretariat-General concerning the registration of e-mails, to ensure a homogenous treatment of this type of documents throughout the Commission.

As an introduction, it is useful to clarify which are the characteristics of e-mails and how e-mail is being used, not only within the Commission, but also for exchanges with the external world.

CHARACTERISTICS OF E-MAILS: BOTH A MEDIUM AND CONTENT USED FOR INTERNAL AND EXTERNAL EXCHANGES, INFORMAL AND MORE FORMAL COMMUNICATIONS

- E-mail is both a medium and content.
- The medium should never be confused with the content. For example, an invitation to coffee or an informal request for opinion from a colleague would be just as informal though it were signed, stamped and on letterhead paper, while an important decision would retain its full importance even when communicated via e-mail.
- E-mail is a very important tool for the Commission and its staff. It is rapid, flexible and easy to use.
- This facility of use has led to the replacement of much oral communication, such as telephone calls, by the written medium of e-mail and also made informal written cooperation between colleagues very frequent.
- At the same time, more and more formal communication is carried out using e-mail, both for internal and external exchanges.
- In conclusion, e-mail is a frequently chosen medium for both informal and more formal communication, internally as well as externally.

In spite of the characteristics described above, the informality of a lot of e-mails exchanged within the Commission and the informal appearance of the e-mail format as such may lead to confusion as to whether e-mails carrying formal communication should be registered or not.

Hence, hereafter are the requested guidelines for the registration of e-mails.

III. LEGAL FRAMEWORK

In the framework of its policy for document management and electronic archiving, the Commission has adopted two important decisions laying down provisions on respectively document management and electronic and digitised documents.¹

Based on these decisions, a set of implementing rules for respectively registration, filing, preservation of files and electronic and digitised documents has been adopted by the Secretary-general after inter-service consultations.²

III.1. Definitions of documents and electronic documents

The provisions on document management state that “*a document shall mean any content drawn up or received by the Commission concerning a matter relating to the policies, activities and decisions falling within the institution's competence and in the framework of its official tasks, in whatever medium (written on paper or stored in electronic form or as a sound, visual or audio-visual recording)*”.³

The Commission's provisions on electronic and digitised documents define “*a document [by referring to the definitions given] by Article 3(a) of Regulation (EC) N° 1049/2001 of the European Parliament and of the Council, and by Article 1 of the provisions on document management annexed to the rules of procedure of the Commission*”; and

“*an electronic document as a data-set input or stored on any type of medium by a computer system or a similar mechanism, which can be read or displayed by a person or by such a system or mechanism, and any display or retrieval of such data in printed or other form*”.⁴

¹ *Provisions on document management*, annexed to Commission Decision N° 2002/47/EC of 23 January 2002 amending its Rules of Procedure (OJ L 21, 24.1.2002, p. 23); *Commission's provisions on electronic and digitised documents*, annexed to Commission Decision N° 2004/563/EC, Euratom of 7 July 2004 amending its Rules of Procedure (OJ L 251, 27.7.2004, p. 9).

² “*Registration and keeping registers of the Institution's documents*”. Implementing rules for Article 4 of the provisions on document management annexed to the Commission's rules of procedure and to be applied in the Commission's Directorates-General and equivalent departments, SEC(2003)349/1;

“*Filing and the management of the Institution's files*”. Implementing rules for Article 5 of the provisions on document management annexed to the Commission's rules of procedure and to be applied in the Commission's Directorates-General and equivalent departments, SEC(2003)349/2;

“*Preservation of the Institution's files*”. Implementing rules for article 6 of the provisions on document management annexed to the Commission's rules of procedure to be applied in the Commission's Directorates-General and equivalent departments, SEC(2005)1419;

“*Electronic and digitised documents*”. Implementing rules for the provisions on electronic and digitised documents, annexed to the Commission's rules of procedure by Commission Decision 2004/563/EC, Euratom, SEC(2005)1578.

³ Provisions on document management, article 4.

⁴ Commission's provisions on electronic and digitised documents, article 3.

E-MAILS ARE DOCUMENTS

- Taken together, the definitions of “document” and of “electronic document” contained respectively in Regulation (EC) No 1049/2001, in Commission Decision 2002/47 and in Commission Decision 2004/563 clearly confirm that e-mails are documents just as any other type of document, provided they concern a matter relating to the policies, activities and decisions falling within the institution’s sphere of responsibility.

III.2. Transmission by electronic means

The Commission’s provisions on electronic and digitised documents further states the following:

- (1) *“The transmission of documents by the Commission to an internal or external recipient may be carried out by the communication technique best adapted to the circumstances of the case.*
- (2) *Documents may be transmitted to the Commission by any communication technique, including electronic means – fax, e-mail, electronic form, web site.”⁵*

TRANSMISSION OF DOCUMENTS BY E-MAIL

- The transmission of documents by e-mail to the Commission and by the Commission is explicitly covered by the Commission’s decision 2004/563.
- This is perfectly normal given that the use of e-mail is increasing day by day.
- The transmission by e-mail may, more and more often, be the communication technique best adapted to the circumstances.

III.3. Protection of individuals with regard to personal data

Pursuant to Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms:

“Everyone has the right to respect for his private and family life, his home and his correspondence.”

This right is explicitly recognized by Article 36 of Regulation N°45/2001⁶, which provides that:

“Community institutions and bodies shall ensure the confidentiality of communications by means of telecommunications networks and terminal equipment, in accordance with the general principles of Community law.”

⁵ Commission’s provisions on electronic and digitised documents, article 6.

⁶ Regulation (EC) N° 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

In Administrative Notices N°88-2002, the Commission states that:

“The e-mail system has been installed for official use. However, incidental personal use is permitted. The e-mail system should not be used for illegal or irregular purposes contrary to the interests of the Communities, or in the sole financial interest of the user. It may not be used contrary to the provisions of the Data Protection Regulation⁷ or in any way that may be regarded as insulting or offensive towards any other person, company or organisation, or that might disrupt the functioning of the e-mail service itself.”

FRONTIER BETWEEN OFFICIAL AND INCIDENTAL PERSONAL USE OF E-MAIL

- As the frontier between official and incidental personal use of the e-mail system is not always obvious, it is necessary to have clear guidelines applicable to all services of the Commission.
- The guidelines for the registration of e-mails in the framework of the e-Domec policy will ensure that the Commission, in its dual capacity as a European institution and European public administration, shall comply with its legal obligations as regards the proper management of its documents, records and files, while preserving the protection of the individuals with regard to personal data.

IV. REGISTRATION AND PUBLIC ACCESS TO DOCUMENTS

The right of the public under Regulation (EC) 1049/2001 to demand access to Commission documents, including e-mail, is completely independent of whether or not a document has been registered. The regulation applies to all documents held by the Commission, that is to say, documents⁸ drawn up or received by it and in its possession, in all areas of activity of the European Union.⁹ Even if the Regulation creates the obligation on the institutions to provide public access to a register¹⁰, registration of a document, in a public or in an internal register, does not imply that such a document shall be made public if its content is covered by one or more exceptions. Therefore, there is no direct link between the registration of an e-mail and its becoming public.

In this context, it must be made clear that access being requested by the public does not automatically lead to access being given. Under Regulation (EC) 1049/2001, the Commission may refuse access to protect a number of interests, including the need of the institution for “space to think”.

⁷ Regulation (EC) N° 45/2001.

⁸ Defined as “any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution’s sphere of responsibility.” [Regulation (EC) N° 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, p. 43), Article 3(a).]

⁹ Regulation (EC) N° 1049/2001, Article 2.3.

¹⁰ Regulation (EC) N° 1049/2001, Article 11.

Specifically, the regulation states that access shall be refused to documents drawn up for internal use that relate to a matter where the decision has not yet been taken, if disclosure would seriously undermine the decision-making process, and unless there is an overriding public interest in disclosure. Likewise, access shall be refused even after the decision has been taken to any document containing opinions for internal use as part of deliberations and preliminary consultations, again if disclosure would seriously undermine the decision-making process, and unless there is an overriding public interest in disclosure¹¹.

These two exceptions to public access are particularly likely to be applicable to e-mail, given its frequent use for internal deliberations and preliminary consultations.

However, these as well as the other exceptions to access laid down by Regulation (EC) No 1049/2001, are of no relevance whatsoever when deciding whether or not to register an e-mail.

LINK BETWEEN REGISTRATION AND PUBLIC ACCESS TO E-MAILS

- There is no direct link between the registration of an e-mail and the possibility of its becoming public.
- A request for access by the public does not automatically lead to access being given. The Commission may refuse access to protect a number of interests, including the institution's need for "space to think".
- The exceptions under which access may be refused are of no relevance whatsoever when deciding whether or not to register an e-mail.

¹¹ Regulation (EC) N° 1049/2001, Article 4.3.

V. PRINCIPLES OF REGISTRATION OF DOCUMENTS AND ELECTRONIC DOCUMENTS

It must be stressed that, under the rules governing document management in the Commission, registration is a fundamental operation by which a document is captured and becomes part of the Commission's documentary resources. Indeed, all the subsequent operations regarding filing, preservation, etc. are ensured if a document is put in a register. Conversely, if a document is not registered, the file to which it relates risks being incomplete and the preservation of the document cannot be guaranteed.

V.1. Documents and electronic documents to be registered

As far as the obligation of registration is concerned, the provisions on document management state, in Article 4, that:

“As soon as a document is received or formally drawn up within a department, in whatever medium, it shall be analysed with a view to determining what is to be done with it and thus whether or not it must be registered.

A document drawn up or received by a Commission department must be registered if it contains important information which is not short-lived and/or may involve action or follow-up by the Commission or one of its departments.”¹²

The implementing rules relevant to article 4 of the above-mentioned provisions on document management add the following:

“Documents to be registered pursuant to the provisions on document management are all documents, regardless of medium, that:

- (a) are received or formally drawn up by a Commission department in the course of its activities; **and***
- (b) i) are likely to require action, follow-up or a reply from the Commission or one or more of its departments; **or***
*ii) involve the responsibility of the Commission or one or more of its departments; **and***
- (c) contain important information which is not short-lived;¹³”*

¹² Provisions on document management, article 4.

¹³ Documents containing information which is unimportant and short-lived are, *in contrast*, documents:

- whose loss would not prevent the departments concerned meeting the Commission's administrative or evidential needs; *or*
- whose value is clearly temporary and rapidly lapsing, ancillary and instrumental; *or*
- which are considered or treated as non-important and short-lived by a records schedule, a procedural regulation or routine administrative practice.

[“Registration and keeping registers of the Institution's documents”. Implementing rules for Article 4 of the provisions on document management annexed to the Commission's rules of procedure and to be applied in the Commission's Directorates-General and equivalent departments, SEC(2003)349/1, point V.]

V.2. Definitions of some key notions relating to registration criteria

Following the adoption of the implementing rules on registration, certain key notions relating to registration criteria were further defined by the Secretariat-General in a registration manual.

As far as the registration criteria for e-mails are concerned, the most relevant key notions are *formally drawn up*, *received*, and *important and not short-lived*.

V.2.1. *Formally drawn up*

There is a very important difference between the **physical existence** of a document, e.g. an e-mail, and its **formal existence** as having been *formally drawn up*. A document may very well exist physically without existing formally. Nevertheless, it is only when a document created at the Commission exists *formally* by having been *formally drawn up* that it can be considered for registration.

A document is considered **formally drawn up** when it has been *approved as ready* by the *author* and is ready for *formal transmission*.

A document in general is **approved as ready** either by an act of approval (for example a signature), or by *de facto* treating the document as ready (for example by sending it to the intended receiver(s), by making it accessible via a website, etc.).

An **e-mail** is **approved as ready** when the author decides to send it to the intended receiver(s). The act of deciding to send the e-mail is considered as *de facto* treating it as ready. Ideally, the e-mail should then be registered and the registration number included in the e-mail before it is sent (see VII.3 below).

If for some reason this is not possible, or one realises only after sending the e-mail that it should have been registered, registration must then be carried out as soon as possible. If deemed necessary, the receiver(s) may be notified that this has been done.

In this context, **author** does not mean the official(s) charged with the practical task of drafting or typing.¹⁴ The author is the person or the organisational entity *formally responsible for the content* directly in accordance with the established rules and procedures of the Commission (including the rules and procedures on delegation).

Ready in this context does not necessarily mean the final version. An intermediate or draft version of a document may be considered ready as such (for example ready to be sent out for a formal inter-service consultation).

¹⁴ Of course, the author in the formal sense and the one doing the actual typing may very well be the same person (which for e-mail is indeed likely to be the case), but this is beside the point. The key issue here is responsibility.

Transmission means an author sending a document to a receiver.¹⁵ This receiver can be a *person*, an *organisational entity*, or an *archiving/information system*.

If the receiver is a **person** or an **organisational entity**, *transmission* is **formal** when the receiver is the one for whom the document is ultimately intended. If the receiver is an **archiving/information system** (for example in the case of a note to the file) *transmission* is **formal** when the document is incorporated into the system, for example the file in question.

V.2.2. *Received*

A document is considered **received** when it is *available* to the service(s) for which it is intended.

Available means that the document has *arrived* at the *premises* of the service, or has been *handed* to an *official competent to deal with the document*, or can be *accessed through an information system* available to the service.

An official competent to deal with the document is either an official involved in the handling of the matter to which the document is related, or an official charged with the task of receiving or treating incoming documents.

A document **handed** to *an official competent to deal with it* is considered available to the service at the moment of handing over, no matter where or when this takes place. If the document fulfils the conditions for registration (see V.1), it must then be registered as soon as practically possible.

A document **handed** to *any other official* is not considered available to the service at the moment of handing over, but must, of course, be forwarded to *an official competent to deal with it* as soon as practically possible.

An **e-mail** is *available* to the service(s) for which it is intended as soon as it is accessible to an official competent to deal with it through the Commission's e-mail system, i.e. when it has been delivered to that official's inbox, or to a functional mailbox available to that official.

An official may for various reasons (holiday, official travel, training, sickness, etc.) be unable to check for incoming e-mail with sufficient frequency (in principle every working day).

¹⁵ By "author" and "receiver" should of course be understood one or several of either, depending on circumstances.

If during an absence an official is likely to receive e-mail that should be registered, then *either*

- anyone who sends an e-mail to that official should be informed about the absence and redirected to a colleague or a relevant functional e-mail address through an “out of office”-message; *or*
- it should be arranged so that a colleague can check for incoming e-mail during the absence; *or*
- both of the above.

Similarly, **functional mailboxes** used to receive e-mail that may have to be registered must be managed in such a way as to ensure that they are checked for incoming e-mail with sufficient frequency (in principle every working day).

If, as is likely to happen from time to time, an incoming e-mail that should be registered is not noticed at the time it is received, it must of course be registered as soon as possible.

In the case of a document **accessible through an information system**, there must also be *intention of transmission* from the author to the Commission. For example, a document is not received by the Commission simply because it is accessible via a website somewhere in the world. If, however, someone makes it known to the Commission that a document, which that someone wishes the Commission to have, is available at a certain web address, the document in question is then considered received by the Commission¹⁶, and should immediately be downloaded and processed for possible registration in the same way as a document received by post.

V.2.3. Important and not short-lived

When deciding if a document, including an e-mail, falls under the obligation of registration, the key issue will often be to decide whether it is *important* and *not short-lived*. It is normally fairly straightforward to decide if an e-mail or any other document has been received or formally drawn up, and likewise to know if it is likely to require action, follow-up or a reply, or involves the responsibility of the Commission.

Important and **not short-lived**, on the other hand, are criteria subject to subtle judgement. What is important? What is unimportant? Just how short is short-lived?

¹⁶ Provided, of course, that the document can actually be found and identified at the given web address.

These judgments will of course vary with the content and context of the document. The following should therefore be seen as guidelines to help make those judgments rather than strict and absolute rules.

The implementing rules on registration give a good indication on how to think when deciding about the importance of a document, for example an e-mail, by saying that it is unimportant and short-lived if its loss “would not prevent the departments concerned meeting the Commission’s administrative or evidential needs”.¹⁷

In other words, when judging the importance of an e-mail one should consider the effect of not having it available when accounting for the actions based on its content. Has the Commission (at any level, from the College of Commissioners via a DG or other department to an individual member of staff) made a decision, paid out money, entered into a legal obligation, or taken some other kind of action based on a certain e-mail (or any other type of document for that matter)? Would it be needed if that action at some point had to be defended or explained? Or would it be necessary in order to prove that the Commission has fulfilled its legal, financial, administrative or other obligations? If **yes**, it is important.

This importance may of course be short-lived. After a short time, it no longer matters if the action can be defended or explained. This is simple enough. The difficulty is of course to identify the (more or less) exact limit of a *short* time. The implementing rules talk about the value of a document being clearly temporary, and rapidly lapsing.¹⁸ It seems reasonable that this should be measured in weeks rather than months. These guidelines therefore recommend that “short-lived” is considered to be a time span of about two to four, and certainly no longer than six weeks.

V.3. Differences and similarities between e-mails and other types of documents

As stated under point III.1 above, e-mail is in principle not different from other documents. In practice, however, an e-mail may:

- (1) differ from many other types of document, in that, given its nature of accessible, easy and rapid communication, it often contains *informal* and/or *unimportant* and/or *short-lived* information. In that case, the e-mail is comparable to e.g. a telephone call and should not be registered; *or*
- (2) contain important information, which is not short-lived and which is likely to require action, follow-up or a reply from the Commission or one or more of its departments or to involve the responsibility of the Commission or one or more of its departments. In that case, the e-mail is as important as a note on paper and must be registered.

¹⁷ Implementing rules for Article 4 of the provisions on document management, SEC(2003)349/1, footnote 12.

¹⁸ Implementing rules for Article 4 of the provisions on document management, SEC(2003)349/1, footnote 12.

While it is difficult to give exact percentages of e-mails of type (1) and type (2), it is reasonable to assume that most e-mails drawn up or received and exchanged between members of staff of the Commission are of type (1) and consequently should not be registered.

However, as the number of e-mails tends to increase and to replace paper circulation, e-mails of type (2) are rapidly progressing, so that the percentage of e-mails to register is likely to increase as well.

V.4. Evaluation of the importance of an e-mail to decide if it has to be registered

Taking account of the fact that it is not always easy to evaluate the importance of an e-mail in order to decide if it has to be registered or not, it is recommended that departments err on the side of caution: *rather one registration too many than one too few*. However, such caution must never be put into practice as indiscriminating mass registration of e-mails.¹⁹

In particular, as far as IT tools are concerned, there is likely to be an increased risk of such indiscriminate registration of e-mail when it is facilitated by semi-automatic capture tools such as through the AdoLook robot into Adonis. If such tools are in use, the DG must take appropriate action to ensure that users are aware of the issue as described in these guidelines.

In this context it must also be noted that e-mails (or other documents) which Commission departments *agree to exchange informally and in good faith* do not have to be registered²⁰, even if the information they contain is important, requires action, etc. In other words, a document that should normally be registered is exempt from registration if it is exchanged informally and in good faith between Commission members of staff. For example, e-mails exchanged between Commission departments in the “space to think”, such as e-mails sent or received between two or several members of staff for advice or comment on a preliminary draft or on a draft which is not a major step in the finalising of a document in the framework of the Commission departments’ activities, should not be registered. (*See also point VII below.*)

¹⁹ Entering more information than needed into the Commission’s document management and archiving systems would in the long run make it harder and more expensive to manage the institution’s documents, records and files and, not least, to find back important information.

²⁰ “Certain documents [...] need not be registered where the administrative rules and practices of the directorates-general and equivalent departments do not require such a formalised record of their transmission. [...] These include [...] documents and memoranda which Commission departments agree to exchange in good faith without involving formality that would add nothing in terms of cost-effectiveness to the speed of the process, the reliability of the transaction or the quality of the administrative activity”. [Implementing rules for Article 4 of the provisions on document management, SEC(2003)349/1, point VII.]

VI. SUMMARY OF GUIDELINES DETERMINING WHETHER OR NOT AN E-MAIL MUST BE REGISTERED

- As a matter of **routine**, **all e-mails must be considered for registration**, the same as any other document drawn up or received by the Commission.
- When considering whether or not to register an e-mail, the decision must always be based on an **analytic evaluation of content and context** (“person A has sent me content B concerning matter C, therefore...”).
- Any e-mail containing important information, which is not short-lived and which is likely to require action, follow-up or a reply from the Commission or one or more of its departments or to involve the responsibility of the Commission or one or more of its departments **must be registered**.
- E-mails should not be registered unnecessarily, and **must never be registered indiscriminately**.
- E-mails exchanged between two or several members of staff informally and in good faith in the “space to think” – such as e-mails sent or received for advice or comment on a preliminary draft or on a draft, which is not a major step in the procedure of finalising a document in the framework of the departments’ activities – **should not be registered**.
- E-mails exchanged between two or several members of staff, which constitute a major step in the procedure of finalising a document in the framework of the departments’ activities, **must always be registered**.

VII. RIGHTS AND RESPONSIBILITIES

VII.1. Rights and responsibilities as lead department (*“chef de file”*)

In the Commission, there must be an official file for each case or matter²¹. For each official file, at any given moment a single unit is always lead department (*“chef de file”*), and thus responsible for the logical unity of the file.²²

Any correspondence, including e-mail, involves a sender and a receiver. If both the sender and receiver of an e-mail are members of staff, they are independently responsible for considering whether or not to register and consequentially, file an e-mail exchanged between them. In other words, a sender can never prevent a receiver from registering an e-mail, as this would be the same as usurping the role of lead department (*“chef de file”*) and the ensuing responsibility for the completeness and unity of the file in question.

²¹ “Filing and the management of the Institution’s files”. Implementing rules for Article 5 of the provisions on document management annexed to the Commission’s rules of procedure and to be applied in the Commission’s Directorates-General and equivalent departments, SEC(2003)349/2, point III.

²² Implementing rules for Article 5 of the provisions on document management, SEC(2003)349/2, point VII.1.

However, given the nature of e-mail as an accessible, fast and frequently informal means of communication, situations may well arise where sender and receiver have different opinions about whether or not an e-mail should be registered. For example, an e-mail intended by the sender to be an informal part of an ongoing discussion between two members of staff might appear differently to the receiver and, by registration, be formalised and given wider circulation²³ than what the sender intended or would have wished for.

In this context, it must be underlined that any user of the Commission e-mail system should always be aware that e-mail is a *written* form of communication over which the sender has very little or no control once it has been sent, and therefore exercise proper judgment when writing and sending e-mail.

This being said, although the lead department (*“chef de file”*) is fully responsible for the file and what goes in it, and the sender must take responsibility for the content of a sent e-mail, it is always good practice (and good manners) to listen to and respect the views of a colleague.

VII.2. Informal exchange of e-mails in good faith between members of staff

The exemption from registration of documents exchanged between Commission departments concerns documents where there is an **agreement of good faith**²⁴.

Such an agreement does not have to be formalised, and may frequently be tacit. However, if it is important to either part in an exchange of e-mail that there is an agreement of good faith, and thus that the e-mail will not be registered, it is recommended to make sure that this is fully understood and agreed upon before the exchange begins.

It may not always be possible for the sender to get such an agreement beforehand. If it still is sufficiently important to the sender that the communication is treated by the receiver as exchanged in good faith, the following procedure should be applied:

- (1) The sender must clearly introduce his/her e-mail by the following disclaimer: **“This is an informal e-mail which should not be registered”**.
- (2) If this is acceptable to the receiver there is no problem, and the e-mail will not be registered.
- (3) If this is not acceptable to the receiver, the sender should be contacted to see if it is possible to come to an agreement, either that the sender accepts that the e-mail is registered, or that the receiver accepts that it is exchanged informally and in good faith and is not registered.

²³ Depending on how a DG is organised, how its registration system is set up, and whether the e-mail itself is attached to the record or not, a registered e-mail might become (more or less easily) available to all staff in a unit, a directorate or even an entire DG. Furthermore, a registered e-mail must be filed, and, depending on the retention lists and appraisal of the file, might be archived indefinitely. On the other hand, registration will never in itself lead to an e-mail being disclosed to the public (see point IV for details).

²⁴ See also point V.4.

- (4) If no agreement is to be found, and the receiver is unwilling to register against the will of the sender, the sender must be informed that no notice can be taken of the e-mail unless the receiver may register it.
- (5) Given the responsibility as lead department ("*chef de file*"), the receiver always has the final say on whether or not to register an e-mail. However, it is strongly recommended that the wishes and intentions of the sender are taken into account and respected as far as possible.
- (6) If the sender and the receiver arrive at an agreement that a given exchange of e-mail was made in good faith after the e-mail in question has already been registered, the registration should then be cancelled in accordance with standard practice²⁵.

VII.3. Clear indication by the sender that the e-mail is registered

In order to inform the receiver that the e-mail has been registered by the sender, the latter should make it clear *either*:

- (a) directly in the subject of the message²⁶; *or*
- (b) at the very beginning of the e-mail; *or*
- (c) in the attached file if the main information is in this attachment (Word, PDF, Excel, etc.) and not in the e-mail message text; *or*
- (d) in the e-mail message text **and** in the attached file if both elements are important (not only the attached file, but also the name of the sender, the names of the receivers in *To* and in *Cc* and the date and hour of transmission.)

and in such a way that it immediately strikes the attention²⁷ of the reader (e.g. by putting the registration number on the first line in bold, underlined and/or in another colour).

²⁵ For further details on the cancellation of registrations, see the Implementing rules for Article 4 of the provisions on document management, SEC(2003)349/1, point IX, 3.

²⁶ This is automatically the case with Adolook, but even if a service is not using this tool, it is always possible to do so.

²⁷ In the case of an attached document in standard EuroLook format, adding the registration number in its usual place on the first page of the document is considered sufficient.

VIII. SUMMARY OF THE PRINCIPLES OF A TACIT OR EXPLICIT AGREEMENT BETWEEN SENDER AND RECEIVER WHETHER AN E-MAIL IS REGISTERED OR NOT

- In order to **inform the receiver that the e-mail has been registered**, the sender should make it clear:
 - (a) *either* in the subject of the message, *or*
 - (b) at the very beginning of the e-mail, *or*
 - (c) in the attached file if the main information is there, *or*
 - (d) in the e-mail message text **and** in the attached file if both elements are important

and in such a way that it strikes the attention of the receiver.
- **A sender can never prevent a receiver from registering an e-mail**, but the intentions and wishes of the sender in this respect should be taken into account as far as possible.
- An **agreement** between members of staff to exchange e-mail informally and in good faith does not have to be formalised, and may be tacit. *It is not possible to make such an agreement when exchanging e-mail with someone outside the Commission.*
- If it is important to either part to make it explicit that the exchange is made in good faith, an agreement should, if possible and/or practicable, be made beforehand. The sender may initiate such an agreement by introducing the e-mail with the following disclaimer: **“This is an informal e-mail which should not be registered”**.
- If no agreement has been made beforehand nor can be had, the procedure outlined under point VII.2, point (1) to (6) above should be followed.

Catherine DAY