

**Comments of the Commission on a request for information from the European Ombudsman**  
**- Strategic initiative SI/4/2021/TE**

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**I. BACKGROUND/SUMMARY OF THE FACTS/HISTORY**

On 30 June 2021, the European Ombudsman launched a strategic initiative on how EU institutions, bodies, offices and agencies record text and instant messages sent/received by staff members in their professional capacity.

The initiative aims ‘to take stock of the current rules and practices on record keeping concerning these messages, with a view to identifying good practices within the EU administration’.

As an initial step, the European Ombudsman requests information on the rules and practices on the recording of text and instant messages across the EU administration<sup>1</sup>.

**II. THE REQUEST TO THE COMMISSION**

The European Ombudsman asks the Commission to reply to the following questions:

‘1) On the applicable rules:

- Does the Commission’s record management decision cover text and instant messages, sent or received through professional and/or personal devices?
- Does the Commission’s record management decision set out criteria/principles for the recording of text and instant messages?
- Does the Commission’s record management decision set out how text and instant messages should be recorded by staff members?

Please provide us with the relevant provisions of your record management decision.

2) On the implementation of the applicable rules:

- How is the record management decision, as regards text and instant messaging, implemented? For example, has the Commission issued relevant guidelines to staff or does it provide training on this matter to staff?
- In practice, has the Commission recorded text and instant messages? If so, could the Commission please provide examples?
- Has the Commission already received requests for public access to text and/or instant messages, under Regulation 1049/2001, or has the Commission identified text and/or instant messages as falling within the scope of an access to documents request? If so, could the Commission please give examples?
- When receiving public access requests which cover, explicitly or implicitly, text

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<sup>1</sup> [Ombudsman to identify good practices on how the EU administration keeps records of work-related text and instant messages | News | European Ombudsman \(europa.eu\)](#).

and/or instant messages, how does the Commission search for relevant ‘documents’? Has the Commission put mechanisms in place (for instance, guidelines or instructions) to assist staff in searching for such ‘documents’?

Please provide us with the relevant documents’.

### III. THE COMMISSION'S REPLIES TO THE QUESTIONS FROM THE OMBUDSMAN

Commission Decision C(2020) 4482 on records management and archives applies to records held by the Commission ‘irrespective of their form, medium age or location’. The Decision defines a ‘record’ as any ‘information, received and created in the form of a document, a collection of data or other form in a digital or analogue medium that is captured in an official repository and managed and maintained as evidence and as an asset’.

Of particular relevance in this context is also Article 7(1) of the Decision, which states that ‘Documents shall be registered if they contain important information which is not short-lived or if they may involve action or follow-up by the Commission or one of its departments’.

In the note Ares(2018)5874624, ‘Guidelines on document registration’, the registration criteria are more widely explained. In line with these guidelines, Commission staff is required to verify whether information created or received in a professional capacity is to be registered in accordance with the following three key registration criteria.

1. The first criterion requires verifying whether the information relates to the policies, activities or decisions falling within the institution's sphere of responsibility.
2. For the second criterion, staff members need to check whether the information concerned is important and not short-lived.
3. Last, the third criterion requires controlling whether the information concerned has been drawn up or received by the European Commission. In accordance with the aforementioned note, ‘A document is considered “drawn up” only if it is “stable”, i.e. if it has been approved as ready for transmission by the person who is empowered to take responsibility for its content in accordance with the rules and regulations applying to the underlying “business process”’. On the other hand, ‘a document is considered as “received” if it has been intentionally delivered to the European Commission by the (external) sender’.

As further stated in Ares(2018)5874624, ‘It follows [...] that various documents of a preliminary nature, such as e-mails containing iterations of a document (for instance, a draft legislative proposal, a draft policy communication or a draft impact assessment), exchanged between individual Commission staff members without constituting the position of the administrative entity or without being empowered to take responsibility for its content, or documents being prepared in collaborative spaces should not necessarily be considered as having been drawn up or received by the European Commission.’

Only when the answer to the three aforementioned criteria combined is positive, staff members are required to register information.

## **In reply to the points raised by the Ombudsman:**

### **On the applicable rules**

- Due to their short-lived and ephemeral nature, text and instant messages are not, in general, considered to contain important information relating to policies, activities and decisions of the Commission, nor are they considered to be drawn up or received in the meaning explained in the criteria set out above. They do therefore, as a general rule, not meet the registration criteria set out above.
- However, this does not rule out that, should a text or an instant message by exception nevertheless contain information that is important and long-lasting, the member of staff concerned has to ensure that the information contained in the message is properly kept, registered and stored. This could be, e.g., in the form of a note to the file.
- Currently it is technically not possible to capture text or instant messages themselves in our record keeping systems. However, if the information is important, relevant and meets the registration criteria, it should be captured in a format that is manageable by the record keeping system, e.g. a note to the file.

### **On the implementation of the applicable rules**

- In line with the above, there is no specific, targeted guidance or training currently available to staff on the registration of text/instant messages as such. However, there is ample information and training available for Commission staff on the registration criteria, i.e. what information needs to be captured and kept, and relevant assistance and advice can and is of course provided by the Document Management Officers and their teams in each DG/service.

Furthermore, Commission staff by and large do not use text or instant messages for official communication but routinely communicate by e-mail. For this reason staff can easily, directly and automatically register their emails in the Commission's records management system.

The Commission is continuously reviewing and updating its guidance and content of trainings on document and information management and will pay particular attention to underlining the need to capture relevant information, as set out in the preceding section, including if this information should be included in a text or instant message.

- In practice, and given the fact that text and instant messaging services are not used for official communication by Commission staff, the Commission has not recorded any such messages.
- When it receives requests for public access to documents, the Commission searches for relevant documents in its official document repository. There is ample guidance and support to help staff conduct such searches. However, as set out above, text and instant messages are not registered in the Commission's record keeping system because they do not meet the registration criteria.

#### IV. CONCLUSIONS

The Commission's record-keeping policy does not set out criteria, principles or procedures for the registration of text and instant messages as such.

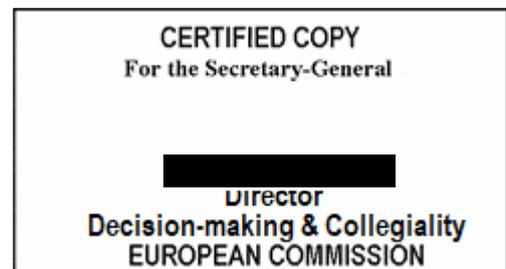
Furthermore, should the information contained in any such message be important, long-lasting and meet the registration criteria set out above, the staff member concerned has to ensure that the information is captured and kept as a record in a different format.

In this context, should texts and instant messages become a routinely used way of communication and the practice of exchanging important and official information in this way become a more common practice, the Commission may consider exploring whether an easy direct import and subsequent registration of text/instant messages into the Commission's main records management tools would be possible. Such new practice would involve the processing of personal data and require careful consideration of data protection obligations as set out in the Data Protection Regulation (EU) 2018/1725 applicable to all EU institutions.

*For the Commission*

[REDACTED]

*Vice-President*



## List of annexes

- [Commission Decision C\(2020\) 4482](#) on records management and archives.
- Note Ares(2018)5874624, 'Guidelines on document registration'.



Brussels, 6.7.2020  
C(2020) 4482 final

**COMMISSION DECISION**

**of 6.7.2020**

**on records management and archives**

# COMMISSION DECISION

of 6.7.2020

## on records management and archives

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EEC, Euratom) No 354/83<sup>1</sup>, and in particular Article 9(1) thereof,

Whereas:

- (1) The records held by the Commission form the basis of its operation and daily work. They are part of the Commission's assets and fulfil the functions of facilitating the exchange of information, providing evidence of action taken, meeting the institution's legal obligations and preserving its memory. They must therefore be managed in accordance with effective rules applicable to all directorates-general and equivalent departments.
- (2) The Commission keeps records that are created, received and managed in the course of its activities. All records, regardless of format and the technological environment in which they are collected, created or generated, are captured and maintained in an official electronic repository of records.
- (3) Provisions on records management and archives set out principles to ensure: the creation, receipt and proper preservation or elimination of records and their consultation and communication; the authenticity, reliability, integrity and readability over time of records and the metadata accompanying them; the identification of each record together with the extraction and allocation of metadata, so that it can be filed, searched and is easily traceable; the development, maintenance and updating of the structure of the Commission's records and archives management systems, its electronic repositories and its repositories for analogue media.
- (4) These principles are intended to cover the lifecycle of the Commission's records, whatever their medium, making available, exchanging, sharing, reusing and disseminating data, information and records, in line with the policy, governance arrangements and practice of the Commission's data and information management.
- (5) Effective and proper records management and archiving help meet the Commission's transparency obligations, in particular by facilitating public access to documents and implementing the principle of accountability of public actions.
- (6) Provisions on records management and archives should be aligned with the obligation to provide access to documents held by the Commission in accordance with the

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<sup>1</sup> 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).

principles, arrangements and limits set out in Regulation (EC) No 1049/2001 of the European Parliament and of the Council<sup>2</sup>.

- (7) By Commission Decision 2002/47/EC, ECSC, Euratom<sup>3</sup>, the Commission amended its Rules of Procedure to include provisions on document management and by Commission Decision 2004/563/EC, Euratom<sup>4</sup> it amended the Rules of Procedure to include provisions on electronic and digitised documents to set up electronic document management and archiving, laying down a common set of rules and procedures applicable to all departments.
- (8) It is necessary to update the rules determining the conditions under which electronic, digitised and electronically transmitted documents are valid and stored for the Commission's purposes.
- (9) The records management and archiving policy should take account of the Commission's digital transformation programme<sup>5</sup>. Therefore, the principle of the creation of records only in electronic format should be strongly emphasised, although exceptions to this principle should nevertheless be possible.
- (10) The Union institutions, bodies, offices and agencies are encouraged to recognise electronic identification and trust services covered by Regulation (EU) No 910/2014 of the European Parliament and of the Council<sup>6</sup> for the purpose of administrative cooperation capitalising, in particular, on existing good practice and the results of ongoing projects in the areas covered by this Regulation.
- (11) The Commission's rules and procedures on records management and archives should be regularly updated, taking account of developments in and the results of academic and scientific research, including the emergence of relevant standards and developments in information and communication technologies.
- (12) A records management system does not only register records, but more broadly captures them to clearly and reliably identify them, ensure their traceability and make them available to other users through filing or other means of aggregation of records throughout their life cycle.
- (13) Information systems, networks and transmission facilities that feed the Commission's records system should be protected by appropriate security measures in accordance with the applicable security rules for protecting information.
- (14) Data and information should be available and shared as widely as possible within the Commission in order to facilitate the collaborative working of its staff and the

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<sup>2</sup> 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).

<sup>3</sup> Commission Decision 2002/47/EC, ECSC, Euratom of 23 January 2002 amending its Rules of Procedure (OJ L 021, 24.1.2002, pp. 23 – 0027).

<sup>4</sup> Commission Decision 2004/563/EC, Euratom of 7 July 2004 amending its Rules of Procedure (OJ L 251, 27.7.2004, pp. 9 – 13).

<sup>5</sup> 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 direction of the internal policy for data, information and knowledge management at the Commission.

<sup>6</sup> 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).

retrievability and reuse of data and information and to promote the synergy of its resources and improve efficiency.

- (15) Each institution of the Union creates and maintains its historical archives and opens them to the public in accordance with Regulation (EEC, Euratom) No 354/83. Each institution furthermore adopts internal rules regarding the application of that Regulation.
- (16) Under Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>7</sup>, the Commission is required to provide information to data subjects on the processing of personal data concerning them and to respect their rights as data subjects. However, the Commission should balance these rights with the objectives of archiving in the public interest in accordance with data protection law.
- (17) Articles 16(5) and 19(3) of Regulation (EU) 2018/1725 provide for exceptions to data subjects' right to information and right to erasure in respect of processing data for archiving purposes in the public interest. Those rights should not apply in principle in the particular context of the Commission's historical archives, taking into account the size of the institution and its records and the nature of archiving in the public interest. The erasure of personal data contained in such records, in particular, would undermine the validity, integrity and authenticity of the Commission's archives and is therefore likely to seriously impair the achievement of the objectives of archiving in the public interest.
- (18) The Commission may be unable or would be required to make a disproportionate effort to provide information on processing once its files and records selected for permanent preservation have been transferred to its historical archives. Data subjects should be informed that records containing their personal data may be transferred to the Commission's historical archives at the end of the retention period identified for those records as part of the information referred to in Articles 15 and 16 of Regulation (EU) 2018/1725. That information is provided in relation to the original processing operations for which the personal data were initially collected.
- (19) Article 25(4) of Regulation (EU) 2018/1725 gives the Commission the possibility of providing for derogations from the rights referred to in Articles 17, 18, 20, 21, 22 and 23 of that Regulation, insofar as those rights are likely to render impossible or seriously impair the achievement of archiving purposes in the public interest and derogations are necessary for the fulfilment of those purposes. Unless derogations are provided for in a legal act adopted on the basis of the Treaties, internal rules must be adopted under which the Commission is entitled to derogate from those rights.
- (20) Granting access to personal data in case of a data subject request which does not provide specific information regarding the processing to which the request relates may involve a disproportionate administrative effort or be practically impossible, given the size and nature of the Commission's historical archives.
- (21) The rectification of personal data would undermine the integrity and authenticity of the Commission's archives and defeat the purpose of archiving in the public interest. This is without prejudice to the possibility that the Commission, in duly justified cases

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<sup>7</sup> 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).

of inaccurate personal data, may decide to include a supplementary statement or annotation to the relevant record.

- (22) Personal data form an integral and indispensable part of records selected for permanent preservation. Therefore, granting the right to object to the processing of personal data contained in such records would render impossible the achievement of the purposes of archiving in the public interest.
- (23) The Commission should provide for derogations subject to the conditions and safeguards referred to in Article 13 of Regulation (EU) 2018/1725.
- (24) In applying the principle of accountability, the Commission should keep a record of its application of derogations.
- (25) To guarantee the utmost protection of the rights and freedoms of data subjects and in accordance with Article 44(1) of Regulation (EU) 2018/1725, the Data Protection Officer of the Commission should be informed as soon as possible of the application of derogations under this Decision.
- (26) The European Data Protection Supervisor was consulted on these rules and delivered an opinion with its recommendations on 3 March 2020.
- (27) All members of staff should be accountable for the creation and correct management of records relating to policies, process and procedures for which they are responsible,

HAS DECIDED AS FOLLOWS:

## **Chapter I**

### **General provisions**

#### *Article 1* *Subject matter*

This Decision lays down rules concerning:

- (a) the management of Commission records and archives;
- (b) the preservation and opening to the public of the Commission's archives and the deposit of the Commission's historical archives at the Historical Archives of the European Union at the European University Institute (EUI) in Florence.

#### *Article 2* *Scope*

This Decision applies to records held by the Commission and to its archives, irrespective of their form, medium, age and location.

It may apply, by specific agreement, to records held by other entities responsible for applying certain Union policies or to records exchanged via data transmission networks between administrations and the Commission.

*Article 3*  
*Definitions*

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

- (1) ‘record’ means information, received and created in the form of a document<sup>8</sup>, a collection of data or other form in a digital or analogue medium that is captured in an official repository and managed and maintained as evidence and as an asset<sup>9</sup>;
- (2) ‘metadata’ means any information describing the context, content and structure of records and their management over time for the purposes of, *inter alia*, retrieval, accessibility and reuse;
- (3) ‘digitisation’ means the process of transforming a record on paper or any other traditional medium into an electronic rendition;
- (4) ‘official repository of records’ means a system, recognised and approved by the Secretariat-General, in which records held by the Commission are collected, organised and categorised to facilitate records retrieval, distribution, use, disposal or preservation;
- (5) ‘capture’ means the insertion of a document into an official electronic repository by combining a unique identifier and metadata<sup>10</sup>;
- (6) ‘unique identifier’ means a sequence of digits or letters, or both, unambiguously assigned to a record by a machine or person and which identifies that record as unique and distinct from all other records;
- (7) ‘registration’ means capturing a record into a register, establishing that it is complete and properly constituted from an administrative and/or legal standpoint and certifying that it has been sent by an author to an addressee on a given date, as incoming or outgoing mail, or has been incorporated into one of the Commission’s official repositories;
- (8) ‘file’ means an aggregation of records organised in line with the Commission’s activities, for reasons of proof, justification or information and to guarantee efficiency in the work; the group of records making up the file is organised in such a way as to form a coherent and relevant unit in terms of the activities conducted by the Commission or its departments;
- (9) ‘filing plan’ means an instrument with a hierarchical and logical structure, in the form of a tree structure with a number of interlinked headings, which enables files (or other aggregations of records) to be intellectually organised and linked to the context in which they were drawn up, on the basis of the functions, activities and working processes;
- (10) ‘authenticity’ means the fact that a record can be proved to be what it purports to be, to have been created or sent by the person purported to have created or sent it and to have been created or sent when purported<sup>11</sup>;
- (11) ‘reliability’ means the fact that the content of a record can be trusted as a full and accurate representation of the transactions, activities or facts to which they attest and

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<sup>8</sup> ‘document’ is understood within the meaning of Article 3(a) of Regulation (EC) No 1049/2001.

<sup>9</sup> ISO 15489-1:2016, point 3.14.

<sup>10</sup> ISO 15489-1:2016, point 9.3.

<sup>11</sup> ISO 15489-1:2016, point 5.2.2.1.

that the record can be depended upon in the course of subsequent transactions or activities<sup>12</sup>;

- (12) ‘integrity’ means the fact that a record is complete and unaltered<sup>13</sup>;
- (13) ‘validity’ means the fact that a document has all the intrinsic and extrinsic characteristics required by its production context, necessary in order to be accepted as an expression of its author with all its legal consequences;
- (14) ‘admissibility’ means the fact that a document has all the intrinsic and extrinsic characteristics required by its reception context, necessary for it to be accepted as an expression of its author with all its legal consequences;
- (15) ‘preservation’ means all technical processes and operations which make it possible to keep records over time, to maintain their integrity and authenticity and to guarantee access to their content.

## **Chapter II**

### **Records management**

#### *Article 4* *Creation*

1. The author of any newly created information shall analyse it in order to determine the electronic management system by which the information is to be managed, if it is to be captured and in which official repository system it is to be preserved.
2. Records shall be created in accordance with the formal requirements set out for the relevant type of records.
3. The Commission’s records shall be created as electronic records and shall be kept in its official electronic repositories.

However, in the following situations records may be created in a different medium or kept in a different manner:

- (a) where a provision of Union or national law so requires,
- (b) where protocol convenience imposes paper medium,
- (c) where practical reasons impede digitisation of the document,
- (d) where the preservation of the original analogue document has an added value because of its form or the material from which it is made or for historical reasons.

#### *Article 5* *Digitisation*

1. Information in analogue media created or received by the Commission shall be systematically digitised. The resulting electronic renditions, when captured in an official electronic repository, shall replace the corresponding original analogue

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<sup>12</sup> ISO 15489-1:2016, point 5.2.2.2.

<sup>13</sup> ISO 15489-1:2016, point 5.2.2.3.

documents, unless a handwritten signature is required by a provision of Union law or the law of the Member State or third country concerned.

2. Implementing rules adopted pursuant to Article 22 shall set out the procedural and technical details of digitisation, the applicable exceptions and the elimination of analogue records following their digitisation.

#### *Article 6*

##### *Capture*

1. Each directorate-general or equivalent department shall regularly review the types of information created or received in the course of its activities to identify which ones are to be captured in an official electronic repository and, taking account of the context in which they were produced, to organise the management of these throughout their life cycle.
2. The captured records shall not be altered. They may be removed or replaced by subsequent versions until the file they belong to is closed.

#### *Article 7*

##### *Registration*

1. Documents shall be registered if they contain important information which is not short-lived or if they may involve action or follow-up by the Commission or one of its departments.
2. Registers shall be set up to generate unique identifiers for the registered records.  
Each register shall be connected to one or more electronic repositories. Exceptions may be made for security reasons.

#### *Article 8*

##### *Filing plan*

The Commission's filing plan shall use a common file classification across all Commission departments. That classification shall form part of the Commission's activity-based management.

#### *Article 9*

##### *Computerised processes and systems*

The directorates-general and equivalent departments shall keep and manage their records by means of computerised processes and computerised systems and structures with interfaces to ensure storage of, access to and recovery of records, unless required otherwise by a Commission provision.

## Article 10

### *Legal effects of electronic signatures, seals, timestamps and registered delivery services*

1. A qualified electronic signature<sup>14</sup> shall have the equivalent legal effect of a handwritten signature.
2. A qualified electronic seal<sup>15</sup> shall enjoy the presumption of integrity of the data and of correctness of the origin of that data to which the qualified electronic seal is linked.
3. A qualified electronic time stamp<sup>16</sup> shall enjoy the presumption of the accuracy of the date and the time it indicates and the integrity of the data to which the date and time are bound.
4. Data sent and received using a qualified electronic registered delivery service<sup>17</sup> shall enjoy the presumption of the integrity of the data, the sending of that data by the identified sender, its receipt by the identified addressee and the accuracy of the date and time of sending and receipt indicated by the qualified electronic registered delivery service.

## Article 11

### *Validity of documents and procedures*

1. A document created or received by the Commission shall be considered to satisfy the validity or admissibility criteria where the following conditions are met:
  - (a) the person from whom it originates is identified;
  - (b) the context in which the document was produced is reliable and the document meets the conditions that guarantee its integrity;
  - (c) the document complies with the formal requirements set out in the applicable Union or national law;
  - (d) in the case of an electronic document, the document is created in a way that guarantees the integrity, reliability and usability of its content and the accompanying metadata.
2. An electronic rendition created by digitising an analogue document created or received by the Commission shall be considered to satisfy the validity or admissibility criteria where the following conditions are fulfilled:
  - (a) no signature is required by a provision of Union law or the law of a Member State or third country concerned;
  - (b) its format offers guarantees of integrity, reliability, durability, readability over time and ease of access to the information it contains.

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<sup>14</sup> 'electronic signature' is understood within the meaning of Article 3(10) to (12) of Regulation (EU) No 910/2014.

<sup>15</sup> 'electronic seal' is understood within the meaning of Article 3(25) to (27) of Regulation (EU) No 910/2014.

<sup>16</sup> 'electronic stamp' is understood within the meaning of Article 3(23) and (34) of Regulation (EU) No 910/2014.

<sup>17</sup> 'electronic registered delivery service' is understood within the meaning of Article 3(36) and (37) of Regulation (EU) No 910/2014.

Where a signed analogue document is not required, such an electronic rendition may be used for any exchange of information and for any internal procedure within the Commission.

3. Where a provision of Union or national law requires a signed original of a document, a document drawn up or received by the Commission shall satisfy that requirement if the document contains any of the following:
  - (a) one or more handwritten or qualified electronic signatures,
  - (b) one or more electronic signatures, other than qualified, providing sufficient guarantees about the identification of the signatory and the expression of their will in the signed document.
4. 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 computer systems, provided that each person is clearly and unambiguously identified and that the system in question provides guarantees that the content is not altered during the procedure.
5. 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 computer systems meeting conditions and providing technical assurances determined by mutual agreement.

#### *Article 12*

##### *Provision of data and information within the Commission*

1. Data and information shall be made available and shared as widely as possible within the Commission, unless legal obligations require access to be limited.
2. In the interest of information sharing, directorates-general and equivalent departments shall ensure that their files are as widely accessible as the sensitivity of their content allows.

#### *Article 13*

##### *Information security and protection*

Records shall be managed in accordance with the Commission's security rules applicable to the protection of information. To this end, records, files, information systems and archives, including their networks and means of transmission, shall be protected by appropriate security measures for the management of classified information, sensitive non-classified information and personal data<sup>18</sup>.

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

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<sup>18</sup> 'personal data' is understood within the meaning of Article 3(1) of Regulation (EU) 2018/1725.

## **Chapter III**

### **Preservation and historical archives**

#### *Article 14* *Storage and preservation*

1. Storage and preservation shall take place 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 authenticity, reliability and the integrity of their content and of the accompanying metadata;
  - (b) the content of records and their relevant metadata must be readable throughout their period of storage by any person authorised to have access to them;
  - (c) where records are sent or received electronically, the information required to determine the origin or destination of the record and the date and time of the capture or registration, shall be part of the minimum metadata to be stored;
  - (d) as regards electronic procedures managed by IT systems, information about the formal stages of the procedure shall be stored under such conditions as to ensure that those stages and the authors and participants can be identified.
2. The Secretary-General shall ensure the implementation of a digital preservation strategy to ensure long-term access to electronic records on the basis of the retention lists referred in Article 15(1). The strategy shall be drawn up in cooperation with the Commission's Historical Archives Service and shall ensure that processes, tools and resources are in place to ensure the authenticity, reliability and integrity of records and their accessibility.

#### *Article 15* *Retention, transfer and elimination*

1. The retention period for the various categories of files and, in certain cases, records, shall be set for the whole Commission by way of regulatory instruments, such as the common retention list, or one or more specific retention lists drawn up on the basis of the organisational context, the existing legislation and the Commission's legal obligations.
2. Directorates-general and equivalent departments shall regularly conduct an appraisal of records and files managed by them to assess whether they shall be transferred to the Commission's historical archives referred to in Article 16, or eliminated.

However, a set of metadata on records and files shall be retained in the original electronic repository as evidence of such records and files and their transfer or elimination.
3. EU classified information with a classification of CONFIDENTIEL UE/EU CONFIDENTIAL or higher shall not be transferred to the Commission's Historical Archives Service.

#### *Article 16* *Commission's Historical Archives Service*

The tasks of the Commission's Historical Archives Service shall be to:

- (a) guarantee the authenticity, reliability and integrity of and access to the Commission's records, files and archives which have been transferred to it;
- (b) ensure the material protection and integrity of the metadata of records and files provided by the transferring departments;
- (c) make records and files available on request to the directorates-general or equivalent departments;
- (d) undertake, where necessary and in cooperation with the originating directorate-general or equivalent department or its successor, a second review of all transferred records, files and archives;
- (e) initiate the declassification of classified documents as referred to in Articles 2 and 5 of Council Regulation (EC, Euratom) No 354/1983<sup>19</sup>;
- (f) open the Commission's historical archives to the public after the expiry of a period of 30 years, except for those records covered by exceptions relating to the privacy and integrity of individuals, or the commercial interests of a natural or legal person, including intellectual property;
- (g) deposit the Commission's historical archives that have been opened to the public at the Historical Archives of the European Union at the EUJ.

#### *Article 17*

##### *Processing of personal data contained in the Commission's historical archives*

1. The following derogations from the rights of data subjects shall apply in accordance with Article 25(4) of Regulation (EU) 2018/1725, as necessary to fulfil archiving purposes in the public interest and to preserve the integrity of the Commission's historical archives, in particular:
  - (a) the right of access<sup>20</sup>, in so far as the request of the data subject does not allow for the identification of specific records without involving disproportionate administrative effort. In assessing the action to be taken on the request of the data subject and the administrative effort required, particular account shall be taken of the information provided by the data subject and the nature, scope and size of the records potentially concerned;
  - (b) the right to rectification<sup>21</sup>, in so far as rectification renders it impossible to preserve the integrity and authenticity of records selected for permanent preservation in the Commission's historical archives, without prejudice to the possibility of a supplementary statement or annotation to the record concerned, unless this proves impossible or involves disproportionate effort;
  - (c) the obligation to notify the rectification or erasure of personal data<sup>22</sup> in so far as this proves impossible or involves disproportionate effort;

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<sup>19</sup> Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 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).

<sup>20</sup> Article 17 of Regulation (EU) 2018/1725.

<sup>21</sup> Article 18 of Regulation (EU) 2018/1725.

<sup>22</sup> Article 21 of Regulation (EU) 2018/1725.

- (d) the right to object to the processing<sup>23</sup>, in so far as the personal data are contained in records selected for permanent preservation in the Commission's historical archives as an integral and indispensable part of these records.
2. The Commission shall implement appropriate safeguards to ensure compliance with Article 13 of Regulation (EU) 2018/1725. Such safeguards shall include technical and organisational measures, in particular, in order to ensure respect for the principle of data minimisation. The safeguards shall include:
- (a) the files to be transferred to the Commission's historical archives shall be selected following a case-by-case assessment according to the Commission's retention lists. All the other files, including structured personal data files, such as personal and medical files, shall be eliminated at the end of the administrative retention period;
  - (b) the retention lists shall provide for the administrative elimination of certain types of records before the end of the administrative retention period. Consequently, these types of records shall not be processed for archiving purposes in the public interest;
  - (c) prior to processing for archiving purposes in the public interest, the directorate-general or equivalent department shall report the potential presence of records covered by Article 2(1) of Regulation (EEC, Euratom) No 354/83 in the files to be transferred to the Commission's historical archives;
  - (d) before any Commission file is opened to the public, the Commission's Historical Archives Service shall review it to verify the possible presence of records covered by the exceptions indicated in Article 2(1) of Regulation (EEC, Euratom) No 354/83, including on the basis of the signposting referred to in point (c) with the aim of protecting personal data.
3. The Commission shall record the reasons for derogations applied pursuant to this Decision. The record and, where applicable, the documents concerning the factual or legal context shall be registered. They shall be made available to the European Data Protection Supervisor on request.
4. The Data Protection Officer of the Commission shall be informed, as soon as possible of the application of derogations from data subject rights in accordance with this Decision. Upon request, the Data Protection Officer shall be provided with access to the associated records and any documents setting out the factual or legal context.

#### *Article 18*

##### *Deposit of the Commission's historical archives at the EUI*

1. The Commission's Historical Archives Service shall provide the EUI, where possible, with access to digitised copies of records held in an analogue medium.
2. The EUI shall be the main access point to the Commission's historical archives that are open to the public.
3. The Commission's Historical Archives Service shall send the EUI descriptions of the archives deposited. In accordance with international standards and to facilitate the

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<sup>23</sup> Article 23 of Regulation (EU) 2018/1725.

exchange of metadata, the Commission will promote interoperability between its archives systems and those of the EUI.

4. The EUI acts as a processor<sup>24</sup> in accordance with Article 3 of Regulation (EU) 2018/1725, under instructions from the Commission, which acts as the controller<sup>25</sup> of personal data contained in its historical archives, deposited at the EUI. The Commission's Historical Archives Service provides, on behalf of the Commission, the necessary instructions for the processing of personal data contained in the Commission's deposited archives by the EUI and monitors its performance.
5. Classified information shall not be deposited at the EUI.

## **Chapter IV**

### **Governance and implementation**

#### *Article 19*

##### *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 to implement this Decision and the implementing rules by their departments.
2. The Secretariat-General shall be responsible for ensuring that this Decision and its implementing rules are applied.
3. The Directorate-General for Informatics shall be responsible for providing the technological infrastructure to implement this Decision.

#### *Article 20*

##### *Network of document management officers*

1. Each director-general or head of department shall designate a document management officer to maintain a modern and efficient records management system in their department and to ensure coordination within their department, with the Secretariat-General and the other departments of the Commission.
2. The role of the network of document management officers, chaired by the Secretariat-General, shall be to:
  - (a) ensure the correct and uniform application of this Decision within the directorates-general and equivalent departments;
  - (b) deal with any issues which may arise from its application;
  - (c) share the requirements of directorates-general and equivalent departments as regards training and support measures.

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<sup>24</sup> 'processor' is understood within the meaning of Article 3(12) of Regulation (EU) 2018/1725.

<sup>25</sup> 'controller' is understood within the meaning of Article 3(8) of Regulation (EU) 2018/1725.

*Article 21*  
*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 Commission's Historical Archives Service, shall put in place the information, training and support measures necessary to ensure the application of this Decision within the directorates-general and equivalent departments.

*Article 22*  
*Implementing rules*

The Secretary-General shall draw up the implementing rules in coordination with the directorates-general and equivalent departments and shall ensure their implementation.

They shall be regularly updated taking account in particular of:

- (a) developments regarding records and archives management and results of academic and scientific research, including the emergence of relevant standards;
- (b) developments in information and communication technologies;
- (c) the applicable rules on the probative value of electronic records;
- (d) the Commission's obligations as regards transparency, public access to documents and the opening to the public of archives;
- (e) any new obligations by which the Commission may be bound;
- (f) harmonisation in the presentation of records drawn up by the Commission and its departments.

*Article 23*  
*Final provision*

Decision 2002/47/EC, ECSC, Euratom and Decision 2004/563/EC, Euratom have no longer effect.

Done at Brussels, 6.7.2020

*For the Commission*  
*Ursula VON DER LEYEN*  
*The President*

## Guidelines on document registration

All of the European Commission's activities and decisions in the political, legislative, technical, financial and administrative fields lead to the production of **documents**. Moreover, the European Commission needs to be able, at any time, to provide information and documentary proof on the matters for which it is accountable.

The identification of documents and their retrieval from the underlying document management systems is also essential for the efficient and timely handling of requests for access to documents under Regulation (EC) No 1049/2001.

**These guidelines provide updated guidance on what should be registered in the Commission's document management systems and what not, including updated practical registration criteria.** They replace the guidance note from January 2015 'Document management and access to documents – Note to Directors General and Heads of Cabinet'.<sup>1</sup>

### 1) What is a 'document held by the European Commission'?

The wording used in Regulation (EC) No 1049/2001 to define its material scope only provides limited guidance in this respect. Indeed, according to Article 2 (3), the Regulation shall (only) 'apply to all documents held by an institution, that is to say, documents drawn up or received by it and in its possession, in all areas of activity of the European Union' concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility.

Given the lack of a clear definition of 'a document held by the European Commission', the European Commission has been interpreting this concept in line with the European Commission Decision on document management<sup>2</sup> and the 2015 guidance note, which established that a document drawn up or received by the European Commission must be registered in the Commission's corporate document management system (Ares or equivalent<sup>3</sup>) based on specific registration criteria.

Consequently, provided the registration criteria are applied correctly, **only registered documents fall under the scope of Regulation (EC) No 1049/2001.**<sup>4</sup>

<sup>1</sup> Ref. Ares(2015)182108.

<sup>2</sup> Commission Decision of 23 January 2002 amending its Rules of Procedure, C(2002)99, OJ L 21 of 24.01.2002, p.23.

<sup>3</sup> Such as Decide, ABAC, etc. These systems have been/are undergoing integration with Hermes/Ares/Nomcom ('IT rationalisation' project).

<sup>4</sup> Therefore, when processing a request for access to documents, documents are normally searched only in Ares or in other document management systems. In case the registration criteria were not applied correctly, namely European Commission services kept unregistered documents and e-mails in their files which should have been registered, the documents concerned are to be registered ex-post as soon as they have been identified in the framework of a request for access to documents, and in any case before replying to the applicant.

## 2) Document registration, filing and retrieval

In accordance with the European Commission Decision on document management<sup>5</sup>, a document drawn up or received by the European Commission must be registered if it contains important information that is not short-lived and/or may involve action or follow-up by the European Commission or one of its departments. Not registering such a document could prevent the institution from retrieving it at a later date.

Keeping documents in a working space such as shared drives or electronic mailbox folders does not ensure their integrity, preservation and retrieval. It is therefore **essential that all documents that meet the registration criteria, defined in the document management ('eDomec') rules and explained and developed further in section 5 of the present guidelines, are actually registered.**

Registering a document does not mean that it will automatically be released in case of a request for access, as an exception<sup>6</sup> may well apply to the whole or parts of it.

While registering a document ensures its integrity and preservation, filing it facilitates its retrieval, both by enabling the identification of the document within its original context and by making it accessible to a larger number of colleagues. All documents registered in the European Commission's document management systems should therefore also be properly filed.

**An unfiled document is only accessible to a few colleagues** (the document stakeholders, i.e. the sender(s), recipient(s), and colleagues with a task related to it). Filing a document makes it accessible to the members of the group that have been granted access to the file. This is usually a Unit or a Directorate-General/service. Access should be on a need-to-know basis. For files which are of general interest and not sensitive it is recommended to give Commission-wide access<sup>7</sup>.

While Ares provides a broad range of search functionalities, the retrieval of registered documents still depends critically on their proper filing.

## 3) The treatment of e-mails

The registration criteria defined in the document management ('eDomec') rules, explained and developed further in section 5 of the present guidelines, also apply to e-mails<sup>8</sup>.

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<sup>5</sup> Decision 2002/47, Article 4.

<sup>6</sup> In the sense of Article 4 of 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 145/2001 of 31.5.2001, p. 43.

<sup>7</sup> See also Commission Staff Working Document of 18 October 2016 accompanying the document 'Data, Information and Knowledge Management at the European Commission', Action 1.2, SWD(2016)333.

<sup>8</sup> The same also holds true for other media such as SMS, although in practice the criteria are less frequently met than for e-mails. However, should it be the case, the content of such other media should be transferred or copied to an e-mail account and then registered as an e-mail or, if this is technically not possible, scanned and then registered by some other means, such as a note to the file.

- E-mails circulated within an informal, preliminary exchange of views between colleagues or containing iterations of a preliminary document (for instance, in relation to a draft legislative proposal), or in which the content has been superseded<sup>9</sup> and/or embodied by ensuing e-mails forming part of the same exchange, should not be registered.

In case of a request for public access, e-mails falling under the scope of the request should be retrievable in the European Commission's corporate document management systems ('Ares' or equivalent)<sup>10</sup>, in the same way as other types of documents fulfilling the registration criteria. Such registration in Ares ensures their integrity and preservation. Conversely, e-mails that do not qualify for registration should not be registered in Ares.

Unregistered e-mails are automatically deleted from the electronic mailbox after 6 months ('Inbox' and 'Sent Items' segments)<sup>11</sup>.

#### **4) Documents produced using collaborative working platforms<sup>12</sup>**

A collaborative working platform is a shared computer system that helps people to create documents or content individually or together with colleagues, to work across Units and services and support innovation, and to share knowledge, open communication and staff engagement.

Collaborative working platforms are complementary to the European Commission's corporate document management systems, such as Ares, but they do not replace them. Collaborative working platforms are generally used for preparatory work, related discussion and drafting.

Any document or content from collaborative working platforms that meets the criteria set out in section 5 must be registered in Ares<sup>13</sup> or in an equivalent European Commission document management system.

- In the context of collaborative working platforms and applying the registration criteria, only the document that reflects the final outcome of the collaborative work is considered for registration.

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<sup>9</sup> The e-mail/document the content of which supersedes an earlier document/content needs to be meaningful and comprehensible on its own. Otherwise, it cannot be considered as superseding the earlier e-mail/document.

<sup>10</sup> The most practical way to register e-mails is to use the Outlook plugin 'Areslook'.

<sup>11</sup> Staff is able to transfer e-mails to personal folders for purely personal use outside service activity, with the consequence that the European Commission considers such transferred items to be strictly personal items, not Commission documents, so such transfer must not be practiced as an alternative to proper registration in Ares.

<sup>12</sup> 'Collaborative working platforms. Guidelines for information and document management' (Ares(2017)5412049).  
[https://webgate.ec.testa.eu/Ares/documentInfoDetails.do?documentId=080166e5b4b615c1&f=ex\\_t](https://webgate.ec.testa.eu/Ares/documentInfoDetails.do?documentId=080166e5b4b615c1&f=ex_t)

<sup>13</sup> 'AresBridge' is the tool that facilitates the Ares integration of web document collaboration and co-creation products by providing direct save and register functionalities into Ares. For more information, please contact your DMO.

## 5) Registration criteria

It is complex to draw up a definitive list or typology of documents with clear and unambiguous rules for what must be registered and what not. The question of whether or not to register a given document can only be answered by analysing it in context.

This analysis must be applied to all documents, whatever their medium.

However, analysing a document does not necessarily entail detailed scrutiny of its content. On the contrary, in most cases a brief study, or even a cursory glance, is sufficient to arrive at a conclusion. This is particularly true as experience of registration, and of the types of documents usually dealt with, is built up within the European Commission's services.

In order to help to build up such experience, and for use in less clear-cut cases, the following three questions need to be answered. **If the answer to all of the following questions is 'yes', then the document needs to be registered** in Ares and/or the relevant corporate document management system.

- 1. Is the document related to the policies, activities or decisions falling within the institution's sphere of responsibility?**
- 2. Is the information contained in the document important and not short-lived?**

This question requires subtle judgement taking into account the content and context of the document concerned.

- A document that requires action or follow-up by the European Commission or one of its departments, or involves the responsibility of the institution, is important and not short-lived. Likewise, a document that may later be needed as proof in accordance with the rules and regulations applicable to the underlying 'business process'<sup>14</sup> is considered important and not short-lived;
- In contrast, information is considered to be unimportant and short-lived if not keeping it would have no negative administrative or legal effect for the European Commission.

- 3. Is the document drawn up or received by the European Commission?**

- A document is considered 'drawn up' only if it is 'stable', i.e. if it has been approved as ready for transmission by the person who is empowered to take responsibility for its content<sup>15</sup> in accordance with the rules and regulations applying to the underlying 'business process';

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<sup>14</sup> A business process covers a pre-defined workflow with clearly defined steps deriving from the procedural requirements or internal rules, and descriptions of the outcome concluding each step.

<sup>15</sup> Depending on the business process concerned, this can be an individual staff member (as in certain human resources-related business processes) or an entity established on an ad hoc basis (such as project evaluation committees) or on a more permanent basis (such as Units, Cabinets).

- This person does not have to be the person charged with the practical task of drafting or typing but rather the person or administrative entity responsible for the content in accordance with the procedural requirements and internal rules of the European Commission for the business process concerned;
- A document is considered as ‘received’ if it has been intentionally delivered to the European Commission by the (external) sender<sup>16</sup>.

It follows from these three cumulative criteria that various documents of a preliminary nature, such as e-mails containing iterations of a document (for instance, a draft legislative proposal, a draft policy communication or a draft impact assessment), exchanged between individual Commission staff members without constituting the position of the administrative entity or without being empowered to take responsibility for its content, or documents being prepared in collaborative spaces should not necessarily be considered as having been drawn up or received by the European Commission.

Similarly, if the content of a draft text or an e-mail exchange between separate administrative entities within or between (a) Directorate(s)-General has been superseded or embodied by ensuing draft texts or e-mails forming part of the same exchange of views or consultations, there is no need for registration..

For instance, in cases where, according to the applicable rules, agreement is to be obtained from a given entity, only the final consultation and the approval/final opinion of that entity requires registration.<sup>17</sup>

In this context, due and full implementation of Internal Control Principle No 13<sup>18</sup> is expected.

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<sup>16</sup> Other documents received through IT platforms, e.g. the Delegates Portal of the Council used for document distribution to Member States delegations and the Commission, may be considered documents received by the Commission when the other cumulative conditions set out in the present guidelines are met.

<sup>17</sup> This is without prejudice to situations in which several consultations occur on the same text.

<sup>18</sup> Internal control framework of the European Commission: 13. The Commission obtains or generates and uses relevant quality information to support the functioning of internal control, C(2017)2373 final.

<b>Examples of items to be, or not to be registered (non-exhaustive)</b>	
<b>Yes</b>	<b>No</b>
<ul style="list-style-type: none"> <li>- Formal notes and communications, both received and sent, especially to/from external parties;</li> <li>- Financial documents (as per DG BUDG guidelines);</li> <li>- Minutes of meetings, especially with other institutions or external stakeholders, and, for important meetings held by Directors, Directors-General, Cabinet Members or Commissioners, briefings/speaking/defensive etc.;</li> <li>- Information received from/sent to the Member States or other EU institutions in accordance with the rules governing the underlying business process, or received from/sent to external stakeholders;</li> <li>- Contributions to interservice consultations;</li> <li>- Documents (including notes to the file and important, not short-lived e-mails) that attest situations or events, justify decisions made or otherwise explain important steps in the development of official actions;</li> <li>- Instruction notes and guidelines for services;</li> <li>- The final exchange between two or more administrative entities (whether within or between (a) Directorate(s)-General), reflecting the result of earlier, more preliminary exchanges, if that final exchange requires action or follow-up by the Commission or may later be needed as proof in accordance with the rules and regulations applicable to the underlying 'business process'.</li> </ul>	<ul style="list-style-type: none"> <li>- Drafts (i.e. documents not yet validated by the person who is empowered to take responsibility for them in accordance with the underlying business process);</li> <li>- E-mails and other texts circulated within an informal, preliminary exchange of views between colleagues;</li> <li>- Exchanges on short-lived matters (such as exchanges regarding practical meeting arrangements);</li> <li>- Information on one's personal situation, unless it documents or implements the procedures established by the Staff Regulations;</li> <li>- Informal, preliminary exchanges of views between European Commission staff with a view to determining the position of the administrative entity responsible for the document's content;</li> <li>- Iterations of a preliminary document (e.g. a draft legislative proposal or policy communication or a draft impact assessment) or of e-mails, the content of which has been superseded and/or embodied by ensuing draft texts or e-mails forming part of the same exchange of views or consultations;</li> <li>- Early versions of documents being prepared in collaborative spaces, i.e. versions that do not reflect the final outcome or document of the collaborative work on the platform.</li> </ul>