



DISCUSSION CASE

ARCHIVING AND DATA PROTECTION

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I. NEED FOR A RISK ASSESSMENT AND ITS FOCUS

1. Consider data protection implications of the processing (age and context of the information + a 30 years time lapse for access)
2. Art. 26(1) of Reg. (EU) 2018/1725: *Taking into account ... the risks of varying likelihood ... the controller shall implement appropriate technical and organisational measures ...*

❖ **Focus I: measures during the digitization process**

- on-site or off-site processing?
- security and confidentiality;
- storage of and access to digitized copies prior to opening to public



2. CONTRACTUAL ARRANGEMENTS WITH EXTERNAL PROVIDER

- No data processing in non-EU/-adequate countries
- Clarify roles: controller/processor
- Contractual safeguards (security, confidentiality, ...)
- Processor should act only on behalf of the controller
- Right to audit the contractor
- Data protection statements, no sub-sub-contracting without prior authorisation...

3. ONLINE DISSEMINATION OF DIGITISED MATERIAL ONCE OPEN TO PUBLIC

Art. 1(2)(a) of Council Reg. 2015/496: *The institutions and EUI should, where possible, make the historical archives available ... in digitised and digital form, ... to facilitate ... consultation on the internet.*

Art. 26(1) of Reg. (EU) 2018/1725: *Taking into account ... the risks of varying likelihood ... the controller shall implement appropriate technical and organisational measures ...*

❖ **Focus 2: measures for online dissemination**

- consider **age and context** of information
- is information (partly/ in full) already in the public domain?
- full online dissemination (all digitized materials) or partial (+ finding aids online)?
- **inform potential users of their responsibilities** as regards data processing

4. INFORMATION TO AND POTENTIAL ACCESS BY DATA SUBJECTS

- Derogations:
 - Art. 16(5)(b): ... impossible ... disproportionate effort, in particular for processing for archiving purposes ...
 - Art. 25(4): ... where ... archiving purposes in the public interest ... internal rules ... may provide for derogations
- Examples of suggested approaches (within different contexts):
 - consider providing plain information about archival processing, holdings selected for long term preservation, access to archives etc. (eg. in archives section website)
 - clarify in internal rules the approach to derogations on archiving purposes and consider ways to support potential requests from data subjects (eg assist in research ...)

5. RECTIFICATION AND ERASURE

- Derogations:
 - Art. 19(3)(d) right to erasure shall not apply ... for archiving purposes in the public interest
 - Art. 25(4): Union Law ... internal rules ... may provide for derogations ...
- Examples of suggested approaches (within different contexts):
 - rectification: consider adding supplementary statement documenting rectification – without altering the original records
 - erasure: assessment / balancing exercise to consider takedown in case of online access – without altering the original records