



EDPS
EUROPEAN DATA PROTECTION SUPERVISOR

SUPERVISORY OPINION 14/2025 ON THE DRAFT DECISION OF THE EUROPEAN DATA PROTECTION SUPERVISOR ('EDPS') ON RECORDS AND ARCHIVES MANAGEMENT (Case 2025-0538)

1. INTRODUCTION

1. This Supervisory Opinion relates to the draft decision of the European Data Protection Supervisor ('EDPS') on records and archives management (the 'draft decision').
2. The EDPS submitted the consultation in its quality of body of the Union to the EDPS in its quality of data protection supervisory authority (the 'Supervisor').
3. The EDPS consultation stems from the draft decision's inclusion of derogations from data subject rights under Article 25(4) of Regulation (EU) 2018/1725¹ ('the Regulation').
4. The Supervisor issues this Supervisory Opinion in accordance with Articles 41(2) and 57(1)(g) of the Regulation.

¹ Regulation (EU) 2018/1725 of the European Parliament and the Council of 23 October 2018 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 No 1247/2002/EC, OJ, L 295, 21.11.2018, pp. 39-98.

2. FACTS

5. The draft decision lays down rules concerning the management of the EDPS records and archives in paper and electronic format, and the preservation and opening to the public of the EDPS archives, defined as ‘records to be permanently preserved for their administrative, fiscal, legal, historical or informational value’.²
6. In its Chapter III - Preservation of records and historical archives, Article 14(1) of the draft decision describes appropriate safeguards implemented by the EDPS to ensure compliance with Article 13 of the Regulation when processing personal data for archiving purposes in the public interest. Moreover, Article 14(2) of the draft decision lists a series of derogations from data subject rights ‘insofar as applying a derogation is necessary to fulfil archiving purposes in the public interest and to preserve the integrity of the EDPS historical archives’. More specifically, the provision provides that derogations may be applied in accordance with the provisions of Article 25(4) of the Regulation to the following rights of data subjects:

‘(a) the **right of access**, as provided for in Article 17 of the Regulation, insofar 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**, [as provided for Article 18 of the Regulation,³] insofar as rectification renders it impossible to preserve the integrity and authenticity of records selected for permanent preservation in the historical archives, without prejudice to the possibility of a supplementary statement or annotation to the record concerned, unless this proves impossible or involves disproportionate administrative effort;

² Article 2(1)(a) of the draft decision.

³ Reference to Article 18 is missing in the draft decision, see Recommendation No 2.

(c) the **right to restriction** of processing, as provided for in Article 20 of the Regulation, insofar as the personal data are contained in records selected for permanent preservation in the EDPS historical archives as an integral and indispensable part of these records;

(d) the **obligation to notify the rectification or erasure** of personal data or restriction of processing, as provided for in Article 21 of the Regulation, insofar as this proves impossible or involves disproportionate effort;

(e) the **right to data portability**, as provided for in Article 22 of the Regulation, insofar as this proves impossible or involves disproportionate effort;

(f) the **right to object** to the processing, as provided for in Article 23 of the Regulation, insofar as the personal data are contained in records selected for permanent preservation in the EDPS historical archives as an integral and indispensable part of these records.’ (emphasis added).

7. Article 14(3) of the draft decision provides that ‘[t]he EDPS shall file, for accountability purposes, a **record** describing the reasons derogations applied, the data subject right from which it has been derogated from (sic), and the outcome of the assessment made. Those records and, where applicable, the documents concerning the factual or legal context shall be part of an ad hoc **register**, which shall be made available, upon request, to the [Supervisor].’ (emphasis added).
8. Moreover, Article 14(4) of the draft decision specifies that ‘[t]he EDPS shall **consult the Data Protection Officer** (DPO) when application of derogations from data subject rights in accordance with [the draft decision] in a particular case is considered and, in any case, prior to taking a decision to apply such a derogation pursuant to [the draft decision]. The DPO shall be provided access to the record and any documents underlying factual and legal elements. The involvement of the DPO shall be documented.’ (emphasis added).
9. The EDPS has analysed the relevant parts of the draft decision and makes the following recommendations.

3. LEGAL ANALYSIS AND RECOMMENDATIONS

3.1. General comments

10. The Supervisor welcomes that the EDPS timely consulted the Supervisor on its draft decision.
11. Furthermore, the Supervisor welcomes the fact that in accordance with Article 25(4) of the Regulations, the draft decision includes clear rules on derogations from data subject rights when it comes to personal data processed in the EDPS archives.
12. The Supervisor also welcomes the fact that the draft decision includes obligations for the EDPS to document the derogations in question and consult the DPO (see paragraphs 7 and 8).

3.1.1. Clerical mistakes

13. Recital 15 of the draft decision states that the Supervisor was ‘informed in accordance with Article 41(1) of [the Regulation]’. However, the EDPS actually submitted a formal consultation under Article 41(2) of the Regulation. The Supervisor therefore recommends that the EDPS change the wording to reflect that the Supervisor was consulted under Article 41(2) of the Regulation, and not merely informed under Article 41(1) of the Regulation (***Recommendation No 1***).
14. Article 14(2)(b) of the draft decision, which concerns the right to rectification, does not refer to the applicable provision of the Regulation (Article 18), whereas subparagraphs (a), (c) to (f) of Article 14(2) includes such a reference. For the sake of consistency, the Supervisor therefore recommends that the EDPS include a reference to Article 18 of the Regulation in Article 14(2)(b) of the draft decision (***Recommendation No 2***).

3.2. Legal assessment

15. Article 25(4) of the Regulation provides that ‘[w]here personal data are processed for archiving purposes in the public interest, Union law, which may include internal rules adopted by Union institutions and bodies in matters relating to their operation, may

provide for derogations from the rights referred to in Articles 17, 18, 20, 21, 22 and 23 subject to the conditions and safeguards referred to in Article 13 in so far as such rights are likely to render impossible or seriously impair the achievement of the specific purposes, and such derogations are necessary for the fulfilment of those purposes.’

3.2.1. Conditions and safeguards referred to in Article 13 of the Regulation

16. Article 25(4) of the Regulation specifies that derogations to data subject rights are subject to the conditions and safeguards referred to in Article 13 of the Regulation, i.e. technical and organisational measures, should be put in place to ensure respect for the data minimisation principle.
17. In this regard, the Supervisor welcomes that Article 14(1) of the draft decision refers to such safeguards, which include:

‘(a) the records and files to be transferred to the historical archives shall be selected on the basis of the EDPS retention schedules. All the other files, including structured personal data files, such as personal and medical files, or files as referred to in Article 26 of the Staff Regulations of EU officials^[4], are never transferred to the historical archives, but are eliminated at the end of their administrative retention period, as determined in the relevant applicable rules and according to the implementing rules of this Decision;

(b) the EDPS retention schedules shall authorise the administrative elimination of specific types of records prior to the expiration of the administrative retention period applicable to the files to which such records pertain. Consequently, these types of records shall be excluded from processing for archiving purposes in the public interest;

(c) prior to processing for archiving purposes in the public interest, the EDPS services shall report the potential presence of records containing special

⁴ Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community.

categories of personal data (as defined in Article 10 of [the Regulation]) in the files to be transferred to the EDPS archives.’

18. The Supervisor welcomes that the EDPS selects the records and files to be transferred to the historical archives on the basis of the EDPS retention schedules, and that ‘[a]ll the other files, including structured personal data files, such as personal and medical files, or files as referred to in Article 26 of the Staff Regulations of EU officials’ are excluded from transfer to the historical archives (Article 14(1)(a) of the draft decision).
 19. However, the Supervisor underlines that in case the records and files selected to be transferred to the historical archives under Article 14(1)(a) of the draft decision include personal data, the EDPS should assess in light of the data minimisation principle, and on a case-by-case basis, whether it is necessary and proportionate to keep those personal data. In addition, it is not clear from the wording in Article 14(1)(b) of the draft decision which ‘specific types of records’ are to be excluded from processing for archiving purposes in the public interest. The Supervisor therefore recommends that the EDPS modify Article 14(1)(a) and (b) of the draft decision to clarify these points (***Recommendation No 3***).
 20. Article 14(1)(c) of the draft decision states that ‘the EDPS services shall report the potential presence of records containing special categories of personal data (...) in the files to be transferred to the EDPS archives.’ However, it is not clear what is meant by ‘reporting’ the potential presence of special categories of data, nor to whom this should be reported. The Supervisor stresses that the EDPS should in any event assess whether it is necessary and proportionate to keep special categories of personal data in the files to be transferred. The Supervisor therefore recommends that the EDPS modify Article 14(1)(c) of the draft decision to clarify these points (***Recommendation No 4***).
- 3.2.2. Derogation from the right of access if identification of the specific records would involve ‘disproportionate administrative effort’
21. Article 14(2)(a) of the draft decision provides that derogations from the right of access under Article 17 of the Regulation may be applied in accordance with Article 25(4) of the Regulation ‘insofar 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’.

22. The Supervisor notes that the justification ‘disproportionate administrative effort’ is not mentioned in Article 25(4) of the Regulation. This provision includes the possibility to ‘provide for derogations’ from certain data subject rights, including the right of access, where personal data are processed for archiving purposes in the public interest, ‘in so far as such rights are likely to render impossible or seriously impair the achievement of the specific purposes, and such derogations are necessary for the fulfilment of those purposes.’
 23. The Supervisor observes while the wording ‘disproportionate administrative effort’ can indeed be found in other provisions of the Regulation,⁵ it is not a ground for derogation under Article 25(4) of the Regulation from the right of access under Article 17 of the Regulation.
 24. The Supervisor therefore recommends that the EDPS justify why the right of access is likely to render impossible or seriously impair the achievement of the specific purposes [archiving in the public interest], and that such a derogation would be necessary for the fulfilment of those purposes, in accordance with Article 25(4) of the Regulation (*Recommendation No 5*).
- 3.2.3. Derogation from the obligation to notify the rectification or erasure of personal data or restriction of processing, ‘insofar as this proves impossible or involves disproportionate effort’
25. Article 14(2)(d) of the draft decision states that, in accordance with Article 25(4) of the Regulation, derogations from the obligation to notify the rectification or erasure

⁵ See Article 16(5)(b), which provides for derogations from the obligation to provide information to the data subject, and Article 21, which provides for a derogation from the obligation to notify recipients of a rectification or erasure of personal data, or a restriction of processing.

of personal data or restriction of processing (Article 21 of the Regulation), may apply ‘insofar as this proves impossible or involves a disproportionate effort’.

26. The Supervisor notes that the wording ‘disproportionate effort’ is not included in Article 25(4) of the Regulation. This provision includes the possibility to ‘provide for derogations’ from certain data subject rights, including the notification obligation, where personal data are processed for archiving purposes in the public interest, ‘in so far as such rights are likely to render impossible or seriously impair the achievement of the specific purposes, and such derogations are necessary for the fulfilment of those purposes.’
27. The Supervisor therefore recommends that the EDPS justify why the notification obligation is likely to render impossible or seriously impair the achievement of the specific purposes [archiving in the public interest], and that such a derogation would be necessary for the fulfilment of those purposes, in accordance with Article 25(4) of the Regulation (*Recommendation No 6*).

3.2.4. Derogation from the right to data portability

28. Article 14(2)(e) of the draft decision provides that derogations may be applied, in accordance with Article 25 of the Regulation, to the right to data portability (Article 22 of the Regulation) ‘insofar as this proves impossible or involves a disproportionate effort’.
29. The Supervisor notes that the wording ‘disproportionate effort’ is not included in Article 25(4) of the Regulation. This provision includes the possibility to ‘provide for derogations’ from certain data subject rights, including the right to data portability, where personal data are processed for archiving purposes in the public interest, ‘in so far as such rights are likely to render impossible or seriously impair the achievement of the specific purposes, and such derogations are necessary for the fulfilment of those purposes.’
30. In addition, the Supervisor notes that while Article 25(4) of the Regulation provides for the possibility to restrict the right to data portability, its scope of application is limited within the EU institutions, bodies, offices and agencies (‘EUIs’). This right only applies when the ground for lawfulness of the processing is consent (Article 5(1)(d) of the Regulation), or the performance of a contract (Article 5(1)(c) of the Regulation),

and when the processing is carried out by automated means. Conversely, it does not apply to processing carried out in the performance of a task in the public interest based on Union law (Article 5(1)(a) of the Regulation). Since Article 5(1)(a) of the Regulation is the most common ground for lawfulness of processing, the scope of the right to data portability is rather narrow in the EUIs. Given that it is unlikely that the right to data portability applies to the personal data processed for archiving in the public interest, there is no need to include rules on derogations from this right in the draft decision.⁶

31. Based on these considerations, the Supervisor recommends the EDPS to remove the reference to derogations from the right to data portability laid down in Article 14(2)(e). In case the EDPS nevertheless considers it necessary to keep this provision, the Supervisor recommends that the EDPS justify why the right to data portability is likely to render impossible or seriously impair the achievement of the specific purposes [archiving in the public interest], and that such a derogation would be necessary for the fulfilment of those purposes, in accordance with Article 25(4) of the Regulation (*Recommendation No 7*).

4. CONCLUSION

32. The Supervisor has made several recommendations to ensure compliance with the Regulation. In light of the accountability principle, the Supervisor expects the EDPS to implement the above recommendations accordingly and has decided to **close the case**.

Done at Brussels on 03/10/2025

(e-signed)

Wojciech Rafał WIEWIÓROWSKI

⁶ See [EDPS Guidance on Article 25 of Regulation \(EU\) 2018/1725 and internal rules restricting data subject rights](#), para. 14.