



EDPS  
EUROPEAN DATA PROTECTION SUPERVISOR

# **SUPERVISORY OPINION 19/2025 ON THE DRAFT REGULATION OF THE EUROPEAN COMMITTEE OF THE REGIONS (‘CoR’) ON RECORDS AND ARCHIVES MANAGEMENT (Case 2025-0762)**

## **1. INTRODUCTION**

1. This Supervisory Opinion relates to the draft regulation of the European Committee of the Regions (‘CoR’ or ‘Committee’) on records and archives management (the ‘draft regulation’).
2. The CoR’s consultation stems from the draft regulation’s inclusion of derogations from data subject rights under Article 25(4) of Regulation (EU) 2018/1725<sup>1</sup> (‘the Regulation’).
3. The European Data Protection Supervisor (‘EDPS’) issues this Supervisory Opinion in accordance with Articles 41(2) and 57(1)(g) of the Regulation.

## **2. FACTS**

4. On 22 August 2025, the CoR submitted a formal consultation under Article 41(2) of the Regulation concerning its draft regulation laying down rules governing the management of the CoR records and archives, including the preservation and opening

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<sup>1</sup> 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.

of the public thereof; and the deposit of the CoR historical archives at the Historical Archives of the European Union, held by the European University Institute in Florence, Italy (the 'draft regulation').<sup>2</sup>

5. Article 6(1) of the draft regulation - 'Processing of personal data contained in the Committee's records and archives' - lists a series of derogations from data subject rights 'as necessary to preserve the integrity of the Committee's records and archives and to fulfil archiving purposes in the public interest'. More specifically, the provision provides that derogations shall apply in accordance with the provisions of Article 25(4) of the Regulation to the right of access, the right of rectification, the obligation to notify the rectification or erasure of personal data and the right to object to the processing.<sup>3</sup>
6. The EDPS has analysed the relevant parts of the draft regulation and makes the following recommendations.

### **3. LEGAL ANALYSIS AND RECOMMENDATIONS**

#### **3.1. General comments**

7. The EDPS welcomes that the CoR timely consulted him on the draft regulation.
8. Furthermore, the EDPS welcomes the fact that in accordance with Article 25(4) of the Regulation, the draft regulation includes clear rules on derogations from data subject rights when it comes to personal data processed in the CoR records and archives.
9. The EDPS also welcomes the fact that Article 6(6) of the draft regulation includes an obligation for the CoR to document the derogations in question and make the relevant documents available to the EDPS.
10. Moreover, the EDPS welcomes the fact that Article 34(6) of the draft regulation provides that the CoR shall submit any review of its retention list to the EDPS in accordance with Article 41(1) of the Regulation.

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<sup>2</sup> Article 2(1)(a) and (b) of the draft regulation.

<sup>3</sup> As laid down, respectively, in Articles 17, 18, 21 and 23 of the Regulation.

11. In addition, the EDPS notes that Article 37(4) of the draft regulation clearly defines the respective roles of the CoR and the European University Institute from a data protection point of view, in line with the Regulation and Article 8(11)<sup>4</sup> of Council Regulation (EU) 2015/496.<sup>5</sup>

## 3.2. Legal assessment

12. 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. Recitals

13. **Recital 11** of the draft regulation stipulates that the exceptions to data subjects' right to information and right to erasure laid down in, respectively, 'Articles 16(5) and 19(3) of [the Regulation]', 'should apply in principle in the particular context of the Committee's historical archives, taking into account the nature of archiving in the public interest in accordance with data protection law.' Furthermore, Recital 11 provides that '[t]he erasure of personal data contained in such records, in particular, would undermine the validity, integrity and authenticity of the Committee's archives and would therefore seriously impair the achievement of the objectives of archiving in the public interest.'

14. As a rule, the controller cannot rely on Article 25(4) of the Regulation to derogate from the right to information and the right to erasure laid down in, respectively,

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<sup>4</sup> 'The EUI shall act as processor in accordance with Article 2 of Regulation (EC) No 45/2001, under instructions from the depositing institutions. The EUI shall process any personal data contained in the historical archives of the institutions in accordance with the guarantees set out in that Regulation.'

<sup>5</sup> Council Regulation (EU) 2015/496 of 17 March 2015 amending Regulation (EEC, Euratom) No 354/83 as regards the deposit of the historical archives of the institutions at the European University Institute in Florence.

Articles 16 and 19 of the Regulation. These provisions already include an exception to the right to information<sup>6</sup> and the right to erasure,<sup>7</sup> respectively, with regard to processing for archiving purposes in the public interest.

15. As a preliminary remark and for the sake of accuracy, the EDPS recommends that the draft regulation refer to, respectively, Article 16(5)(b), and 19(3)(d) of the Regulation, instead of Article 16(5) and 19(3). In addition, the EDPS notes that while Recital 11 includes a justification for applying the exception to the right of erasure in line with Article 19(3)(d) of the Regulation ('would therefore seriously impair the achievement of the objectives of archiving in the public interest'), the provision lacks an equivalent justification for applying the exception to the right of information under Article 16(5)(b) of the Regulation.
16. The EDPS therefore recommends that the CoR modify Recital 11 of the draft regulation to include the correct references to the provisions in the Regulation, and add the missing justification for applying the exception to the right to information under Article 16(5)(b) of the Regulation (*Recommendation No 1*).
17. **Recital 12** of the draft regulation sets out that Article 25(4) of the Regulation provides the possibility, where certain conditions are met, to derogate from the data subject rights laid down in Articles 17, 18, 20, 21, 22 and 23 of the Regulation. In accordance with **Recital 13** of the draft regulation, '[p]ersonal data form an integral and indispensable part of records selected for long term 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.'<sup>8</sup>

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<sup>6</sup> Article 16(5)(b) of the Regulation: 'the provision of such information proves impossible or would involve a disproportionate effort, in particular for processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes or in so far as the obligation referred to in paragraph 1 of this Article is likely to render impossible or seriously impair the achievement of the objectives of that processing;'

<sup>7</sup> Article 19(3)(d) of the Regulation: 'for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, in so far as the right referred to in paragraph 1 is likely to render impossible or seriously impair the achievement of the objectives of that processing;'

<sup>8</sup> Article 23 of the Regulation.

18. It is not clear why the right to object is dealt with in a separate recital, whereas that is not the case with the other data subject rights listed in Article 25(4) of the Regulation and Recital 12 of the draft regulation. In addition, the EDPS notes that the justification laid down in Recital 13 of the draft regulation ('would render impossible the achievement of the purposes of archiving in the public interest') is not replicated in Article 6(1)(d) of the draft regulation. The EDPS therefore recommends that the CoR modify recital 12 of the draft regulation to remedy these discrepancies (*Recommendation No 2*).

3.2.2. Derogations from the right of access if identification of specific records would involve 'disproportionate administrative effort'

19. **Article 6(1)(a)** of the draft regulation provides that derogations from the right of access under Article 17 of the Regulation shall apply in accordance with Article 25(4) of the Regulation '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 at 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'.

20. The EDPS 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.'

21. The EDPS observes that while the wording 'disproportionate effort' can indeed be found in other provisions of the Regulation,<sup>9</sup> it is not as such a ground for derogation

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<sup>9</sup> 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.

under Article 25(4) of the Regulation from the right of access under Article 17 of the Regulation.

22. The EDPS therefore recommends that the CoR 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 3*).

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’

23. **Article 6(1)(c)** of the draft regulation states that, in accordance with Article 25(4) of the Regulation, derogations from the obligation to notify the rectification or erasure of personal data (Article 21 of the Regulation), shall apply ‘insofar as this proves impossible or involves a disproportionate effort’.
24. First, the EDPS notes that Article 21 of the Regulation already includes an exception to the obligation to notify the rectification or erasure of personal data, where this would prove impossible or involve a disproportionate effort.<sup>10</sup>
25. Second, the EDPS 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.’

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<sup>10</sup> ‘The controller shall communicate any rectification or erasure of personal data or restriction of processing carried out in accordance with Article 18, Article 19(1) and Article 20 to each recipient to whom the personal data have been disclosed, unless this proves impossible or involves disproportionate effort. The controller shall inform the data subject about those recipients if the data subject requests it.’

26. Since the justification for applying a derogation set out in Article 6(1)(c) of the draft regulation is covered by the exception laid down in Article 21 of the Regulation, there is no need to rely on Article 25(4) of the Regulation, unless the CoR intends to apply a derogation from the obligation to notify for another reason. If so, the CoR should 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.
27. The EDPS therefore recommends that the CoR make the necessary changes to Article 6(1)(c) of the draft regulation with regard to the obligation to notify the data subject (*Recommendation No 4*).

#### 3.2.4. Derogation from the right to object

28. **Article 6(1)(d)** of the draft regulation provides that derogations from the right to object under Article 23 of the Regulation shall apply in accordance with Article 25(4) of the Regulation ‘in so far as the personal data are contained in records selected for long term preservation in the Committee’s historical archives as an integral and indispensable part of these records.’
29. As mentioned above regarding recital 12 of the draft regulation (paragraph 23), the EDPS notes that the part of the justification (‘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’) for applying a derogation from the right to object provided in Recital 13, is absent from Article 6(1)(d). The EDPS therefore recommends that the CoR complete the provision to ensure consistency and alignment with Article 25(4) of the Regulation (*Recommendation No 5*).

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

30. 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.

31. In this regard, the EDPS welcomes that **Article 6(2)** of the draft regulation explicitly refers to the principle of data minimisation, and lists the following safeguards:

‘(a) The files to be transferred to the Committee’s historical archives shall be selected following a case by case assessment in accordance with the Committee’s retention list as referred to in Article 34(1). All 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 list 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 lead department shall report the potential presence of records covered by Article 2(1) of Regulation No 354/83 in the files to be transferred to the Committee’s historical archives.

(d) Before any Committee file is opened to the public, the Committee’s team responsible for records and archives shall review it to verify the possible presence of records covered by the exceptions indicated in Article 2(1) of Regulation No 354/83.’

32. The EDPS welcomes the fact that the EDPS selects the files to be transferred to the historical archives following a case-by-case assessment in accordance with the CoR’s retention list, and that ‘[a]ll other files, including structured personal data files, such as personal and medical files, shall be eliminated at the end of the administrative retention period (**Article 6(2)(a)** of the draft regulation).

33. However, the EDPS underlines that in case the files selected to be transferred to the historical archives under **Article 6(2)(a)** of the draft regulation include personal data, the CoR should assess in light of the data minimisation principle whether it is necessary and proportionate to keep those personal data. In addition, it is not clear from the wording in **Article 6(2)(b)** of the draft regulation what ‘certain types of records’ are to be excluded from processing for archiving purposes in the public

interest. The EDPS therefore recommends that the CoR modify Article 6(2)(a) and (b) of the draft regulation to clarify these points (*Recommendation No 6*).

34. **Article 6(2)(c)** of the draft regulation states that ‘[p]rior to processing for archiving purposes in the public interest, the lead department shall report the potential presence of records covered by Article 2(1) of Regulation No 354/83 in the files to be transferred to the Committee’s historical archives.’ However, it is not clear what is meant by ‘reporting’ the potential presence of such records, nor to whom this should be reported. In addition, the EDPS notes that the definition given in Article 2(1)<sup>11</sup> of Regulation No. 354/83<sup>12</sup> is very wide and seems to cover all documents that include personal data. The EDPS questions whether this was the intention, and therefore recommends that the CoR modify Article 6(2)(c) of the draft regulation to clarify the above points, including the definition of ‘records covered by Article 2(1) of Regulation No 354/83’ if necessary (*Recommendation No 7*).

### 3.2.6. Sensitive personal data

35. **Article 6(5)** of the draft regulation states that ‘[t]he implementing measures of this Regulation may establish specific rules for enhanced protection of sensitive personal data, including data falling outside the scope of Article 10(1) of Regulation (EU) 2018/1725’.
36. The EDPS notes that the draft regulation does not include any definition of ‘sensitive personal data’, other than that the concept appears to be broader than ‘special categories of data’ under Article 10 of the Regulation. For the sake of clarity, the EDPS

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<sup>11</sup> ‘In the case of documents covered by the exception relating to privacy and the integrity of the individual, as defined in Article 4(1)(b) 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 (1) and that relating to the commercial interests of a natural or legal person, including intellectual property, as defined in the first indent of Article 4(2) of Regulation No 1049/2001, the exceptions may continue to apply to all or part of a document after the 30-year period if the relevant conditions for their application are satisfied.’

<sup>12</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, as amended (OJ L 79, 25.3.2015, p. 1).

recommends that the CoR adds a definition of ‘sensitive personal data’, for instance in Article 2 of the draft regulation (*Recommendation No 8*).

### 3.2.7. Information of the data protection officer

37. **Article 6(7)** of the draft regulation provides that ‘[t]he data protection officer of the Committee shall be informed, as soon as possible, of the application of derogations from data subject rights in accordance with this Regulation. 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.’
38. In accordance with Article 44(1) of the Regulation, EU institutions, bodies and agencies shall ensure that the data protection officer (‘DPO’) is involved, properly and in a timely manner, in all issues which relate to the protection of personal data. Consequently, the EDPS recommends adding an obligation to consult - not only inform - the DPO *before* the controller takes any decision to derogate from data subject rights in a particular case. The controller should involve the DPO throughout the procedure and document this consultation. The EDPS therefore recommends that the CoR modify Article 6(7) of the draft regulation accordingly (*Recommendation No 9*).

## 4. CONCLUSION

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

Done at Brussels on 11/11/2025

(*e-signed*)  
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