



EDPS  
EUROPEAN DATA PROTECTION SUPERVISOR

# **SUPERVISORY OPINION 01/2026 ON THE DRAFT DECISION OF THE EUROPEAN ECONOMIC and SOCIAL COMMITTEE ('EESC') ON RECORDS AND ARCHIVES MANAGEMENT (Case 2025-1182)**

## **1. INTRODUCTION**

1. This Supervisory Opinion relates to the draft decision of the Assembly of the European Economic and Social Committee ('EESC' or 'Committee') on records and archives management (the 'draft decision').
2. The EESC's consultation stems from the draft decision'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), 57(1)(g) and 58(3)(b) of the Regulation.

## **2. FACTS**

4. On 5 December 2025, the EESC submitted a formal consultation under Article 41(2) of the Regulation concerning its draft decision laying down rules governing the management of the EESC records and archives, including the preservation and opening to the public thereof; the deposit of the EESC historical archives at the Historical Archives of the European Union, held by the European University Institute in Florence, Italy; and the governance, roles and responsibilities on the implementation of the provisions on record management and archives.<sup>2</sup>
5. On 18 December 2025, the EESC submitted a revised version of the draft decision.

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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.

<sup>2</sup> Article 1(1)(a)-(c) of the draft decision.

6. The EDPS has analysed the relevant parts of the revised version of the draft decision and makes the following recommendations.

## 3. LEGAL ANALYSIS AND RECOMMENDATIONS

### 3.1. General comments

7. The EDPS welcomes that the EESC timely consulted him on its draft decision.
8. Furthermore, the EDPS welcomes the fact that in accordance with Article 25(4) of the Regulation, the draft decision includes clear rules on derogations from data subject rights when it comes to personal data processed in the EESC records and archives.
9. The EDPS also welcomes the fact that the draft decision<sup>3</sup> includes obligations for the EESC to document the derogations in question and make the relevant documents available to the EDPS.

### 3.2. Legal assessment

10. 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

11. The EDPS notes that **Recital 12** of the draft decision, which reads '[d]ata protection rules, transparency and access to documents and other relevant framework regarding electronic identification and trust services across the EU like eIDAS', seems incomplete. The EDPS therefore recommends that the EESC modify Recital 12 accordingly (*Recommendation No 1*).

#### 3.2.2. Derogations from data subject rights

12. **Article 17(1)** of the draft decision provides that '[t]he following derogations from the rights of data subjects shall apply in accordance with Article 16(5), point (b), Article 21 and Article 25(4) of Regulation (EU) 2018/1725, only in so far exercise of those rights would render impossible or seriously impair the achievement of archiving purposes in the public interest, and such derogations are necessary for the fulfilment of those purposes'.

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<sup>3</sup> Article 17(3) of the draft decision.

13. The EDPS notes that only Article 25(4) of the Regulation allows for *derogations* to data subject rights to be applied where personal data are processed for archiving purposes. Articles 16(5)(b) and 21 of the Regulation include *exceptions* to the right to information and the notification obligation, respectively.<sup>4</sup> It is therefore not correct to say that derogations from the rights of data subjects shall apply in accordance with Articles 16(5)(b) and 21 of the Regulation.
14. In addition, the EDPS notes that the *exception* to the notification obligation laid down in Article 21 of the Regulation applies where fulfilling this obligation ‘proves impossible or involves a disproportionate effort’. This provision does not include the justification of the *derogation* to the same obligation laid down in Article 25(4) of the Regulation, i.e. ‘such rights are likely to render impossible or seriously impair the achievement of the specific purposes [of archiving in the public interest], and such derogations are necessary for the fulfilment of those purposes’, and repeated in Article 17(1) of the draft decision.
15. The EDPS therefore recommends that the EESC modify Article 17(1) of the draft decision accordingly to clarify the appropriate legal ground for each derogation and exception respectively, and clearly distinguish between the two concepts and their respective scope (*Recommendation No 2*).

### 3.2.3. Derogation from the right of access

16. **Article 17(1)(a)** of the draft decision 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 as such right is likely to render impossible or seriously impair the achievement of the specific purposes. 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’.
17. The EDPS notes that the wording above is slightly misleading. The fact that the request of the data subject cannot be granted ‘without involving disproportionate administrative effort’ is one element to consider when assessing whether the request is likely to render impossible or seriously impair the achievement of archiving in the public interest; it is not a reason for applying the derogation as such. The EDPS therefore recommends that the EESC modify Article 17(1)(a) of the draft decision to clarify this point (*Recommendation No 3*).

### 3.2.4. Derogation from the right to object

18. **Article 17(1)(c)** of the draft decision provides that derogations from the right to object under Article 23 of the Regulation shall apply in accordance with Article 25(4)

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<sup>4</sup> In addition to these provisions, Article 19(3)(d) of the Regulation includes an exception to the right to erasure for archiving purposes in the public interest.

of the Regulation ‘as necessary to fulfil archiving purposes in the public interest and to preserve the integrity of the Committee's historical archives’ (...) ‘in so far as the personal data are contained in records selected for permanent preservation in the Committee’s historical archives as an integral and indispensable part of these records.’

19. The EDPS notes that this provision lacks a justification (e.g. to what extent ‘granting the right to object to the processing of personal data contained in such records would render impossible or seriously impair the achievement of the purposes of archiving in the public interest’) for applying a derogation from the right to object. The EDPS therefore recommends that the EESC completes the provision to ensure alignment with Article 25(4) of the Regulation (*Recommendation No 4*).

### 3.2.5. Consultation of the data protection officer

20. **Article 17(4)** of the draft decision provides that ‘[t]he Data Protection Officer of the Committee shall be consulted as soon as possible in case of envisaged application of derogations from data subject rights in accordance with this Decision. In the framework of the consultation, the Data Protection Officer shall be provided with access to the associated records and any documents setting out the factual or legal context. Any derogation from data subjects rights shall be documented and the documentation shall include the opinion of the Data Protection Officer.’

In addition, **Article 17(7)** of the draft decision provides that ‘[a]ny time controllers intend to take any decision to derogate from data subject rights in a particular case, they shall:

- (a) consult the data protection officer of the Committee properly and in a timely manner;
  - (b) involve the data protection officer throughout the procedure and document of this consultation;
  - (c) upon request, provide the data protection officer with access to the associated records and any documents setting out the factual or legal context;
  - (d) upon request and with the data protection officer’s consent, associate the Document Management Officer with access to those records.’
21. The EDPS welcomes the fact that these provisions clearly lay down the obligation to consult the data protection officer (‘DPO’) and involve them throughout the procedure, to document any derogation and include the DPO’s opinion in the documentation.
22. The EDPS recalls that Article 44(1) of the Regulation provides that 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. The EDPS therefore recommends clarifying that the DPO should be consulted *before* the controller takes any decision to derogate from data subject rights

in a particular case. In addition, the EDPS notes that there is a certain overlap between Article 17(4) and 17(7) of the draft decision and recommends considering merging the two. The EDPS therefore recommends that the EESC modify Article 17(4) and 17(7), as well as Recital 11, which uses similar wording, accordingly (*Recommendation No 5*).

## 4. CONCLUSION

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

Done at Brussels on 09 January 2026

*(e-signed)*

Wojciech Rafał WIEWIÓROWSKI