CODE OF CONDUCT FOR ARCHIVES SERVICES


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1/PREAMBLE

The Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (hereafter called “the Regulation”) aims to the protection of natural persons with regard to the processing of personal data and on the free movement of such data. Under its terms:

“1. Processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, shall be subject to appropriate safeguards, in accordance with this Regulation, for the rights and freedoms of the data subject. Those safeguards shall ensure that technical and organisational measures are in place in particular in order to ensure respect for the principle of data minimisation. Those measures may include pseudonymisation provided that those purposes can be fulfilled in that manner. Where those purposes can be fulfilled by further processing which does not permit or no longer permits the identification of data subjects, those purposes shall be fulfilled in that manner.

2. Where personal data are processed for scientific or historical research purposes or statistical purposes, Union or Member State law may provide for derogations from the rights referred to in Articles 15, 16, 18 and 21 subject to the conditions and safeguards referred to in paragraph 1 of this Article 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. Where personal data are processed for archiving purposes in the public interest, Union or Member State law may provide for derogations from the rights referred to in Articles 15, 16, 18, 19, 20 and 21 subject to the conditions and safeguards referred to in paragraph 1 of this Article 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.

4. Where processing referred to in paragraphs 2 and 3 serves at the same time another purpose, the derogations shall apply only to processing for the purposes referred to in those paragraphs.”

Whereas:

“Public authorities or public or private bodies that hold records of public interest should be services which, pursuant to Union or Member State law, have a legal obligation to acquire, preserve, appraise, arrange, describe,

1 Article 89: Safeguards and derogations relating to processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes.
communicate, promote, disseminate and provide access to records of enduring value for general public interest."

and

"Where personal data are processed for archiving purposes, this Regulation should also apply to that processing, bearing in mind that this Regulation should not apply to deceased persons."

Having regard:

- The Charter of Fundamental Rights of the European Union (2000/C 364/01) adopted on December 18th, 2000, considers to be fundamental rights on the one hand the Protection of personal data (Article 8) and on the other hand Freedom of expression and information (which includes freedom to receive and impart information) (Article 13), and Freedom of the arts and sciences, including freedom of research (Article 13);

- the Council of Europe Recommendation No. R (2000) 13 of the Committee of Ministers to Member States on a European policy on access to archives states that ‘Access to public archives is a right.’ (Article 5) and that ‘Access to archives is part of the function of public archive services.’ (Article 6);

- The Recommendation Rec(2002)2 on access to official documents adopted by the Committee of Ministers of the Council of Europe on 21 February 2002 enhances the necessity of providing access to unimpaired official documents and archives (article 3) : “Member States should guarantee the right of everyone to have access, on request, to official documents held by public authorities.”;

- The Universal Declaration on Archives adopted by the UNESCO in 2011 says :

  "Archives record decisions, actions and memories. Archives are a unique and irreplaceable heritage passed from one generation to another. Archives are managed from creation to preserve their value and meaning. They are authoritative sources of information underpinning accountable and transparent administrative actions. They play an essential role in the development of societies by safeguarding and contributing to individual and community memory. Open access to archives enriches our knowledge of human society, promotes democracy, protects citizens' rights and enhances the quality of life."

- The Code of ethics for archivists adopted by the International Council of Archives on September 6th, 1996, states at Article 1st that :

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2Recital 158.
3Recital 158.
4The Universal Declaration on Archives, prepared by the International Council on Archives, was adopted by UNESCO on 26 October 2011 – see http://unesdoc.unesco.org/images/0021/002134/213423e.pdf.
“Archivists should protect the integrity of archival material and thus guarantee that it continues to be reliable evidence of the past. The primary duty of archivists is to maintain the integrity of the records in their care and custody. In the accomplishment of this duty they must have regard to the legitimate, but sometimes conflicting, rights and interests of employers, owners, data subjects and users, past, present and future. The objectivity and impartiality of archivists is the measure of their professionalism. They should resist pressure from any source to manipulate evidence so as to conceal or distort facts.”

- The International Council on Archives’ Principles of Access to Archives⁵ adopted in 2012 set out the benefits of access while also recognising that there may need to be some limitations:

“Archives are preserved for use by present and future generations. An access service links archives to the public; it provides information for users about the institution and its holdings; it influences whether the public will trust the custodians of archives and the services they provide. Archivists support a culture of openness, but accept restrictions as required by laws and other authorities, ethics or donor requirements. (...) Access to the archives of government is essential for an informed society. Democracy, accountability, good governance and civic engagement require a legal guarantee that individuals will have access to the archives of public bodies established by national, self-governing territories and local governments, intergovernmental institutions, and any organization and any legal or natural person performing public functions and operating with public funds. All archives of public bodies are open to the public unless they fall under an exception grounded in law.”

This present Code of conduct, based on article 40 of the Regulation, aims at balancing on the one hand the need to ensure that the interests of data subjects are protected in the course of archives services’ work, and on the other hand the needs to protect freedom of information and research, and to allow archives to play their role of preserving unique and irreplaceable heritage and protecting citizens’ rights, particularly in view of the need of preserving the evidential value of archives for individuals in relation to decisions and actions that affected them and their ancestors.

Processing of personal data for archiving purposes by an archives service in connection with the acquisition and management of documents and the provision of access to them is a compatible further purpose of processing in terms of Article 89 (1) of the Regulation 2016/679 and an objective of public interest in terms of Article 6 (1) (e) of the Regulation⁶, where such processing is in accordance with this Code.

The code sets out the actions archives services are required to take in connection with the processing of personal data for archiving purposes, specifically to enable their use for research and evidence finding, now or in the future.

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⁵ The Principles were adopted by the International Council on Archives on 10 September 2012 – see http://www.ica.org/13619/toolkits-guides-manuals-and-guidelines/draft-principles-of-access-to-archives.html
⁶Article 89 (3).
2.1.1 This code of conduct applies to public and private archives services that have adopted the code in accordance with arrangements made under Article 40 of the Regulation and described at section 5.

2.1.2 It should be noted that public archives services are likely to come under the scope of article 89 (3), and private archives services, under the scope of article 89 (2).

2.1.3 This code applies solely to processing of personal data for archiving purposes. It should be clear that processing of personal data for archive services’ own initial purposes (such as staff records) is subject to general regime stated in the Regulation.
3/ GENERAL PRINCIPLES

3.1 Definitions

This section explains how certain terms have been used in this code of conduct. As a general rule, terms such as data subject have the meaning given to them by Article 4 of the Regulation, but some other terms are used in a particular way in this code and hence require definition.

**Acquisition** – the receipt of documents from an external person or organisation or from another part of the same organisation. The term represents a transfer of responsibility for documents and is not intended to imply that they automatically become the property of the archives service.

**Archival information management system** – software that supports or carries out the management of documents.

**Archives service** – Services which, pursuant to Union or Member State law, have a legal obligation to acquire, preserve, appraise, arrange, describe, communicate, promote, disseminate and provide access to records of enduring value for general public interest.\(^7\)

**Communication** – disclosure of documents. This includes making documents available for consultation, providing copies or enabling copying of documents, and enabling the interrogation of documents.

**Data controller** – has the meaning given to it in the Regulation

**Data processor** – has the meaning given to it in the Regulation

**Data subject** – has the meaning given to it in the Regulation. It is stressed that a data subject is necessarily a living person\(^8\).

**Dissemination** – disclosure of documents, including making them available for consultation, whether online or in research rooms, and enabling interrogation of them. Dissemination takes no account of the identity of the user and in effect publishes personal data to the world at large. This happens when documents are published on websites or in some other way.

**Document/data** – any item of information recorded in any form or format that has been acquired by an archives service for preservation as part of its collections or, having been received by the archives services, is being assessed for this purpose. The documents to which this Code refers are those that contain or consist of personal data.

**Finding aids** – metadata, catalogues, indexes and other means of locating and identifying the contents and context of documents.

\(^7\)Provided for by Recital 158.

\(^8\)Provided for by Recital 158 and 160.
Management of documents – the term used for the activities of the archives service in relation to the documents for which it is responsible. This may include appraisal of documents for permanent preservation, acquisition and accessioning, storage and preservation, arrangement and description, and provision of access through communication, promotion and dissemination.

Member State law – any official measure taken by a Member State whether by law or by regulation.

[Personal data – has the meaning given to it in the Regulation]

Preservation – measures taken by an archives service to keep the integrity, authenticity, confidentiality and availability of documents and data in order to enable users to interpret them correctly and to reconstruct the information contained in them in an appropriate manner.

[Processing - has the meaning given to it in the Regulation]

[Pseudonymisation – has the meaning given to in the regulation]

Regulation – the Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)

Research – investigation into persons, facts and circumstances, including the gathering, analysis and interpretation of documents and the development of conclusions based on those documents and, if applicable, other sources. “Research” applies whether historical or for evidence finding. It includes not only research organisations but also research conducted privately by any individual as well as genealogical research.

[Special categories of data – has the meaning given to it in the Regulation]

User – any person not identical with the data subject who requests or gains access to documents held in an archives service for archiving purposes, or who uses other services offered by the archives service, such as provision of advice and guidance in the use of the documents, with the exception of the staff working at the archives services in the course of their duties.

3.2 Responsibilities and commitments

Responsibilities

3.2.1 Archives services acquire and manage documents from many different organisations and individuals. The nature of this acquisition (transfer by public records bodies, legal deposit, purchase, private donation…) should determine whether the archives service has sole responsibility for compliance with the Regulation as data controller or shares the
responsibility with the depositor or donor. The responsibilities of all parties in relation to data protection should in any case be clearly laid out and should be part of the document/data description.

3.2.2 Archives services set up a framework of rules which defines the conditions for the communication and the dissemination or re-use of personal data, in accordance with Union or Member State law. When users acquire personal data in documents communicated or disseminated by an archives service, they become responsible of that personal data\(^9\). Archives services alert users to the fact that they may acquire obligations under the Regulation in the course of their research and provide or refer them to appropriate guidance. The archive services cannot be held responsible for the use made of legally communicated or disseminated documents or data.

3.2.3. Archives services must keep the original documents unaltered for the long term. Data protection measures should be limited for the time they are needed to protect the living data subject\(^10\) but should be reversible when this protection is no longer needed. Archives services ensure that adequate safeguards exist to protect personal data against unauthorised access.

**Commitments**

3.2.4 Archives services respect the rights, fundamental freedoms and dignity of data subjects in their processing of personal data regarding living individuals.

3.2.5. Archives services ensure that their organisational structure is adequate for the processing of personal data. The processes and the allocation of staff and other resources are structured in such a way that the requirements of the Regulation can be met.

3.2.6 Archives services ensure that their policies and procedures are compatible with the Regulation and this code and require their staff to act in accordance with them. Archives services also ensure that suitable schemes are in place to ensure adequate training in data protection and further training in the long term. Archives services should work in close partnership with the data protection officer.

3.2.7 Archives services safeguard the integrity and authenticity of documents containing personal data and ensure that this is not impaired by any actions taken by or on behalf of the archives service. They abstain from any activity that involves tampering with, dissembling or misrepresenting facts or information in the documents.

3.2.8 Archives services put in place measures to ensure that any person undertaking activities on behalf of the archives service in connection with documents containing personal data does so with the fairness, accuracy, impartiality, honesty and diligence required by professional practice and his/her position.

\(^9\)Article 89 (2).
\(^10\)Recital 158.
3.2.9. When personal data are processed by automated means archives services implement appropriate technical and organisational measures to protect the rights of the data subject as well as the authenticity and the integrity of the data.

3.2.10. Archives services ensure that the dissemination of documents and their description by the archives service itself (finding aids, online-catalogues, digitised collections etc.) is conform with the regulation.
4/ RULES FOR ARCHIVES SERVICES’ ACTIVITIES

4.1 Appraisal and acquisition of documents

Appraisal

4.1.1 When appraising the value for preservation of documents containing personal data, archives services must consider whether preservation of these documents is in the public interest. This requires archives services to take account of their legal obligations, their mandate and their policies concerning acquisitions, and to weigh up whether society as a whole, and current and future users, will benefit from preservation of the documents. Such assessment takes into account international norms such as NF ISO 30300 and NF ISO 30301 on information and documentation; NF ISO 15489 on records management; ISO 26122 on information and documentation (work process analysis for records).

4.1.2 Archives services should appraise whether pseudonymisation or some other means of disconnecting personal data from the identity of data subjects, would compromise the authenticity of the documents or otherwise lead to the loss of their value for historical research and evidential value. It should also be appraised whether such pseudonymisation would create a risk for possible other rights such as intellectual property rights for example.

4.1.3 Appraisal of the persistent value of documents, and the decisions made as a consequence must be documented so that archives services can explain why documents are being preserved permanently.

Acquisition

4.1.4 Archives services must develop and apply a policy on the types of documents they will acquire by defining collection guidelines, selection criteria, appraisal criteria or heritage generation criteria. The criteria may be content-based, formal or qualitative in nature. The application of such a policy to particular documents will support the position that their acquisition and preservation is in the public interest.

4.1.5 Archives services must follow accepted professional practice in their documentation of acquisitions, in particular in view of international professional norms of description of archives or archive producers such as those published by the International Council of Archives 11.

4.1.6 Archives services are not expected to inform data subjects that documents containing their personal data have been acquired and are being processed. However they must make it clear in general publicity and guidance material that the documents they hold may contain personal data and that such data is being processed in accordance with the Regulation and the present Code of conduct.

11ISAD-G, issued in 1994, or ISAAR-CPF, issued in 1996, for example.
4.2 Storage and preservation of documents

4.2.1 Archives services must store documents containing personal data securely so as to protect them from unauthorised access, alteration, loss, damage or destruction.

4.2.2 The level of security must be appropriate and proportionate to the nature of the personal data and the harm that could result from a security breach. It must reflect accepted professional standards, such as those precised in ISO 14641-1, keep pace with ongoing technical developments, and take account of accepted risk management techniques.

4.2.3 In the event of a serious breach arising from storage and preservation of documents, archives services must consider whether the breach is likely to cause significant damage to the interests of living data subjects. If so, notification of the breach should be considered, under the terms of article 34 (3) c) of the Regulation, and given to the supervisory authority.

4.3 Access to documents

4.3.1 The general approach to access adopted by archives services is set out in the International Council on Archives’ Principles of Access to Archives. This sets out the benefits of access while also recognising that there may need to be some limitations. This approach determines the description of documents and the provision of access to them through communication and dissemination.

4.3.2 It should be clear that this Code does not oppose any Member State law on access to archives or official documents. Equally, this Code should not be held in opposition with Directive 2013/37/EU on reuse of public information sector.

Description of documents

4.3.3 Archives services must provide finding aids that enable users to understand the nature and contents of documents held by the archives service and that help users locate personal data of interest to them.

4.3.4 The descriptions of documents within these finding aids must respect the rights of data subjects in relation to the information they contain. Descriptions that identify data subjects must not reveal information that is confidential, protected by law or requires protection from disclosure for some other reason. Descriptions should be made in accordance with accepted professional standards.

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12 The Principles were adopted by the International Council on Archives on 10 September 2012 – see http://www.ica.org/13619/toolkits-guides-manuals-and-guidelines/draft-principles-of-access-to-archives.html
13 As the Regulation itself recalls, in article 86, that “Personal data in official documents held by a public authority or a public body or a private body for the performance of a task carried out in the public interest may be disclosed by the authority or body in accordance with Union or Member State law to which the public authority or body is subject in order to reconcile public access to official documents with the right to the protection of personal data pursuant to this Regulation.”
with international professional norms and standards. When description levels are defined and shall include personal data, the archives service should clearly document the reason for this decision. The fact that documents or data hold personal data should not be an obstacle to them being described in finding aids. If descriptions that identify data subjects reveal information that is confidential, protected by law or requires protection from disclosure for some other reason, they must not be communicated as long as these restrictions apply.

**Communication of documents**

4.3.6 While archives services exist to preserve and provide access to documents, they must not disclose documents containing personal data unless they can reconcile the requirements of research, whether historical or for evidence, with the rights and fundamental freedoms of data subjects.

4.3.7 Archives services must check whether newly acquired documents contain, or are likely to contain, any of the special categories of personal data so that appropriate arrangements can be made for their management. Where practicable, they must document the circumstances in which the personal data was originally obtained and used.

4.3.8 As a general rule archives services may disclose documents to users only if the following conditions are met:

- Union or Member State law provides legal ground for the disclosure of documents; or
- Where no such law exists, it is appraised that access would be fair to the data subject. In determining this the nature of the information and its age must be considered as well as the reasonable expectations of data subjects and the likely impact of disclosure on their private and family life, their standing in the community and their reputation; or
- There is no impediment in law such as a court order or a statutory prohibition of disclosure or a legally binding duty of confidence; or
- There is a wider public interest in communicating the information than in protecting the privacy of the data subject; or
- The disclosure would not excessively affect the data subject’s privacy.

4.3.9 Archives services are not expected to investigate whether data subjects are still alive and hence protected by the Regulation. However, the possibility of the data subject being still alive should be taken into account when appraising the impact of disclosure of documents, unless such disclosure is provided for by Union or Member State law.

4.3.10 When general access cannot be provided to documents, it may be possible to provide an individual user with access to the documents subject to specific safeguards to protect the interests of data subjects. These safeguards might include requiring users to sign an undertaking to respect the rights of data subjects, to anonymise data before the dissemination or to refrain from copying the documents as a condition of obtaining access.

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14Such as ISAD-G or ISAAR-CPF.
15Article 8 of the CoE recommendation on access to archives.
4.3.11 Decisions to allow or refuse access must be explained and documented so that the archives service is able to demonstrate how it has acted in accordance with the Regulation and this code.

4.3.12 Archives services must make users aware that they may acquire responsibility for compliance with the Regulation in relation to documents communicated or disseminated to them and must provide or refer users to appropriate guidance.

Dissemination of documents and of finding aids

4.3.13 It is not possible to protect documents that are disseminated from misuse or use that is unfair to data subjects. For this reason, archives services must not disseminate documents unless they have assessed them and decided that they can be disseminated without detriment to the interests of data subjects.

4.4 Data subject rights

4.4.1 The Regulation provides for a derogation for article 17 (right to erasure) for processing for archiving purposes.

4.4.2 Apart from article 17, article 89 states the possibility to derogate to other rights provided for by the Regulation, when necessary for the fulfilment of the purposes set at this article. Member State should therefore provide derogations for articles 15, 16, 18 and 21 for archiving purposes under terms of article 89 (2) and derogations for articles 15, 16, 18, 19, 20 and 21 for scientific or historical research purposes or statistical purposes, under terms of article 89 (3). These derogations should be stated in Member State law.

4.4.3 Archives services must have procedures in place for handling requests from data subjects relating to the exercise of these rights and must ensure that all relevant staff are trained to recognise them and handle them in accordance with the procedures.

4.5 Processing by automated means

4.5.1 All archival processes from acquisition to dissemination may be supported by automated means. Archive services implement adequate safeguards, security measures, mechanisms and a dedicated access rights management to ensure that only authorised staff and users can access personal data. In order to meet the requirements of the Regulation archives services will implement data protection guidelines for their archival information management systems.
5/IMPLEMENTATION

5.1 Adoption

5.1.1 Member State law should provide for official adoption of this Code in view of the national organization.

5.1.2 Subscription to this Code should be mandatory for public archives services.

5.1.3 Subscription to this Code should be compulsory for private archives services.

5.1.4 Private archives services should be able to submit their subscription to a national referent designed by each Member State. This national referent should keep an up-to-date register of archives services having subscribed to the Code.

5.2 Breaches

5.2.1 Breaches of the Code by an archives services shall be reported to the national referent.

5.2.2 When alleged, breaches should be subject to the penalties stated by the Regulation, article 41.