

Recommendation on a European policy on access to archives **Adopted by the Committee of Ministers on 13 July 2000 at the 717th meeting of the Ministers'**

The Committee of Ministers, under the terms of article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to establish closer union between its members and that this aim can be pursued by common action in the cultural field;

In view of the Convention for the Protection of Human Rights and Fundamental Freedoms, in particular Articles 8 and 10, and of the Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data (ETS No. 108);

In view of Recommendation (81) 19 of the Committee of Ministers to member states on access to information held by public authorities and Recommendation (91)10 of the Committee of Ministers to member states on the communication to third parties of personal data held by public bodies;

Considering that archives constitute an essential and irreplaceable element of culture;

Considering that they ensure the survival of human memory;

Taking account of the increasing interest of the public for history, the institutional reforms currently under way in the new democracies and the exceptional scale of changes which are taking place in the creation of documents;

Considering that a country does not become fully democratic until each one of its inhabitants has the possibility of knowing in an objective manner the elements of their history;

Taking account of the complexity of problems concerning access to archives at both national and international level due to the variety of constitutional and legal frameworks, of conflicting requirements of transparency and secrecy, of protection of privacy and access to historical information, all of which are perceived differently by public opinion in each country;

Recognising the wish of historians to study and civil society to better understand the complexity of the historical process in general, and of that of the twentieth century in particular;

Conscious that a better understanding of recent European history could contribute to the prevention of conflicts;

Considering that in view of the complexity of the issues connected with the opening of archives, the adoption of a European policy on access to archives is called for, based upon common principles consistent with democratic values,

Recommends that the governments of member states take all necessary measures and steps to:

- i. adopt legislation on access to archives inspired by the principles outlined in this recommendation, or to bring existing legislation into line with the same principles;
- ii. disseminate the recommendation as widely as possible to all the bodies and persons concerned.

Appendix to Recommendation No. R (2000) 13

I. Definitions

1. For the purposes of the present recommendation:

a. the word "archives" has the following meanings:

i. when it is written with a lower case "a": the totality of the documents regardless of date, form or medium, produced or received by any individual or corporate body during the course of their business and transmitted to the Archives for permanent preservation; unless otherwise stated, the present recommendation is only concerned with "public archives", that is, those produced by official authorities;

ii. when it is written with an upper case "A": the public institutions charged with the preservation of archives;

b. the word “access” has the following meanings:

i. the function attributed to Archives to make available to users the holdings they have in their custody;

ii. the fulfilment of this function;

c. “access to archives” means the possibility of consulting archival documents in conformity with national law. This notion of access does not cover the exploitation of documents leading to derived products which shall be subject to specific agreements;

d. “user” means any person who consults the archives, with the exception of the staff working in the Archives;

e. “protected personal data” means any information relating to an identified or identifiable individual (data subject) which the law, regulatory texts or courts consider cannot be the subject of communication to the public without risking injury to the interests of that person.

II. Legislative and regulatory texts

2. In European countries, the responsibility for setting out the general principles which govern access to archives lies with the legislature and, therefore, shall be governed by an act of parliament. Practical arrangements will be divided between acts and regulations, according to the laws of each country.

3. Acts and regulations concerning access to public archives should be co-ordinated and harmonised with the laws concerning related areas, in particular with that on access to information held by public authorities and that on protection of data.

4. The criteria for access to public archives, defined in law, should apply to all archives throughout the entire national territory, regardless of the Archives responsible for their preservation.

III. Arrangements for access to public archives

5. Access to public archives is a right. In a political system which respects democratic values, this right should apply to all users regardless of their nationality, status or function.

6. Access to archives is part of the function of public archive services, for which, as such, fees should not be charged.

7. The legislation should provide for:

a. either the opening of public archives without particular restriction; or

b. a general closure period.

7.1. Exceptions to this general rule necessary in a democratic society can, if the case arises, be provided to ensure the protection of:

a. significant public interests worthy of protection (such as national defense, foreign policy and public order);

b. private individuals against the release of information concerning their private lives.

7.2. All exceptions to the general closure period, whether relating to the reduction or to the extension of this period, should have a legal basis. Responsibility for any closure or disclosure lies with the agency which created the documents or with its supervisory administration, unless national legislation assigns this responsibility to a particular Archive. Any closure beyond the usual period should be for a pre-determined period, at the end of which the record in question will be open.

8. Finding aids should cover the totality of the archives and make reference, should the case arise, to those which might have been withheld from the description. Even when finding aids reveal the existence of closed documents, and as long as they do not themselves contain information protected by virtue of legislation, they shall be readily accessible so that users may request special permission for access.

9. The applicable rules should allow for the possibility of seeking special permission from the competent authority for access to documents that are not openly available. Special permission for access should be granted under the same conditions to all users who request it.

10. If the requested archive is not openly accessible for the reasons set out in article 7.1, special permission may be given for access to extracts or with partial blanking. The user shall be informed that only partial access has been granted.

11. Any refusal of access or of special permission for access shall be communicated in writing, and the person making the request shall have the opportunity to appeal against a negative decision, and in the last resort to a court of law.

IV. Access to private archives

12. Wherever possible, *mutatis mutandis*, attempts should be made to bring arrangements for access to private archives in line with those for public archives.