DISCUSSION CASE
ARCHIVING AND DATA PROTECTION

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1. **NEED FOR A RISK ASSESSMENT AND ITS FOCUS**

1. Consider data protection implications of the processing (age and context of the information + a 30 years time lapse for access)

2. Art. 26(1) of Reg. (EU) 2018/1725: Taking into account ... the risks of varying likelihood ... the controller shall implement appropriate technical and organisational measures ...

   ❖ **Focus 1: measures during the digitization process**

     ➢ on-site or off-site processing?

     ➢ security and confidentiality;

     ➢ storage of and access to digitized copies prior to opening to public
2. Contractual arrangements with external provider

- No data processing in non-EU/-adequate countries
- Clarify roles: controller/processor
- Contractual safeguards (security, confidentiality, ...)
- Processor should act only on behalf of the controller
- Right to audit the contractor
- Data protection statements, no sub-sub-contracting without prior authorisation...
3. ONLINE DISSEMINATION OF DIGITISED MATERIAL ONCE OPEN TO PUBLIC

Art. 1(2)(a) of Council Reg. 2015/496: The institutions and EUI should, where possible, make the historical archives available ... in digitised and digital form, ... to facilitate ... consultation on the internet.

Art. 26(1) of Reg. (EU) 2018/1725: Taking into account ... the risks of varying likelihood ... the controller shall implement appropriate technical and organisational measures ...

❖ Focus 2: measures for online dissemination

- consider **age and context** of information
- is information (partly/ in full) already in the public domain?
- full online dissemination (all digitized materials) or partial (+ finding aids online)?
- inform potential users of their responsibilities as regards data processing
4. INFORMATION TO AND POTENTIAL ACCESS BY DATA SUBJECTS

- Derogations:
  - Art. 16(5)(b): ... impossible ... disproportionate effort, in particular for processing for archiving purposes ...
  - Art. 25(4): ... where ... archiving purposes in the public interest ... internal rules ... may provide for derogations

- Examples of suggested approaches (within different contexts):
  - consider providing plain information about archival processing, holdings selected for long term preservation, access to archives etc. (eg. in archives section website)
  - clarify in internal rules the approach to derogations on archiving purposes and consider ways to support potential requests from data subjects (eg assist in research ...)
5. Rectification and Erasure

- Derogations:
  - Art. 19(3)(d): right to erasure shall not apply ... for archiving purposes in the public interest
  - Art. 25(4): Union Law ... internal rules ... may provide for derogations ...

- Examples of suggested approaches (within different contexts):
  - Rectification: consider adding supplementary statement documenting rectification – without altering the original records
  - Erasure: assessment / balancing exercise to consider takedown in case of online access – without altering the original records