



Access to archives

Implementation of Recommendation No. R (2000) 13 of the Committee of Ministers to Member States on a European policy on access to archives

Culture and Cultural Heritage Division

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Introduction

This study presents the findings of a pan-European survey on Access to Archives, commissioned by the Directorate General of Democracy and Human Dignity, Directorate of Democratic Participation, Steering Committee for Culture, Heritage and Landscape of the Council of Europe, conducted in October 2022.

It evaluates the lessons learned from the findings, and outlines possible measures in order to further improve the state of access to Archives on the basis of the Council of Europe Recommendation R(2000)13 on a European policy on access to Archives.

The process that led to the drafting and adopting of the Council of Europe Recommendation on Access to Archives started in the early 1990s when, after the radical changes in the political systems in the Eastern part of Europe, the direct political and ideological confrontation of competing powers ended. Of particular importance in this period was the demand for making previously inaccessible documents available to the public as a basis for coming to terms with the history of the Cold War era, at institutional and individual levels alike. This necessitated the accessibility of information and documents regarding both current and historical documents. The former is governed by the principles of the freedom of information, the latter by access to Archives.

The Council of Europe had recognized the increased significance of access to Archives, and, in accordance with its mandates, launched activities to create a system of principles and requirements in this field. This process finally led to the adoption of Recommendation R(2000)13 on 13 July 2000.

In order to monitor the implementation of the Recommendation, a first pan-European survey was carried out in 2003/04, the results of which, together with guidelines for the Implementation of the Recommendation, were published in 2005.¹

During more than two decades that have passed since the adoption of the Recommendation, significant changes took place in the archival world. The two main driving forces of the changes have been the rapid development of information and communication technologies, and, in connection with the former, changes in the expectations of the users of Archives. Both have a substantial impact on the state of access to Archives.

Recognising these changes, the competent bodies of the Council of Europe have commissioned a study to provide an update on the state of implementation of the Council's Recommendation and to identify the need for an update of the Recommendation in order to reflect the changes that have occurred since 2004, while adequately taking into account new developments with regard to the basic principles of the Recommendation.

Our study emphasizes the practices to be followed by the national Archives and the legislation and regulation in order to comply with the Recommendation, thus providing arguments to the competent bodies of the Council of Europe for launching adequate programmes and actions to further improve the situation of access to Archives in Europe.

Our study may also assist archival institutions to improve their services, the legislators and regulators to remove legal and regulatory obstacles from access to Archives, and the professional and lay users of Archives to demand better conditions for access to paper-based, audiovisual and electronic documents alike.

Methodology

The aim of the study was achieved through a Europe-wide survey of Archives and their users, supplemented by qualitative expert interviews. The empirical survey was based on the 2003/04 survey so that the results could be compared. However, it was not a mere repetition of the earlier survey; rather, changes in the practice and use of Archives as well as technological developments and changes in the legal environment were taken into account. The study focused in particular on

¹ Kecskeméti, C. and Székely, I. (2005): *Access to Archives: A handbook of guidelines for the Implementation of Recommendation R(2000)13 on a European Policy on Access to Archives*. Strasbourg: Council of Europe Press.

the impact of digitising archival sources, preserving and processing digital documents and providing online access.

As part of the online survey, representatives from various stakeholder groups were asked to complete an extensive questionnaire. The survey was addressed to all National Archives of the CoE countries, selected regional and municipal Archives, as well as members of two important user groups of Archives, namely academics - historians in particular - and civil society organisations working for the protection of civil rights or freedom of information. An invitation was sent to 46 National Archives, to 20 regional Archives from 8 countries and to 20 municipal Archives from 16 countries, as well as to 77 professional organisations of academic users and 103 civil society organisations, from all 46 CoE member states.

Three versions of the questionnaire were created for the different respondent groups, taking into account their different tasks and level of information. The questionnaire comprised 38 and 41 questions for users and 57 questions for Archives.

The survey was conducted online using a professional survey tool. Fieldwork took place between 10 October and 04 November 2022. Although the survey had a high response rate at least among the National Archives (85 %), the sample remained relatively small. In the case of users (response rate about 20 %), the sample was not designed to be statistically representative.

The results of the survey analysis were complemented by insights from the interviews with experts from Archives and civil society organisations as well as with academics.

Status of implementation of the Recommendation

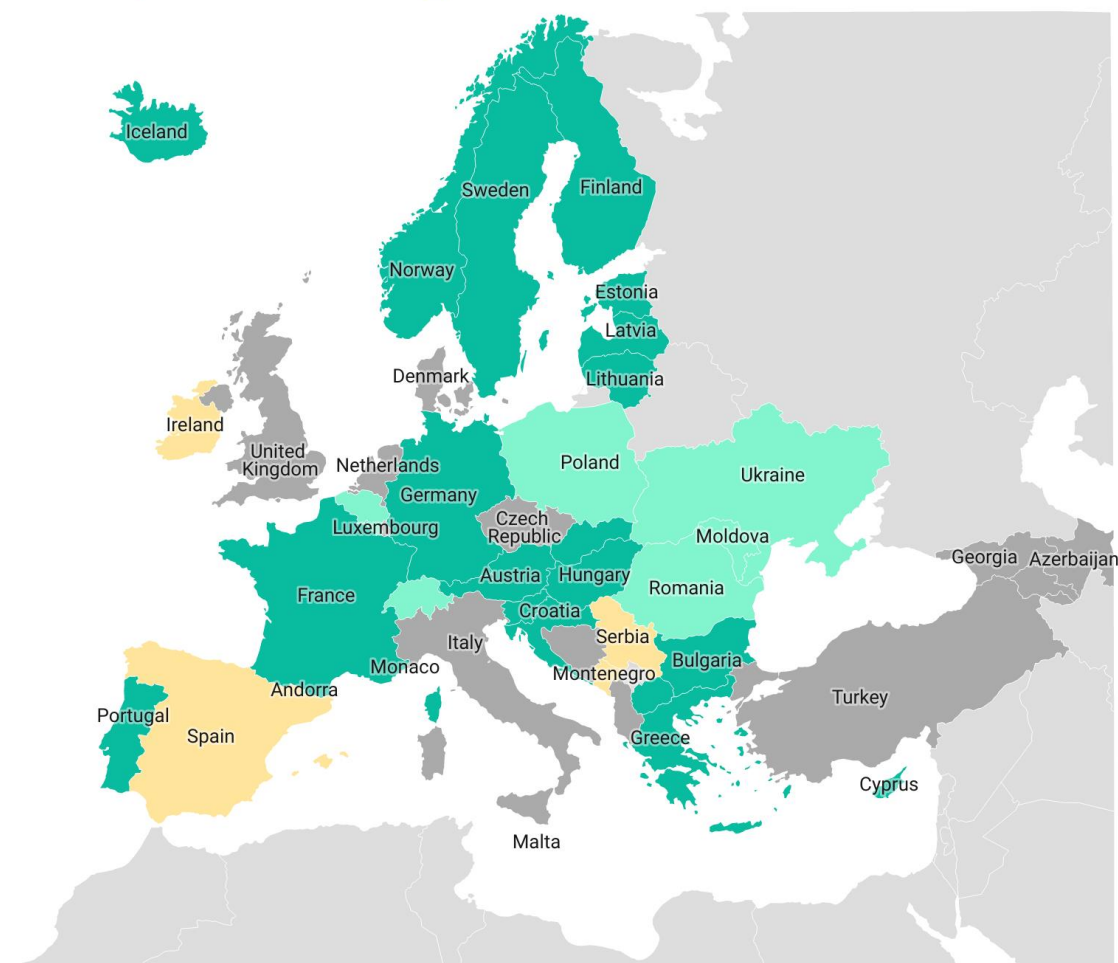
Awareness and compatibility with national legislation

The Council of Europe called on its member states to enact legislation on access to Archives based on the principles set out in the Recommendation. Overall, this request has been met and the provisions of the Recommendation have been largely implemented. According to the responses of the National Archives, national legislation in most countries now complies with the Recommendation entirely, or with a few exceptions (see the figure below).

While the Recommendation is still considered an important basis, a multitude of European, national and local rules and regulations play a more important role in the daily work of Archives. These regulations include, above all, the European General Data Protection Regulation (GDPR), national archive laws and freedom of information laws. Other relevant legislation is in preparation (such as the European Data Act).

Compatibility of the national legislation with the Recommendation

■ fully compatible
 ■ compatible with few exceptions
 ■ partly compatible
 ■ N.A.



Source: Questionnaire for Archives, Question 0.2, variable 2

Exemptions from regulation

According to Art. 3 of the Recommendation, there should be no Archives exempted from the Regulations. This is the case in a majority of countries.

However, in 13 out of 33 countries (39 %), there are archival institutions that are exempt from the access rules prescribed in the respective archive laws. This share has not changed significantly since 2003/04. Archives that are subject to such exceptions include, for example, parliamentary archives, the Archives of the ministries responsible for internal security and defence, and the Archives of police forces and intelligence services. However, the actual access conditions of these Archives are mostly in line with the principles of the Recommendation, i.e., access does not require prior authorisation and special permission is usually granted to access restricted documents.

The criteria for access must also be the same for all (public) Archives in a country. In most countries, this is indeed the case. There are deviations mainly in strongly federalised countries or when responsibilities are unclear and coordination mechanisms are not adequate.

Access as a right

According to Art. 5 of the Recommendation, access to public Archives is a right that should apply to all users. The Archives surveyed (30 out of 31) largely agree that this is the understanding in their countries. However, the details of the access conditions suggest that this is not always the lived practice.

Secret Archives

First of all, the "right of access" means that the existence of Archives must in principle not be secret. In most countries, current legislation prohibits the establishment or maintenance of secret Archives whose existence is not disclosed. At the same time, however, there is still a comparatively large number of countries (12 out of 31) in Europe where secret Archives exist or are at least permitted.

Authorisation

In many countries (20 out of 30), all users are granted free access to documents, i.e., generally without special authorisation. Unfortunately, this also means that access to non-classified documents is subject to authorisation in a considerable number of countries. This has not changed since 2004/05.

Special permissions

In the vast majority of countries (28 out of 29) it is also possible to obtain special permission to access restricted documents.

In nine countries, the production of documents can be refused on the grounds that they are allegedly not relevant to the research topic in question. The very question of the research topic, but above all the assessment of the relevance of the archival documents by archivists, contradicts the spirit of the Recommendation in every respect and opens up the possibility of arbitrariness.

Rules for specific user groups

The survey shows that specific rules for certain categories of users exist in 13 out of 30 countries. These special rules particularly favour professional, academic researchers, who are arguably the most intensive users of Archives.

Costs of access and document reproduction

According to Article 6 of the Recommendation, access to Archives should be free of charge. This is the case in almost all countries of the Council of Europe. If there are fees for a user card, they are usually small. In three-quarters of the countries, basic access to paper-based, microfilmed and digitised content, is free, as required by the Recommendation. In 87 % of the countries, online access is also free of charge. In a considerable number of countries, however, Archives charge fees for various services that exceed the actual costs. Nevertheless, the responding users felt that these fees are reasonable.

General closure periods

Article 7 of the Recommendation calls for the opening of public Archives' holdings without specific restrictions or for a defined general closure period. Historically, closure periods have varied greatly in different countries. Since the adoption of the Recommendation, the closure periods have been largely harmonized in the CoE countries and are now mostly 30 years. In 85 % of the countries that do not have a closure period regulated by law, which means that documents become immediately accessible after their transfer to the Archive.

Documents with restricted access

Article 7.1 of the Recommendation allows exceptions to the rule of a general closure period for certain types of documents, usually in the interests of national defence, foreign policy and public order, and for reasons of data protection.

Most countries make use of these exceptions but have added additional criteria to restrict the accessibility of documents, such as official secrets and private or national economic interests.

In 87 % of the countries, there are restrictions for protecting personal data in archival documents. However, many Archives and researchers see a conflict between the demand for accessibility on the one hand and the protection of personal data on the other.

Most of the countries (68 %) have provisions for reviewing the classification or downgrading of documents at the expiration of the closure period. If no formal procedure exists it often remains difficult for users to find out which documents have become accessible.

In seven countries (26 %), documents can be classified without a time limit, which is not compatible with the Recommendation. In addition, 13 countries (45 %) provide for the possibility to reclassify documents that are already freely accessible.

Finding aids

The accessibility of an Archive as a whole depends on the quality and accessibility of the finding aids. Therefore, the recommendation calls for finding aids to be available and to cover the entirety of the holdings. In 24 of the responding countries, finding aids are generally available and freely accessible. However, in six countries, access to all or certain finding aids is subject to prior authorisation. In five countries, Archives do not produce finding aids describing their restricted documents, and in nine other countries, they are produced only in specific cases.

In almost 73 % of the countries, finding aids for restricted documents can be used without restrictions, which means that users in four countries (27 %) cannot gain an unhindered overview of an Archive's restricted holdings. In such a situation, researchers cannot find out which restricted documents exist and thus cannot apply for special permissions or declassification.

Special permissions to access restricted documents

In order to avoid blanket restrictions and to meet legitimate interests, the Recommendation provides in Article 9 for the possibility to apply for special permission for access to documents that are not openly available.

This possibility exists in 27 of the 31 responding countries. Users can usually apply for such special permission for scientific research, for private legal reasons, and for journalistic investigations.

However, the two user groups in the survey report different experiences when applying for special permissions. While the majority of academic users report that such permits are usually granted, civil society organisations experience that their applications are often rejected.

Finally, Archives from nine countries reported that they have special rules governing the Archives established for preserving documents of former repressive organisations. In some countries, these special Archives were incorporated into normal Archives after the closure period. Some of the countries that had such special regulations in 2003/04 have abolished them since then.

Partial access to restricted documents

Instead of completely restricting access to documents, the Recommendation provides in Article 10 that partial access to extracts or with partial blanking should be granted for documents that are not openly accessible.

In recent years the number of Archives in which partial access is actually provided has increased significantly. While in 2003/04 there were provisions for partial access to restricted documents in just under half of the countries, this is now the case in 26 countries (84 %). In the countries that actually have a regulation for the partial release of Archives, only 52 % of the National Archives are able to effectively implement this in practice.

Refusal of access and appeal options

The Recommendation requires in Article 11 that any refusal of access or special permission must be communicated in writing and that the applicant must have the opportunity to appeal against a negative decision.

This important safeguard for the users' right to access is effectively implemented in almost all CoE member states: 27 of the responding countries have provisions for mandatory written notification of refusals; 29 countries offer the possibility of administrative appeals, and 29 countries also have the possibility of appeal to a court. These possibilities are actually used by the users, although administrative complaints and court cases against rejected permits have mostly been unsuccessful.

In most cases, requests for access to documents have been refused for reasons of data protection or classification of the documents. However, in certain Archives access is refused on the grounds of "insufficient qualification of the researcher" or because "the documents are not necessary for the research topic", a practice that clearly contradicts the Recommendation.

Private Archives

The recommendation actually only concerns state Archives. However, archival heritage is also preserved on a large scale in private Archives. Therefore, Article 12 of the Recommendation calls for an attempt to harmonise, wherever possible, the rules on access to private Archives with those for public Archives. Like in the past, only a modest number of countries have made such attempts with legal, financial or other provisions. However, users rate the research conditions in private Archives as equivalent or better than in public Archives, especially with regard to the accessibility of documents, the quality of catalogues and other finding aids, and the technical equipment.

Digitisation of Archives

As in many other areas, digitisation has become the greatest current challenge for Archives. Computer technology has led to a multiplication of the amount of information. New, born-digital documents have been added to the classic paper-based documents. None of these new digital documents really played a role when the Recommendation was adopted in 2000. As part of the survey, we asked the Archives and their users about the impact of digitisation on accessibility.

Digital documents

It turned out that the Archives tend to assess the effect of digitisation on the accessibility of documents positively overall. 73 % of the Archives agreed that the possibility of online access is the greatest advantage. In fact, experts have confirmed that the new digital offerings are also attracting additional user groups. However, since the process of digitising existing holdings is by far not completed, the Archives and the users feel that the actual accessibility has only been partially improved.

From an internal perspective, many Archives feel that digitisation distracts from other important tasks and requires additional resources in the face of notoriously scarce funding. Digitisation and online access have also increased concerns about additional legal risks, particularly in relation to data protection and copyright.

The share of digital documents among the Archives' holdings is still low. Just under half of the Archives stated that they already digitised more than 5% of their analogue text documents, and in most Archives, the share of digital-born documents in the total holdings is less than 5 %.

When it comes to the question of which documents should be digitised as a matter of priority, conservation aspects are in the foreground, but three-quarters of the Archives also respond to user demands.

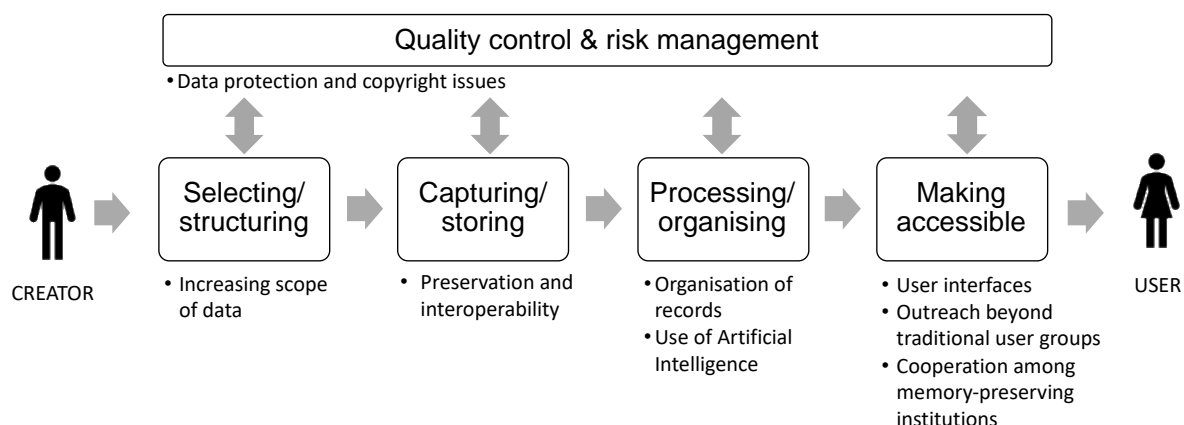
Remote access

Besides digital documents, remote (online) access to finding aids and documents, usually via the Internet, is the second element of a digital Archive. 93 % of the Archives participating in the survey offer online access to catalogues and other finding aids, of which, however, only 11 % offer a direct link between online catalogues and individual (digital) documents.

When it comes to online access to the (digital) documents themselves, this is free of charge in the vast majority of Archives. However, with the restriction that for most Archives, not all digital documents are accessible online, but only certain collections, series or selected samples.

Future challenges

There are important current technical and organizational developments, as well as changes in the social embeddedness of Archives that will have an impact on the accessibility of their holdings. The challenges are distributed along the complete archival process chain from creator to user.



Data protection and copyright issues

There is a consensus that the implementation of the General Data Protection Regulation is currently the greatest challenge for the accessibility of Archives. The reason for this is the uncertainty about how to strike a balance between the Archives' tasks of ensuring transparency, openness and accessibility for everyone on the one hand, and the protection of personal data and privacy of the individuals mentioned in the documents on the other. The supervisory authorities naturally tend to emphasize data protection in their practice, while there are virtually no court decisions to provide guidance, yet. Practitioners express a need for guidelines that are concrete enough for their daily work, but at the same time have a high legal liability.

Furthermore, there are often unresolved copyright issues, for example because the creators can no longer be found. But even if creators are known, obtaining the rights of use is often too time-consuming for the Archives.

Archives react to this uncertainty by restricting the accessibility of previously open documents and by not releasing potentially problematic (especially born-digital) holdings.

Legal uncertainty also exists on the side of the users, and there is anecdotal evidence that researchers are more likely to work with collections that do not entail legal risks for the publication of results.

Increasing scope of data

The sheer increase in the number of documents, especially born-digital ones, raises the question of how many of them are valuable enough to be preserved in an Archive, because what has not been kept will not be accessible in the future. As digital documents that Archives typically collect form are from the recent past, their historical relevance is difficult to assess today. A "total recall" approach might be technically and economically feasible, but it is not a solution to accessibility problems because it puts the burden of distinguishing relevant from irrelevant information on the user, who usually does not have the necessary skills and time. With limited resources, Archives have to prioritise which digital collections they want to make accessible. At the same time, this means that documents on other topics (must) remain inaccessible.

Preservation and interoperability

The challenge is no longer the creation of simple computer-readable documents in formats specialized for long-term preservation such as PDF/A, but the capture and provision of content and data formats from now obsolete systems, such as outdated e-mail systems. There is the question of which version of a document, such as a database, for example, may be considered the "original" and whether the change over time should be taken into account as well.

Organisation of records

The organisation of digital documents currently also presents Archives with considerable challenges.

If digital documents are preserved in a non-standardized metadata scheme, and the description of these documents does not follow international standards, the user of these documents will be unable to compare his/her findings with digital documents from other archival institutions' holdings. Therefore, Archives (and other memory-preserving institutions) would profit open standards, such as the high-level Open Archival Information System Reference Model, and the Metadata Encoding and Transmission Standard built upon this model.

Metadata repositories can be regarded as aggregate information sources to identify where documents are actually located. On a larger scale, the Europeana aggregator portals, among them the Archives Portal Europe, offer integrated search possibilities in the domain of cultural institutions and collections, under similar principles.

Use of Artificial intelligence (AI)

There are high expectations of what AI can do in the archival context. There are in particular two aspects where AI may be able to improve the accessibility: 1) The automatic creation of metadata, especially for large unstructured collections and 2) the automatic classification between problematic and unproblematic content and can thus also support the indexing and disclosure of digital mass-documents. However, both applications also bring problems with them: on the one hand, there is the "algorithmic bias" in the generation of metadata and the statistical uncertainty in the discovery of problematic content on the other.

User interfaces

The creation of an appropriate interface for the use of digital collections is another, often neglected factor for the accessibility of documents. On the one hand, it must be ensured that documents cannot be changed or deleted. At the same time, it must be guaranteed that sensitive data is hidden depending on the place of use and the authorisation of the user. From the user's perspective, not only the bare document should be presented, but also its narrower or wider context.

Cooperation of memory-preserving institutions

Digitization is a trend that does not only challenge Archives but all memory-preserving institutions and opens up new possibilities. If a researcher finds only a fraction of the documents she is interested in, and another archival institution has complementary material, the researcher can expect that that links exists between them, not just at a general level, but to the direct continuation of the document series in question. This requires the development of interoperable systems and standards and the provision of entire digital collections, as well as cooperation between Archives, Libraries, Museums etc.

It is already apparent that new services provided by the Archives, i.e., better accessibility of the holdings, are leading to increased use. The additional demand does not come primarily from the established user groups, but from users who previously had little experience with Archives, who now approach the Archives with new expectations. An adequate form of accessibility must also be created for these new user groups.

Conclusions

Comparing the current survey with the one conducted in 2003/04, it is clear that there has been a shift in emphasis with regard to the accessibility of the Archives: Back then, the biggest problems were official secrecy and classified data and documents. The biggest problem now is to find an appropriate balance between the desire for transparency and openness on the one hand and the protection of privacy and personal data on the other. Or in other words: while in the early 2000s laws and legal practices were often designed to protect state interests against citizens, today laws focus more on safeguarding citizens' rights. The adaptation of Archives to this change is still ongoing.

This development will continue to grow in importance, as a large proportion of documents are now digital-born and can easily be made available online, which also increases the risk of data protection and copyright infringements. There are numerous reasons for the legal uncertainty that has emerged: a lack of binding guidelines tailored to the everyday tasks of Archives, inconsistent decisions of supervisory authorities and the lack of clarification of important questions by the (highest) courts.

Despite the common history and cultural proximity of countries in certain European regions, there is a persistence of historically grown archival cultures that still have an impact on practice today, but are also noticeable in the openness to adapt new digital technologies and services.

Furthermore, it must be noted that apart from many improvements in the accessibility of Archives, there are still undesirable practices that contradict the provisions and the spirit of the Recommendation. Despite existing laws declaring access to Archives as a right, in some countries Archive users have to apply for permission - i.e. privilege - to access otherwise unrestricted documents. Similarly, the arbitrary practice of certain archival institutions to restrict access to documents, deemed “unnecessary” for the user’s research topic is a serious curtailment of the right to information. A similarly unacceptable practice is discrimination against researchers on the basis of their nationality, qualification or profession.

The principles and provisions of the Recommendation have not lost their validity in the new technological environment. However, the new archival practices and the new expectations of users of Archives, that were revealed in our survey, may make it necessary to revise the provisions of the Recommendation, and amend them where necessary. In particular we propose to take the following points into consideration:

- 1) The Council of Europe could play an active role in stimulating the development of exemplary international case law and other international legal documents that could serve as a clear and practical orientation to harmonize the right to access to public information and historical documents on the one hand, and the right to the protection of personal data and informational self-determination on the other, in the practice of archival institutions. Harmonization must not be interpreted in the framework of the traditional trade-off model in which one right or demand can only be realised at the expense of another right or demand, as a virtual zero-sum game: here both access and protection are fundamental rights and should be regarded as two sides of the same coin. Thus, Archives must strive for finding practical solutions where both rights are realised at the highest possible level.
- 2) In a future amendment or updating of the Recommendation we suggest including the following points:
 - the need to find practical solutions for providing access to Archives and protecting personal data of individuals in today’s legal and technological environment;
 - the use of new and emerging information technologies in digitizing and providing onsite and remote access to archival holdings, taking the range of the users’ present and future terminal equipment and wide-spread applications into consideration;
 - the importance of inter-organizational cooperation with regard to the interrelatedness of memory institutions, their information systems, and the de facto and de jure standards in this field;
 - to take the societal role of, and the cooperation possibilities between traditional public Archives and new types of Archives, such as community Archives and post-custodial Archives into consideration;
 - to broaden the Archives’ outreach activities in order to attract new user groups and encourage them to use archival collections – also in innovative ways.
- 3) At a broader level, the Council of Europe may also encourage stronger cooperation among the various cultural and memory institutions at the level of exchanging information, development and application of common technical standards, creating cross-references at the level of catalogues and finding aids, as well as sharing experiences and formulating common expectations with the aim of attracting and educating users on the basis of common European values.

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