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## Archive Regulations of the German Bundestag

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Upon the recommendation of the Commission on Internal Affairs set up by the Council of Elders, the German Bundestag's Council of Elders adopted the following Archive Regulations of the German Bundestag on 21 March 2019:

### Section 1 – Purpose and scope of application

- (1) The German Bundestag shall maintain Parliamentary Archives.
- (2) The purpose of the Parliamentary Archives shall be to preserve archival material and facilitate its use. This may also be achieved by digitising archival material and making it publicly accessible online.
- (3) The archival material shall encompass the documents of Parliament and its Administration which are of enduring value. Documents shall be official records of any kind, irrespective of the form in which they have been recorded. Documents of the Members of the German Bundestag and of the parliamentary groups in the German Bundestag shall not constitute archival material of the Parliamentary Archives.
- (4) The Parliamentary Archives shall conduct an appraisal to determine whether documents are of enduring value.
- (5) The Parliamentary Archives must respect the legitimate interests of data subjects. Data subjects shall be identified or identifiable natural persons about whom information is contained in archival material. Insofar as identified or identifiable persons are subject to the scope of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the General Data Protection Regulation), the Parliamentary Archives must take suitable measures to protect them which fulfil, at a minimum, the requirements of Article 89 (1) of the General Data Protection Regulation.

### Section 2 – Offering and transfer of documents

- (1) All documents whose retention periods have expired and which are no longer required for ongoing official business shall be offered to the Parliamentary Archives for acquisition. Digital documents may be archived even if they are still required for the performance of duties and are being updated.
- (2) In accordance with Article 17 (3) (d) of the General Data Protection Regulation, documents containing personal data which would normally have to be restricted, erased or destroyed under Article 17 (1) of the General Data Protection Regulation shall also be offered and transferred to the Parliamentary Archives.

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- (3) In accordance with Article 9 (2) (j) of the General Data Protection Regulation, documents containing information whose processing would otherwise be prohibited by Article 9 (1) of the General Data Protection Regulation shall also be offered and transferred to the Parliamentary Archives. The Parliamentary Archives shall be permitted to process them subject to the conditions and safeguards referred to in Article 89 (1) of the General Data Protection Regulation.

### **Section 3 – Use of archival material**

- (1) Anyone may use the archival material held by the Parliamentary Archives on request, pursuant to these Archive Regulations. Priority shall be given to the Members of the German Bundestag, the parliamentary groups and the Bundestag Administration.
- (2) The Parliamentary Archives may impose conditions on the use of material or reserve the right to revoke its use in order to protect public interests or safeguard legitimate interests of data subjects.
- (3) If the person submitting the request asks for a specific type of use, a different type of use may only be specified for a compelling reason.
- (4) The Parliamentary Archives may restrict or prohibit use if the use would:
1. put at risk the archival material's state of preservation, or
  2. result in a disproportionate administrative burden.
- (5) Parliamentary bodies and organisational units in the Bundestag Administration which have transferred documents to the Parliamentary Archives may access the archived documents at any time if they need them to perform their duties. They shall also have access to the archival material produced by their legal predecessors.
- (6) The Council of Elders and its commissions may each take decisions on access to their documents.
- (7) The "Guidelines for the Treatment of the Minutes of Committee Meetings under Rule 73, paragraph (3) of the Rules of Procedure of the German Bundestag" shall apply to the use of the minutes of meetings and printed papers of committees and committees of inquiry.
- (8) The Bundestag Rules on Document Security shall apply to classified material.
- (9) Access to documents relating to proceedings under Article 46 of the Basic Law and Section 44c of the Members of the Bundestag Act shall only be granted if the Committee for the Scrutiny of Elections, Immunity and the Rules of Procedure gives its consent.
- (10) Details on the use of archival material shall be regulated in the Regulations on the Use of the Parliamentary Archives, annexed to these Archive Regulations.

### **Section 4 – Embargo periods for archival material**

- (1) No embargo periods shall apply to documents which were intended for publication at the time of their creation, such as the minutes of plenary proceedings and printed papers of the German Bundestag.
- (2) The general embargo period for archival material from the Bundestag Administration shall be 30 years after its creation, unless otherwise stipulated by legal provisions.

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- (3) Once the embargo periods referred to in subsection (2) have expired, archival material whose purpose or main substance relates to one or more natural persons may be used no earlier than ten years after the death of the person concerned. If ascertaining the year of death is impossible or involves unreasonable effort, the embargo period shall end 100 years after the birth of the person concerned. If ascertaining the year of birth is also impossible or involves unreasonable effort, the embargo period shall end 60 years after the creation of the documents. These embargo periods shall not be applied to archival material which relates to public officials in the exercise of their offices or prominent public figures, unless the sphere of private life which merits protection is affected.
  - (4) The embargo periods referred to in subsection (2) shall not be applied to archival material insofar as it consists of documents to which access was already granted under the Freedom of Information Act before their transfer to the Parliamentary Archives.
  - (5) Embargo periods may be reduced by the Parliamentary Archives on request for a specific usage request.
  - (6) Embargo periods may not be reduced if:
    1. there is reason to assume that the use would put at risk the welfare of the Federal Republic of Germany or one of its *Länder* (federal states);
    2. there is reason to assume that legitimate interests of data subjects or their relatives preclude this;
    3. the use would violate federal legal provisions relating to secrecy.
  - (7) The embargo periods for the documents specified in subsection (3) may be reduced if the data subjects give their consent. If consent is not given, the embargo periods for these documents may be reduced if:
    1. their use is essential
      - a) for a scholarly research or documentation project, or
      - b) to safeguard the overriding legitimate interests of another person or body, and
    2. any adverse effect on the legitimate interests of data subjects or their relatives can be eliminated by taking suitable measures, in particular by providing anonymised reproductions or obtaining declarations of undertaking.

### **Section 5 – Rights of data subjects, rights of access**

- (1) Data subjects shall not have a right of access under Article 15 of the General Data Protection Regulation.
- (2) Data subjects shall, however, have the right, on request, to receive information about the documents relating to them in the Parliamentary Archives, insofar as the archival material is indexed by the person's name or details are provided which make it possible to find the relevant archival material without this resulting in an unreasonable administrative burden. The decision on whether the information is provided to the data subject in an analogue or digital data format shall be taken by the Parliamentary Archives, by way of derogation from Article 20 of the General Data Protection Regulation. Section 3 (8) shall be applied, *mutatis mutandis*, with regard to the consultation of documents.

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- (3) After the death of a data subject, his or her relatives shall be entitled to exercise the rights referred to in subsection (2) if:
1. they assert a legitimate interest, and
  2. the data subject has not left behind instructions to the contrary, and his or her opposition is not clearly recognisable from other circumstances.
- For the purposes of these Archive Regulations, relatives shall mean spouses, civil partners, children, grandchildren, grandparents and siblings of the data subject.
- (4) If data subjects contest the accuracy of documents containing personal data, they shall be given the opportunity to provide a counterstatement. The relatives of deceased data subjects shall also be given an opportunity to provide a counterstatement if they assert a legitimate interest in doing so. The Parliamentary Archives shall be obliged to append the counterstatement to the documents. The rights of data subjects to rectification under Article 16 of the General Data Protection Regulation shall not apply in the case of documents held by the Parliamentary Archives.
- (5) Rights of data subjects arising from Article 17 of the General Data Protection Regulation, especially a right to the erasure of data, shall not apply insofar as they are likely to render impossible or seriously impair the achievement of the objectives of the processing of this data.
- (6) Further rights of data subjects
1. to restriction of processing of data, arising from Article 18 (1) (a), (b) and (d) of the General Data Protection Regulation, and
  2. to object to the archiving of lawfully stored personal data under Article 21 (1) of the General Data Protection Regulation
- shall not apply if the conditions set out in Section 28 (4) of the Federal Data Protection Act are met.

### **Section 6 – Implementing provisions**

The Archive Regulations, including the Regulations on the Use of the Parliamentary Archives, may be fleshed out by means of appropriate implementing provisions. The implementing provisions shall be issued by the Secretary-General of the German Bundestag.

### **Section 7 – Entry into force, repeal**

These Archive Regulations shall enter into force upon signature by the President of the German Bundestag. They shall replace the Archive Regulations of the German Bundestag of 27 June 2008.

Berlin, 26 March 2019

The President of the German Bundestag

Annex: Regulations on the Use of the Parliamentary Archives