COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

**Recommendation**[***Rec(2003)15***](https://search.coe.int/cm/Pages/result_details.aspx?Reference=Rec(2003)15)

**of the Committee of Ministers to member states**

**on archiving of electronic documents in the legal sector**

*(adopted by the Committee of Ministers on 9 September 2003*

*at the 851st meeting of the Ministers’ Deputies)*

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 achieve greater unity among its members;

Considering that archiving is an essential part of case processing in the legal sector;

Bearing in mind that various legal documents are required by law to be preserved for very long periods of time or even permanently;

Aware that the growing number of computer users and electronic communications, the digitising of sound and video recording, and the introduction of more powerful information technology systems is bound to increase the use of electronic documents in the legal sector;

Bearing in mind that an increasing number of legal documents will be produced in electronic form in accordance with the legislation on electronic signatures;

Considering that adequate procedures for the archiving of electronic documents are essential to promote the legal recognition and wide use of electronic documents, electronic signatures and electronic data processing in the legal sector;

Recognising that electronic documents offer numerous advantages and extensive functionality such as vast access, display and communication possibilities;

Realising, at the same time, that the preservation of electronic documents faces the problem of the limited longevity of the conservation media, the diversity of document formats and standards, and the rapid obsolescence of the hardware and software required for their readability;

Aware also of the organisational problems, high costs and security-related risks in the preservation of electronic documents;

Resolved to find appropriate solutions for the archiving of electronic documents in the legal sector;

Recognising at the same time that the constant evolution of technology does not permit the setting of definitive technical standards for the archiving of electronic documents;

Considering, nevertheless, that when drawing the attention of member states, legal sector organisations and archiving services to the risks and problems related to the archiving of electronic documents, it is essential to promote continuous research in this field;

Having regard to Recommendation No. R (95) 11 concerning the selection, processing, presentation and archiving of court decisions in legal information retrieval systems, Recommendation No. R (2000) 13 on a European policy on access to archives, Recommendation [*Rec(2001)2*](https://search.coe.int/cm/Pages/result_details.aspx?Reference=Rec(2001)2) concerning the design and re-design of court systems and legal information systems in a cost-effective manner, Recommendation [*Rec(2002)2*](https://search.coe.int/cm/Pages/result_details.aspx?Reference=Rec(2002)2) on access to official documents and Recommendation [*Rec(2003)14*](https://search.coe.int/cm/Pages/result_details.aspx?Reference=Rec(2003)14) on the interoperability of information systems in the justice sector,

Recommends that governments of member states:

1.         implement the principles and guidelines set out in this recommendation in their domestic law and practice;

2.         bring these principles and guidelines to the attention of persons and institutions responsible for the archiving of electronic documents in the legal sector.

**1. Definitions**

For the purposes of this recommendation:

– “archiving” shall mean the preservation of documents for periods prescribed by the applicable law and regulations of member states, consisting of the following two stages:

i. “initial preservation”: preservation related to the primary purposes for which the documents have been produced in view of their evidential value;

ii. “subsequent archiving”: preservation related to the heritage value of the documents beyond their primary purposes;

– “archiving services” shall mean bodies responsible for archiving, including:

i. “archivists”: persons or departments within the organisations that have produced or received the documents in question as well as specialised archiving services responsible for initial preservation of documents;

ii. “Archives”: public national institutions or public institutions of local communities responsible for subsequent archiving, in accordance with the applicable law and regulations of member states;

– “electronic documents” shall refer to documents, including texts as well as images, audio and video in digital form, which have the capacity to create rights or have evidential value and may be submitted to a public repository;

– “legal sector” shall comprise all public and private stakeholders that act as producers or recipients of electronic documents within the meaning of the previous definition.

**2. General provisions**

2.1. Member states should ensure that the legal norms regulating archiving are applied also to electronic documents.

2.2. Electronic documents should be archived in a way that preserves their integrity, authenticity**,** reliability, and, where appropriate, their confidentiality.

2.3. The readability and accessibility of archived electronic documents should be guaranteed over time, taking into account the evolution of information technology.

2.4. As in the case of the archiving of paper-based documents, the period of preservation of electronic documents and the time at which they may be made available to the public should be determined in collaboration with the archivists.

2.5. Archived electronic documents should be associated with standardised metadata describing the context of their creation as well as the existing links with other electronic, paper-based or analogue documents.

2.6. Encrypted electronic documents should be archived in a decrypted form.

2.7. Digitisation of paper-based or analogue documents can be justified for their more efficient use and processing but should not aim necessarily at replacing archiving of documents in their original form.

**3. Organisational measures**

3.1. Initial preservation of electronic documents should be carried out either by the responsible staff within the organisations that have produced or received the electronic documents in question, or by specialised archiving services, in co-ordination with Archives.

3.2. Member states should encourage the reduction, after the closure of the files concerned, of the legal delays for the transfer of electronic documents to Archives for subsequent archiving.

3.3. Electronic documents submitted to archiving services should be accompanied by their metadata.

3.4. Member states should endeavour to provide the Archives and organisations in the legal sector entrusted by law with the duty of archiving, with the necessary resources for the archiving of electronic documents.

3.5. Archives should implement electronic document archiving programmes in order to accumulate the necessary know-how and thus be in a position to provide the necessary recommendations on the archiving of electronic documents to archivists and other organisations concerned.

**4. Security measures**

4.1. All operations concerning the archiving of electronic documents should be subject to procedures ensuring their traceability.

4.2. Archiving services should verify, possibly through the use of electronic signatures or other electronic procedures, that electronic documents are submitted to them by competent persons or organisations and that they have not been altered during their transmission.

4.3. The entry, modification or deletion of electronic documents in electronic document archiving systems should be executed by specialists authorised and trained to carry out such operations.

4.4. Member states should facilitate the use of modern security techniques to preserve the integrity of archived electronic documents, such as an electronic signature for storage media or the use of non-rewriteable storage media.

4.5. Copies of the archived electronic document should be preserved by the archiving services, if possible on several different storage media.

4.6. Procedures should be put in place to ensure the physical protection of premises where the electronic document archiving systems are situated, including adequate storage conditions and access control. The electronic document archiving systems should be subject to periodic assessment.

**5. Conservation measures**

5.1. Electronic documents should be archived by periodically applying migration techniques – periodic transfer of data from one storage medium to another or from one format to another. Migration should also apply to metadata concerning the archived electronic documents.

5.2. Migration to new storage media should take place regularly, taking account of degradation and wear in the medium in question. Storage media should be renewed when they become obsolete because of the technological development of media and hardware.

5.3. Migration to new formats should be carried out, when appropriate, in view of the technological evolution.

5.4. Member states should also encourage research and experimentation in emulation as an alternative method for the preservation of electronic documents.

**6. Document formats**

6.1. Member states should encourage uniformity in the document formats used in the legal sector.

6.2. Member states should ensure that these formats are open, international and standard, and that they permit subsequent migration of data and allow processing in different languages.

6.3. Archiving services should be consulted on and involved in the selection of formats and the definition of metadata to ensure that the subsequent requirements for the archiving of electronic documents are properly taken into account.

**7. Electronic signatures**

7.1. As it is the responsibility of the creating authority to verify the authenticity of the electronic document by verifying its electronic signature at the moment when this electronic document is under its control and before its transmission to archiving, the archiving services should not be obliged to verify electronic signatures used initially by those who have contributed to the preparation of the electronic document that has been certified with an electronic signature.

7.2. An archived electronic document should be considered reliable and valid, in the absence of proof to the contrary, regardless of the possibility of continuous verification of its initial electronic signature, provided that it has been transmitted to and preserved by archiving services in accordance with the security requirements as specified in Principle 4.