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OPEN ARCHIVES FOR SOCIAL SCIENCE RESEARCH IN WIDENING COUNTRIES OF THE EUROPEAN UNION

Abstract

Purpose: *Archives play a key role in social sciences research by providing access to primary sources of public and private organisations, and individuals.*

Method/approach: *A research project of archivists and scholars was launched in 2024 at the European University Institute to analyse access conditions of public archives in Widening Countries, the Western Balkans and Eastern Partnership Countries.*

Results: *Two workshops were organised, one on 6 September during the Annual Graduate Conference on the history of European integration at the European University Institute, and one during the 34th International Archival Day Conference organised by the International Institute of Archival Science IIAS in Maribor, Slovenia, on 26-27 November 2024. The first workshop was dedicated to a discussion amongst scholars of European integration history, and the latter workshop was attended by archivists of public archival institutions.*

Conclusion/findings: *The research papers presented and discussed during the two workshops provided an up-to-date overview on legal provisions and practice in providing access to public archives in EU Widening Countries, the Western Balkans and Eastern Partnership Countries. Based on the research results and as a follow-up to the investigation, the project team intends to formulate potential elements for a training programme curriculum for archivists on the principles of access to archives in Europe.*

Key words: *Open Archives, European Union, Archives, Social Science Research*

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INTRODUCTION

Archives in the European Union play a key role for academic research in social sciences. They preserve primary sources produced by public and private institutions and shape research by making these sources available and accessible. They provide open, equal and inclusive access to historical documents in custody according to common principles formulated by international, European and national archival law, reinvigorated by codes of ethics and declarations of the profession. They also play a key role in transparency and accountability of public administration by preserving and giving access to trustworthy and authentic records and by responding to the citizens' right to freedom of information.

In the aftermath of the 1989 events in Europe and the following political transformation of Central and Eastern Europe from the previous Soviet regime towards democratization, an intense discussion began in the European Union about the ethical foundations and the mission of Archives in democratic societies. The political change did not immediately lead to overall modernization of the legal and regulatory framework for archival practice. These processes were long-term and are today still unfinished. Archives in Europe, and in particular in EU Widening Countries, have diverse legislation and practice on access to archives.

In 2024, the European University Institute launched a research project under its Alcide De Gasperi Research Centre to analyse the accessibility conditions, research experience, and levels of education and training of archivists and scholars on the right to access public archives in EU Widening Countries. The inter-disciplinary project involves both, archivists and scholars. Two workshops were organized to discuss access conditions in public archives and draw conclusions from the analysis. A round-table discussion took place for historians of European integration during the Annual Graduate Conference on the History of European Integration at the European University Institute on 6 September 2024, while two workshop sessions were held for archivists during the 34th International Archival Day Conference, organized by the International Institute of Archival Science IIAS in Maribor, Slovenia, on 26-27 November 2024.

The research on archival legislation and practice in Widening Countries analyses the ethical principle of open archives as key element of transparency and accountability of public governance, as called for in the Council of Europe's Recommen-

dition R (2000)¹³ on a European policy on access to archives, the EU Archives Regulation 354/83 and the EU's Access to Document Regulation 1049/2001. The research project also voices the insights of archival professionals in Widening Countries in facilitating access to primary sources for social science research.

1. THE CONTEXT FOR ACCESS TO ARCHIVES

As integral part of public administration, archives work in the service of society and citizens. By preserving and making available records on the decision-making processes of public institutions, they shape democratic societies and secure the common memory of societies. Within the European Union, strong and diverse archival traditions exist in the member states. At the same time, common ethical, procedural and technical principles have evolved through cooperation and harmonization initiatives that secure a rights-based approach on access to archives. Open and equal access to archives has become a key element of the EU's democratic governance model of transparency and accountability. Already in 1966, the international archival professionals, gathered in the Extraordinary ICA Congress in Washington, had issued the first international declaration on free access to archives. In 1968, the ICA Conference in Madrid called for a general limitation of access restrictions for 30 years (Valge, 2007, 195–198). In 1996, the ICA agreed on a common Code of Ethics on access to archives, and 15 years later, in 2011, UNESCO published its Universal Declaration on archives and their role in democratic societies.

Following the events of 1989 in Europe and other regions of the world, the democratic transformation and the principles of access to archives became relevant topics for the international archival profession. In 1993, the ICA conference in Mexico established an expert group on archives of former repressive regimes to develop recommendations on archival access for countries in process of democratisation (Quintana, 1997, 3). The expert group followed the idea that: "Archives have a decisive influence on the lives of people. Nothing serves as a better example of this than the way in which documents are used to serve the ends of repression" (Quintana, 1997, 6). Access to the archives of repression was considered key for individual rights to reparation and compensation, restitution of confiscated goods, amnesty for political crimes committed during the regime,

and indemnity for victims and families. As precondition to access, the experts considered the requirement of securing archival holdings from destruction. A primary example was the determination of the people in the German Democratic Republic in the aftermath of the Fall of the Berlin Wall to preserve the archives of the State Secret Service STASI, which was later used to purge the responsible of the former regime from the new administration and to compensate victims (Quintana, 1997, 6–7).

The experts also claimed that these archives would need to be immediately placed under the new law and under the authority of the democratic government, and ultimately be kept in dedicated archival institutions. New archival legislation should cover the right of free access, the decision on consultation by third parties, and the right to obtain files of repressive agents. Moreover, a code of ethics should be established for the archivists to preserve the integrity of the documentation, to serve the people and grant free public access (Quintana, 1997, 12–13). The principles of access to archives defined by the expert group triggered the preparation of the International Council on Archives' Code of Ethics, published in 1996, which confirmed the public's right of access to archives of public bodies on equal and fair terms, and claimed that both public and private entities should open their archives to the greatest extent possible. Archivists should pro-actively participate in the decision-making processes on access to archives. Any access restrictions should be clear, of stated duration and based on law with the possibility for appeal to a denial of access (ICA, 2012, 8–11).

2. ACCESS TO ARCHIVES IN EUROPE

In Central and Eastern Europe, the protection, preservation and opening of archives during the years of democratic transformation was important for restoring the rule of law and for protecting the rights of victims (Kecskeméti & Székely, 2005, 10). The Council of Europe and the European Union supported this transition with the Resolution of the Council of the European Union in 1993 calling for a group of experts to report on the situation of public archives in the European Union with the Council of Europe Recommendation R (2000)¹³ on a European policy on access to archives, and with another EU Council resolution in 2003 calling for a report of an expert group on public archives in the enlarged Europe-

an Union. Moreover, during this period, the European Union formalised the citizens' right to access to public records in its Freedom of Information Regulation 1049/2001. The EU also raised the protection of personal data in public records, first with Regulation 45/2001, then in 2016 with the General Data Protection Regulation 2016/679. Finally, the EU strengthened the archival cooperation amongst National Archives and EU institutions with the establishment of the European Archives Group in 2004.

Under the communist regimes, human rights had been seriously violated in Central and Eastern Europe. During the democratic transformation, the archives changed from an instrument of power towards a service to citizens and civil society. The main question after 1989 revolved around the redressing of the victims and their right to know the truth. The access to the files of former secret services was, therefore, a crucial precondition to the restoration of individual rights, the right to privacy, the public and judicial interest, and finally the scholarly research interest (Gruodyte, 2015, 151–152; CoE, 2006, 14). Two different approaches were chosen, either the provision of full access (e.g. Bulgaria, Czech Republic, Germany and Slovakia) or that of limited access (e.g. Estonia, Hungary, Latvia, Lithuania, Poland and Romania) (Gruodyte, 2015, 155). In Germany, during January 1990, civil society activists occupied the State Secret Service (Stasi) headquarters to hold officials from shredding evidence when already up to 16,000 mail sacks were piling up full of shredded documents. The GDR government intended to destroy the files to avoid politically motivated revenge and the use of the files by Western State Security Services. When various leaks of politicians with Stasi past, as well as untrue allegations of collaboration against activists went to the press, the Eastern German Parliament decided in favour of opening the files to the victims and using them to uncover the truth. It placed the archival custody under the Parliament and the Federal Commissioner Joachim Gauck (Danielson, 2004, 176–180).

The Council of Europe in Strasbourg got active in 1992, organising for November 1994, in cooperation with the European Board of the International Council on Archives, the first conference of directors of National Archives. It then established an Archives Assistance Programme for democratic transition and prepared draft recommendations on access to archives, which were published in 1997. The rec-

ommendations called for equal access, short closure periods, accountability, rule of law and privacy, improved preservation conditions, systematic declassification, education and training of archivists, the development of international standards, the use of ICT, the public availability of finding aids, and the preparation of codes of good practice and ethical principles (Tyacke, 1995, 133–136; Valge, 2007, 193–194; Kecskeméti & Székely, 2005, 10).

On 13 July 2000, the Council of Europe adopted Recommendation No. R (2000) 13 on a European policy on access to archives, which expressed the common ethical, procedural, and technical principles on rights-based access to public archives in Europe. It called for any restrictions to be duly justified and limited in time, the harmonization of rules based on law, and free access to public records and finding aids. The Recommendation is considered the first intergovernmental standard on archives access policy and practice in Europe. It encouraged the development of access policies based on democratic values, human rights and the rule of law, acknowledging that access to public archives is a right and not a privilege (Kecskeméti & Székely, 2005, 7; Friedewald, 2024, 61). Archive users should be entitled to request access and to appeal against the rejection of access. Moreover, Archives should not deny access to material they deem irrelevant for the research in question and should inform users if only partial access is granted. Access rules to private archives should align with those for public archives (Access to archives, 2005, 15–17).

Based on its recommendation, the Council of Europe commissioned a survey in 2003, as regards archival law and practice on access in the 45 member states and signatories of the 1954 European Cultural Convention of the Council of Europe. 22 of them claimed their legislation would be fully compatible with the recommendation, 12 stated compatibility with few exceptions and 10 claimed to have respective archival legislation revision on the way. While 14 respondents had no general disclosure period in their archival regulation, 20 respondents applied 30 years rule years. 50 percent of respondents reported to have obstacles for research on post-1950 files and the majority claimed their archival legislation was not adequate to fully respond to the recommendation (Kecskeméti & Székely, 2005, 18–26, 34–38). The survey of 2003 revealed significant shortcomings of traditions that were still in favour of archival secrecy. 20 years later, in 2022, the

Council of Europe commissioned a follow-up survey. National legislation now corresponded with few exceptions. Archival acts had been updated in the light of the arrival of information technology and the internet, due to important new European regulations, such as the GDPR and the European Data Act. The closure periods had been harmonized towards 30 years and overall, progress was made in implementing the Council of Europe recommendation of 2000 (Friedewald, 2024, 57–63). ”The survey showed a visible shift from the challenges of secrecy and classified documents towards a balance between transparency on the one and data protection on the other hand” (Friedewald, 2024, 65–66).

In a 2021 study, Mikuláš Čtvrtník compared access law of archives in selected European countries, United Kingdom, France, Germany, Sweden, Switzerland, Czech Republic, and the EU institutions and defined the functions of closure periods in protecting recent, sensitive and valuable information from misuse, and in protecting the administration and its efficiency, privacy, and commercial or business interests. “The study demonstrates that, over time, a gradual release occurs in what was initially a very restrictive regime of access to public records and historical sources” (Čtvrtník, 2021, 319). In the United Kingdom, in 1967 the closure period was lowered from 50 to 30 years. This became the average closure period on continental Europe introduced 1979 in France, 1988 in Germany, and 1983 in EU institutions. The EU’s Freedom of Information Regulation of 2001 obliged not only public archives to make records available to the public, but covered all records from the moment of their production in public entities (Čtvrtník, 2021, 321–322). Recently, the United Kingdom moved to 20 years archival closure (2010), and Switzerland introduced general open access to federal public records in 2006 (Čtvrtník, 2021, 328–329), thus, coming close to the Swedish approach introduced already in the 1766 Freedom of Press Act. Central and Eastern European countries generally followed the 30-years EU model in the 1990s (Čtvrtník, 2021, 331–332). One exception was the national archives of Romania, which remained restrictive even under the new Archival law of 1996 with privileged access remaining general practice. In 2002, another law reform guaranteed for the first time in view of EU accession the right to access to information of public interest, and the amendment of 2007 showed a clear will for reform, democratisation, and transparency (Dobrincu, 2012, 19–23).

3. COORDINATION WITHIN THE EUROPEAN UNION

The European Union became active in the field of access to archives following the events of 1989 at the same time as the International Council on Archives and the Council of Europe. On 14 November 1991, the Council of the European Communities issued a resolution that stressed the role of archives in times of democratic transition and in line with the objectives of the Maastricht Treaty of 1992 establishing the European Union. The Treaty of 1992 introduced a common European citizenship and brought to the fore the common European cultural heritage as an instrument for the functioning of democracy. Public archives were considered key in providing access to public records and for writing the history of the European Union, the entire continent, and its individual nations. The resolution called for an expert report to analyse the organization of public archives in EU member states and to come up with areas for coordination and cooperation. Examples were the appraisal and disposal of records, the preservation of archives, the improvement of access conditions, the revision of national legislation, the management of digital archives, the exchange of archival information through digital networks, the training of archivists and the recognition of diplomas, the handling of private archives, and finally the work methods of EU institutional archives (European Commission, 1994, III-V).

With regard to public access to archives, the experts reckoned the general acceptance in Europe of the 30-years disclosure rule as a common standard, but also noted that this should be considered an upper limit, in particular in view of freedom of information requirements. The main recommendation on access referred to: guaranteeing equal access to all users, opening reading rooms in public archives for at least 40 hours per week, not limiting the number of items requested for consultation by the readers, making available the full range of reprographic processes and a system of exchange through reproduction, the publishing and distribution of bilingual user guides, making available published repository guides, not preventing access in those cases where full inventories were absent, exchanging inventories of collections of international interest, establishing an archival telematic network on European level, providing minimum provisions for the services to be given to readers and researchers, and finally training all reading room personnel towards receiving readers (European Commission, 1994, XII and 30).

The preceding account shows, on the one hand, the profound similarity of the legal and ethical principles which govern the availability of archives in the 12 Member States of the Community and, on the other hand, the great diversity of formulas adopted by the laws and regulations of these 12 Member States regarding the concrete expression of these principles. It seems illusory (and moreover in the main useless) to seek complete unification of these laws and regulations, many of which are connected with ideas and traditions which are specific to each national culture. However, it could be wished that where analogous documents of all countries are concerned, the rules of access be harmonized, with duly justified exceptions. (European Commission, 1994, 43–44)

Moreover, a European definition of personal data and privacy was desirable to clarify the conditions of access to archives, and the report called for the general strengthening of cooperation in archival methodology, management and the opening of archives to the public. Transnational training programmes, information exchange and standardization in information technology were also deemed important. Finally, the report referred to the transformation in Central and Eastern Europe as an important contribution to the reinforcement of democracy in Europe:

“This awareness is even more important in that archives in the countries of Central and Eastern Europe are in general in a state of decay, owing to a lack of funds and qualified personnel. Remaining within the sphere of the resolution, attention given to the state of archives in certain countries or furthering cooperation with regard to their use will also contribute to reinforcement of democracy throughout Europe.” (European Commission, 1994, 78–79).

Ten years after the first report, on 6 May 2003, the Council of the EU issued a new resolution on public archives in member states and convened once again a group of national experts to prepare a report on increased future cooperation in the enlarged Europe. The report was presented in Brussels on 3 June 2004 and covered the organization of the archival sector in Europe, access to archives, the role and training of archivists in the 21st century, preservation and damage prevention of archives, electronic archives, activities at the European level, and finally audio-visual archives. The main actions in the field of access to archives referred to the monitoring of EU and national legislation relating to the access to and the establishment of an inventory of existing archival legislation within the

enlarged European Union. Moreover, the report recommended the creation of an official European Archives Group for a first period of 3 years to implement all recommendations (Council of the EU, 2004, I–IV).

“In a world of continuous and rapid change, modern archives services in the 21st century are an element of continuity, stability and provide a solid base for essential information and indispensable documents and archives, which are among the prerequisites for the democratic functioning of our societies.” (Council of the EU, 2004, V).

The new European Archives Group became a standing official expert group under the rotating Presidency of the Council of the EU and still operates today. Coordinated by the European Commission, it acts as main forum for cooperation, standardisation and information exchange amongst national archives of EU member states and with EU institutions. Its membership also includes the Historical Archives of the European Union at the European University Institute in Florence. During the negotiations for the General Data Protection Regulation, for example, it represented the needs of public archives and achieved the recognition of the principle “archiving in the public interest”, which permits the preservation of relevant personal data for transparency, fundamental rights, accountability, scientific and research purposes, beyond its strict administrative use, for long-term preservation and public access (European Archives Group, 2018, 5).

CONCLUSION

In democratic societies, access to archives is a general right and not just a privilege. Much has been achieved since the first claim of public access to archives in the French Revolution of 1789 and the first legal reference to access in the Swedish Press Freedom Act of 1766. Important steps towards the democratic provision of access have been made in the West during the Cold War. The Freedom of Information movement has further extended access rights to public documents onto the moment of their creation and overriding the general disclosure periods set by archival legislation.

In the aftermath of 1989 and the democratic transition in Central and Eastern Europe, the Council of Europe and the European Union became active and played important roles in facilitating the democratization and modernization of archival legislation and practice in the countries in transformation. Still today, though, archival legislation and the accessibility of public archives continue to vary.

The research project OPENARCH of the EUI's Alcide De Gasperi Research Centre analyses the development of accessibility conditions in EU Widening countries since the events of 1989 and seeks to give guidance to the archival profession in the Western Balkans and the Eastern Partnership countries in the field of open access to archives. Moreover, the project consults the experience of scholars in the social sciences when consulting public archives, and identifies areas for strengthening cooperation and training on public access to archives.

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