

# EPO Retention Policy

30 June 2024



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## Summary

This document presents a brief description of the legal framework which has been adopted for the retention and storage of files and records created, maintained and kept at the European Patent Office.

### 1. Introduction

The EPO Retention Policy (the “Policy”) establishes a legal framework for the retention and maintenance of files/records kept by the European Patent Office (the “Office”). It entered into force on 1 January 2023, and following a transitional period of one year, came into full effect on 1 January 2024.

The Policy is supplemented by the EPO Retention Schedule (“ERS”) which categorises all the files/records that exist across the various units of the Office. It specifies how long files/records are to be retained by the responsible unit (the “lead unit”), and which action should be taken once a retention period has lapsed.

### 2. Purpose

The aim of the Policy is to promote sound and reliable management of files and records. Overall, it sets out to strike a balance between limiting the amount of time that files/records, both on paper as well as electronically, are kept within the Office, whilst maintaining operational practicalities. This, in turn, will lead to greater administrative consistency.

A key objective of the Policy is to further the Office’s quest for sustainability, digital transformation and contribution to reducing the use of paper. To this end, it specifically provides that where an electronic version of a file exists, any paper versions of the file may be destroyed unless compelling reasons exist for their retention. Moreover, it encourages the destruction of all

files/records which are no longer relevant as part of the Office’s operations, thereby ensuring a responsible use of physical and electronic storage whilst also retaining valuable operational knowledge.

At the same time, and as a commitment to the Organisation’s history and heritage, the Policy also ensures that files/records, in particular those of lasting or even permanent historical, legal or strategic value, are properly preserved.

### 3. Scope

The Policy applies to all files and records, in both electronic and physical format, which are kept by the Office in a document management system, including those which were created before the Policy’s entry into force. The Policy applies to the entire content of a file/record, irrespective of their medium (e.g. paper documents; electronic documents such as Word documents, PowerPoint presentations, Excel spreadsheets, etc.).

Several categories of files/records fall outside the scope of the Policy. In particular, the following files are excluded:

- Files/records maintained by the Boards of Appeal;
- Personal files/records maintained by Office staff;
- Files/records stored or saved to mobile devices or in local folders; or
- Mere copies of files/records kept by a unit of the Office other than the lead unit, e.g. copies received as email attachments.

## 4. Structure

The Policy is supplemented by the ERS, which categorises files/records according to their lead unit, nature and subject-matter. The retention period and post-retention action for each file/record category has been determined by the respective lead units.

### 4.1 Closure

Once a lead unit has determined that a file/record is no longer required for operational use and can be closed, the retention period will begin to run on 1 January of the following year. Events which may trigger such “closure” are, for example, the resolution of the issue or subject matter of the file in question, the finalisation of a project or the expiration of a contract.

If a closed file/record becomes newly relevant to the operations of the Office, it may be reopened. Once definitively closed, the retention period for the file/record in question will begin to run anew. This ensures that files/records of continued operational value are appropriately retained.

### 4.2 Retention periods

The category to which a file/record belongs defines its retention period, a definitive time period for which the file must be retained. After the retention period has lapsed a post-retention action for the file in question must be taken.

Where a file/record does not fall into one of the specially defined categories of the ERS, and/or no legal or specific business reason exists to retain the file/record for a specific period, the retention period will be 3 years. The provisions of the Policy do not affect other retention periods which are mandated by the European Patent Organisation’s legal framework. Where a difference exists between the provisions of the Policy and another legal instrument, the latter will apply.

Patent files, for example, will be retained in accordance with the time limits set by Rule 147 EPC, 93 PCT. This means that EPC search, examination and opposition files are preserved for at least five years from the end of the year in which the application is refused/withdrawn/deemed withdrawn, the patent is revoked or lapses. Files that need to be kept under the PCT are preserved for 10 years from the international filing date/date of receipt unless earlier disposal is possible under Section 705bis PCT. A- and B-publications are retained indefinitely.

### 4.3 Post-retention actions

The ERS provides for four designated post-retention actions, which are to be applied once the retention period of a file/record has lapsed. With a view to advancing the Office’s quest for increased digitisation and digital transformation, lead units have been encouraged to only opt for a retention in physical format or archiving of physical files in limited circumstances. At the same time, in order to ensure that files/records of lasting or even permanent historical value for the Office or the Organisation are properly preserved, lead units were encouraged to consider moving such files/records to the Office’s historical archives.

The following post-retention actions are available:

- **Destroy or “DEST”:** If a file/record is labelled “DEST”, then all physical and electronic copies are to be destroyed. In the interests of fostering sustainability and ensuring a responsible use of electronic storage space, lead units have been encouraged to apply “DEST” as the primary post-retention action.
- **Keeping of electronic copies or “EK”:** If a file/record is labelled as “EK”, an electronic version of the file/record will be permanently retained in the lead unit’s respective document management system. Meanwhile, all physical (paper) versions of the file/record are to be destroyed.

- **Keeping of physical copies or “PP”:** If a file/record is labelled as “PP”, it is foreseen that all physical versions of the file/record are retained in a lead unit’s internal archives. All electronic versions are to be kept permanently in the lead unit’s respective document management system. Lead units were instructed to make only very limited use of this post-retention action and to only apply it in exceptional cases.
- **Archiving or “ARCH”:** Files/records labelled as “ARCH” will be transferred offsite to the Office’s external archives. This action is primarily reserved for selected files of lasting strategic and evidentiary value, such as high-level legislative instruments or strategy documents, and is only available to files/records in physical format.

## 5. Data protection considerations

The Policy ensures alignment with the requirements and principles of the Office’s Data Protection Framework. This means, in particular, that lead units have to ensure full respect for the principles of data minimisation, purpose and storage limitations, including methods that are already in place for their satisfaction. This might necessitate, for example, the anonymisation or deletion of any personal data contained in a file.

Lead units have been reminded of the need to ensure that retention periods for a particular file under the ERS should be, in principle, aligned with those they specified in the Records of processing activities included in the EPO Data Protection Register. This, however, means that for files where personal data can be anonymised, the retention period indicated in the ERS can be longer than the one in the concerned Record of processing activities.

## 6. Review

The ERS will be reviewed in regular intervals (at the latest every 5 years) to ensure that the retention periods and post-retention actions are still appropriate and fit for purpose. Where new retention periods are determined as a result of amendments to the existing legal framework of the EPO, or stemming from organisational restructuring leading to shifts in responsibility of lead units, or are otherwise approved by the President, the ERS will be updated accordingly.

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