

# Retention Schedule for Emails – How to Balance it All

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# Your Speakers



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## I. General Considerations

- Emails are personal data
- Deletion of personal data

## II. Practical aspects

- Step 1: Gather facts
- Step 2: Categorize your emails
- Step 3: Apply a deletion strategy

## III. Privacy issues

- Legal basis
- Private use of emails
- Obligation to inform the employees
- How to develop an appropriate deletion concept?
- Obligation to inform the works council?  
Co-determination rights?



## Emails are everything

- Email system = communicative center of companies
- Emails = data in unstructured format that relate to various topics
- This leads to the application of different retention periods

## An email account is assigned to an individual person

- It is not the best place to retain company documents that are of general interest

## Content is often not important

- Not every email is important, however companies have to
  - meet privacy requirements and
  - Find solutions that are practical

# Emails = personal data

## Content data or '*the email body*'

- Subject line (may already contain sensitive data, for example "I will be absent today due to a cold")
- Text
- Signature
- Footer

## Attachments

- Various kinds of data

## Metadata

- Sender and recipient (IP-address)
- Email address
  - Local part (abc@...) + domain part (...@xyz.com)
- Date of creation, format of the content
- Points of transmission



## Article 4 No. 2

Erasure is itself (!) a processing operation

- *'processing' means any operation [...] which is performed on personal data [...], whether or not by automated means, such as [...] erasure or destruction*

## Article 5

Erasure belongs to many, if not all data protection principles, in particular to the principles of

- Purpose limitation
- Data minimization
- Accuracy
- Storage limitation

Accountability!

## Article 17

Right to erasure ('right to be forgotten')

## Article 32

A deletion concept is an important part of appropriate technical and organizational measures (TOM)

# What does erasure or deletion really mean?

## Erasure/ Deletion



Irreversible inaccessibility  
of personal identifying data



**Not:** archiving the data (and  
retrieve them by double-click)

### No deletion:

- commitment of the controller not to use the data any more
- removing data from directories or tables e.g. by commands in operating systems (e.g. commands such as delete, erase)

# Deletion versus retention = GDPR versus other areas of law

**General principle: Delete unless you are required to retain**

## **Look out for retention periods in:**

- All relevant areas of law
- Your company's audit requirements
- Other regulations or considerations, such as legal hold

## **Example from Germany:**

### **Retain for 6 years**

- commercial letters (including emails and conversations when initiating contracts)

### **Retain for 10 years**

- balance sheets, accounting documents, annual financial statements and the like



## Step 1 – Gather facts

1

### Look out for applicable guidelines/recommendations

- In your company: often you will find fragmented provisions in various guidelines, such as
  - IT security guidelines
  - Communication guidelines
  - Works Agreements
- As industry standards?
- As general recommendations, such as the German DIN 66398, which proposes
  - The application of the statutory deletion period as criteria for sorting mails
  - The application of one deletion rule per data type
  - Treat data types in the same way regardless of where it is stored

2

### Always think of **DOCUMENTATION**

- Document what you are considering and implementing (accountability)

## Step 2 – Categorize your emails

1 Assess the current guidelines that you found that apply to your company according to the use of emails

- Check for existing deletion obligations
- Is the private use of emails permitted or tolerated?

2 Talk to the departments

- Let people report what comes in and what goes out in their day-to-day business
- Note the results down and start to cluster

3 Explore possibilities to get data out of the email system to store it elsewhere

4 Think about the remaining rest and categorize  
Possible categories:



- Contracts
- Business letters
- Accounting documents



- Certificates (resulting from various areas of law)
- Private messages
- Other

## Step 3 – Apply a deletion strategy

Based on your findings during the initial discussion with the departments:

- 1 For the existing emails
  - Find out the best way to move all business related communication that is subject to certain retention periods out of the email system
  - Figure out a technical solution to categorize the rest
  - Announce the deletion
  - Delete emails according to the announcement

NOTE: ALWAYS PAY ATTENTION TO THE PRIVACY ISSUE SECTION OF THIS WEBINAR

- 2 For new emails
  - Issue guidelines how to 
  - move email to other storage media,
  - Treat the remaining emails (set deletion periods)

- 3 Train employees how to apply the guidelines

- 4 Remind employees to apply the guidelines regularly

## What is the legal basis for categorization and deletion?

- Consent is not a basis
  - The employer needs to have a reliable legal basis without a systematic weakness (withdrawal of consent would lead to a non-practicable situation)
- The employment contract obliges the employee to adhere to guidelines of the employer
- The company has the right to process data (including deletion) in order to comply with a legal obligation (Art. 6 par. 1 c) GDPR)
- The company may base the deletion on justifying interests

NOTE: DOCUMENT YOUR CONSIDERATIONS AND DECISIONS



### Important

1. Look out for existing Works Agreements and provisions on the use of email
2. Assess if a DPIA is required





## In case the private use of email is allowed or tolerated


Be very careful in Germany

Check the existing terms of use for the email system, if any

You may not be allowed to delete emails (without notifying employees in advance)

Do not automatically filter emails without carefully considering if this is permissible

# Privacy Issues – Information to the employees?

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- A background image showing two women in an office. One woman with curly hair is looking at a laptop screen, and the other woman with long dark hair is pointing at the screen. They appear to be in a collaborative work environment.
- Check your existing privacy note
  - You may want to fulfill the privacy information requirement through a combination of
    - the email retention guideline, and
    - your general privacy information

- Depends on the specific concept
- May be required according to Sec. 87 German Works Constitution Act:

“The works council shall have a right of co-determination in the following matters in so far as they are not prescribed by legislation or collective agreement:

1. matters relating to the rules of operation of the establishment and the conduct of employees in the establishment,

[...]

6. the introduction and use of technical devices designed to monitor the behaviour

or performance of the employees,

[...]“

”



# Conclusions

An email deletion  
concept is  
challenging but not  
impossible...





## Questions and Answers

# Thank you!



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■ Regional desks and strategic alliances

