

# COUNCIL OF EUROPE

## COMMITTEE OF MINISTERS

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RECOMMENDATION No. R (81) 20

**OF THE COMMITTEE OF MINISTERS TO MEMBER STATES**  
**ON THE HARMONISATION OF LAWS**  
**RELATING TO THE REQUIREMENT OF WRITTEN PROOF**  
**AND TO THE ADMISSIBILITY OF REPRODUCTIONS OF DOCUMENTS**  
**AND RECORDINGS ON COMPUTERS<sup>1</sup>**

*(Adopted by the Committee of Ministers on 11 December 1981  
at the 341st 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 between its member states ;

Considering that, increasingly, use is being made in business of processes of document reproduction by microfilming and of techniques for recording of information on computers, the originals, if they exist, being destroyed to save storage space and costs ;

Having regard to the absence of general rules in most states, particularly as to the admissibility of these reproductions and recordings ;

Conscious of the need for such rules because of the development of business practice and of the desirability of reaching harmonised solutions in the member states justified by the international nature of the problem since reproductions or recordings made in one state are increasingly likely to be presented as evidence in another ;

Convinced of the desirability of harmonising national rules requiring written proof for transactions whose value is greater than the minimum amount fixed by law and of harmonising also the periods of time during which documents must be preserved,

Recommends :

I.1. Governments of the member states whose laws require written proof for transactions whose value is greater than the minimum amount fixed by law :

a. to study the possibility of abolishing this requirement ;

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1. When this recommendation was adopted, and in application of Article 10.2.c of the Rules of Procedure for the meeting of the Ministers' Deputies :

— the Representatives of Belgium and Italy reserved the right of their governments to comply or not with point III of the recommendation ;

— the Representatives of Austria, Norway and Sweden reserved the right of their governments to comply or not with Article 2 of the appendix to the recommendation ;

— the Representative of the United Kingdom reserved the right of her government to comply or not with point II of the recommendation ;

— the Representative of France reserved the right of his government to comply or not with the recommendation.

*b.* to provide that in all those cases where written proof is still required a written form will be necessary only for transactions whose value is equal to or greater than a sum, in national currency, corresponding to at least 728 special drawing rights as defined by the International Monetary Fund at the moment when the state implements this recommendation ;

*c.* to consider, in the light of the economic situation, the advisability of revising the sum mentioned in *b* above at least every five years from the date of the adoption of this recommendation.

2. Paragraph 1 does not affect the cases where national law requires written form for the validity of the transaction.

II. Governments of all member states :

to fix a period not exceeding ten years as the period of compulsory preservation of books and documents which commercial undertakings must preserve pursuant to national law.

III. Governments of all member states :

to make their law concerning reproductions of documents by microfilming and recordings on computers conform to the rules contained in the appendix to this recommendation or, if no such law exists, to introduce legislation conforming to these rules.

#### Appendix to Recommendation No. R (81) 20

### Rules

#### *Article 1*

1. Commercial undertakings and other persons designated by national law may preserve their books and the documents relating to transactions to which they are parties or with which they are concerned in the form of reproductions by microfilming of the original except in cases specified by national law. This law shall also designate which books, documents and data may be recorded on computers.

2. The documents on which reproductions or recordings permitted by national law are based may be destroyed. However, states may require that these documents should be preserved for a certain period, which shall not exceed two years.

#### *Article 2*

A reproduction or recording made in conformity with Articles 3, 4 and 5 of these rules shall be admitted as evidence in judicial proceedings. Such reproduction and recording shall be presumed to be a correct and accurate reproduction of the original document or recording of the information it relates to, unless the contrary is proven.

#### *Article 3*

1. Reproductions or recordings made under the responsibility of the person referred to in Article 1 must conform to the following general rules. They must :

*a.* correspond faithfully to the original document or the information to which the recording relates, as the case may be ;

*b.* be reproduced or recorded in a systematic way and without gaps ;

*c.* be made in accordance with the working instructions, laid down consistently with national law and preserved as long as the preservation of the reproductions or recordings ;

*d.* be preserved with care, in a systematic order, and be protected against any alteration.

2. When a document which has been reproduced or has been used for a recording is destroyed, the following particulars must be preserved together with the recording and in the reproduction, if possible, or otherwise with it :

- a. the identity of the persons under whose responsibility the reproduction or recording has been made and of the person effecting it ;
- b. the nature of the document ;
- c. the place and date of the reproduction or recording ;
- d. any defects observed during the reproduction or recording.

#### *Article 4*

The following conditions must be fulfilled when a document is reproduced by microfilming :

- a. the reproduction must constitute an indelible, faithful and durable image of the original ;
- b. the reproduction must enable one to ascertain the sequence of reproduction ;
- c. the reproduction must be perfectly legible and technically sound ; the faithfulness of the reproduction to the original must be verified before the destruction of the latter ;
- d. the reproduction must always be available for inspection by persons entitled to do so.

#### *Article 5*

1. The following rules shall apply to computer programmes :

- a. the programme write-up, files descriptions and programme instructions must be directly legible and kept carefully up to date under the responsibility of the person referred to in Article 1 ;
- b. the documents referred to in *a* above must be preserved in a communicable form for so long a time as the recordings to which they relate.

2. If, for whatever reason, the data recorded are transferred from one computer to another, the person referred to in Article 1 must establish that there is concordance.

3. The following rules apply to computer systems generally :

- a. the system must contain the safeguards necessary in order to avoid any alteration of the recording ;
- b. the system must also make it possible to reproduce at any moment the information recorded in a directly legible form.