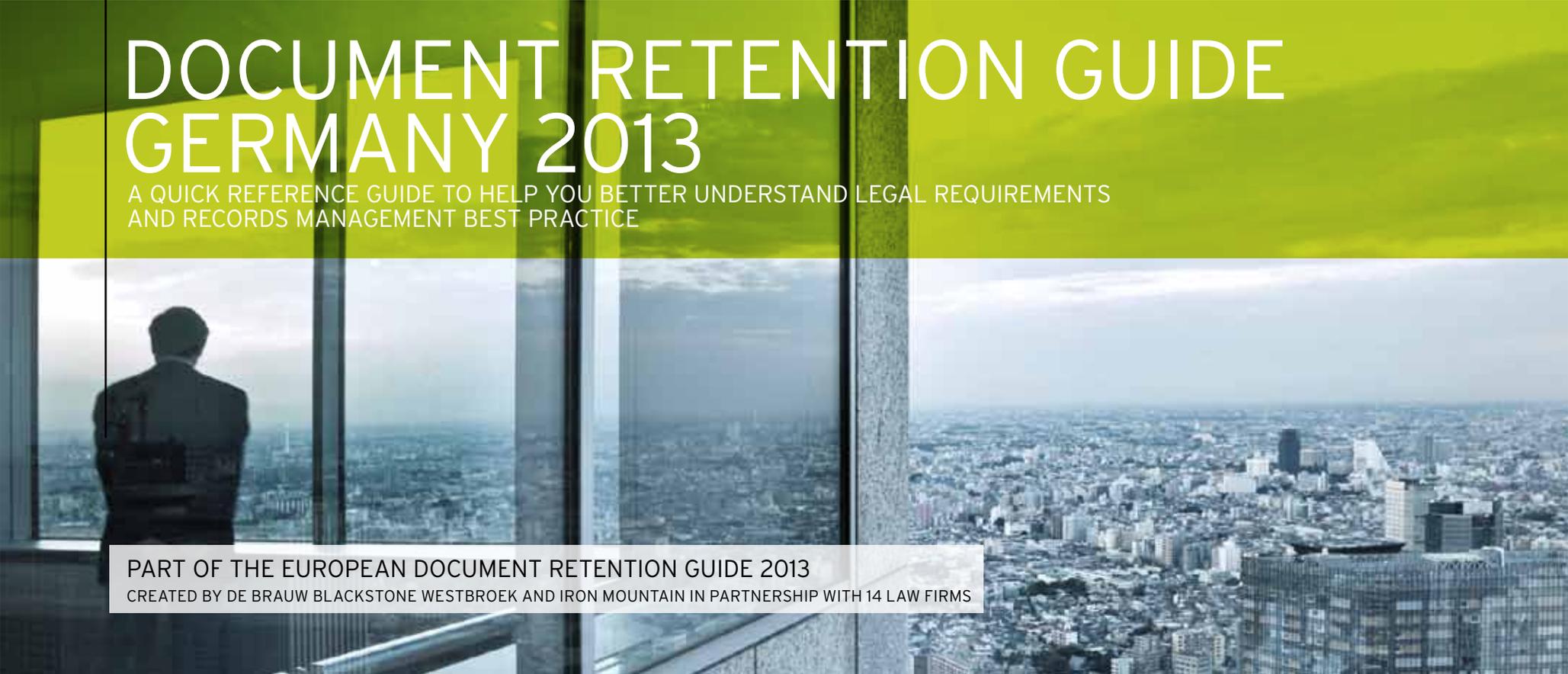


DOCUMENT RETENTION GUIDE GERMANY 2013

A QUICK REFERENCE GUIDE TO HELP YOU BETTER UNDERSTAND LEGAL REQUIREMENTS
AND RECORDS MANAGEMENT BEST PRACTICE



PART OF THE EUROPEAN DOCUMENT RETENTION GUIDE 2013
CREATED BY DE BRAUW BLACKSTONE WESTBROEK AND IRON MOUNTAIN IN PARTNERSHIP WITH 14 LAW FIRMS

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A QUICK GUIDE TO RECORDS MANAGEMENT AND RETENTION

DELIVERING EFFECTIVE AND COMPLIANT RECORDS MANAGEMENT:

Meeting your corporate data challenges

The benefits of compliant records management

Records management case studies



MEETING YOUR CORPORATE DATA CHALLENGES

We are all faced with an ever increasing volume of records, including emails and traditional paper documents. Legislation and regulation covering records management is so complex and far-reaching that compliance can become a major challenge as well as a drain on your resources. This makes a mandatory retention policy indispensable for minimising both business risks and the chance of costly litigation, caused either by destroying information before, or retaining it beyond, the end of its legally required retention period.

This guide gives you an overview of the regulations governing record retention and the relevant legal issues. The quick references help you cut through the complexity and get a clear picture of different record types and their business functions, as well as the legislation that affects them. It also offers practical suggestions to meet challenges.

WHY COMPLY?

Fines for non-compliance are increasing

Risk of investigatory audits by the authorities

Reputational risks are substantial with an ever less tolerant public

Risk of prosecution, claims for damages or claims for injunctions in civil proceedings

It pays to be compliant: don't store what you don't need to

An inventory is not a maybe, it's a must

'BECAUSE I DON'T KNOW WHAT TO KEEP AND WHAT TO DESTROY, I'M STORING TOO MUCH AND EXPOSING MYSELF TO CONSIDERABLE LEGAL RISK.'

'DESTRUCTION IS AN ARBITRARY PROCESS THAT I CAN'T CONTROL.'

'I HAVE TO RE-EVALUATE MY PROCESSES EVERY TIME A NEW REGULATION COMES OUT.'

THE BENEFITS OF COMPLIANT RECORDS MANAGEMENT

Effective records management is about planning, organising and controlling the different stages in the life of a record – from its creation, through its active and inactive periods, to its destruction or permanent storage. Efficient records management meets the dual needs of providing easy retrieval of information while keeping costs to a minimum.

A comprehensive records management programme gives you immediate and long-term benefits:

Controlling record volumes

Implementing a records retention schedule and destroying unnecessary records can cut your physical and digital storage requirement by up to 40%. Managing the creation of new records will reduce the costs of organising, maintaining and disposing of them.

Improving access to information

With the right systems and procedures in place you can respond faster to business challenges, provide better customer service and make informed decisions.

Ensuring regulatory compliance

You're faced with a multitude of industry-specific rules, national laws and European regulations on corporate bookkeeping and records conversion, retention and maintenance. A records management programme determines which records must be kept and for how long, in order to remain compliant.

Improving efficiency and productivity

Poor record keeping and badly managed or non-integrated systems mean costly delays when searching for misfiled records and prevents timely meeting of e-discovery orders or governmental subpoenas.

Safeguarding critical information

It is estimated that more than a third of all businesses that suffer a disaster never resume operations. An efficient records management programme ensures that you have protected copies of all business-critical records.

WHAT DOES COMPLIANCE INVOLVE?

Knowing the requirements – European, national and sector

Seeking appropriate legal advice to help you create your own retention schedule

Closed chain of custody – knowing what you've got and where it is, and monitoring who gained access for what purposes

Secure, organised storage

Secure, timely destruction

36% OF COMPANIES KEEP ALL THEIR INFORMATION IN CASE IT IS NEEDED

41% OF COMPANIES SEE MANAGING THEIR PAPER LEGACY AS A MAJOR FUTURE CHALLENGE

31% OF COMPANIES SEEK LEGAL ADVICE REGARDING DATA RETENTION BEFORE TAKING ACTION

SOURCE: BEYOND AWARENESS: THE GROWING URGENCY OF DATA MANAGEMENT FOR THE EUROPEAN MID-MARKET - PWC REPORT IN CONJUNCTION WITH IRON MOUNTAIN, 2013

RECORDS MANAGEMENT CASE STUDIES

The following are some examples of different companies across Europe that enjoyed the benefits of an effective records management strategy.

MANUFACTURING - BAE SYSTEMS

The challenge

BAE Systems is one of the world's leading defence manufacturers employing over 100,000 people in locations across the world. In 2004, the company identified a problem. Paper records were stored in disparate locations ranging from cupboards to large containers and document retrieval processes entailed a risk of loss or damage. BAE was looking for a solution that would help better organise its information and safeguard their valuable information assets in highly secure facilities.

The solution

Dedicated Iron Mountain experts work on-site to manage indexing, storage, retrieval and transport

200,000 cubic feet of records stored at Iron Mountain facilities which meet the stringent security standards required

Highly classified documents stored in dedicated vault with relevant Iron Mountain staff vetted by the Ministry of Defence

Iron Mountain catalogues statutory retention periods and carries out secure destruction as appropriate

IM Connect™, the Iron Mountain online customer portal, allows authorised BAE personnel to find documents and securely request retrieval

Value

BAE Systems has benefited from enhanced customer confidence in a highly security-conscious industry.

PROFESSIONAL SERVICES - KPMG - THE NETHERLANDS

The challenge

KPMG The Netherlands offers audit and tax consultancy services. The company has over 4,000 employees in 15 offices across the Netherlands. Audit firms in the Netherlands have to comply with strict regulations governing records management. The company found that requirements for the safe storage and transport of documents were making these operations too complicated and expensive to handle themselves.

The solution

Iron Mountain active file management offered KPMG The Netherlands the dual benefits of fast, authorised access and compliant, secure storage

Twice-daily scheduled visits by vetted Iron Mountain staff pick up and drop off required documents in state-of-the-art secure vehicles

Barcode scanning and a strict chain of custody make files fully traceable, and support compliance with strict regulations

Value

As well as being able to meet compliance needs, KPMG The Netherlands has reduced costs and saved space.

BEST PRACTICE TO IMPLEMENT A COMPLIANT RECORDS MANAGEMENT PROGRAMME

WITH REGARD TO COMPLIANCE, A 'RECORD' REFERS TO ALL DOCUMENTS IN WHATEVER MEDIUM, RECEIVED OR CREATED BY AN ORGANISATION IN THE COURSE OF ITS BUSINESS, AND AS EVIDENCE OF ITS ACTIVITIES OR BECAUSE OF THE INFORMATION CONTAINED



To comply with current regulations, an information management programme must include documented policies covering retention and disposal, as well as documented procedures covering proof of training, communication and implementation throughout the organisation.



FOUR STEPS TO A COMPLIANT RECORDS MANAGEMENT PROGRAMME

The four steps below describe best practices that can help you with the ongoing development of your own compliant information management programme.



CREATING A RECORDS RETENTION POLICY



INDEXING AND ARCHIVING OF RECORDS



ENSURING CERTIFIED DESTRUCTION OF RECORDS



OFF-SITE STORAGE OF BACKUP DATA

STEP ONE: CREATING A RECORDS RETENTION POLICY

The records retention policy dictates how long a record should be stored before it is destroyed. To develop an effective policy, your company must have a thorough understanding of the records that it stores across all formats, including paper documents, electronic files, telephone call records and social media.

Research must be conducted to determine the relevant national and industry regulations for different record types. This guide will provide an overview, but you are advised to also seek specialist legal advice to ensure you are compliant with all relevant obligations for your company.

As well as the information provided in the guide, seek specialist legal advice to determine:

What are the applicable document retention laws in your country?

Which document retention laws are applicable to your industry?

What are the financial penalties and other consequences of non-compliance?

For a more in-depth guide to these four steps, download the Path to Compliance ebook 'Implementing a Compliant Records Management Programme' at

ironmountain.de/compliance

FOUR STEPS TO A COMPLIANT RECORDS MANAGEMENT PROGRAMME

STEP TWO: INDEXING AND ARCHIVING OF RECORDS

Effective indexing and archiving of records will ensure you can easily locate files and rapidly retrieve them as and when they are needed. Many organisations consider the scanning or digitising of paper documents an effective way to index and archive files while reducing costs through space saving. The above information covers some of the issues to consider when scanning and storing documents to protect their legal integrity, and here are some further do's and don'ts when implementing a scanning programme:

Get staff support

This is essential for the successful conversion to digital information. Without staff support, employees may make their own copies and print outs, resulting in unstructured archives in multiple locations.

Get legal advice

Take the time to survey the regulatory landscape for your country and industry, and build in the ability to meet any regulatory requirements from the outset.

Only digitise what you need

Documents from existing files that will rarely be retrieved should only be absorbed into the digital system if and when they are actually required.

Use internal and external experts

Staff who use the documents regularly are in the best position to recommend effective tags and labels, guided by external experts.

Effective methods of indexing and archiving print and digital documents are discussed in more detail in the Path to Compliance ebook 'Implementing a Compliant Records Management Programme' at

ironmountain.de/compliance

FOUR STEPS TO A COMPLIANT RECORDS MANAGEMENT PROGRAMME

STEP THREE: ENSURING CERTIFIED DESTRUCTION OF RECORDS

Before destroying any documents in accordance with your retention schedule, you should also be aware of the following:

Legal

Check with your legal department to ensure documents are not required for any ongoing legal proceedings or statutory minimum retention periods.

Chain of custody

Confidential waste needs to be tracked from the moment it is designated for destruction until it is destroyed. For certain documents certification of destruction is required.

Standards

There are standards that govern secure destruction. Standards cover security processes and the size of the pieces of shredded paper to ensure your confidential information cannot be reconstituted.

Costs

If a 200 employee company produces an average of 400kg paper waste per week, of which 15% is confidential, what are the costs of secure destruction? If an average machine shreds 2.5kg per hour it would take 24 employee hours per week to shred. On a junior's salary of £25,000/€30,000, annual destruction costs could be around £15,000/€18,000.

Source: Secure Information Destruction, Iron Mountain, 2011

Environment

Recycling one tonne of shredded paper can save around 15 trees, helping meet environmental targets for your organisation.

Source: Baxter CVG case study

STEP FOUR: OFF-SITE STORAGE OF BACKUP DATA

Ensure your current data backup programme enables you to answer the following questions:

What conditions are your media stored in to protect against environmental damage?

How quickly and easily can you access your backup data in the event of an emergency?

How is your data stored to protect against security breaches without compromising the availability of data that will benefit your business?

What processes do you have available if you are unable to locate a specific file?

Do you have/require a mix of encrypted and unencrypted data?

**'40% OF COMPANIES
CONSIDER NATURAL
DISASTER TO BE THE
BIGGEST THREAT
TO INFORMATION
SECURITY.'**

SOURCE: EXTREME WEATHER AND BUSINESS CONTINUITY, IRON MOUNTAIN, 2012

LEGAL ISSUES THAT AFFECT YOUR RECORDS MANAGEMENT

A COMPREHENSIVE RECORDS MANAGEMENT PROGRAMME HAS TO TAKE INTO ACCOUNT ALL LEGAL ISSUES WHICH AFFECT THE CREATION, CONVERSION, RETENTION AND DESTRUCTION OF RECORDS. THESE LEGAL ISSUES INCLUDE:

Requirements to set out in writing

Evidentiary value of electronic records

Legal requirements in respect of the books and records of companies

ISO 15489

Guidelines tax and customs administration

LEGAL ISSUES THAT AFFECT YOUR RECORDS MANAGEMENT

The following main legal issues must be considered when planning a comprehensive records management programme:

Legal requirements that certain contracts be set out in writing

Whether a legal obligation exists to retain certain records in paper format

Legal requirements in respect of the conversion of written records which belong to a company's administration into electronic format

Related issues are:

The evidentiary value of electronic records

International technical norms and standards for the conversion to, retention and accessibility of electronic records

The minimum and maximum retention periods applying to the records

REQUIREMENTS TO SET OUT IN WRITING

Under German law, certain agreements or instructions have to be set out in writing (Schriftformerfordernis). This means that the document has to be signed by the issuer with his/her name by his/her own hand, or with his/her notarially certified initials and, in the case of a contract, the signatures of the parties in general must be made on the same document, Sec. 126 Civil Code (Bürgerliches Gesetzbuch, BGB).

General examples include without limitation:

Upon request, the obligee (Gläubiger) must issue a written receipt (Quittung)

The notice of termination of a lease

The declaration of guarantee (Bürgschaft), acknowledgement of debt (Schuldversprechen) or abstract promise to fulfil an obligation (Schuldanerkenntnis) of a private individual

The report on the establishment of a limited liability company (GmbH)

Records on financial services

The requirement to set certain matters out in writing can also be established by an agreement. Examples include:

The requirement that changes to an agreement are explicitly made in writing

The requirement that certain notices are made in writing

Though certain agreements or notices have to be set out in writing, this does not always bar the possibility of converting the original paper record into an electronic record which replaces the paper record. In general, documents in written form may be replaced by an electronic document pursuant to Sec. 126a BGB. In this case, the issuer of the declaration must add his/her name to it and provide the electronic document with a qualified electronic signature in accordance with the Electronic Signature Act (Signaturgesetz, SigG).

EVIDENTIARY VALUE OF ELECTRONIC RECORDS

Electronic records as evidence in legal proceedings

Under Sec. 371a Code of Civil Procedure (Zivilprozessordnung, ZPO), electronic documents pursuant to Sec. 126a BGB generally have an equal value as written documents.

For other documents, the general rules of evidence apply. In civil proceedings, the electronic version (scan) of a paper record, or a print-out of that scan, can later serve as evidence of the contents and existence of the original paper record, when this original has been disposed of. However, a court may ascribe less evidentiary value to such a reproduction than it would to the original.

This lesser evidentiary value is a consequence of the possibility of alterations being made to an electronic record. The original record could be tampered with before it is scanned, or changes made in the electronic record itself. In both cases, the alterations could be made with relative ease and not be easily detectable. Additional problems can occur when the electronic record is converted into a different file type or transferred to another data carrier. If this renders the record less legible or inaccessible, its evidentiary value will also decrease.

LEGAL REQUIREMENTS IN RESPECT OF THE BOOKS AND RECORDS OF COMPANIES

Minimum retention obligation

Under German law, companies have a retention obligation for certain types of records. The key provisions for the retention of documents are Sec. 257 German Commercial Code (Handelsgesetzbuch, HGB) and Sec. 147 Fiscal Code (Abgabenordnung, AO).

Sec. 257 HGB provides that companies have to retain, inter alia, financial statements, audit reports, records, profit and loss accounts as well as commercial books for a period of ten years. Several other documents, such as correspondence which relates to a business transaction, must be retained for a minimum period of six years. These obligations largely correspond to the obligation pursuant to Sec. 147 AO.¹

Sec. 147 (1) AO stipulates, inter alia, an additional retention obligation regarding all documents which might be relevant for a tax assessment. Furthermore, the retention period under AO does not expire as long as the tax authorities may carry out a tax assessment pursuant to Sec. 169 AO. Although the time periods under Sec. 169 AO are relatively short, the beginning of the retention period may be different from the start of the time period pursuant to Sec. 147 (3) AO (Sec. 170 AO), and there are several exceptions concerning the expiration of the retention period (Sec. 171 AO).

¹ According to a proposed amendment, the 10 years retention period under Sec. 147 AO will be reduced to 8 years for documents for which the minimum retention period has not yet expired and from 1 January 2015 to 7 years for documents for which the minimum retention period of then 8 years has not yet expired as of 1 January 2015. The same applies to the retention period under Sec. 257 HGB for accounting documents. See BT-Drucksache 17/13082.

Maximum retention periods

Mostly, maximum retention periods derive from data protection law. To the extent records contain personal data as defined by the German Data Protection Act (Bundesdatenschutzgesetz, BDSG), these records may not be kept for a longer period than is necessary for achieving the purposes for which the personal data have been collected or are subsequently processed unless the individual consents (Sec. 35 (2) No 3 BDSG).

Legal requirements regarding the retention of certain records in paper format

In general, the relevant provisions for the retention of documents also determine in which circumstances the specific documents may be replaced by electronic records.

Sec. 257 (3) HGB provides that the opening balance sheet and the financial statements may not be kept in electronic form. Other records may be replaced by electronic records if (1) the generally accepted accounting principles (Grundsätze ordnungsgemäßer Buchführung, GAAP) are respected, (2) the electronic documents correspond to the original documents and (3) full access to the data is guaranteed and the data can be made available without undue delay.

The GAAP (Sec. 238, Sec. 239 HGB) require that records are maintained in such a way that an outside expert can derive from it an overview of the business operations and position of the company within a reasonable amount of time.

Under Sec. 147 AO, paper documents may be replaced by electronic records with the exception of the annual financial statements, opening balance sheets and certain customs documents. However, Sec. 147 (4) AO stipulates obligations of the tax payer with regard to the access of the tax authorities to such electronic records. The tax payer is obliged to make the data available at his own expense and, upon request by the tax authority, has to print all or part of the documents or furnish reproductions which are legible without auxiliary tools without undue delay.

ISO 15489

ISO 15489 was adopted in Germany without amendments and is applied as DIN ISO 15489.

Compliance with ISO 15489 might be used as an argument in a situation where, e.g., a company is accused of having wilfully destroyed or deleted documents which appear to be relevant in a criminal or regulatory investigation.

GUIDELINES TAX AND CUSTOMS ADMINISTRATION

Pursuant to Sec. 147 AO, most paper records can be replaced by electronic documents. On 7 November 1995, the Ministry of Finance published guidelines on the conversion of tax-related documents to electronic documents.

In general, an entity needs to respect the following conditions:

The records must be converted in a way that their content remains intact

The records remain accessible for their entire retention period

The records can be produced and made legible within a reasonable time frame

The entity has to respect the GAAP (which also applies to paper records)

QUICK REFERENCE RETENTION GUIDE



DOCUMENT RETENTION PERIODS

The following is a quick reference guide for document retention periods under German law as applicable and in force on 31 January 2013. Please note that this is not an exhaustive list and that legal document retention requirements may be subject to change. Please also see our general disclaimer on page 31.

	DOCUMENT DESCRIPTION	RETENTION PERIOD	START OF THE RETENTION PERIOD	RELEVANT LEGAL PROVISION
GENERAL COMPANY RECORDS				
1	General obligation for retention of company accounts, books of account and records, including accounting documents, as well as operating instructions and other organisational documents necessary for interpreting these documents	Minimum 10 years	Close of calendar year in which the document was created	Sec. 257 (1) No 1 and 4, (4) Commercial Code (Handelsgesetzbuch, HGB)
2	Shareholders' resolution (copy), Articles of incorporation (copy), Shareholders' register (original), Standing orders (copy), Supervisory Board's rules of procedure (copy), Supervisory Council's Rules of procedure (copy) Board resolutions (copy), Boards' and shareholders' meetings minutes (copy)	No fixed period/ during the lifetime of the corporation		General considerations
		Minimum 10 years (only if these documents are necessary to interpret documents listed in Sec. 257 (1) No 1 and 4 HGB)	Close of calendar year in which the document was created	Sec. 257 (1) No 1 and 4, (4) HGB
	Business correspondence (received correspondence and copies of sent correspondence)	Minimum 6 years	Close of calendar year in which the document was created	Sec. 257 (1) No 2 and 3, (4) HGB
3	Financial statements, audit reports, commercial books and records, inventories, opening balance sheets, annual financial statements, management reports, consolidated financial statements, consolidated management reports, profit-and-loss accounts etc	Minimum 10 years	Close of calendar year in which the document was created	Sec. 257 (1) No 1, (4) HGB
4	Profit and loss accounts	Minimum 10 years	Close of calendar year in which the document was created	Sec. 257 (1) No 1, (4) HGB
5	Records and documents of the dissolved legal entity	Minimum 10 years	Conclusion of the liquidation proceedings	Stock Companies (AG): Sec. 273 (2) Stock Corporation Act (Aktengesetz, AktG) Limited Liability Companies (GmbH): Sec. 74 (2) Limited Liability Companies Act (GmbH-Gesetz, GmbHG) Limited partnerships (KG) and general partnerships (OHG): Sec. 157 (2) HGB
6	Membership records in a cooperative association (original)	Minimum 3 years	Close of calendar year in which the member left the cooperative association	Sec. 30 Act on Cooperative Associations (Genossenschaftsgesetz, GenG)
7	Subsidy records and documents			

	DOCUMENT DESCRIPTION	RETENTION PERIOD	START OF THE RETENTION PERIOD	RELEVANT LEGAL PROVISION
	TAX AND ACCOUNTING RECORDS			
	GENERAL TAXES			
8	<p>General obligation of taxpayers to provide (upon request of the tax inspector) all information that may be relevant to their tax position, including all books, records and other data carriers, inventories, financial statements, management reports, opening balance sheets and related information, business correspondence, accounting records, certain customs documents as well as any other document relevant for the taxation</p> <p>Keeping an administration, including books, records and other data carriers from which the taxpayer can at all times show their rights and obligations in the interest of levying taxes</p> <p>Organisations are obliged to provide the tax inspector (only upon request) with information relevant to the tax liabilities of third parties</p> <p>In cases where an organisation is legally required to withhold tax payments to third parties (e.g. VAT), these organisations may also be required to provide, on their own initiative, the tax authorities with information about these third parties</p>	<p>Minimum 6 resp. 10 years - depending on the document (10 years for books, records and other data carriers, inventories, financial statements, management reports, opening balance sheets and related information, accounting records and certain customs documents; 6 years for all other documents relevant for the taxation)</p>	<p>Close of calendar year in which the document was created or last amended</p>	<p>Article 8 Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code</p> <p>Sec. 147 (1), (4) Fiscal Code (Abgabenordnung, AO)</p>
	VAT			
9	Information relevant for VAT purposes, specifically invoices for any delivery of goods or services sent and received	Minimum 10 years ¹	Close of calendar year in which the invoice was issued	Sec. 14b Act on Value Added Tax (Umsatzsteuergesetz, UStG)
10	Obligation to keep records and other data carriers relating to the ownership of real estate and rights relating thereto			
	CORPORATE INCOME TAX			
11	Taxpayers' obligation to have available all information that deals with intra-group price setting, so that the Tax Authorities can check transfer prices and other conditions agreed upon in intra-group transactions			

¹ According to a proposed amendment to Sec. 14b UStG, the minimum retention period will be reduced to 8 years for all documents for which the minimum retention period of 10 years has not yet expired and from 1 January 2015 to 7 years for all documents for which the minimum retention period of then 8 years has not yet expired on 1 January 2015. See BT-Drucksache 17/13082.

	DOCUMENT DESCRIPTION	RETENTION PERIOD	START OF THE RETENTION PERIOD	RELEVANT LEGAL PROVISION
	TAX AND ACCOUNTING RECORDS			
	DIVIDEND WITHHOLDING TAX			
12	Obligation to have an administration showing the payment of dividends, and the obligation to issue dividend notes			
	GENERAL CUSTOMS TAX			
13	Keep an administration as per the requirements set out in the General Customs Act, including books, records and other data carriers. General obligation of taxpayers to provide (upon request of the customs authority) all information which may be relevant to them, including making available all books, records and other data carriers			
	LOCAL TAXES			
14	Regional and municipal taxes	Local taxes and related obligations vary from Federal State to Federal State and from municipality to municipality		

	DOCUMENT DESCRIPTION	RETENTION PERIOD	START OF THE RETENTION PERIOD	RELEVANT LEGAL PROVISION
PAYROLL AND SALARY RECORDS				
15	The withholding agent (generally the employer) must keep an administration of wages, including tax-exempt reimbursements as well as social security records, pay slips, overtime compensation, bonuses, expenses, benefits in kind and severance pay records	Minimum 10 years	Close of calendar year in which the document was created	Sec. 147 (1) No 1, (3) AO, Sec. 257 (1) No 1, (4) HGB
	Salary account (Lohnkonto) including employee data relevant for the salary payment	Minimum 6 years	Last entry of salary payment	Sec. 41 (1) Income Tax Act (Einkommenssteuergesetz, EStG)
	Record of daily working hours of seconded/borrowed workers who benefit from minimum wages (Mindestlöhne)	Minimum 2 years	Creation of the records	Sec. 19 (1) Seconded Workers Act (Arbeitnehmer-Entsendegesetz, AEntG), Sec. 17c (1) Borrowed Workforce Act (Arbeitnehmerüberlassungsgesetz, AÜG)
16	A company needs to include information about employees in its administration, including name, date of birth, tax registration number and address. In addition, requests from employees to apply a wage withholding tax discount must be retained in the company's administration			
	A company needs to have included copies of valid IDs of employees in its administration before the employees start working for the employer			
TYPE OF DOCUMENTS LIKELY TO BE ALSO SUBJECT TO A MAXIMUM RETENTION PERIOD BASED ON DATA PROTECTION RULES				
17	Payroll records (wages, tax and social security records, payslips, overtime compensation, bonuses, expenses, benefits in kind)	No specific maximum retention period, general rules apply		
	Severance pay records	Minimum retention period: see section 15		

	DOCUMENT DESCRIPTION	RETENTION PERIOD	START OF THE RETENTION PERIOD	RELEVANT LEGAL PROVISION
HR/EMPLOYMENT/PENSION RECORDS				
18	Employment contract Various information on employees relevant for payment of social security contributions	Minimum 1 year	Close of calendar year of audit by social security administration	Sec. 28f Social Security Code IV (Sozialgesetzbuch IV, SGB IV) Sec. 8 Regulation on Contribution Proceedings (Beitragsverfahrensverordnung, BVV)
19	Identification documents of foreign nationals (copy)	Minimum 1 year	Close of calendar year of audit by social security administration	Sec. 28f Social Security Code IV (Sozialgesetzbuch IV, SGB IV) Sec. 8 Regulation on Contribution Proceedings (Beitragsverfahrensverordnung, BVV)
20	Business data and documents concerning pension schemes and related subjects (data on the employer's business pension obligations relevant for the insolvency insurance)	Minimum 6 years		Sec. 11 Act on Business Pensions (Gesetz über die betriebliche Altersversorgung, BetrAVG)
21	Pension plans and schemes, career and talent development programmes, diversity programmes, other HR policies (e.g. alcohol and drugs policy, HIV/AIDS policy, personnel handbook), social plans			
TYPE OF DOCUMENTS LIKELY TO BE ALSO SUBJECT TO A MAXIMUM RETENTION PERIOD BASED ON DATA PROTECTION RULES				
22	Data of rejected job applicants, (e.g. application letters, CVs, references, certificates of good conduct, job interview notes, assessment and psychological test results)	No specific maximum retention period, general rules apply		
23	Data concerning a temporary worker	No specific maximum retention period, general rules apply. Minimum retention period: see section 15.		
24	Reports on employee performance review meetings and assessment interviews (e.g. evaluations, employment application forms of successful applicants, copies of academic and other training received, employment contracts and their amendments, correspondence concerning appointment, appraisals, promotions and demotions, agreements concerning activities in relation to the works council, references and sick leave records)	No specific maximum retention period, general rules apply		
25	Employee stock purchase and options records	No specific maximum retention period, general rules apply		
26	Copy of identification documents	No specific maximum retention period, general rules apply. No specific minimum retention period. See section 19.		
27	Expats records and other records relating to foreign employees (e.g. visa, work permit)	No specific maximum retention period, general rules apply		
28	Data concerning pension and early retirement	No specific maximum retention period, general rules apply. Minimum retention period: see section 20.		

	DOCUMENT DESCRIPTION	RETENTION PERIOD	START OF THE RETENTION PERIOD	RELEVANT LEGAL PROVISION
MEDICAL/SAFETY RECORDS				
29	Medical files, medical documents in cases of a medical treatment contract Records on X-ray treatments X-rays	Minimum 10 years Minimum 30 years Minimum 10 years	After termination of the treatment The date of the last treatment	Various professional codes of conduct Sec. 28 (1), (3) Regulation on X-ray (Röntgenverordnung, RöV)
30	Floor plans and directions			
31	Work-related to hazardous substances	Minimum 40 years	End of exposure	Sec. 14 (3) No 3 and 4 Ordinance on Hazardous Substances (Gefahrstoffverordnung, GefStoffV)
32	List of employees who have worked under dangerous conditions or whose health has otherwise been under threat			
33	Register of employees who work with 3rd and 4th category biological agents	Minimum: at least until termination of employment. Maximum: after termination only a copy of the relevant excerpt be handed to the employee.	Creation of the records	Sec. 13 (4) Regulation on Biological Agents (Biosstoffverordnung, BioStoffV)
34	Lists/register of employees who have been exposed to asbestos dust	Minimum 40 years	End of exposure	Sec. 14 (3) No 3 and 4 Ordinance on Hazardous Substances (Gefahrstoffverordnung, GefStoffV)
35	Administration concerning measurements of radioactive substances			
36	Records of radiation	Minimum 30 years. Maximum 100 years.	Termination of the employment. Birth.	Sec. 42 Radiological Protection Ordinance (Strahlenschutzverordnung StrlSchV)
37	Medical records of employees who have possibly been exposed to ionizing radiation	Minimum 30 years. Maximum 100 years.	Termination of the relevant activity. Birth.	Secs. 64 (3), 103 (aircrews) StrlSchV
TYPE OF DOCUMENTS LIKELY TO BE ALSO SUBJECT TO A MAXIMUM RETENTION PERIOD BASED ON DATA PROTECTION RULES				
38	Registration of work and rest periods (in appropriate format) for professional drivers	No specific maximum retention period, general rules apply. Minimum retention period: 2 years.	Creation of the records	Sec. 21a (7) Working Hours Act (Arbeitszeitgesetz, ArbZG)
39	Necessary data for emergency medical care, individual reintegration plans, individual treatment agreements, degree of incapacity for work, required workplace adaptations	No specific maximum retention period, general rules apply		

	DOCUMENT DESCRIPTION	RETENTION PERIOD	START OF THE RETENTION PERIOD	RELEVANT LEGAL PROVISION
	TRANSPORT RECORDS			
40	Administration regarding transport of biofuels and biofuels stock control			
41	Loading or unloading plan (by captain or terminal representative)	Minimum 6 months	Creation of the records/date of loading or unloading	See the relevant provisions of the Federal States (Länder) Acts, such as Sec. 24 (4) Harbour Act of Lower Saxony (Niedersächsische Hafenordnung, NHafenO)
42	The captain of a ship on its way from an EU port, and the manager of the harbour it has just left, must both retain data passed onto the appropriate authorities as required by the Port Reception Facilities Directive (registration of quantity waste and other materials on board)		Creation of the records	See e.g. the Act on the Prevention of Pollution from Ships of Hamburg (Hamburgisches Gesetz über Schiffsabfälle und Ladungsrückstände, HmbSchEG)

	DOCUMENT DESCRIPTION	RETENTION PERIOD	START OF THE RETENTION PERIOD	RELEVANT LEGAL PROVISION
ENVIRONMENTAL RECORDS				
43	Data regarding chemicals or environmentally dangerous substances, and preparations for these which a company has manufactured, imported or supplied	Minimum 10 years	Last date of manufacture, import, supply or use of the substance or preparation	Art. 36 paragraph 1 of Regulation 1907/2006/EC (REACH) Article 49 Regulation 1272/2008/EC on classification, labelling and packaging of substances and mixtures
	Updated list of dangerous substances	No specific minimum retention period applies	Creation of the records	Sec. 9 (2), Annex II of 12th Regulation on Emission Control (12. Bundesimmissionsschutzverordnung, BImSchV)
	Data on transactions of energy suppliers on the purchase of energy	Minimum 5 years	Creation of the records / date of transaction	Sec. 5a (1) EnWG
44	The names and addresses of the clients/buyers of the above mentioned substances and preparations	Minimum 10 years	Last date of supply of the substance or mixture	Article 49 of the Regulation No 1272/2008 on classification, labelling and packaging of substances and mixtures
45	Documents related to an environmental permit	The permit may contain an obligation to retain the permit and the corresponding documents. However, a permit should be kept in order to preserve evidence of the rights granted under the permit.		
	Data regarding emissions, monitoring and repairs and documents necessary for interpreting the documents if the permit holder is operator of a plant which needs a permit according to the Federal Emission Control Act (Bundesimmissionsschutzgesetz, BImSchG)	Minimum 5 years	Once the data is obtained	Sec. 31 BImSchG (measurements on authority's request)
		Minimum 4 years	Once the data is obtained	Sec. 5 (2) 11th Regulation on Emission Control (11. Bundesimmissionsschutzverordnung, BImSchV) (emission declarations for certain categories of emissions)
		Minimum 5 years	Once the data is obtained	Sec. 12 (2) 12th BImSchV (documents on prevention of emergencies in highly dangerous facilities)

	DOCUMENT DESCRIPTION	RETENTION PERIOD	START OF THE RETENTION PERIOD	RELEVANT LEGAL PROVISION
	ENVIRONMENTAL RECORDS			
46	Registered data concerning the recycling or disposal of waste materials (waste bookkeeping)	Minimum 3 years	Once the waste materials are registered pursuant to Sec. 49 Closed Substance Cycle Act (Kreislaufwirtschaftsgesetz, KrWG)	Sec. 49 (1),(3),(5) KrWG
	Registered data concerning the transfer of industrial or hazardous waste to another party for collection or disposal	Minimum 12 months		Sec. 49 (1),(3),(5) KrWG
	Documents on results of inspections on the discharge of domestic waste water	Depending on the Federal State: 3 years in North Rhine-Westphalia; 10 years in Brandenburg	Once the data is obtained	Since the Federal States have the legislative power on issue, see the Water Acts of the Federal States, e.g. Sec. 60 (4) Water Act of North Rhine-Westphalia (Landeswassergesetz, LWG); Sec. 75 Water Act of Brandenburg (Wassergesetz, BdbWG)
	Documents containing audits on radioactivity and all results of measurements taken			
47	Relevant documents from the manufacturer concerning conformity assessment/ statement of an energy-consuming product	Minimum 10 years	Termination of production of product	Sec. 4 (6) Act on energy related products (Energieverbrauchsrelevante-Produkte-Gesetz, EVPG)
	Manufacturers of electronic products need to keep information regarding the recycling of their products (materials) for recycling facilities. This obligation only exists if this information is necessary for the compliance with the provisions of the Electrical and Electronic Equipment Act	Minimum 1 year	Once the product is placed on the market	Sec. 13 (6) Electrical and Electronic Equipment Act (Elektro- und Elektronikgerätegesetz, ElektroG)
48	Technical documentation and declaration of performance on construction products	Minimum 10 years	Once the product is placed on the market	Article 11 paragraph 2 Regulation (EU) No 305/2011, laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC (applicable from 1 July 2013)
49	The recipient of subsidies for clean-up operations must retain administration regarding the rights and obligations, and receipts and payments, related to those subsidies			
	Records on soil and water investigations by the owner on an authority's request if the site is potentially hazardous or contaminated	Minimum 5 years; longer if required in individual cases	Creation of the records	Sec. 15 (3) Federal Soil Protection Act (Bundesbodenschutzgesetz, BBodSchG)
	Copies of applications, notifications, examinations and testing pursuant to the provisions of the Act on Chemicals	Minimum 5 years	Following the last time the substance is produced or placed on the market	Sec. 20 (5) Act on Chemicals (Chemikaliengesetz, ChemG)
50	Accident reports			

	DOCUMENT DESCRIPTION	RETENTION PERIOD	START OF THE RETENTION PERIOD	RELEVANT LEGAL PROVISION
ENVIRONMENTAL RECORDS				
51	A copy of the documents concerning the transfer of waste materials sent by the competent authority	Minimum 3 years	Once shipment starts	Article 20 of the Regulation (EC) No 1013/2006 on Shipments of Waste
52	Documents containing train number, date and time of checks, identified irregularities, and measures taken	Minimum 3 months	Once transport is accomplished	Section 5.4.4.1 European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR) Section 5.4.4.1 Regulation concerning the International Carriage of Dangerous Goods by Rail (RID)
53	The operator of a dumpsite must retain the description of the waste materials under certain circumstances	Until the end of the maintenance period	Creation of the records	Sec. 13 (3) Dumpsite Regulation (Deponieverordnung, DepV)
54	The operator of a dumpsite must retain the samples of analysis done on the collected waste materials	Until the end of the maintenance period	Creation of the records	Sec. 13 (3) DepV
55	Written and electronic data from which information has been derived to describe the nature, quality and composition of the waste material	Minimum 3 years	Once the waste materials are registered pursuant to Sec. 49 (1) KrWG	Sec. 49 (1), (3), (5) KrWG
56	Transmission systems operators need to retain all records of quality indicators			
57	Technical documentation based on Directive 2000/14/EC of the European Parliament and of the Council of 8 May 2000 on the approximation of the laws of the Member States relating to the noise emission in the environment by equipment for use outdoors and EC statement	Minimum 10 years	Date of manufacturing the last machine of one type	Sec. 5 of 32th BImSchV (Geräte- und Maschinenlärmschutzverordnung, 32. BImSchV)

	DOCUMENT DESCRIPTION	RETENTION PERIOD	START OF THE RETENTION PERIOD	RELEVANT LEGAL PROVISION
	INSURANCE RECORDS			
58	Insurance policies			

	DOCUMENT DESCRIPTION	RETENTION PERIOD	START OF THE RETENTION PERIOD	RELEVANT LEGAL PROVISION
	MARKETING RECORDS			
59	The use of automatic call systems without operator intervention and electronic messages for the sending of unrequested communications for commercial, non-commercial or charitable purposes is allowed, provided the sender can demonstrate that prior consent was given by the subscriber			

	DOCUMENT DESCRIPTION	RETENTION PERIOD	START OF THE RETENTION PERIOD	RELEVANT LEGAL PROVISION
	PURCHASING RECORDS			
60	An organisation is obliged to record all delivery of goods or services, all intra-European Community acquisitions, all import and export, and all other information relevant for VAT purposes	See General Company Records and Tax and Accounting Records above		
61	General ledger, accounts receivable department, accounts payable department, (procurement and) sales administration, inventory records	See General Company Records and Tax and Accounting Records above		
62	Procurement records	See General Company Records and Tax and Accounting Records above		
	TYPE OF DOCUMENTS LIKELY TO BE ALSO SUBJECT TO A MAXIMUM RETENTION PERIOD BASED ON DATA PROTECTION RULES			
63	Debtors and creditors records	No specific maximum retention period, general rules apply. Minimum retention period: see General Company Records and Tax and Accounting Records above.		
64	Customers and suppliers records	No specific maximum retention period, general rules apply. Minimum retention period: see General Company Records and Tax and Accounting Records above.		

	DOCUMENT DESCRIPTION	RETENTION PERIOD	START OF THE RETENTION PERIOD	RELEVANT LEGAL PROVISION
	LEGAL FILES/CONTRACTS & AGREEMENTS			
65	Intellectual property records			
66	Contracts, agreements and other arrangements			
	Records on trade with insider securities (Insiderpapiere)	Minimum 6 years	From the moment the document is created	Sec. 16 Securities Trading Act (Wertpapierhandelsgesetz, WpHG)
	Insider lists, i.e. lists of persons who have access to insider information (Insiderverzeichnisse)	Minimum and maximum 6 years	Close of calendar year in which the last entry was made	Sec. 15b WpHG, Sec. 16 Insider Lists Regulation (Wertpapierhandelsanzeige- und Insiderverzeichnisverordnung, WpAIV)
	Records on services related to securities	Minimum 5 years; for records regarding the rights and obligations of the investment services enterprise and its clients: at least for the duration of the business relationship with the client	Close of calendar year in which the last entry was made	Sec. 34 (3) WpHG
	Information on, inter alia, the identity of a contracting party if the Anti-Money Laundering Act (Geldwäschegesetz, GwG) is applicable	5 years	Close of calendar year in which the contractual relationship has ended or close of calendar year in which the information was obtained, depending on the scenario	Sec. 8 GwG
67	Permits, licences, certificates			
68	Confidentiality and non-competition agreements (if a penalty is attached to the non-competition or confidentiality clause)			
69	Legal files concerning provision of services (e.g. by lawyers, accountants, notaries, architects, brokers, veterinary surgeons, etc)	Minimum 5 years (lawyers, patent attorneys). Minimum 10 years (tax advisers, auditors, doctors).	End of services/assignment	Lawyers: Sec. 50 (2) BRAO; Patent attorneys: Sec. 44 (2) PAO, Tax advisers: Sec. 66 (1) StBerG; Auditors: Sec. 51b (2) WiPrO; Doctors: Sec. 10 MBO-Ä

	DOCUMENT DESCRIPTION	RETENTION PERIOD	START OF THE RETENTION PERIOD	RELEVANT LEGAL PROVISION
OTHER RECORDS				
70	Correspondence Registers of transfers into other EU countries Business correspondence (received correspondence and copies of sent correspondence)	See General Company Records and Tax and Accounting Records above		
71	The processing of personal data, if this differs from the process as notified to the DPA			
TYPE OF DOCUMENTS LIKELY TO BE ALSO SUBJECT TO A MAXIMUM RETENTION PERIOD BASED ON DATA PROTECTION RULES				
72	Personal data of employees in network systems, computer systems, communication equipment used by employees, access controls and other internal management/administration	No specific maximum retention period, general rules apply		
73	Login and logout data of visitors	No specific maximum retention period, general rules apply		
74	Camera recordings	Must be deleted without undue delay if no longer needed or individuals have interest in deletion		Sec. 6b (5) BDSG

	DOCUMENT DESCRIPTION	RETENTION PERIOD	START OF THE RETENTION PERIOD	RELEVANT LEGAL PROVISION
OVERVIEW RETENTION PERIODS ADDITIONAL RECORDS ¹				
GENETIC ENGINEERING				
75	Records of genetic engineering	Minimum 10 (security level 1) to 30 years (security levels 2-4 and in case of release)		Secs. 2, 4 Regulation regarding Records of Genetic Engineering (Gentechnik-Aufzeichnungsverordnung, GenTAufzV)

¹ These records are provided in addition to the records listed in the general schedule. This does not imply that the other jurisdictions do not have retention periods for those records.

Hengeler Mueller

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HENGELER MUELLER

Iron Mountain Deutschland GmbH

Hindenburgstr. 162
22297 Hamburg
Germany

T 0800 408 0000

www.ironmountain.de

Hengeler Mueller

Dirk Uwer / Vera Jungkind

Benrather Str. 18-20
D-40213 Düsseldorf
Germany

T +49 211 8304-0

E dirk.uwer@hengeler.com

E vera.jungkind@hengeler.com

www.hengeler.com