Introduction

This book surveys national laws and regulations that specify retention requirements for electronic records in 18 Western European countries where multi-national and transnational organizations have a significant presence. The book is intended for records managers, compliance officers, information governance specialists, attorneys, risk managers, and others who need to know how long records must be kept to satisfy legal and regulatory requirements in specific countries. The book covers commonly encountered records that are likely to be maintained, in whole or in part, in electronic form, although much of the retention guidance is applicable to paper records as well.

The book is organized as a series of country reports. Each report begins with an overview of the country’s legislative structure, followed by a description of legal resources that provide online access to the country’s recordkeeping laws and regulations. The remainder of each report surveys legal requirements that apply to specific categories of electronic records. The discussion is limited to electronic records of a general nature that are held by many organizations. Sector-specific records—customer records maintained by banks, investment account records maintained by broker-dealers, reports and working papers maintained by auditing firms, drug testing records maintained by pharmaceutical companies, and manufacturing records maintained by chemicals companies, for example—are out of scope.

Twelve of the countries discussed in this book (Denmark, Finland, France, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, the Netherlands, Norway, Portugal, and Sweden) are unitary states with a centralized national government that issues laws, regulations, ordinances, and other legal instruments that apply to the entire nation. The authority of subnational jurisdictions, where they exist, is limited to administrative matters that do not impact electronic recordkeeping. The remaining six countries (Austria, Belgium, Germany, Spain, Switzerland, and the United Kingdom) are federated states. The national government shares power with subnational jurisdictions, which may pass laws that specify recordkeeping requirements for matters that come within their authority. Such subnational legal requirements are outside the scope of this book. Coverage of federated states is limited to national legislation.

In each country discussed in this book, recordkeeping laws and regulations are online through one or more websites operated by government agencies or other organizations. Subject to slight variations, country reports identify laws and regulations by their titles in English accompanied by references to the pertinent passages and a summary of the stated retention requirements. Endnotes following each country chapter provide the vernacular titles and identifying numbers (where applicable) of cited items, along with links to the full text in the country’s official language. For multi-lingual nations, such as Belgium and Switzerland, the full text is cited in one of the official languages.
Links to English translations are provided where available, but such translations must be used with caution because they may not be based on the latest version of a law or regulation. There is no substitute for the vernacular version of a given law or regulation. It is the only authoritative source. Because the country reports summarize rather than reproduce laws and regulations, the full texts must be consulted for complete information.

Over time, a cited law or regulation may be amended, consolidated, or rescinded. Whenever possible, endnotes link to online sources that are automatically updated to incorporate the most recent changes to a law or regulation. Even then, a search should be conducted to confirm that retention decisions are based on the latest available information. Most of the websites discussed in country reports support searches by vernacular titles and/or identifying numbers, which are supplied in endnotes. With most countries, amended laws and regulations have the same titles and identifying numbers as their predecessors.

Of the 18 countries discussed in this book, 14 are European Union (EU) Member States. As such, they have adopted EU directives and regulations, which are cited in the country reports. As members of the European Economic Area (EEA), Iceland, Liechtenstein, and Norway have agreed to adopt EU legislation. This results in uniform retention practices for records related to specific topics—in particular, customs, workplace health and safety, and intellectual property—as well as for records that contain personally identifiable information. Switzerland is not a member of the European Union or the European Economic Area.

Throughout this book, recordkeeping laws and regulations are identified, categorized, and summarized without interpretation. The objective is to minimize the time-consuming legal research associated with the development of retention schedules. To identify the hundreds of laws and regulations cited in country reports, thousands of legal instruments were examined, but analysis and evaluation of their applicability to electronic records in the context of specific business operations are the reader’s responsibility. The citations to laws and regulations are intended as a starting point for an organization’s retention decisions, which may ultimately be based on non-legal considerations. Even then, however, laws and regulations define minimum retention periods that must be taken into account.

The following sections provide a topical overview of the records covered in individual country reports. It is expected that readers will consult reports for those countries where their organizations do business. Each country report is self-contained and is designed to be read on a stand-alone basis without reference to information presented in other country reports.

Corporate Documents

In all countries discussed in this book, commercial entities, including branches of foreign companies, must register with and submit certain information and documents to a government-operated commercial registry, which may be maintained by the national government or by a subnational jurisdiction. Certain documents must be submitted when a company is initially registered. Income statements, balance sheets, auditors’ reports, and other documents must be submitted annually or at other specified intervals. In most countries, documents can be submitted to commercial registries in electronic formats, and most of the registries maintain the documents electronically for online access. Commercial registries typically retain the submitted documents for some period of time after a registered company ceases to exist. Retention periods are not specified for the submitting entity’s copies, but many of them are subject to retention requirements for accounting records.

Some Western European countries specify retention requirements for a company’s organizational records. Examples, which vary from country to country, include minutes of a company’s general and special meetings, minutes of meetings of directors or other governing bodies, lists of directors, records of directors’ decisions and resolutions made without a meeting being held, registers of shareholders, registers of capital contributions,
registers of bondholders, annual reports, auditors’ reports, and other records. Some countries specify retention periods for these records. Others simply state that the records must be available for inspection at a company’s registered office for a designated period of time—3 years, for example—or with no time limit specified, the implication being that the records must be retained as long as the company exists.

Meeting minutes are likely to originate in electronic form, although copies may be printed for distribution to shareholders and other interested parties. Shareholder registers and similar lists may be maintained as databases. In some countries, laws and regulations specify that minutes, registers, and other corporate records can be retained in electronic format. More commonly, however, electronic recordkeeping is neither specified nor prohibited.

**Accounting Records**

All countries discussed in this book specify minimum retention requirements for accounting records that document an organization’s business transactions and disclose its financial position. Examples include accounting books and ledgers, charts of accounts, balance sheets, financial reports, auditors’ reports, records of goods purchased and sold, inventories, and supporting documentation, such as contracts, invoices, payment vouchers, receipts, and reconciliation documents. Retention periods—which may be specified in a commercial code, a civil code, an accounting act, bookkeeping regulations, and/or tax laws—range from 3 years to 10 years, depending on the country and the types of records involved. The retention period may begin on the date when the records were created or, more commonly, the end of the calendar year, end of the fiscal year, or conclusion of the accounting transaction to which the records relate. Some laws and regulations include correspondence related to accounting transactions, although some commentators interpret these laws and regulations broadly to encompass all business correspondence.

Accounting operations have been computerized for decades. General ledgers and subsidiary accounting ledgers and journals are typically created and maintained in electronic form by software developed specifically for that purpose. Supporting documentation, which is created or received in paper form, may be scanned for electronic storage. Most of the countries discussed in this book accept electronic accounting records to satisfy retention requirements subject to certain conditions, the most common being that the electronic records accurately preserve all content, that the records remain readable throughout their retention periods, and that printed copies can be created when requested by government officials. Computer equipment and software to support retrieval, display, and printing of electronic accounting records must be available as long as the records must be kept. Some countries require non-erasable storage media or technical procedures to ensure the integrity of electronic accounting records. A few countries require that specific accounting records, such as balance sheets and consolidated financial statements, be retained in their original formats. Some countries mandate retention of paper accounting records for a period of time following scanning.

Most Western European countries specify that accounting records must be kept at an organization’s registered headquarters where they will be readily available for examination by tax officials, auditors, shareholders, and other authorized persons. Exceptions may be made for electronic accounting records providing that they are accessible online when needed for audits or other purposes. Some countries limit the foreign locations where electronic accounting records can be stored. Some countries require the creation of backup copies to safeguard electronic accounting records.

**Tax Records**

Depending on the country, retention requirements for tax-related records will be specified in one of the following ways:
• Tax codes and regulations specify retention requirements for income tax returns and supporting documentation.
• Tax codes and regulations refer to retention requirements specified in commercial codes, bookkeeping laws, and other accounting legislation.
• Tax laws and regulations merely state that records related to assessment and collection of income taxes must be retained as long as they are subject to review by tax officials—that is, as long as an organization is subject to tax assessment and until all collection issues are resolved.

Whether specified in legislation or derived from the statute of limitations on tax assessments, typical retention periods for income tax records range from 5 to 10 years following the end of the year to which the records pertain or the end of the year in which a tax return was filed. Longer retention requirements apply where a taxpayer files a late return or fraud or negligence is suspected.

Value-added tax laws and regulations specify retention periods ranging from 5 to 10 years for invoices, vouchers, credit notes, debit notes, receipts, customs clearance documents, and other VAT-related records. Depending on the country, the retention period for records related to purchase or renovation of immovable property may be as long as 20 years.

In most of the countries discussed in this book, electronic records can satisfy tax-related retention requirements, subject to conditions specified by tax officials. Such conditions are similar to those specified above. The electronic records must accurately represent the information, they must be readable throughout their retention periods, they must be accessible without unreasonable delay, exact paper copies must be printed when requested by tax officials, and the integrity of the records must be guaranteed.

Most of the countries discussed in this book require storage of tax-related records at the taxpayer’s domestic location, but some countries allow electronic records to be retained abroad if tax officials can access them online.

**Customs Records**

EU Member States must comply with record retention requirements specified in the European Union’s customs legislation. Non-EU countries discussed in this report have national laws and regulations that specify retention periods for import and export authorizations, customs certificates, transport documents, customs declarations, customs clearances, and other customs records. Retention periods for customs records are relatively short. Only Norway and Iceland have retention requirements longer than 5 years.

Many customs records originate in electronic form, and paper documents may be scanned for electronic storage. EU legislation accepts electronic records to satisfy retention requirements. The same is true of national laws and regulations, subject to assurances of readability and integrity.

**Legal Records**

In all countries discussed in this book, civil codes and other laws specify statutes of limitations that may impact retention decisions for databases, e-mail, digital documents, digital photographs, and other electronic records related to contracts, agreements, payment transactions, product liability, personal injuries, employment relationships, and other legal matters. Limitation periods, also described as periods of prescription, vary from country to country and with the type of claims to which they pertain. Limitation periods are not equivalent to retention periods, and statutes of limitations are not retention mandates. Electronic records need not be kept for the entire time periods specified by statutes of limitations, but it is often prudent to do so.
E-mail

There are few examples of laws and regulations that deal specifically and exclusively with e-mail, one of the most widely encountered categories of electronic records, but e-mail messages may be subject to laws and regulations that specify retention requirements for correspondence related to accounting transactions, tax matters, or other business operations. E-mail messages may also be relevant for legal proceedings, in which case their retention periods will be influenced by statutes of limitations.

Employment Records

Countries covered by this report have laws and regulations that require employers to create and keep certain information about employees and prospective employees. Examples, which vary from country to country, include names, addresses, job titles, and duties of individual employees; the terms and conditions of employment contracts, agreements, and letters of appointment; wages, social security contributions, and other payments made to or for individual employees; time and attendance information for individual employees, including overtime and holiday hours worked as well as paid and unpaid leave taken; hours worked by truck drivers and other employees who transport passengers or goods; eligibility for occupational pension and other benefits; and identity verifications and work authorizations for alien employees.

Some of this information is maintained in electronic form by human resource information systems, payroll systems, or other database applications. Contracts, agreements, documents, resumes of job applicants, letters of reference, and other personnel documents may be scanned for electronic storage. Few laws and regulations state that electronic employment records can satisfy retention requirements, but none of the laws and regulations discussed in this book prohibits electronic recordkeeping for that purpose.

Workplace Health and Safety Records

Some Western European countries require employers to conduct and keep records for periodic medical examinations to prevent and control workplace illnesses and injuries and to assess employees’ fitness for specific tasks. Some laws and regulations discussed in this book have recordkeeping requirements for workplace accidents and for inspection and testing of potentially hazardous work equipment.

EU Member States must comply with European Union directives and regulations regarding hazardous substances in the workplace. Non-EU countries have adopted similar legislation. These laws and regulations specify multi-decade retention periods for records related to employees’ exposure to carcinogenic and mutagenic chemicals, harmful biological agents, and asbestos.

In a few countries discussed in this book, laws and regulations state that electronic records are acceptable to satisfy retention requirements related to workplace health and safety. More often, however, specific recordkeeping formats are neither prescribed nor prohibited.

Intellectual Property Records

All countries discussed in this book have intellectual property laws that define periods of protection for copyrights, trademarks, patents, and industrial designs. They do not address recordkeeping requirements. The minimum advisable retention periods for intellectual property records are based on periods of protection. The Western European countries discussed in this book conform to the Universal Copyright Convention, international trademark agreements, and the European Patent Convention. They all have the same periods of protection, which can span multiple decades. As with statutes of limitations that specify time periods for legal proceedings, there is no legal mandate to retain intellectual property
records until periods of protection expire and all issues related to infringement or other legal matters are resolved, but it is widely considered prudent to do so.

While intellectual property laws cited in this book neither approve nor prohibit specific recordkeeping formats, many intellectual property records likely originate and are saved in electronic formats. Others may be scanned for electronic storage.

**Surveillance Recordings**

Most of the countries discussed in this book have laws or regulations that specify short retention periods for surveillance images produced by closed circuit television (CCTV) cameras or other cameras installed in public spaces. In the absence of legislation that deals expressly with video surveillance, Western European countries typically invoke data protection laws to limit retention of video recordings that contain personally identifiable information. In a few countries, legislation limits retention of video recordings made in the workplace. Some countries prohibit such recordings.

**Records of Dissolved and Bankrupt Companies**

In some countries discussed in this book, laws or regulations delineate retention requirements for records of liquidated companies, including closed branches of foreign companies. In the absence of specific legislation, such records are subject to laws and regulations that apply to active companies. The accounting records of a liquidated company, for example, must be retained for time periods specified in commercial codes, civil codes, bookkeeping acts, tax laws, and other legislation. Provisions related to the acceptability of electronic records for active companies apply to the records of liquidated companies.

**Data Protection Requirements**

All countries discussed in this book have data protection laws that mandate the destruction of personally identifiable information when no longer needed for the purpose for which it was originally intended. This provision requires interpretation that can affect retention periods for employment records, payroll records, workplace health and safety records, shareholder records, tax records, e-mail, and other records that may contain personally identifiable information, including sector-specific customer and client records that are outside the scope of this book. While data protection considerations are important, they do not take precedence over other laws and regulations that specify minimum retention periods for specific records.

Data protection laws may impose additional record retention mandates. In some countries, for example, controllers of personally identifiable information must keep a record of processing activities, for a specified period of time.

**Transborder Record Storage**

Most of the countries discussed in this book have laws and regulations that restrict the geographic locations where electronic records can be stored. Some laws and regulations, for example, require domestic storage of accounting and tax records. Employment and workplace safety and health records must generally be kept at a worker’s place of employment. For organizations that do business in multiple Western European countries, these restrictions impact the centralization of recorded information on network servers located at a regional center or company headquarters. In-country storage requirements also limit the use of cloud-based information services.

In all of the countries discussed in this book, data protection laws prohibit the transfer of records containing personally identifiable information to countries that lack an adequate level of protection. Such records can be transferred within the European Economic Area, which consists of the EU Member States plus Iceland, Liechtenstein, and Norway.
Switzerland, which is not an EEA country, is on the European Union’s “white list” of non-EEA countries that offer acceptable data protection safeguards. Other countries on the list include Andorra, Argentina, Canada, the Faroe Islands, Guernsey, the Isle of Man, Israel, Jersey, New Zealand, and Uruguay. Most countries discussed in this book accept the white list, although some require approval by data protection authorities prior to sending personally identifiable information to those countries. Transfer of personally identifiable information to the United States, which does not have national data protection legislation, is typically limited to organizations that comply with the Safe Harbor framework developed by the U.S. Department of Commerce.

Endnotes

1 Multi-national organizations are headquartered in one country but have branches or subsidiaries in other countries. Trans-national organizations have distinct, autonomous operations in multiple countries. While multinational and transnational operations are closely associated with corporations and partnerships, many universities, scientific and medical research organizations, foundations, scholarly and professional associations, cultural institutions, philanthropic organizations, charities, religious groups, and other not-for-profit entities operate in more than one country.