

# The legal framework for web archiving: focussing on GDPR

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# Agenda

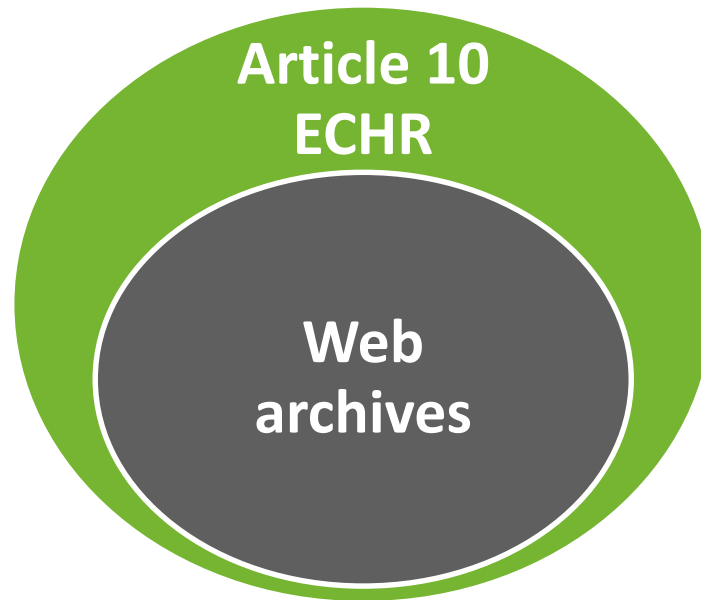
## 1. Legal context for web archiving

- a. Right to information
- b. Overview of legal issues raised by web archiving activities

## 2. The GDPR specific regime for archiving in the public interest

- a. Context
- b. Beneficiaries of specific regime for archiving in the public interest
- c. Derogations

# Legal context for web archiving



Web archives

Facilitate research and access to information for  
the public

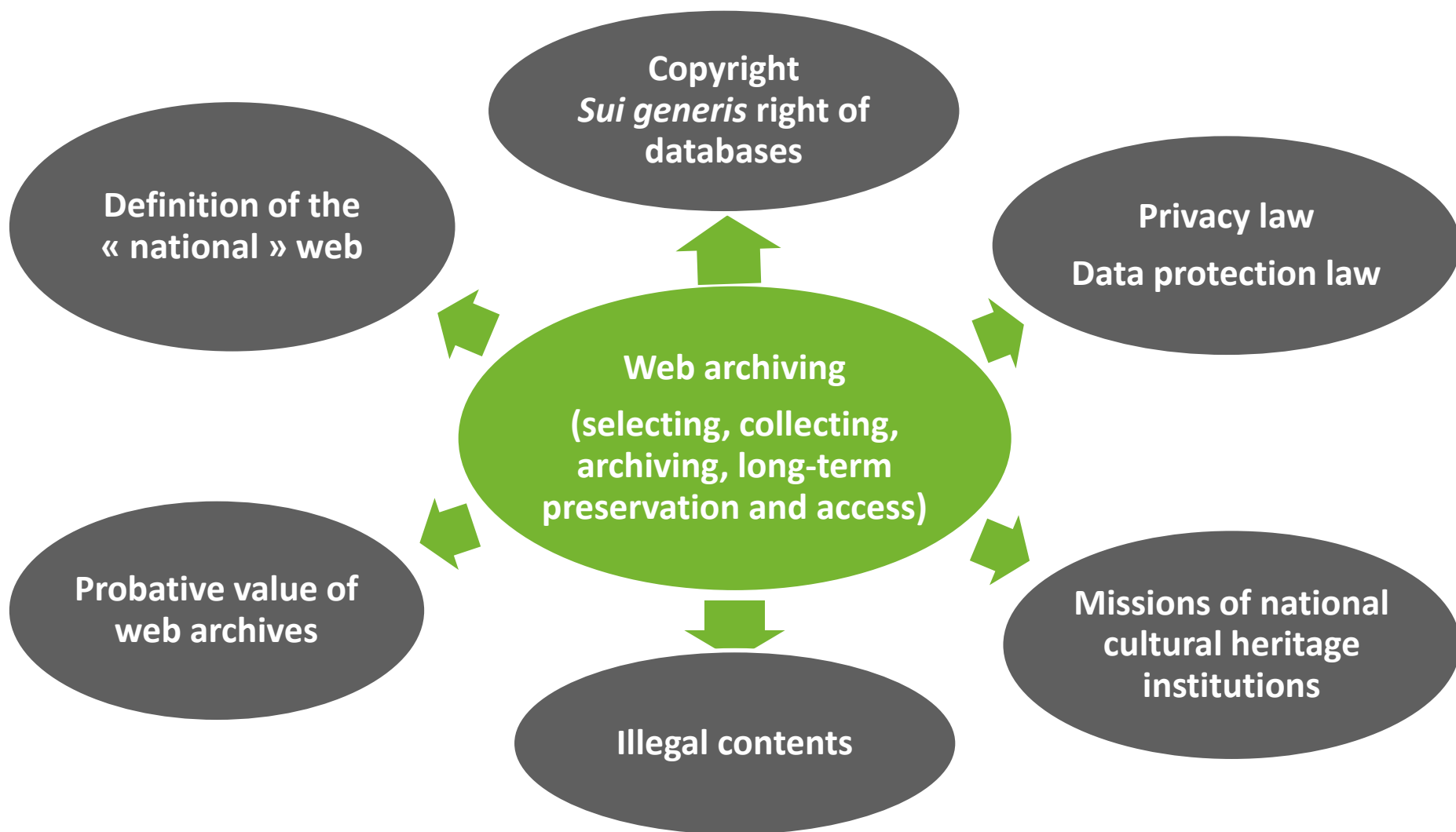
Right to information  
Heritage value

## Legal context for web archiving

**“The maintenance of Internet archives is a critical aspect [for enhancing public’s access to news and facilitating the dissemination of information] and the Court considers that such archives fall within the ambit of the protection afforded by Article 10”**

ECHR (4th section), case *Times Newspaper LTD v. the United Kingdom (Nos 1 and 2)*, 10 March 2009, §27.

# Legal context for web archiving



# The GDPR specific regime for archiving in the public interest

GDPR applies to **web archiving** as it implies **processing** of websites containing **personal data**...

**\*Personal data: « any information relating to an identified or identifiable natural person »**

e.g. in web archiving sector: name, first name and contacts (email, address, phone number) of natural person ; bibliographic data ; photo ; biography ; religious or philosophical beliefs ; cultural preferences ; quality of life ; ...

**\*Processing: « any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means »**

e.g. in web archiving sector: harvesting ; collecting ; capturing ; long-term preservation ; consultation ; communication ; access ; erasure ; ...

# The GDPR specific regime for archiving in the public interest

...but GDPR foresees a « **softened regime** » in terms of principles, obligations and rights **for data processing for archiving purposes in the public interest**

## Beneficiaries of this specific regime ?

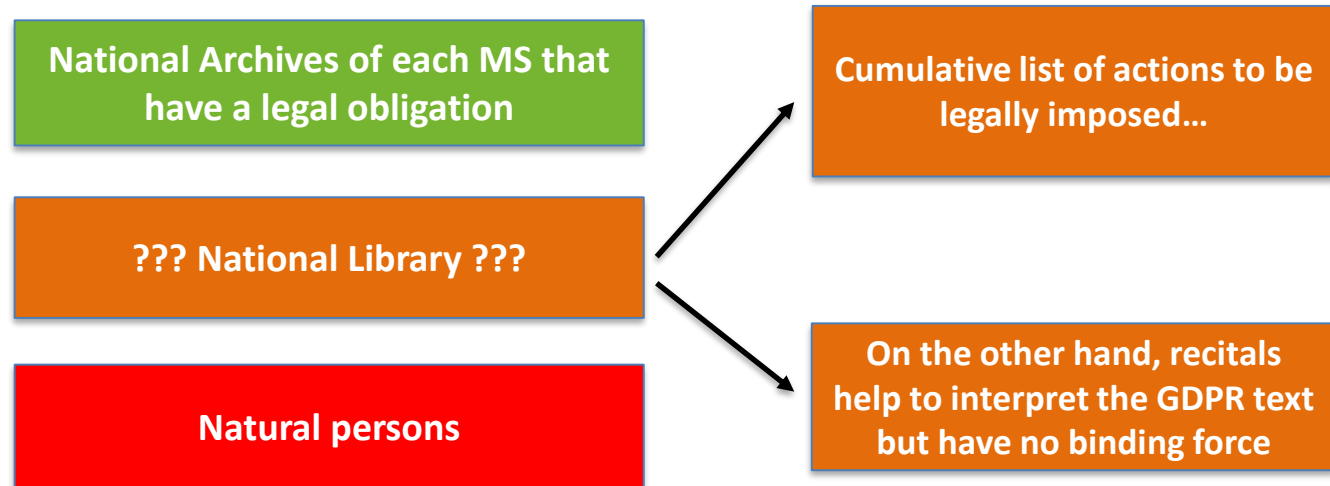
« **Public authorities or public or private bodies** that **hold records of public interest** should be services which, pursuant to Union or Member State law, **have a legal obligation to acquire, preserve, appraise, arrange, describe, communicate, promote, disseminate and provide access to records of enduring value for general public interest** »

(recital n° 158)

# The GDPR specific regime for archiving in the public interest

So, in practice, **who can really benefit** from this derogatory regime ?

Not a lot of data controllers... :

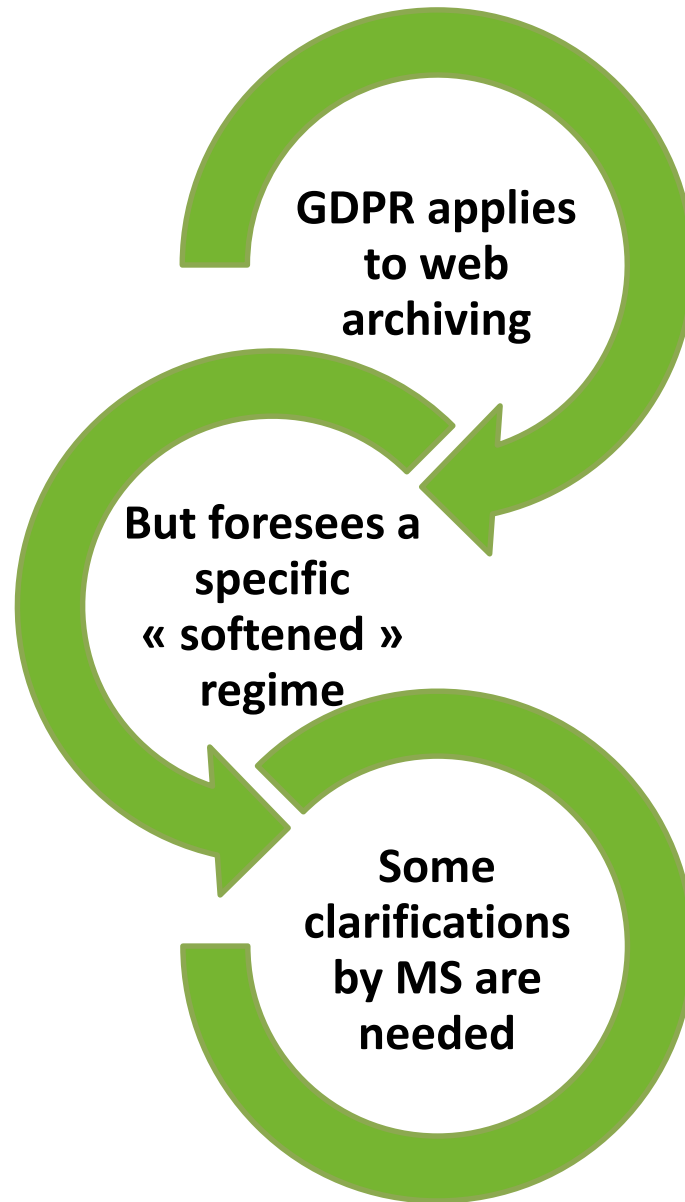


But MS can define this concept in national law and designate services covered by this concept of « data processing for archiving in the public interest »



Type of derogation	Details	Conditions	Level
<b>Further processing</b>	Compatible with the initial purposes → art. 5, §1, b)	-Adoption of appropriate safeguards for rights and freedoms of data subjects (technical and organisational measures)	GDPR
<b>Storage limitation</b>	Storage for longer periods OK → art. 5, §1, e)		
<b>Prohibition of processing of special categories of personal data</b>	Data controller can process special categories of personal data if necessary for this specific purpose → art. 9, §2, j)		Union law or MS national law
<b>Information to be provided where personal data have not been obtained from the data subject</b>	Not applicable → art. 14, §5, b)	-Adoption of appropriate safeguards for rights and freedoms of data subjects (technical and organisational measures) -If provide this information proves impossible or would involve a disproportionate effort -Implementation of appropriate measures such as making the information publicly available	GDPR
<b>Right to erasure</b>	Not applicable → art. 17, §3, d)	-Adoption of appropriate safeguards for rights and freedoms of data subjects (technical and organisational measures) -The exercise of such right is likely to render impossible or seriously impair the achievement of the specific purposes	
<b>Rights of access, rectification, restriction and object</b>	Not applicable → art. 89, §§2 et 3	Adoption of appropriate safeguards for rights and freedoms of data subjects (technical and organisational measures) -If such derogation is necessary for the fulfilment of the specific purpose -The exercise of such right is likely to render impossible or seriously impair the achievement of the specific purposes -Implementation of potential specific procedures for that the data subject is able to exercise her/his right if appropriate	Union law or MS national law
<b>Right to data portability</b>	Not applicable → art. 89, §3		
<b>Notification obligation regarding rectification, erasure or restriction</b>			

# Conclusion



Thanks !

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