

The legal framework for web archiving: focussing on GDPR

Alejandra MICHEL

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Agenda

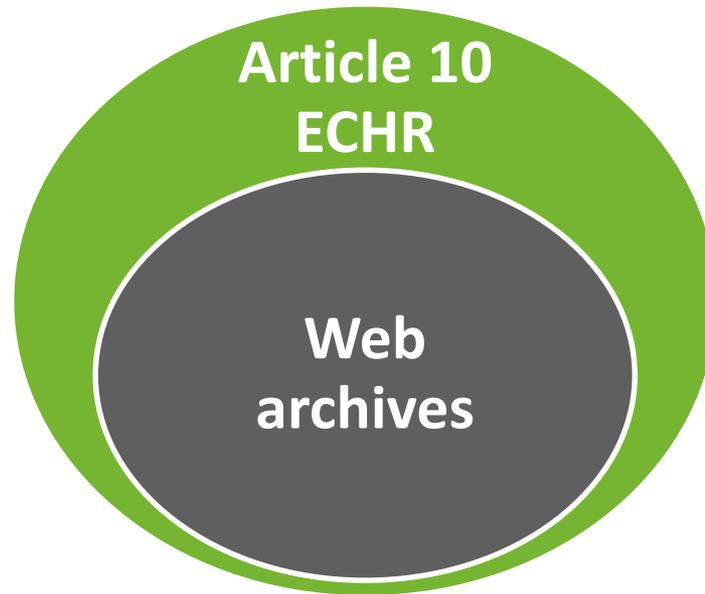
1. Legal context for web archiving

- 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

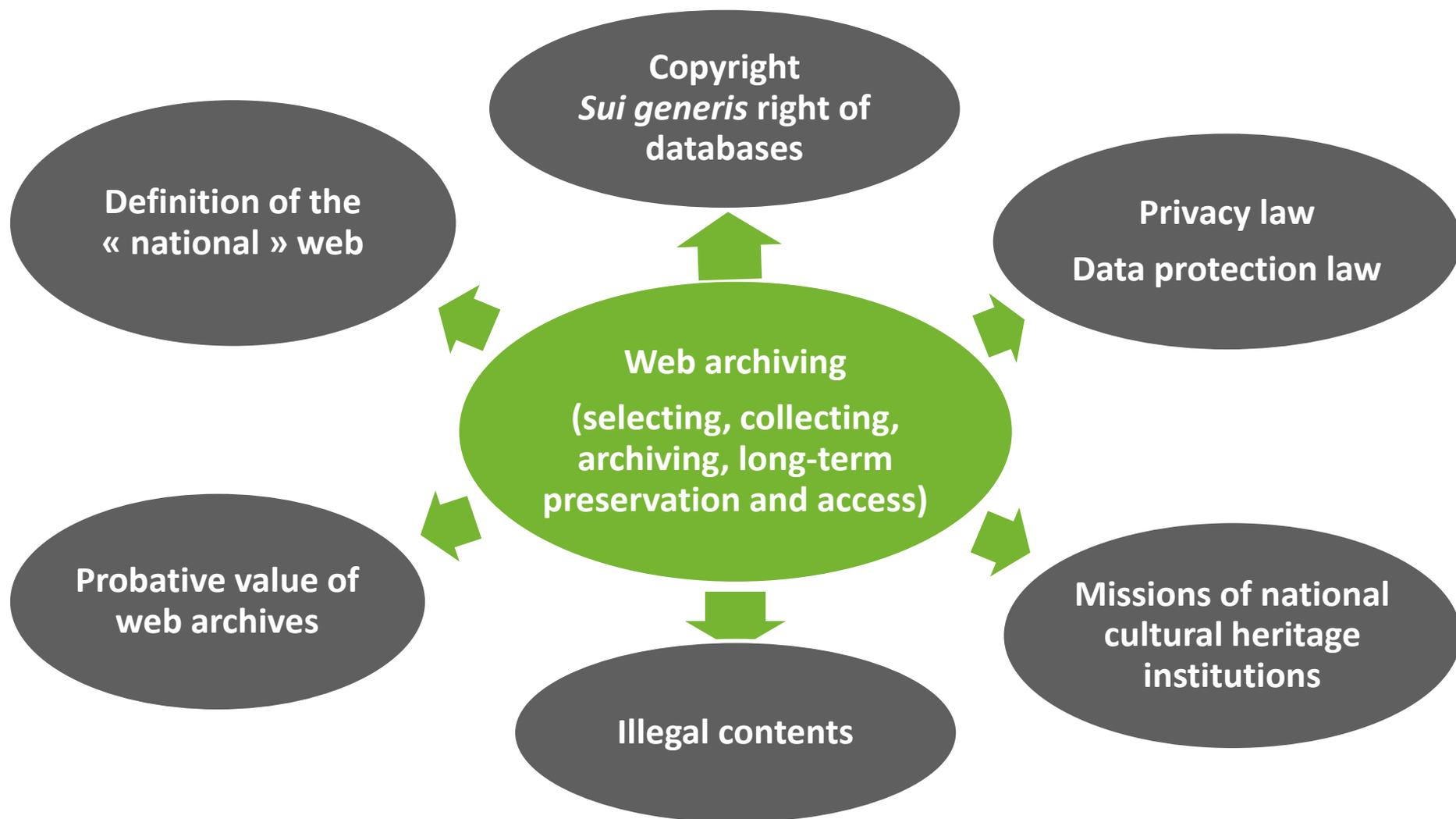
Right to information
Heritage value

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 ?

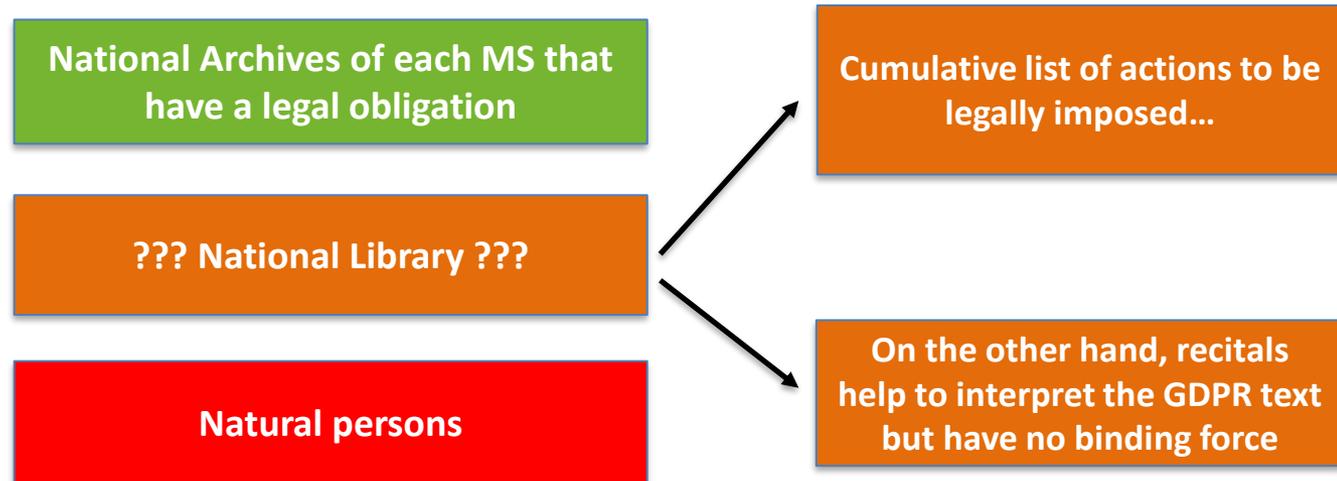
« **Public authorities or public or private bodies** that **hold records of public interest** should be services which, pursuant to Union or Member State law, **have a legal obligation to acquire, preserve, appraise, arrange, describe, communicate, promote, disseminate and provide access to records of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

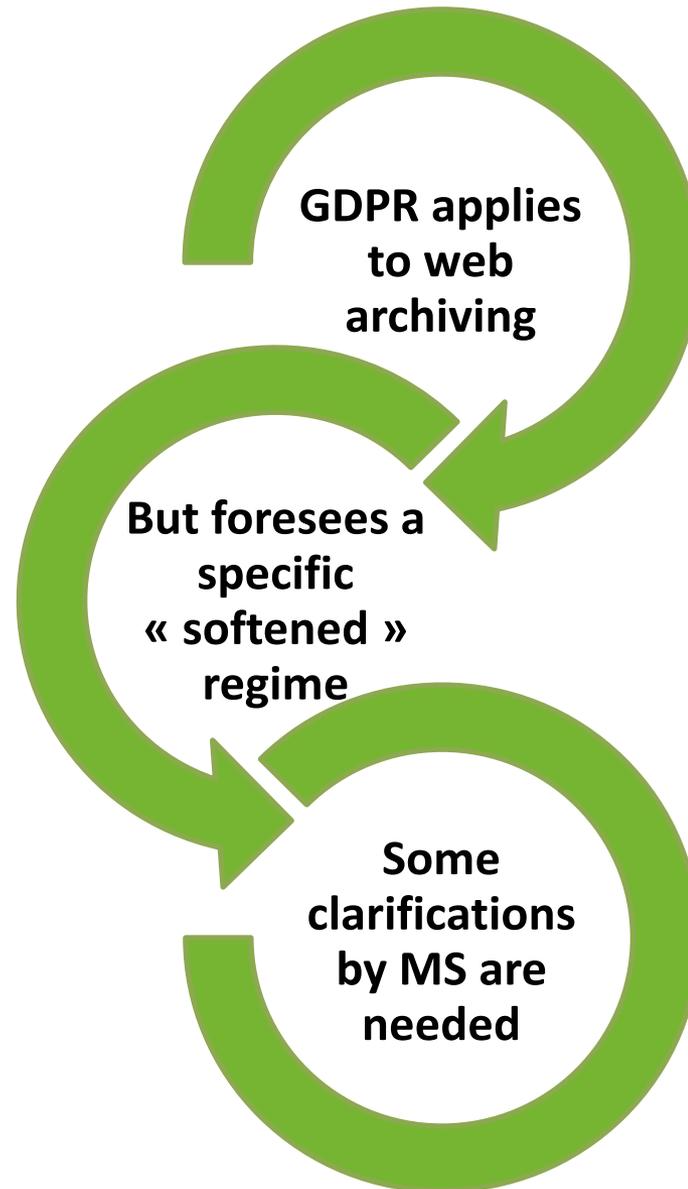
Not a lot of data controllers... :



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
Further processing	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
Storage limitation	Storage for longer periods OK → art. 5, §1, e)		
Prohibition of processing of special categories of personal data	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
Information to be provided where personal data have not been obtained from the data subject	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
Right to erasure	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	
Rights of access, rectification, restriction and object	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
Right to data portability	Not applicable → art. 89, §3		
Notification obligation regarding rectification, erasure or restriction			

Conclusion



Thanks !

Alejandra MICHEL

Legal researcher at CRIDS

NaDI Member

University of Namur, Belgium
(alejandra.michel@unamur.be)