

DATA PROTECTION & ARCHIVES

Dr Rónán Kennedy
NUI Galway School of Law



Whitaker
Institute



NUI Galway
OÉ Gaillimh

DATA PROTECTION PRINCIPLES (GDPR ARTICLE 5)

- lawfulness, fairness and transparency
- purpose limitation
- data minimisation
- accuracy
- storage limitation
- integrity and confidentiality
- accountability

LAWFUL BASIS FOR PROCESSING (GDPR ARTICLE 6)

- For archives: *Article 6 (1) (e)*:
'necessary for the performance of a task carried out in the public interest'
- Depends on mission of institution,
not public or private ownership

SAFEGUARDS AND DEROGATIONS

- *Article 89.1.* Processing for *archiving purposes in the public interest, scientific or historical research purposes or statistical purposes*, shall be subject to **appropriate safeguards**, in accordance with this Regulation, for the **rights and freedoms of the data subject**. Those safeguards shall ensure that **technical and organisational measures** are in place in particular in order to ensure respect for the principle of **data minimisation**. Those measures may include **pseudonymisation** provided that those purposes can be fulfilled in that manner. Where those purposes can be fulfilled by further processing which does not permit or no longer permits the identification of data subjects, those purposes shall be fulfilled in that manner.

DATA SUBJECT RIGHTS

- Transparency (*Art 12*)
- Information (*Art 13*)
- Access (*Art 15*)
- Rectification, Erasure, and Restriction (*Arts 16 to 19*)
- Data Portability (*Art 20*)
- Objection (*Art 21*)

PROCESSING OF SPECIAL CATEGORIES OF PERSONAL DATA (ARTICLE 9)

- Generally prohibited - exceptions include:
 - where ‘processing is necessary for archiving purposes in the public interest’
 - for historical research

PROCESSING OF PERSONAL DATA RELATING TO CRIMINAL CONVICTIONS AND OFFENCES

- ‘under the control of official authority or when the processing is authorised by Union or Member State law’
- must be ‘appropriate safeguards for the rights and freedoms of data subjects’

OTHER ISSUES

- *Article 25:*
 - Data Protection by Design
 - Data Protection by Default
- *Articles 32–34:*
 - Security
- *Articles 35–36:*
 - Data Protection Impact Assessment (for high risk processing)
 - Prior Consultation
- *Article 30:* Record of Processing

MORE INFORMATION

- European Archives Group, 'Guidance on Data Protection for Archive Services' (2018)

https://ec.europa.eu/info/about-european-commission/service-standards-and-principles/transparency/freedom-information/access-documents/information-and-document-management/archival-policy/european-archives-group/guidance-data-protection-archive-services_en