

# Challenges for Long-Term Data Preservation & Use Under the GDPR

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# Outline of Talk

1. Overview of General Data Protection Regulation
2. Derogations for Research and Archiving
3. Problems raised by these Provisions
4. General and Free Speech Derogations
5. Conclusions

# General DP Regulation: Introduction

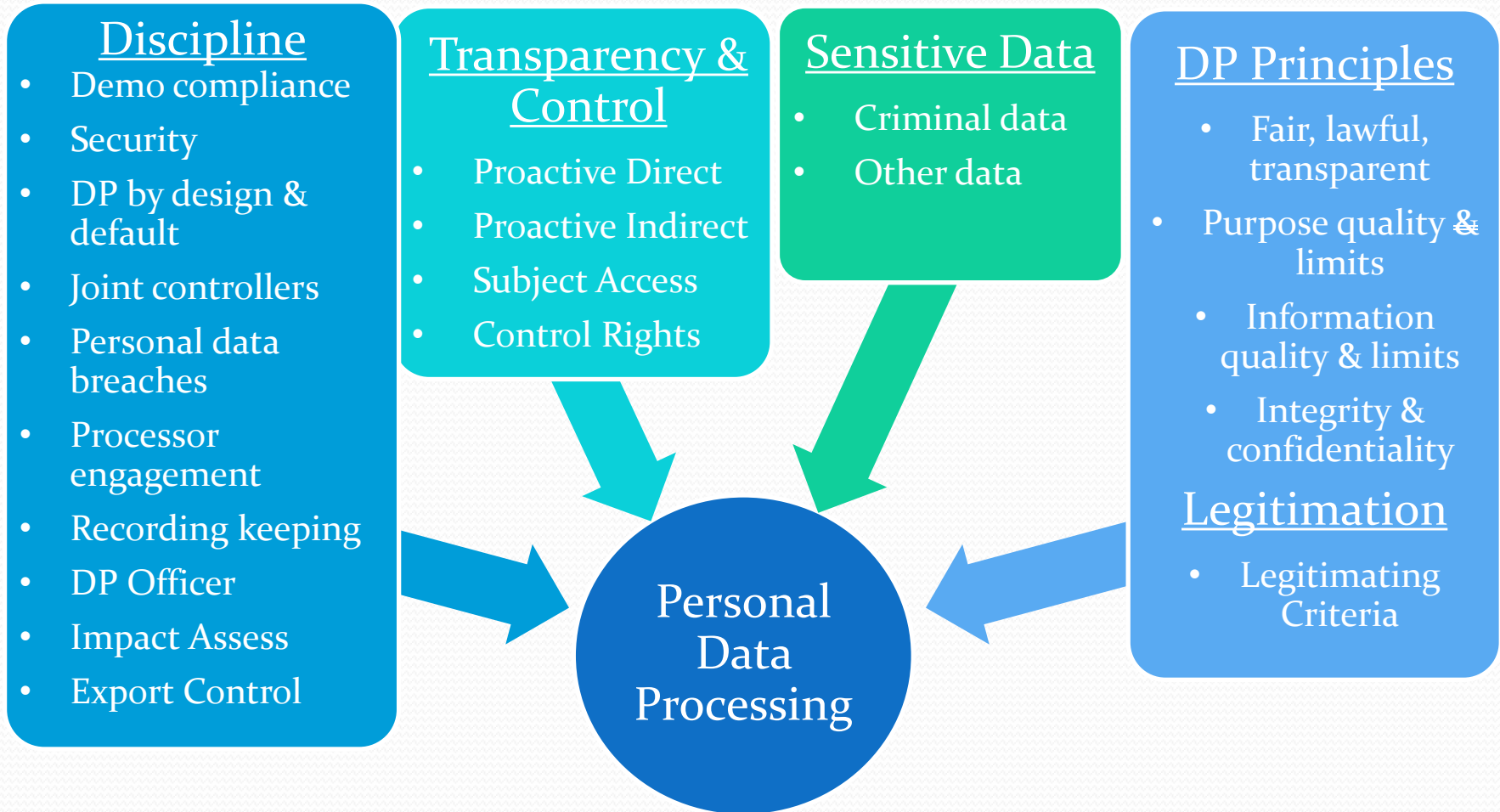
**New pan-EU regime** covering regulating:

- **Processing of**
- **Personal Information**

with a view to

- **Protecting fundamental rights and freedoms &**
- **Ensuring free flow** of data across the EU

# General DP Regulation: Substance



# Research & Archiving Derogation: Scope

## Discipline

- Demo compliance
- Security
- DP by design & default
- Joint controllers
- Personal data breaches
- Processor engagement
- Recording keeping
- DP Officer
- Impact Assess
- Export Control

## Transparency & Control

- Proactive Direct
- Proactive Indirect
- Subject Access
- Control Rights
  - RtbF
  - Restriction
  - Notification
  - Portability
  - Objection

## Sensitive Data

- Criminal data
- Other data

## DP Principles

- Fair, lawful, transparent
  - Purpose quality & limits
  - Information quality & limits incl time
  - Integrity & confidentiality
- ## Legitimation
- Legitimizing Criteria

Personal  
Data  
Processing

# Research & Archiving Derog: Gen. Conditions

## Article 83 (1)

- Archiving must be “*in the public interest*”
- Research must be “*scientific*” or “*historical*”
- Must be “*appropriate safeguards*” including “*technical and organisation measures*”
- These must in particular ensure respect for “*data minimisation*”:

*“Whenever these purposes can be fulfilled by further processing which does not permit or not any longer permit the identification of data subjects these purposes shall be fulfilled in this manner.”*

# Transparency & Control, Sensitive Data Conditions

- **Transparency and Control:**

- Union or Member State Law
- Must otherwise “*render impossible or seriously impair the achievement of purposes*”.
- (Must be necessary for the fulfilment of these purposes)

- **Sensitive Data:**

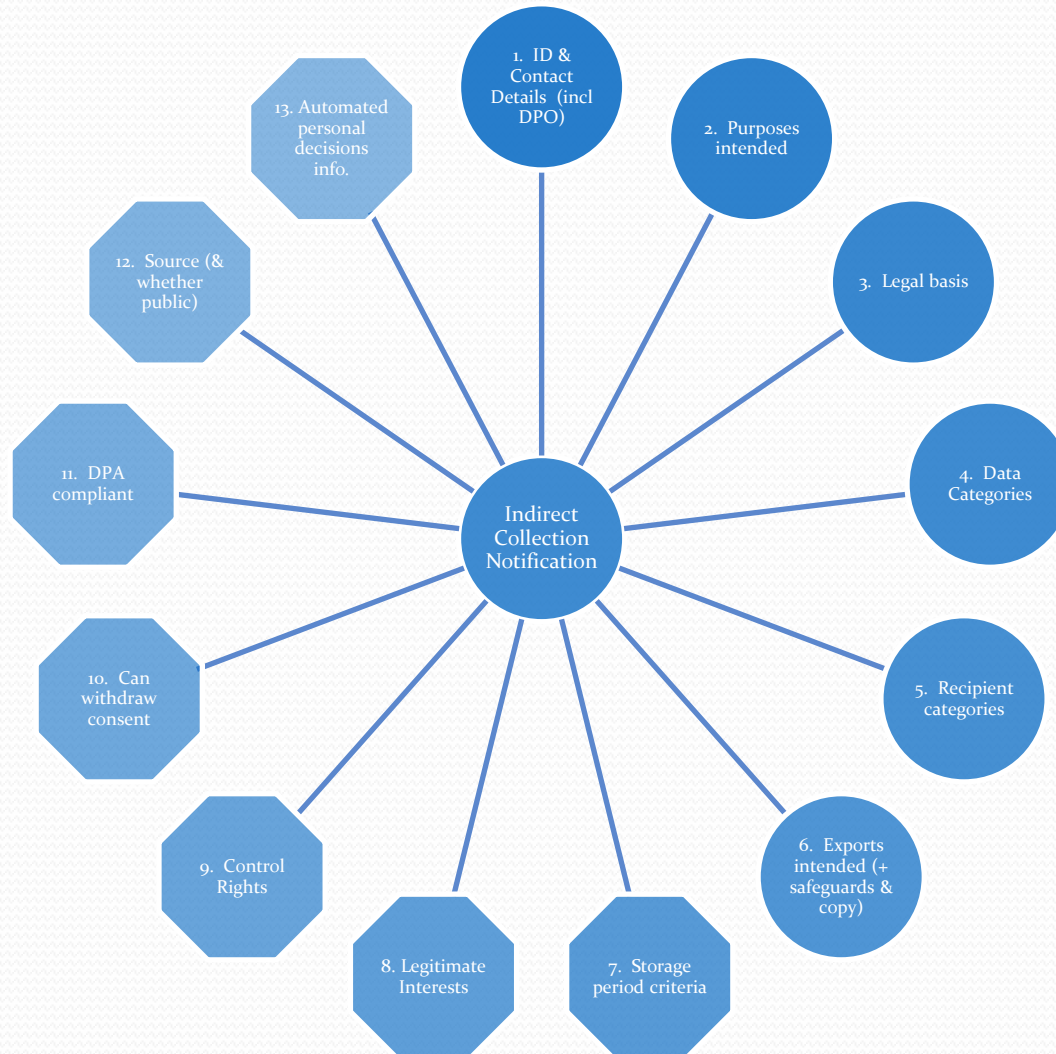
- Union or Member State Law
- Proportionate and respect essence of DP right
- Provide for suitable and specific measures

# Proactive Direct Transparency (A. 14)





# Proactive Indirect Transparency (A. 15)



# Proactive Specifications & Exemptions

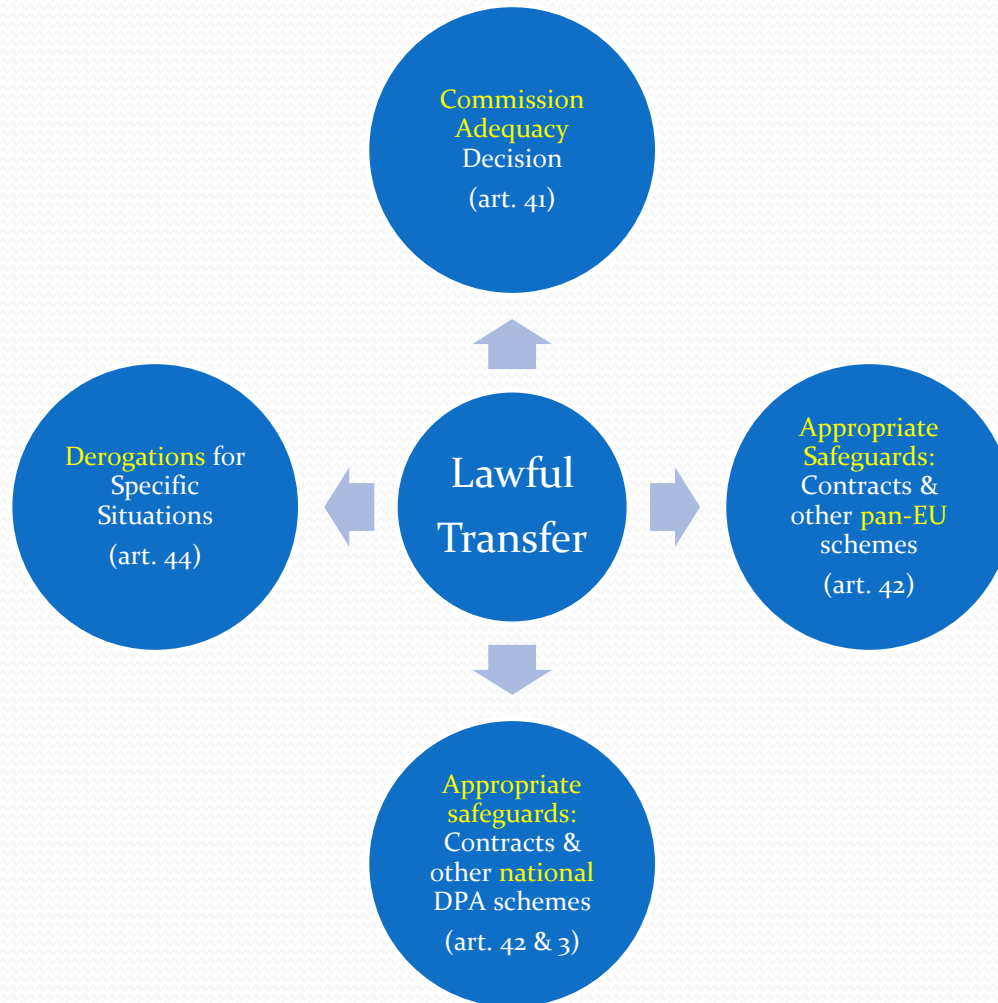
- **General Limits:**

- **Direct:** If already have information
- **Indirect:** As above + “*impossible*” or “*disproportionate effort*” but only if “*appropriate [protection] measures*” including “*making the information publicly available*”.

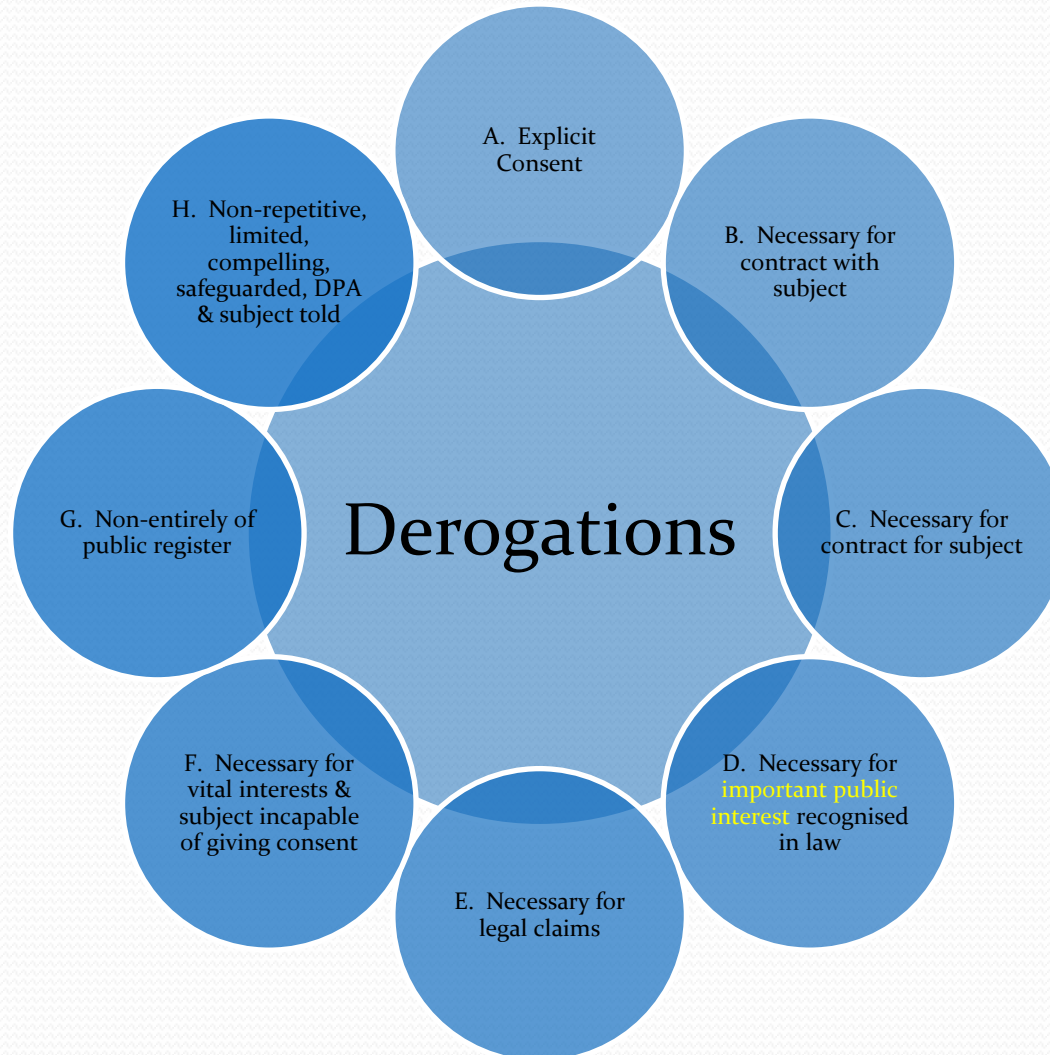
- **Change of purpose?**

- Stated that must give new notification of this

# Extra-EU Transfers (Ch. V): Vires



# Derogations for Specific Situations (A. 44)



# Other Derogations

- **General Derogations (A. 21)**

- Available where needed for important objectives of general public interests, protection of the rights and freedoms of others etc.
- Could apply to transparency rules but not data transfer

- **Free Speech Derogations (A. 80 (2))**

- Available for journalism as well as academic, artistic and literary expression.
- Could apply more broadly to secure balanced outcome.

# Conclusions

1. General provisions of **GPDR** pose a **severe legal threat** to long-term **data preservation and use**.
2. Even if used to the full the **research and archiving derogations** alone are **far from sufficient** to address all concerns.
3. Use of **general derogations** may address some of the difficulties.
4. **Users** of archives may fall within protections for **journalism, academic and/or literary expression**.