

GDPR and archive services Survey

Context

The GDPR has been in force for over a year now, so we can investigate and draw the first conclusions about its impact on the archives sector. By raising some specific questions, this survey aims to find out which aspects of the GDPR and national implementation law are creating the most problems for archives services. The national/federal archives serve as a first case and the primary focus is on the derogations regarding processing for archiving purposes in the public interest. The goal is to map out common difficulties and get an idea in which way to look for solutions, and find out about the future role to be played by EAG.

Coordinator of this survey is the Belgian State archives. If you should need clarification, please contact DPO Ellen Van Keer (dpo@arch.be). The replies to the survey should be sent also to her, before 6 September 2019.

Your participation in this survey is much appreciated. It should take max. 30 minutes of your time.

Information on the respondent:

Name:

Organisation:

Position/role:

Contact details:

Available for further information: Yes – No

FYI: the [GDPR](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1489068264005&uri=CELEX:32016R0679) can be found in all language versions on <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1489068264005&uri=CELEX:32016R0679>

When you are asked to choose, please mark the answer of your choice in **bold** or a **colour**. In tables please add a 'X' in the columns/rows applicable.

Please provide the link(s) to the national/federal law and other legislation implementing the GDPR in your country:

...

I. Impact of the GDPR

- Has the GDPR entailed a big change for the national/federal archives?

Yes – Partly – No – I don't know (yet)

- Please specify the level of impact/change in the following areas:

	Very low	Low	Mod- erate	High	Very High
Record appraisal and selection					
Document retention and destruction					
Archival description					
Providing access to archives					
(Digital) Preservation					
Management of archival collections					
Operational management records					
Research within the organisation					
Services to the public					

Other...					
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3. In which area(s) do you experience the most problems? **Please elaborate:**

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II. “archiving in the public interest”

4. Is the concept of ‘archiving purposes in the public interest’ as introduced by the GDPR adequate for the national/federal archives to achieve its objectives?

Yes – No – I don’t know (yet)

Please elaborate: ...

5. Has the concept of ‘archiving purposes in the public interest’ received further specification on the national level?

Yes – No

If yes:

- indicate the source(s):

	the concept is defined in national/federal law
	the Data Protection Authority (DPA) has provided interpretation of this notion
	the notion has been detailed in a professional code for the archival sector
	other:

- please provide a link and summarize the definition:

...

- Do these specifications meet the needs and support the fulfilment of the archiving purposes of the national/federal archives?

Yes – Partly – No – I don’t know (yet)

Please elaborate: ...

6. In your country, which activities are covered by the ‘archiving purposes in the public interest’:

Within the national/federal archives	
	Record appraisal and selection of records
	Document retention and destruction
	Archival description
	Providing access to archives
	(Digital) Preservation
	Management of archival collections
	Services to the public
	Other:
Within the public administrations/records creators	
	Keeping records selected for permanent preservation
	Other:

7. In your country, which type(s) of archive services can process for ‘archiving purposes in the public interest’?

	Public archive services
	Private archive services with public accreditation or funding
	Private archive services without public accreditation or funding
	Other:

8. In your country, which **lawful bases** (art. 6 GDPR) can be applicable to processing for ‘archiving purposes in the public interest’? (please specify ‘other’ and ‘comments’)

Lawful basis (art. 6 GDPR)	Public administrations	Public archive services	Private/ with accreditation	Private/ without accreditation	Other
Consent					
Contract					
Legal obligation					
Vital interest					
Public interest					
Legitimate interest					
I don't know					
Comments					

III. Derogations for archiving purposes in the public interest

9. Are specific derogations relating to processing for archiving purposes in the public interest implemented in member state law (art. 89.3 GDPR)?

Yes – No

If yes:

- For which articles?

art. 15	art. 16	art. 18	art. 19	art. 20	art. 21

- Does your national legislation introduce new specific obligations for the archives in order to safeguard the fundamental rights and the interests of the data subject in relation with these derogations?

Yes – No

Please elaborate: ...

- Are the legal obligations relating to these derogations adequate to fulfil the archiving purposes and practices of the national/federal archives?

Yes – In part – No – I don't know (yet)

Please elaborate: ...

- Have the national/federal archives been involved in fixing the obligations relating to the derogations for archiving purposes in the public interest?

Yes – No

If no derogations have been implemented, how do archive services conciliate compliance with GDPR and fulfilment of their archival duties ?

...

IV. Specific actions undertaken by the archives services

10. Does the national/federal archives engage with public administrations/record creators to ensure the uptake of the derogations for archiving purposes in the public interest and enforce the continued application of archival law (i.e. ensure the integrity and transfer of records selected for permanent preservation to the archives)?

Yes – No – Not applicable

If yes, why?

	We have an advisory role in matters of (archival) legislation
	We get many questions on the topic from (DPO's at) record creators

	We have indications / are concerned that records are being prematurely destroyed on data protection grounds
	Other:

If yes, how?

	Sending circulars, instructions...
	Having face-to-face contacts, organising workshops...
	Setting up a helpdesk for records creators (online or by phone)
	Creating informational webpages, brochures...
	Networking with the DPO's active in public administrations
	Other:

11. Are specific measures being taken in relation to the retention and transfer of records from public administrations/record creators to the national/federal archives?

Yes – No – I don't know

If yes, which?

	Revision / modification of retention periods and schedules
	Reflecting together with the records creators on 'archiving by design'
	Contractual agreements / clauses with record creators
	Other:

12. Are special measures being taken in relation to providing access to information to the public?

Yes – No – Not applicable

If yes, which?

	Taking archival records / finding aids with possibly harmful information offline
	Producing pseudonymised (versions of) finding aids for public consultation
	Masking personal data in copies of archival records
	Supervised consultation / only manual reproduction of special categories of data
	Obligation for researchers to sign a research declaration
	Requesting a death certificate or proof of consent of data subjects
	Other:

V. Interaction with other provisions, policies and legislation

13. Have your national lawmakers made provisions allowed by the GDPR besides article 89 which have an impact on archival practice?

Yes – No – I don't know

If yes, which?

	Art. 9 GDPR regarding sensitive data
	Art. 10 GDPR regarding criminal data
	Recital 27 GDPR regarding data of deceased persons
	Other:

14. Have the GDPR and/or national data protection laws impacted the archives' open data policies and practices?

Yes – No – I don't know (yet)

Please elaborate: ...

15. In your country, what legal provisions are applicable for the (further) processing of archival documents with personal data?

Applicable legislation	Target group	Data subject	Scientific or historical research					Journalists	General public	Comments
			Independent researcher	Universities	Non-profit associations	Private companies	Genealogical researcher			
GDPR										
National law implementing derogations provided for in GDPR, with regard to	archiving purposes (art. 89.3)									
	scientific / historical research (art. 89.2)									
	academic expression (art. 85)									
	other									
Archival Law										
Freedom of Information Act										
Other										
Not provided for by law										

16. In your country, is legislation in other domains being modified in order to be in harmony with the GDPR

Yes – No – I don't know

Please elaborate: ...

VI. Expertise development and network support

17. On a managements level, are (new) issues related to the implementation of the GDPR considered a priority at the national/federal archives?

Yes – No

18. Did the national/federal archives designate a data protection officer (art. 37-39 GDPR)?

If yes,

- This is a full time role: Yes – No
- This person's primary background is in:
ICT – Law – Archival Studies – Other:

If no, national/federal archives

	Have the support of a DPO at the ministry or hierarchical structure they are depending of
	Works with an independent DPO, according to the needs
	Shares a DPO with other archive services in the country
	Shares a DPO with other heritage institutions in the same jurisdiction/region

	Other:
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19. With regard to the archives sector in your country, are there:

	Yes/ No	Type of collaboration/ contacts and frequency	Nature of participants (archivists, DPOs, legal advisers...)	Content/output/results
Contacts/consultation within the archives sector relating to the GDPR				
Initiatives to develop a national code of conduct (art. 40-41 GDPR) for archives				
Initiatives to develop certification mechanisms (art. 42 GDPR)				
Contacts/consultation between the archives sector and the DPA (art. 51-59 GDPR)				
Other GDPR related initiatives				

20. What could be the future role/projects of EAG with regard to issues regarding data protection legislation? Please add ideas and suggestions

Projects	YES	NO
Developing a transnational code of conduct for archive services		
Supporting a European network of archive DPOs		
Supporting harmonisation of the implementation of the derogations for archiving in the public in EU and national law		
Creating an online tool/forum/wiki for FAQ and exchange of best practices with regard to data protection		
Stimulate cooperation with the European Data Protection Board		
Follow-up of 'archiving by design' issues and practices		
...		

Have you suggestions, comments, remarks or would you like to mention other key issues?

Please send your reply to the survey to dpo@arch.be, before 6 September 2019.

Thanks for your collaboration!