

GDPR is Principles Based

- Not proscriptive (you may/you may not)
- Not possible to know with certainty in advance how critical balancing test will be applied – and application may differ from Member State to Member State

GDPR “Lawful Basis”

- Personal Data processing must have a “lawful basis”
- Relevant “lawful basis”
 - Consent of data subject
 - Public interest
 - To further a legitimate purpose consistent with privacy interests of data subject
- Even where processing is lawful, adequate safeguards must be in place; data minimization principle must be respected

Lawful Basis – Proportionality Test

- Personal Data processing has a lawful basis if the processing is:
 - Undertaken with real – and revocable – consent
 - Necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller
 - Necessary to achieve the legitimate interests of the data processor – except where overridden by the privacy interests of the data subject

Legitimate Interest Test

- FIRST, start with personal data elements collected to run DNS
- SECOND, list who, what, why – context and detail are critical
- THIRD, balance against privacy interests of data subject
- FINALLY, identify appropriate safeguards