# Agenda Item 3: General Data Protection Regulation (GDPR Overview)

## Issues

This is an initial overview session on the policy implications of ICANN compliance with GDPR. It is intended as an opportunity for the GAC to review the current situation and consider how best to pursue its objectives during ICANN 62.

## GAC Action Required

The GAC should consider prioritising:

1. GAC responsibilities and protocols for resolving outstanding issues in relation to GDPR and WHOIS, including:
2. Agreeing that securing good public policy outcomes in this area is a matter for the entire GAC to consider, as supported, to the extent helpful, by the GAC Public Safety Working Group (PSWG).
3. Confirming the coordination group of GAC members to facilitate GAC input to any GNSO Policy Development Process that may be initiated, and possibly to other relevant community processes: current volunteers are India, United States, the European Commission and the Co-Chairs of the PSWG.
4. Confining GAC advice to the Board in this matter to those areas where Board action is actually possible; and complementing any advice with active engagement in other processes, including any GNSO PDP.
5. Agreeing that the substantive policy objectives for the GAC at this time are the following items of outstanding GAC advice in the [San Juan Communique](https://gac.icann.org/contentMigrated/icann61-gac-communique) (Note: The Board has [deferred](https://www.icann.org/resources/board-material/resolutions-2018-05-17-en)[[1]](#footnote-1) a response to these but included the substance of them in the *Temporary Specification Annex: Important Issues for Further Community Action*):
6. Distinguishing between legal and natural persons, allowing for public access to WHOIS data of legal entities which are not in the remit of the GDPR.
7. Ensuring continued access to WHOIS data, including non-public data, for users with a legitimate purpose, until the time when the interim WHOIS model is fully operational, on a mandatory basis for all contracted parties.
8. Ensuring that limitations in terms of query volume envisaged under an accreditation program balance realistic investigatory cross-referencing needs.
9. Ensuring confidentiality of WHOIS queries by law enforcement agencies.
10. Engagement by GAC and PSWG members in relevant ICANN 62 sessions, including the Cross-Community Sessions on GDPR Compliance, Access to WHOIS and Accreditation and the GAC’s meeting with the ICANN Board, to argue for and get community support for the above objectives.

## Current Position

This is a summary of a complex set of issues. More detailed information is available on the [GAC website](https://gac.icann.org/activity/whois-compliance-with-gdpr-reference) and at the links provided below.

The European General Data Protection Regulation (GDPR) came into effect on 25 May 2018. The ICANN Board has adopted a [Temporary Specification](https://www.icann.org/resources/pages/gtld-registration-data-specs-en/#annex) for gTLD (generic top level domain) Registration Data (Implementation of GDPR Interim Compliance Model). This allows ICANN and gTLD registries and registrars to comply with existing ICANN contractual requirements and policies in light of the GDPR, particularly with regard to collecting and making available data on gTLD registrants.

The Temporary Specification provides for continued collection of Registration Data (still widely known as WHOIS) but restricts access to personal data to those who demonstrate a legitimate purpose for obtaining such data. This restricted access is known as a tiered or layered system and will be implemented by new arrangements being put in place by contracted parties. Such new systems are likely to include a system to accredit and credential users with a legitimate purpose.

The GAC, supported by its Public Safety Working Group, has argued on public policy grounds for continued access to WHOIS data for legitimate purposes by law enforcement agencies, consumers and others. This has included advice to the ICANN Board, and engagement, including public comment, with several community processes.

The Temporary Specification applies for a maximum of 12 months from 25 May 2018. During that time:

* The Board will renew the Specification every 90 days, and may make adjustments based on, amongst other things, GAC advice.
* A GNSO [Expedited Policy Development Process](https://gnso.icann.org/sites/default/files/file/field-file-attach/annex-4-epdp-manual-30jan18-en.pdf) (EPDP) is one option being considered by the GNSO Council to make recommendations on the policies that should apply to the issues covered by the Specification. The details of this, including how other SOs/ACs might participate, have not been finalised by the GNSO Council.

The Specification incorporates some parts of the GAC advice contained in the San Juan Communique and defers a response on four elements pending further Board-GAC discussions (see above). It includes some issues which are not finalised, although it is not yet clear whether these might be incorporated into the Specification during the next 12 months or left for resolution by the EPDP. These are:

1. Pursuant to Section 4.4, continuing community work to develop an accreditation and access model that complies with GDPR, while recognizing the need to obtain additional guidance from Article 29 Working Party/European Data Protection Board.
2. Addressing the feasibility of requiring unique contacts to have a uniform anonymized email address across domain name registrations at a given Registrar, while ensuring security/stability and meeting the requirements of Section 2.5.1 of Appendix A.
3. Developing methods to provide potential URS and UDRP complainants with sufficient access to Registration Data to support good-faith filings of complaints.
4. Consistent process for continued access to Registration Data, including non-public data, for users with a legitimate purpose, until the time when a final accreditation and access mechanism is fully operational, on a mandatory basis for all contracted parties.
5. Distinguishing between legal and natural persons to allow for public access to the Registration Data of legal persons, which are not in the remit of the GDPR.
6. Limitations in terms of query volume envisaged under an accreditation program balanced against realistic investigatory cross-referencing needs.
7. Confidentiality of queries for Registration Data by law enforcement authorities.

**Relevant ICANN 62 Sessions**

Monday 25 June: GAC Session – GDPR Overview

Monday 25 June: High Interest Topic – Update from RDS-WHOIS2 Review Team

Tuesday 26 June: GAC Session - GDPR discussion (1)

Tuesday 26 June: Cross Community Sessions (**Note**: Details of these have not yet been finalised. The issues to be covered will probably include those of concern to the GAC, but also other items including guidance for registries and registrars on compliance arrangements and costs.)

* WHOIS/RDS Policy Post-GDPR
* Accreditation & Access to Non-Public WHOIS Data Post-GDPR

Wednesday 27 June: GAC Session - GDPR discussion (2)

Wednesday 27 June: GAC meeting with ICANN Board

Wednesday 27 June: GAC Communique drafting

Thursday 28 June: Temporary Specification for gTLD Registration Data

## Further Information

[GAC website](https://gac.icann.org/activity/whois-compliance-with-gdpr-reference)

[ICANN Data Protection/Privacy page](https://www.icann.org/dataprotectionprivacy)

[ICANN 62 Schedule](https://62.schedule.icann.org/)

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## Document Administration

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1. Resolution 2018.05.17.09 [↑](#footnote-ref-1)