

WHOIS and Data Protection Policy

3 November 2019

Session 1/2

ICANN | GAC
Governmental Advisory Committee



ICANN66 - GAC Plenary Meeting - Agenda Item 10

ICANN66 Leadership Proposal for GAC Action

Background:

- Key Developments
- Status of Policy Development
- Timeline

Policy Discussion:

- Roles and Responsibilities
- ICANN Engagement with Data Protection Authorities
- Accreditation: Concept of GAC Accreditation Principles
- Public Authorities Requiring Access to Non-Public Data

Next Steps for the GAC

1. **Assess whether the EPDP Phase 2 has achieved the swift and considerable progress expected by the GAC** consistent with [Advice](#) in the [GAC Kobe Communiqué](#) (14 March 2019) and the Phase 2 [inaugural statement](#) (8 April 2019) by GAC Representatives on the EPDP Team

2. **Discuss GAC expectations regarding the timely deployment of a Unified Access Model**, including:
 - ICANN's willingness to take on responsibilities and liability
 - Guidance on feasibility from European Data Protection Authorities to ICANN
 - Process and timing for completion of development and implementation

3. **Consider what could be an acceptable accreditation model for access to non-public gTLD registration data** by law enforcement and other legitimate public authorities
 - See concept paper shared with GAC Membership on 2 November
 - Discuss identification of public authorities requiring access to non-public gTLD registration data (Action Points in [ICANN65 Minutes](#), section 2.1)

- **GAC Whois Principles Regarding gTLD WHOIS Services** (28 March 2007)
 - Recalled in GAC Abu Dhabi Communiqué (1 November 2017)

- **ICANN Community Discussion of a Unified Access Model**
 - Various proposals put forward by ICANN for Community Input
 - Legal Advice received by European law firm Hamilton Advokatbyrå
 - Public policy concerns in GAC Advice and input from GAC and GAC Members
 - Guidance provided by Data Protection Authorities

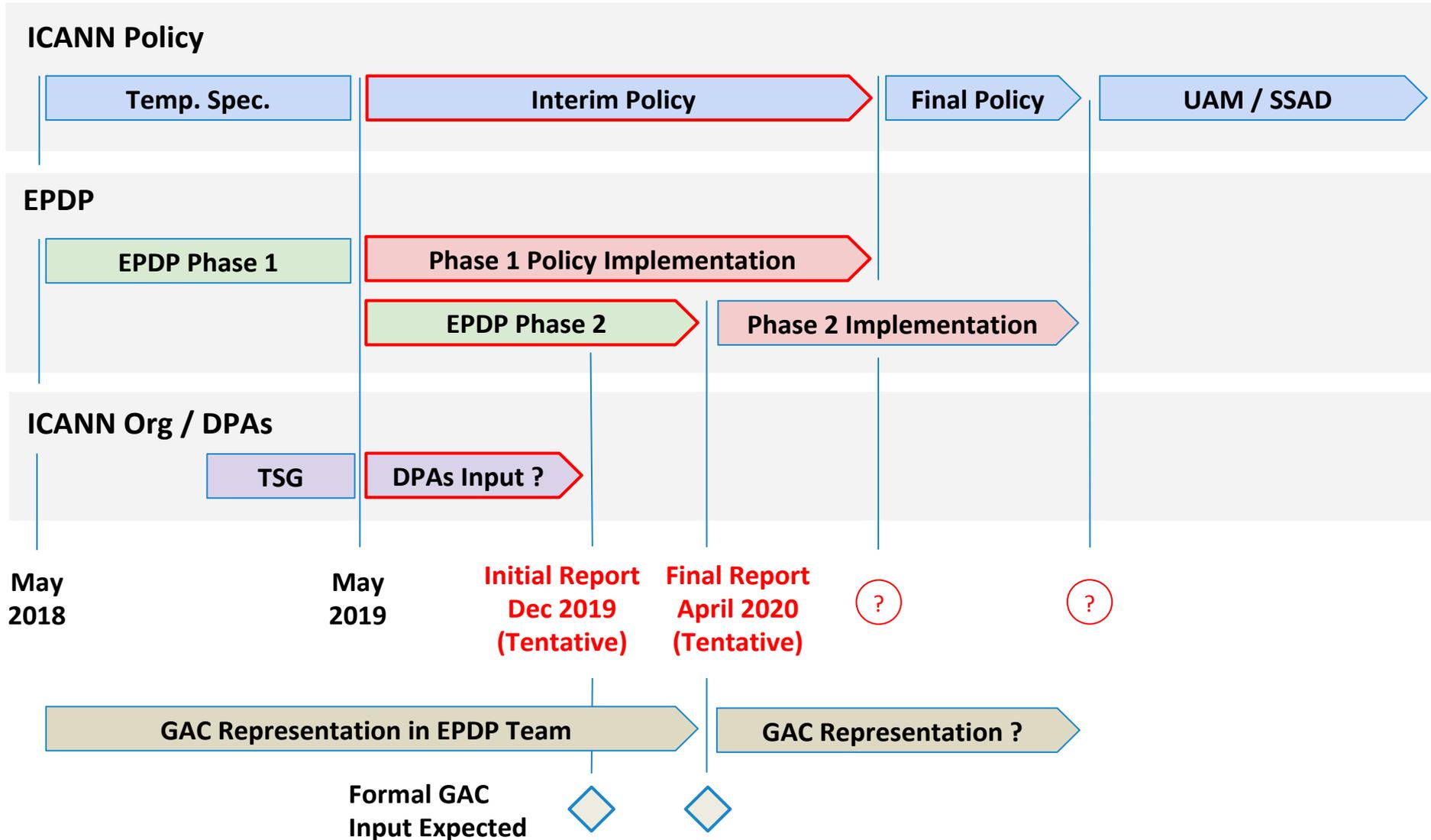
- **ICANN Temporary Specification on gTLD Registration Data** (17 May 2018)
 - Emergency Temporary Policy under ICANN Contracts
 - Objective:
 - Comply with GDPR and existing ICANN Contracts
 - Maintain WHOIS to the greatest extent possible

- **Impact of Temporary Specification:**
 - Redaction of most gTLD domain name registrants' personal data
 - Unspecified requirement of “*Reasonable Access*” to non-public data by legitimate parties leading to “*fragmentation*” and “*failing to meeting the needs of Law enforcement [and other 3rd parties]*” (GAC Barcelona Communiqué, 25 October 2018)
 - Launch of Policy Development Process

Expedited Policy Development Process (EPDP) on gTLD Registration Data

- Launched as part of emergency measures, to replace the Temporary Specification
- **Phase 1** (Aug. 2018 - Feb. 2019)
 - Laid out foundation of new policy framework (purposes, data elements, etc.)
 - Sufficient basis to proceed (GAC to ICANN Board, 24 April 2019)
 - Most Policy Recommendations adopted by ICANN Board (15 May 2019)
- **Phase 1 Implementation** (ongoing)
 - Interim Registration Data Policy (20 May 2019) extended Temporary Specification
 - Completion date of implementation uncertain
- **Phase 2** (ongoing)
 - Focus on System for Standardized Access/Disclosure and pending issues
 - Currently considering high level policy principles and requirements related to:
 - Requests and Responses, Disclosure, Automation, Terms of Use
 - User Groups and Accreditation
 - Accountability Mechanisms (Audit and Logging)

Timeline to delivery of Unified Access

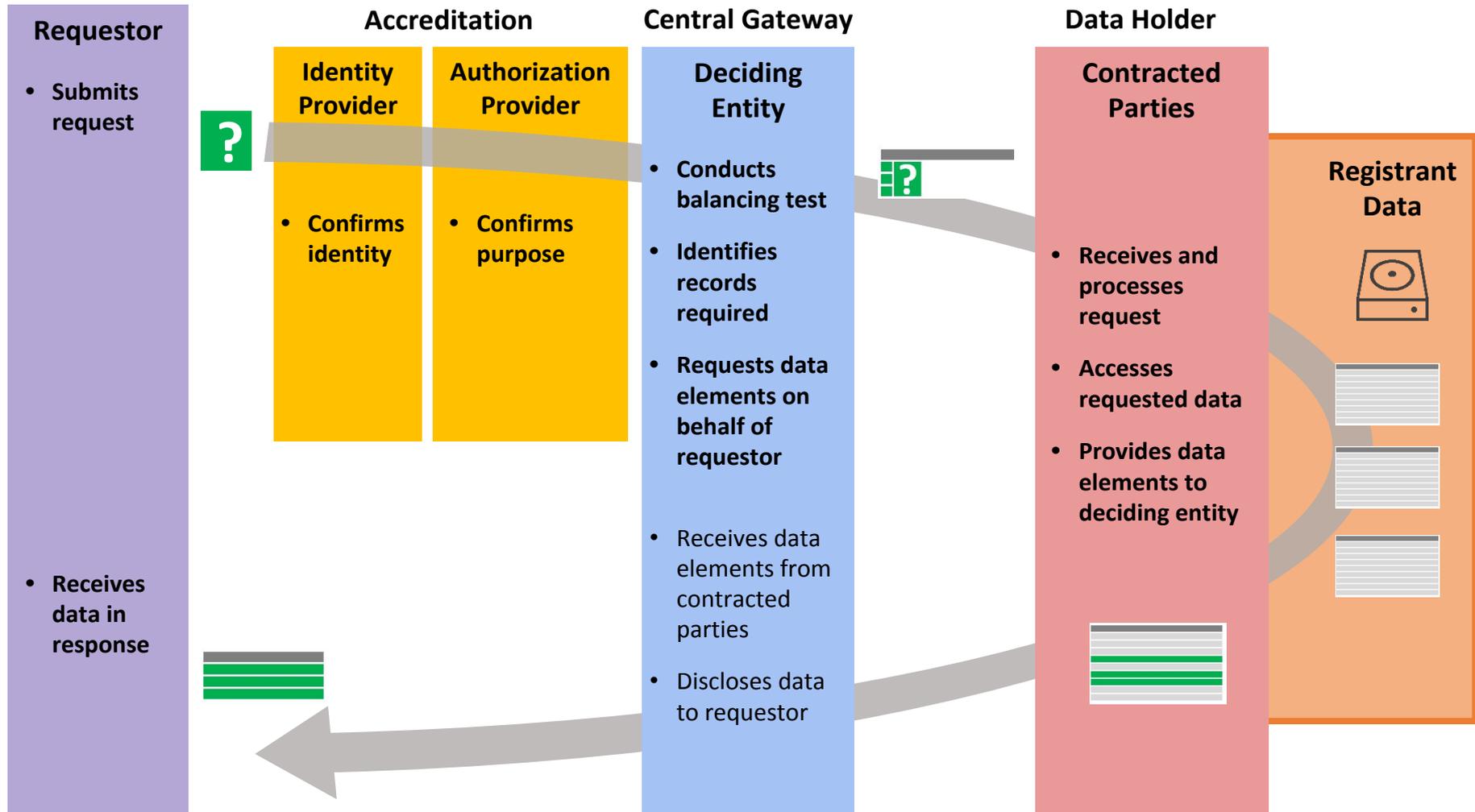


Parallel Efforts by ICANN Org regarding a Unified Access Model (UAM)

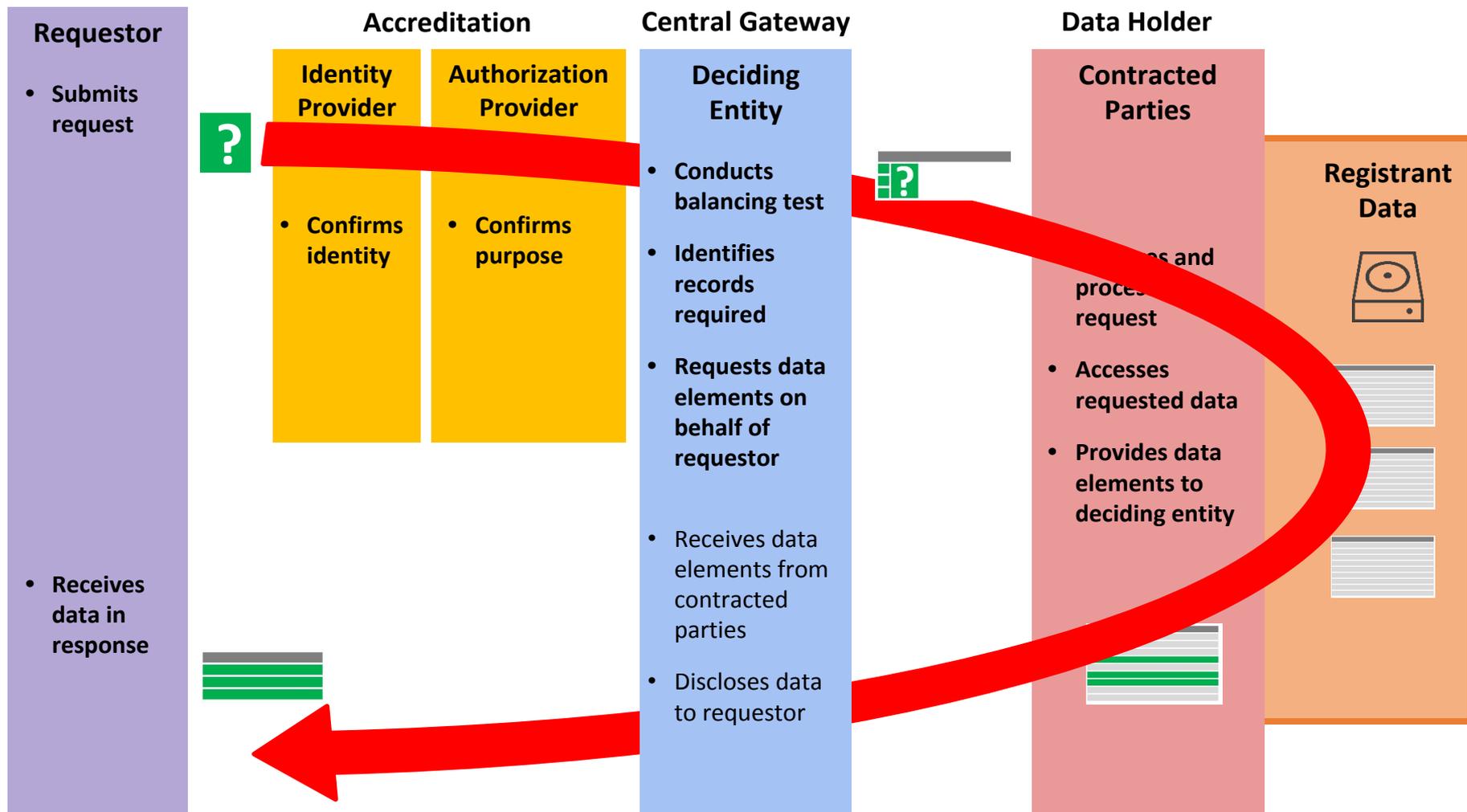
- **Technical Study Group** (Dec. 2018 - May 2019)
 - Explored reducing/shifting liability risks through centralization of certain data processing (accreditation, authentication and disclosure)
 - Delivered a technical model (30 April 2019)

- **ICANN Engagement with DPAs**
 - The ICANN org CEO sought formal guidance from the European Data Protection Authorities (25 October 2019)
 - Assumptions of the proposed UAM based on the TSG Model
 - ICANN operating a centralized gateway responsible for disclosure of personal data where authorized per policy, to accredited and authenticated requestors
 - Data is not required to be stored by the centralized gateway
 - ICANN Org expects this to be discussed at EDPB Plenary in December

Overview of Processing Activities



Data is not required to be stored by Central Gateway



Input expected from DPAs on ICANN's Questions, including:

(Per ICANN CEO [Letter](#) to EDPB, 25 October 2019)

1. Would a centralized and unified model ensure a higher level of protection for natural persons' personal data than a distributed system in which multiple actors make decisions about this data?
2. Would this proposed UAM centralize responsibility under the GDPR for the disclosure of personal data contained in gTLD Registration Data (i.e., make the Centralized System operator(s) primarily responsible, as opposed to individual Contracted Parties), compared to a decentralized model where each Contracted Party would be responsible for directly receiving and responding to requests for disclosure?

Source: [Exploring a Unified Access Model for gTLD Registration Data paper](#) (25 October 2019)

Private Entities

- The GAC supports accreditation of other groups that are represented within the EPDP such as:
 - Intellectual Property Rights Holders
 - Cyber security practitioners
- The GAC also supports the ability for non accredited users to be able to make requests to the contracted parties to request the data
- The GAC has maintained that accreditation of an entity does not guarantee access to data and that all applicable laws and appropriate data standards should be applied before any disclosure of personal data.

Public Authorities

- Public authorities require a different method to obtain accreditation compared to private entities
- Allows a country to appoint its own identity provider.
- Allows a country to set its own eligibility requirements to gain credentials.
- The final responsibility for granting disclosure of RDDS data will remain with the party considered as the controller.

- **GAC Marrakech Communique (27 June 2019)**
 - *Members of the GAC volunteered to provide indicative lists of public authorities and other relevant parties requiring non-public registration data, in response to the request included in the [“Draft Framework for a Possible Unified Access Model”](#) published on 20 August 2018 .*
- **ICANN65 GAC Meeting Minutes**
 - GAC Members to consider assembling indicative lists of their public authorities and other relevant parties requiring non-public registration data
- **GAC Members to consider** including relevant authorities tasked with:
 - criminal and civil law enforcement,
 - consumer protection, etc..
- **The European Commission** is coordinating with the EU Member States to identify law enforcement authorities that need access to non-public registration data to exercise their public policy task

- **Next Sessions during ICANN66** to discuss WHOIS and Data Protection
 - Preparation of meeting with the ICANN Board **Sun. 3 Nov. 13:30**
 - Meeting with the Registry Stakeholder Group **Sun. 3 Nov. 15:15**
 - Cross Community Session on EPDP Phase 2 **Mon. 4 Nov. 10:30**
 - GAC on WHOIS and Data Protection 2/2 **Tue. 5 Nov. 08:30**
 - Meeting with the ICANN Board **Tue. 5 Nov. 15:15**

- **After ICANN66**
 - GAC Members input on **Accreditation Principles** for Public Authorities
 - GAC Members to consider assembling indicative **lists of public authorities** and other relevant parties requiring non-public registration data
 - **GAC Comments** on EPDP Phase 2 Initial Report (expected end of 2019)

- GAC Members to consider joining the GAC Small Group on GDPR and following EPDP deliberations