
BARCELONA - GAC: GDPR Discussion
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MANAL ISMAIL, GAC CHAIR: So again, as Laureen mentioned, this is going to be a continuation of the GDPR discussion, so if I may ask members of the EPDP small working group if they can join us on the panel, it would be good for the discussion. Thank you. [AUDIO BREAK]

Okay maybe a little bit louder this time. I do invite colleagues who are members of the small EPDP working group to join us on the panel. [AUDIO BREAK]

Maybe I can start calling names. Ashley, Georgios, Rahul, if you can join us on the panel, and Kavouss.

LAUREEN KAPIN: And Kavouss and Chris.

MANAL ISMAIL, GAC CHAIR: Thank you for helping me. [AUDIO BREAK]
Kavouss, you're not joining us on the panel?

KAVOUSS ARASTEH: Maybe I prefer to stay here on this desk, but if you wish, or if you advise, I am [inaudible].

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MANAL ISMAIL, GAC CHAIR: Yeah, I mean it's up to you. We want you here, but if you don't feel comfortable, as you wish.

KAVOUSS ARASTEH: Stay here. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, Kavouss. So I think we're going to start, and first of all apologies for missing the discussion this morning. We had another meeting running at the same time, so I do apologize for this. The intention of this meeting, of this session, the objective is to discuss the next steps on GDPR and mainly to come up with the messages that we want to convey through the communiqué.

So maybe in light of earlier discussions you had today, we can converge into messages we need to pass through the communicate. With this, and since a few of us have missed the discussion this morning, maybe Laureen, if you can kindly brief us quickly on this morning's session and then we can take it from there. Thank you.

LAUREEN KAPIN: So this is just a very brief consolidation of the issues we discussed in the prior hour. This was our public safety working group meeting. I'm going to focus just on the GDPR related activities. As an aside, we also discussed our general public safety working group activities and the DAAR, but for the purposes of our discussion now, we focused on

several issues related to the WHOIS and the GDPR. Most importantly, we focused on the impact of the changes in the WHOIS availability and accessibility and the impact of the temporary specification on law enforcement activities.

Of note, we focused in detail, and I would urge you to review the slides, on the survey that the RDS review team did that specifically asked very pinpointed questions about the impact of the GDPR, and the changes in the WHOIS, and the temporary specification on their investigative work. And what we saw from those respondents from 55 -- 55 respondents from a variety of countries, from Australia to Zambia, A to Z, was that there was a very significant impact.

First, a majority of the respondents concluded that there was a significant negative impact on WHOIS meeting investigative needs, that the current WHOIS does not meet investigative needs, that there weren't adequate alternatives to the current system, which now hides a lot of information. Very significantly, there was a lack of knowledge about how to request access to the information that is now publicly unavailable, and that's a serious concern.

Other impacts that were noted is that this impacts how long it takes for law enforcement to do their investigative work, and it has a negative impact on the investigation in general. Separate and apart from impact on law enforcement and public safety consumer protection authorities are those in the private sector who focus on cybersecurity investigations, and significantly, law enforcement relies on that work often to get tips and information to combat DNS Abuse,

and there was a similarly negative effect on the changes to the WHOIS in the cybersecurity community as well. And again, I will refer you to the slides in the previous presentation because that gives very specific information on the results of this survey.

We then moved onto a discussion that reinforced the results of this survey based on discussions yesterday in the public safety working group from a variety of folks in the law enforcement community who provided some real world examples reinforcing the messages that one, the lack of publicly available information is having a serious impact on law enforcement investigations. The lack of a centralized method of obtaining this information is also a serious concern, that there's a lack of knowledge about how to request this information, and that these delays are having a real world impact. All of this reinforcing the need for work to get started and conclude quickly on coming up with a unified access model to resolve these issues.

I think that that gives you sort of the broad messages, but I'm happy to either answer questions, or again, meet with people on the fringes if you want to delve into something more specifically.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Laureen. So I hope this puts everyone on the same page for those who missed the working group meeting this morning. Kavouss, are you seeking the floor?

KAVOUSS ARASTEH:

Yes, I'm seeking the floor if you allow me and Laureen allows me to comment on what she said. She said that negative impact because some nonpublic information is no longer accessible or available, but I don't categorize it as negative impact. I categorize it as impact, because on one hand GDPR requires that certain data be redacted. On the other hand, we should not say that no, we are against the GDPR. Everything should be available as before. So we could not talk about negative impact.

We could say that some informations are no longer available, but they will be available based on the access mechanisms, if it comes to certain a process of legitimacy and so on and so forth. So we should formulate that, I have no problem. In the communiqué we talk about that there has been some impact on the availability of the nonpublic data but we should not categorize it as negative because [inaudible] issue means that we are not in favor of the very essential basis of the GDPR that no all information from now should be available public, nonpublic unless there is a legitimate request for that and there is investigation and there is authentication and many other things. So we should try to maintain this balance between these two, so we should be quite careful. So when you're talking about communicate, this is one point that we should be quite careful. Thank you.

LAUREEN KAPIN:

Thank you, Kavouss, and as usual, I appreciate your call for precision in language. So I agree with you that the GDPR is all about balancing, maybe perhaps echoing a word in another session, reconciling these

interests between privacy, privacy needs and law enforcement cybersecurity, the rights of the public. It is all about balance, and absolutely your law enforcement community and consumer protection community, and your privacy community, recognizes these interests which must be taken into account, and that is built into the GDPR.

So when I talk about impact, what I am talking about is the fact that there are real world consequences to this change in the system, and in that way there is a negative impact. I think negative impact is the right term, but I think your call is for context and precision with how the system works, so I absolutely agree with you there. But the slides that we had presented regarding the results of the RDS survey do point to the fact that these changes are having a negative impact, perhaps because the system is still not fully baked yet. There are still many open questions. There is still much discussion to be had by the community as to how to strike this balance most effectively.

And I think what the survey tells us, and our discussions with our colleagues tell us is right now there is indeed a negative impact and there is much work to be done to try and strike this balance in a way which really meets the needs of the communities that the WHOIS system is intended to serve.

MANAL ISMAIL, GAC CHAIR: Thank you, Laureen, and thank you, Kavouss. And I think this is a good point where we can start discussing the messages we want to

pass through the communique and then get into the wordsmithing. But I can see Germany seeking the floor, please.

GERMANY: Thank you, Madam Chair. [Inaudible], Germany, Federal Ministry of the Interior, Building and Community. I would like to support what Laureen just said, we need clear and precise language, but from our point of view, there can be no doubt that the fact that law enforcement agencies have lost quick and easy access to WHOIS has a negative impact. We want to be very clear on that.

It's also crystal clear that the fact that the GDPR has been adopted didn't have a negative impact. This goes without saying, but the fact that law enforcement agencies have lost their quick and easy access needs to be stressed, and so I would prefer to have this language 'negative impact', with regard to this. We should be very clear on that. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, Germany, and thank you for the clear distinction. So, the question now is what do we want to convey in the communiqué; and Ashley, please go ahead.

UNITED STATES: Thank you. Ashley with the U.S. Also a member of the EPDP. I think one thing that's become very clear in our participation in the EPDP is there's a lot of mistrust amongst the different community members. I

don't think it's intentional. But what I've noticed is that there seems to be a lot of misperceptions with respect to our interests, and our motive, and among that are references to the users of WHOIS wanting to go back to what was the status quo, which was free and open access to all information, and somehow not applying GDPR to the WHOIS.

And I think it might be helpful in the context of our communique to make it clear that we do recognize as governments obviously because we represent so many interests. We represent the interests off our citizens and the protection of their data as well that yes, of course we recognize the importance of complying with GDPR and data protection regulations, but also we think it's fully possible to comply with GDPR and meet our needs. So perhaps we could make that clear distinction that we're not being absolute obstructionists. We are trying to work within the system, and do the best to preserve all interests. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, U.S. Any other -- yeah, Iran, please.

IRAN: Thank you, Manal. Perhaps we should reconcile between the terms. We would not refer to negative or positive. But we could say what Germany said in a different language, law force authorities lost their access to the required data, or data access to the required data is reduced but not lost, but not talking negative or positive. The issues

that we don't want to oppose to the principles of GDPR and so on and so forth. We should try to language either balance or reconcile between the words.

Yes, it's quite clear that before they have full access to everything. But now there is some limited access because they need to proof that they need this data and for what purpose this data is needed. So we have to find the balance between that. So I suggest a language that law enforcement authorities -- access to the data has been reduced for law enforcement authorities because of the situation. That we could say, but not talking negative or positive.

MANAL ISMAIL, GAC CHAIR: Thank you, Kavouss, and I think we are going into wordsmithing before we agree on the key messages that we need to -- so maybe we can try to see what exactly we want to ask the Board in the communique, and then try to find the right language. Yes, please, go ahead.

SPAIN: Good morning and thank you for all these interesting discussions. My name is Helena, I'm Spanish, I work for the law enforcement community. I would like just to underlie that we fully agree on the words that Greg from Europol and Germany have said. We don't want to talk [inaudible] speaking about a negative impact, but it's really clear that the lack of access to WHOIS is having a negative impact on our investigations. We are seeing this every day in investigations

coming from cyber attacks, coming from cyber activities related to terrorism, and it's a fact that this is hampering our investigations because of two reasons.

Firstly, because we can't have access in a timely manner to the data, and this is essential for investigations. Of course, we can make use of the temporary specifications but the fact is that on many occasions we don't have the results on time. And the second thing to remark is that it's not so difficult to get the information, again in the context, but of course it's really difficult to access the data when it's to enforce these obligations beyond our borders, and that means that on many occasions we are not able to access data that are essential for the investigations.

So, I also would like to underline that it's absolutely clear for us that this has negative impacts in the law enforcement investigations. Thank you very much.

MANAL ISMAIL, GAC CHAIR: Thank you very much. So any further comments, please?

EUROPEAN COMMISSION: Thank you, [inaudible], European Commission. Two remarks I would like to make. First of all, I think all the discussions that took place and the interventions that we saw speaking about negative impacts, I think what it's important to clarify is that we are talking about the impact of the temporary specification. That is what has affected the

access of law enforcement and other competent authorities to WHOIS data, so that's I think what we should stress.

Secondly, possible topics what we could raise with the Board are in my opinion for example the access aspect so the reasonable access. Yesterday there was a high interest topic discussion and I think one of the interesting aspects of the discussion was that it wasn't clear to what extent the EPDP will be able to touch upon the access aspect.

Of course there are discussions ongoing on the unified access model, but it's not clear if, how, and to what extent it will be able to provide for a comprehensive model that will solve some of the issues that we are currently experiencing, and therefore I would suggest that we raise with the Board how it could be clarified, and secured, that indeed in a timely manner we will be provided with comprehensive, clear rules that will provide for access to law enforcement authorities and other competent authorities.

MANAL ISMAIL, GAC CHAIR: Thank you very much, European Commission. So again, I can see -- yes, so I can see the European Commission and Senegal. Okay.

EUROPEAN COMMISSION: I want to add to this. I think as it is designed the whole process, the mechanics of the whole process here, we have currently in the EPDP the question of access deferred to the last part of the EPDP and continuously we have this discussion which is of course of great interest as the previous speakers said at the very late stage.

The question to the Board is that we should stress this, that they should guarantee somehow that this question of the access is going to be addressed at the later stage of the EPDP and it has to be connected to the unified access model somehow, gives a practical implementation outcome because this is what all the communities here from the law enforcement, the cybersecurity are asking for.

It would be unfortunate to reach the deadline of May and not have something that works because this used to be, to my limited knowledge on policy development processes, discussions that were taking place, and we are not concluding here. We have to have a conclusion on this and we have to incorporate what is developed in the unified access model somehow.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Georgios. Senegal, go ahead.

SENEGAL: [Speaking in French] This is Senegal speaking. Thank you, Madam Chair. I would briefly like to say that it is not only the law enforcement agencies that are facing issues. When we think about this issue, we see it's overarching and it affects everyone. It also favors certain attacks that are carried out on the Internet. It favors the increase of cybercrime due to this lack of information or because we cannot access this information, this affects both the corporate community and the law enforcement community, and this is a real problem.

We have dealt with plenty of cyber attacks lately, and we cannot move any further due to this lack of information. And from the victim's perspective, before they can appear before a court, they need certain information that is not accessible right now. Therefore, I believe that we should focus on a message to request some kind of setback or to go back on our steps, to go back to the prior stage of data availability so that it becomes available to everyone, and we do not have GDPR as an overarching law that is above all other measures.

So WHOIS should be available to the Internet community, to the law enforcement agencies, to the corporate world, and we should engage in further reflections to see how to work around certain principles of the GDPR. I am deeply concerned about what we have seen in the past months recording this lack of information to face certain attacks on the Internet. Thank you very much for your attention.

MANAL ISMAIL, GAC CHAIR: Other comments? Iran, please.

IRAN: Thank you, madam. Let me clear our previous positions. We are fully in line with all distinguished GAC colleagues, that during the last few months the access has been reduced. We are not saying that has not been reduced, but we are saying that we reflect that in a proper manner.

Now, coming to the issue of access, unfortunately, the issue is followed with the charter. The charter mentions that there are three

deliverables. The first deliverable is triage document, it has been done. The second deliverable is the initial report. It's being done. They put at the end, but please kindly look at the wording they crafted. The third deliverable of the EPDP team shall be an initial report outlining a proposed model of a system for providing accredited access to nonpublic legislation data followed by a final report following the review of public comments. They put access almost at the end.

And yesterday, in the public forum, and in the EPDP forum it was mentioned that the charter is this and they cannot change that. So what we could talk with the Board, if you want to talk with the Board, even meeting with the Board, we say that we have not been involved in the charter. We are not in favor of such sequence of action. Nothing prevents us after the initial report is prepared and put to public comments, to start to work on the access model.

But some people they don't want that, and yesterday Goran Marby mentioned that we could establish an informal group. I don't understand what means informal group. Access issue is not something that we could deal with informally. This is a most formal issue. So this is not quite clear. So we have to mention it here or elsewhere.

We believe that access and an access model is an integrated part of the whole system, must be provided at the same time, with the document provided for the Board for approval. But some people even mention there may be another team or another group or another

public policy development process, they want to totally separate that, Manal.

So let us be quite clear. That in our belief, it is not separable and should be part of the same process, same action within the same one year. So that is the issue, thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, Iran. Any other comments or requests for the floor? Okay, if not, then I would encourage you to start putting a concrete language for the communique. We have a session this afternoon to review the communique and we will start the actual drafting in the evening as well.

And I would appreciate if members who are concerned of the specific language that will go into the communique contribute to the drafting so we can have, as agreed as possible comments starting point. So with this, if there are not any other requests for the floor, we can conclude here. We now have a 15 minute coffee break, and please make sure to be back in the room by 10:30. Kavouss, I'm sorry.

KAVOUSS ARASTEH: Sorry, I apologize to Laureen. Maybe we assigned this task to Laureen to head the group, lead the group and the group is open for anybody. We put together what we want to talk about. The redaction of the availability of some data for the law enforcement authorities, and also we would put some words with respect to the need of having access to

be done within the same time period of the one year before the temporary specification becomes definite or otherwise.

But we would have to do something together and so on and so forth, and everybody is free to come, but at least maybe a member of the team and alternate, or one of the core [inaudible] and other people are most welcome to put the team together but we need to have a clear language. In fact, I am not in favor of the charter. But this is not your business. This is business of the GNSO. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, Kavouss, your point is noted. And please, if there is concrete text that you want to see in the communiqué, share it over email and Laureen would help compiling, and ultimately Tom will be reflecting it on the communique. Thank you very much, and please be back at 10:30.

[END OF TRANSCRIPTION]