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**ICANN PURPOSE:**

--For Registrars Only--

Provide mechanisms for safeguarding Registered Name Holders' Registration Data in the event of a business or technical failure, or other unavailability of a Registrar or Registry Operator

Nexus: (Purposes by Actor (E))(TempSpec - 4.4.11)

**Purpose Rationale:**

**1) If the purpose is based on an ICANN contract, is this lawful as tested against GDPR and other laws?**

Yes, as escrowing the data is supported by ICANN's mandate to provide for security and stability in the DNS and this purpose is primarily protecting the registrant's rights.

Yes. Escrow exists because Registrants have a reasonable expectation of business continuity.

While all contracted parties that have to be compliant with GDPR need to make sure there are protections against data loss and mechanisms to enable swift data recovery, ICANN is operating at the global level where customers can register domain names with registrars globally and the registry operators are based in numerous jurisdictions, it is important to have interoperability of escrow agents. Requiring all contracted parties to use the same policies for both escrowing data and applying the same standards to escrow agents for making data available, is necessary for contingency planning at the global level.

**2) Is the purpose in violation with ICANN's bylaws?**

No.  
1.1(a)(i) Coordinates the allocation and assignment of names in the root zone of the Domain Name System ("DNS") and coordinates the development and implementation of policies concerning the registration of second-level domain names in generic top-level domains ("gTLDs"). In this role, ICANN's scope is to coordinate the development and implementation of policies:

- For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS including, with respect to gTLD registrars and registries, policies in the areas described in Annex G-1 and Annex G-2; and
- That are developed through a bottom-up consensus-based multistakeholder process and designed to ensure the stable and secure operation of the Internet's unique names systems.

The issues, policies, procedures, and principles addressed in Annex G-1 and Annex G-2 with respect to gTLD registrars and registries shall be deemed to be within ICANN's Mission.

Section 4.6. SPECIFIC REVIEWS

(e) Registration Directory Service Review  
(ii) The Board shall cause a periodic review to assess the effectiveness of the then current gTLD registry directory service and whether its implementation meets the legitimate needs of law enforcement, promoting consumer trust and safeguarding registrant data ("Directory Service Review").

**3) Are there any "picket fence" considerations related to this purpose?**

None. Only with respect to the data model(s) defined within RDDS/Whois consensus policies. Agreements between ICANN and escrow providers are not within scope of the picket fence.

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V4.5 question #1

Commented [BC2]: Added by LA break out team  
V4.5 question #4

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V4.5 question #2

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V4.5 question #7

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**Lawfulness of Processing Test:**

Processing Activity:	Responsible Party: <small>(Charter Questions 3k, 3l, 3m)</small>	Lawful Basis <small>(Is the processing necessary to achieve the purpose?)</small>
<p><b>E-PA1:</b> Collection of registration data for escrow  (Charter Question 2b)</p>	<p>ICANN – Sole Controller  <del>Registries – Processor</del> Registrars - Processor</p>	<p>Yes. 6(1)(f)</p> <p>This is a 6(1)(f) purpose because although there is likely a legitimate interest in providing mechanisms for safeguarding Registered Name Holders' Registration Data in the event of a business or technical failure, or other unavailability of a Registrar or Registry Operator, it is not technically necessary to collect data for an escrow agent in order to allocate a string to a registered name holder, and is therefore not necessary to perform the registration contract.</p> <p><del>6(1)(b)</del> - This is a 6(1)(b) purpose because ..... [The BC and IPC [add others as appropriate] expressed the view that Purpose E was a 6(1)(b) because safeguarding registrants in the event of business failure is necessary for the performance of the contract, and a registrant would expect their data to be escrowed accordingly.]</p>
<p><b>E-PA2:</b> Transmission of registration data to <del>Data e</del>Escrow <del>a</del>Agent  (Charter Questions 2c, 2d, 2e, 2i)</p>	<p>ICANN - Controller <del>Registries – Processor</del> Registrars – Processor <del>Data Escrow Agent - Processor</del></p>	<p>Yes. 6(1)(f)</p> <p>This is a 6(1)(f) purpose because although there is likely a legitimate interest in providing mechanisms for safeguarding Registered Name Holders' Registration Data in the event of a business or technical failure, or other unavailability of a Registrar or Registry Operator, it is not technically necessary to transmit data to an escrow agent in order to allocate a string to a registered name holder, and is therefore not necessary to perform the registration contract.</p> <p>[NOTE: The lawful basis small breakout team agreed to the following, but this was not agreed to in plenary:  The processing activity of transmission of registration data to escrow agent is lawful under Art. 6(1)(f): processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child. The small breakout team did note documentation of the requisite balancing test would need to be completed.]</p>
<p><b>E-PA3:</b> Disclosure of registration data to <del>Gaining Registrar</del>.....  (Charter Questions 2f (gating questions), 2j)</p>	<p>ICANN - Controller <del>Registries – Processor</del> Registrars - Processor</p>	<p>Yes. 6(1)(f)</p> <p>This is a 6(1)(f) purpose because although there is likely a legitimate interest in providing mechanisms for safeguarding Registered Name Holders' Registration Data in the event of a business or technical failure, or other unavailability of a</p>

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Processing shall be lawful only if and to the extent that at least one of the following applies:

Art. 6(1)(b): processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract.

Art. 6(1)(f): processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

Art. 6(1)(a): Consent - the data subject has given consent to the processing of his or her personal data for one or more specific purposes.

**Commented [BC7]:** Added by LA break out team on Lawful Basis

V0.4 - Legal memo

**Commented [BC8]:** If there is mention of Escrow in the RtA, then 6(1)(b) appears useable?

**Commented [BC9]:** Added by BC/IPC 4 Oct.

**Commented [BC10]:** Benedict comment 12 Oct. This is an indicator of the additional relationships to be considered here. Namely in an ICANN DPA with the 3rd parties.

**Commented [BC11]:** 27 Sept - added by Caitlin

**Commented [BC12]:** Suggested PA by Staff

Does a separate Transmission processing activity also need to be defined or is it implied?

		<p>Registrar or Registry Operator, it is not technically necessary to transmit data to an escrow agent in order to allocate a string to a registered name holder, and is therefore not necessary to perform the registration contract.</p> <p>Data is not made public for escrow purposes, but a transfer to the escrow agent and - in case of contingencies - the transfer to a gaining registrar is required to ensure that operations are not impaired.</p> <p>How and who ICANN choses as the Gaining Registrar may have additional implications to the lawfulness should the Gaining Registrar not reside within the EU when the Losing Registrar did reside within the EU. Is the processing necessary to achieve the purpose?</p> <p>6(1)(b) - This is a 6(1)(b) purpose because .....  6(1)(f) - This is a 6(1)(f) purpose because .....  6(1)(a) - This is a 6(1)(a) purpose because .....</p>
<p><b>E-PA4:</b> Retention of registration data by Data Escrow Agent.....  (Charter Questions 2g, ??)</p>	<p>ICANN - Controller Registries - Processor Registrars - Processor Data Escrow Agent - Processor</p>	<p>Yes. 6(1)(b)</p> <p>This is a 6(1)(b) due to the direct contractual nature between ICANN Org and Data Escrow Agent providers.</p> <p>From the Escrow Specification (3.3.1.6), deposits to Third-Party Escrow Agents two copies are held for one year.</p> <p>Questions about the validity of the one year for TPP, noting that no retention is listed for ICANN approved vendors, given that once a new deposit occurs and is verified, it renders prior deposits useless.</p> <p>[The group also discussed that perhaps some minimal retention could be necessary from an overall continuity perspective.]</p> <p>Is the processing necessary to achieve the purpose?  What are the data retention requirements to meet the purpose?</p> <p>6(1)(b) - This is a 6(1)(b) purpose because .....  6(1)(f) - This is a 6(1)(f) purpose because .....  6(1)(a) - This is a 6(1)(a) purpose because .....</p>

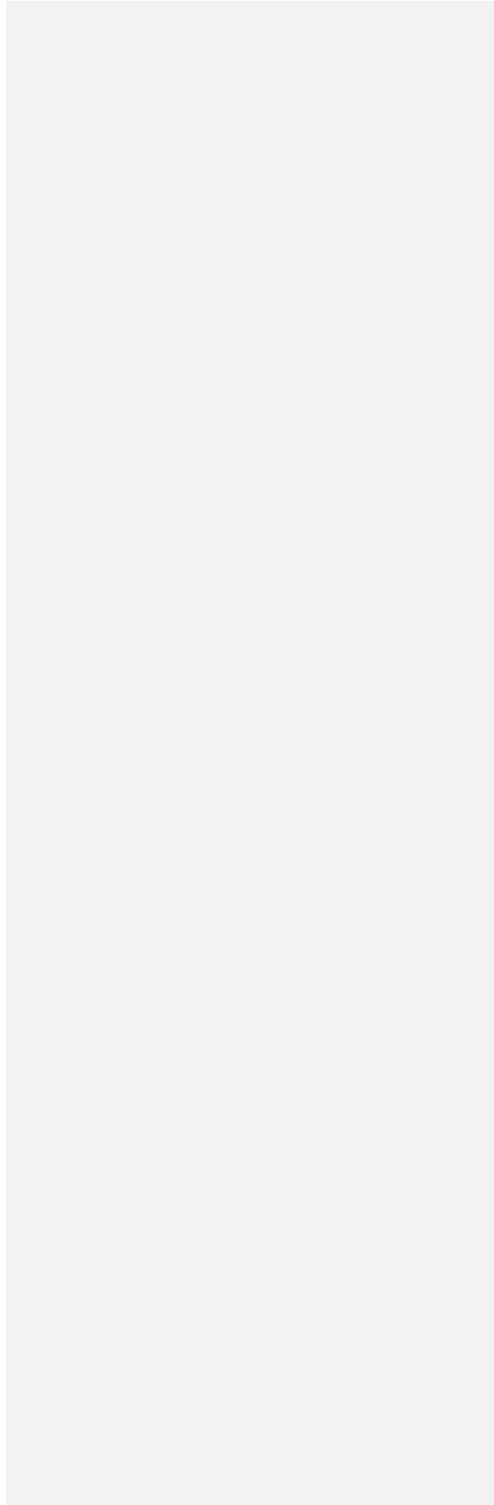
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From v4.5 question #6

**Commented [BC14]:** Added by LA break out team  
From v4.5 question #9

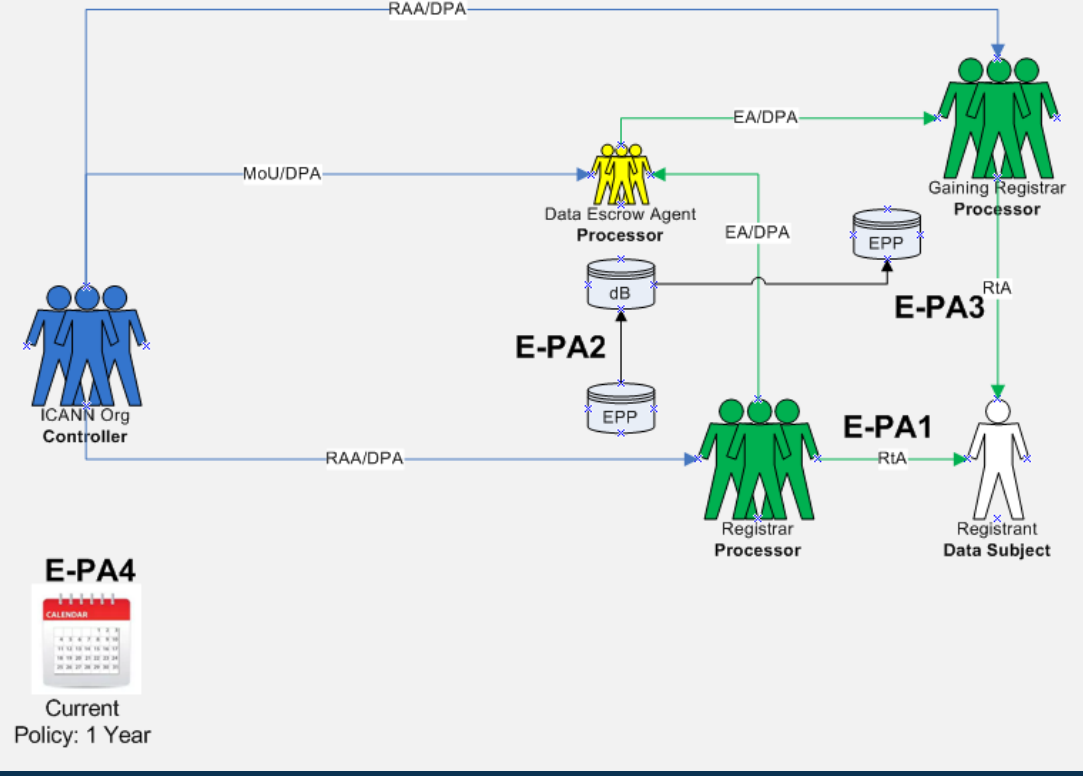
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**Commented [BC16]:** Added by LA break out team  
From v4.5 question #8

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**Data Elements Map:**



**Data Elements Matrix:**

"1" = Required "(1)" = Optional "-" = Not Required or Optional

Data Element	Collection E-PA1	Transmission E-PA2	Disclosure E-PA3	Retention E-PA4	TBD E-PA5	BC1 E-PA6
Domain Name	1	(1)	(1)	(1)	-	-
Registry Domain ID	-	(1)	(1)	(1)	-	-
Registrar Whois Server	-	(1)	(1)	(1)	-	-
Registrar URL	-	(1)	(1)	(1)	-	-
Updated Date	-	(1)	(1)	(1)	-	-
Creation Date	-	(1)	(1)	(1)	-	-
Registry Expiry Date	-	(1)	(1)	(1)	-	-
Registrar Registration Expiration Date	1	1	1	1	-	-
Registrar	1	1	1	1	-	-
Registrar IANA ID	-	(1)	(1)	(1)	-	-
Registrar Abuse Contact Email	-	(1)	(1)	(1)	-	-
Registrar Abuse Contact Phone	-	(1)	(1)	(1)	-	-
Reseller	1	1	1	1	-	-
Domain Status	-	(1)	(1)	(1)	-	-

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- Commented [BC18]:** Added by LA break out team
- Commented [BC19]:** Suggested by staff 10/10 in v4.5
- Commented [BC20]:** Suggested by staff 10/14
- Commented [BC21]:** Suggested by staff 10/14

Data Element	Collection E-PA1	Transmission E-PA2	Disclosure E-PA3	Retention E-PA4	TBD E-PA5	<b>BC17</b> E-PA6
Registry Registrant ID	-	-	1-	1-	-	-
Registrant Fields						
• Name	1	1-	1-	1-	-	-
• Organization (opt.)	-	1-	1-	1-	-	-
• Street	1	1-	1-	1-	-	-
• City	1	1-	1-	1-	-	-
• State/province	1	1-	1-	1-	-	-
• Postal code	1	1-	1-	1-	-	-
• Country	1	1-	1-	1-	-	-
• Phone	1	1-	1-	1-	-	-
• Phone ext (opt.)	-	1-	1-	1-	-	-
• Fax (opt.)	-	1-	1-	1-	-	-
• Fax ext (opt.)	-	1-	1-	1-	-	-
• Email	1	1-	1-	1-	-	-
2nd E-Mail address	-	1-	1-	1-	-	-
Admin ID	-	1-	1-	1-	-	-
Admin Fields						
• Name	-	-	-	-	-	-
• Organization (opt.)	-	-	-	-	-	-
• Street	-	-	-	-	-	-
• City	-	-	-	-	-	-
• State/province	-	-	-	-	-	-
• Postal code	-	-	-	-	-	-
• Country	-	-	-	-	-	-
• Phone	-	-	-	-	-	-
• Phone ext (opt.)	-	-	-	-	-	-
• Fax (opt.)	-	-	-	-	-	-
• Fax ext (opt.)	-	-	-	-	-	-
• Email	-	-	-	-	-	-
Tech ID	-	-	-	-	-	-
Tech Fields						
• Name	-	-	-	-	-	-
• Organization (opt.)	-	-	-	-	-	-
• Street	-	-	-	-	-	-
• City	-	-	-	-	-	-
• State/province	-	-	-	-	-	-
• Postal code	-	-	-	-	-	-
• Country	-	-	-	-	-	-
• Phone	-	-	-	-	-	-
• Phone ext (opt.)	-	-	-	-	-	-
• Fax (opt.)	-	-	-	-	-	-
• Fax ext (opt.)	-	-	-	-	-	-
• Email	-	-	-	-	-	-
NameServer(s)	-	-	-	-	-	-
DNSSEC	-	-	-	-	-	-
Name Server IP Address	-	-	-	-	-	-

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Data Element	Collection E-PA1	Transmission E-PA2	Disclosure E-PA3	Retention E-PA4	TBD E-PA5	768 E-PA6
Last Update of Whois Database	-	-	-	-	-	-
Other Data:						
• Field 1	-	-	-	-	-	-
• Field 2	-	-	-	-	-	-

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Chain of Custody:

- Registrar Data Escrow Program: <https://www.icann.org/resources/pages/registrar-data-escrow-2015-12-01-en>
  - Data Fields Source: <https://www.icann.org/en/system/files/files/rde-specs-09nov07-en.pdf>
- Temp Spec: Section 5.3, Appendix B