

afnic

*Impacts of the GDPR in
Afnic - Registrar relations:*

FAQ

afnic

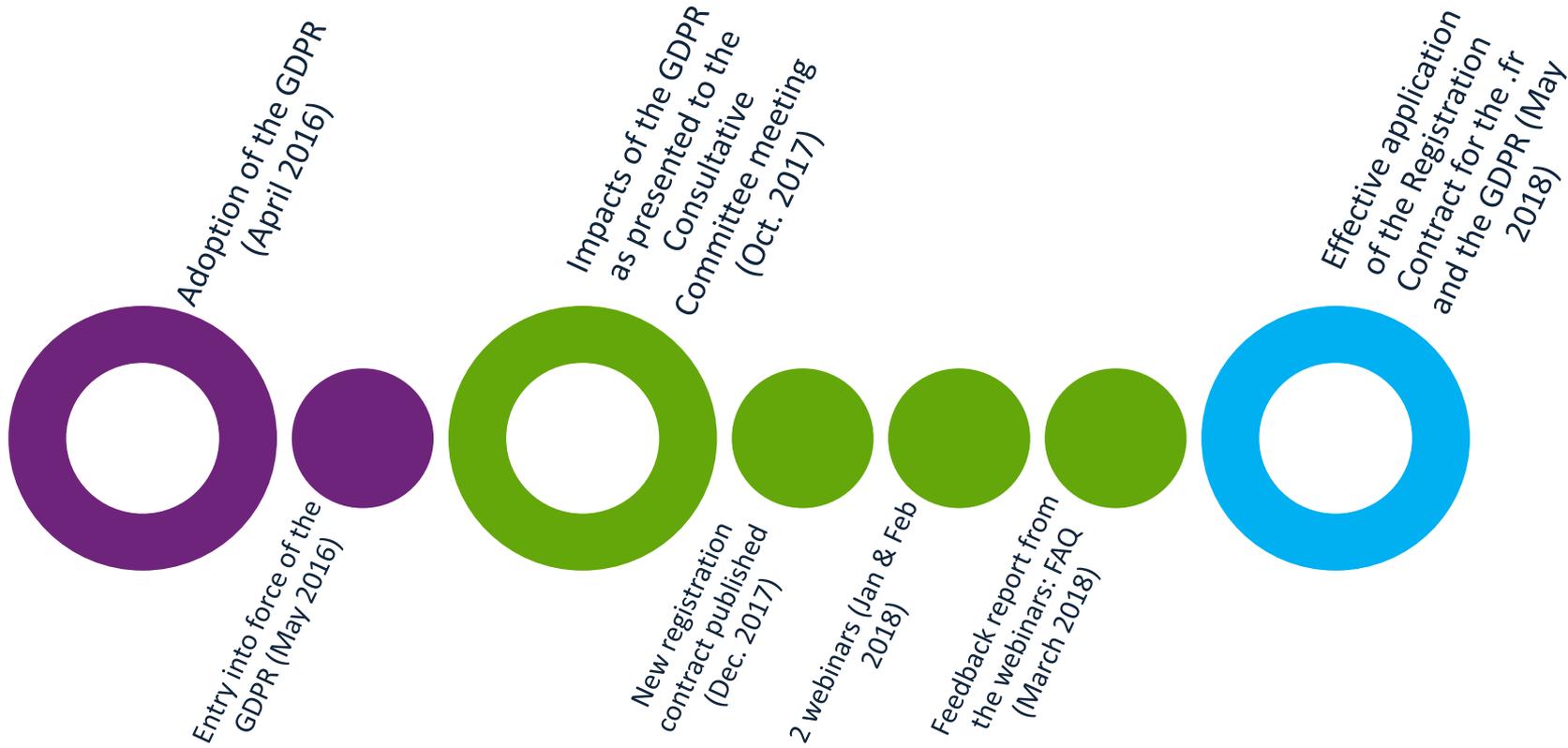
Background

- The adoption of Regulation (Eu) 2016/679 of the European Parliament and of the Council of April 27, 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (GDPR)
- The entry into force of the GDPR took place on May 24, 2016 with application effective as of 25 May 2018
- The registration contract is renewed on January 1 of each year
- The provisions of the Registration Contract concerning the GDPR have been amended for 2018
- During the last Consultative Committee meeting on October 12, 2017, Afnic described the changes in its relations with registrars further to the GDPR

Background

- In December 2017, Afnic published the [Registration Contract for the .fr TLD effective as of May 25, 2018](#), the date of actual implementation of the GDPR
- The contract incorporates the provisions relating to the GDPR as described during the Consultative Committee meeting on October 12, 2017
- Afnic invited registrars to two webinars on Tuesday, January 16 and Thursday, February 15 so that they could ask any questions about the impact of the GDPR on the contractual documents for the .fr, and, more broadly, the impact of the GDPR on their relations with Afnic
- This document contains all the questions asked inside and outside the two webinars, together with the answers provided by Afnic.

Background



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Does the GDPR apply to non-European citizens?

- YES
- The .fr is subject to the French and European legal framework, in particular for matters relating to the protection of personal data
 - *Article 3 of the GDPR "Territorial Scope"*
 - *Article L45-3 of the French Electronic Communications and Telecommunications Act (CPCE)*
 - *Article L45-5 of the French Electronic Communications and Telecommunications Act (CPCE)*
 - *Article 5.1 of the Naming Policy "Eligibility of the holder of a domain name"*

Why are this year's changes so important? Could you specify the changes that will be made?

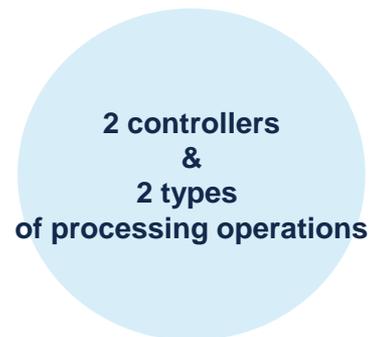
- Greater responsibilities of Afnic and Registrars both of which are responsible for their processing of .fr domain name registrants
- New obligations to be implemented by all: Afnic and Registrars
- These impacts do not result in the renewal of the existing relations specified to take into account the new obligations introduced by the GDPR (information and transparency due to registrants and customers, data breach, etc.) resulting in:
 1. The updating of three existing documents:
 1. *The accreditation application package.*
 2. *The registration contract*
 3. *The naming policy*
 2. The creation of a new specific document of information on the processing of personal data by Afnic.

Why are both the registry and the registrar data controllers?

- This has always been the case in Afnic - Registrar relations
- Article L45-5 of the French Electronic Communications and Telecommunications Act (CPCE)
 - *Registries and registrars make public the prices of their services concerning the attribution and management of domain names. Registries publish the domain names they have registered on a daily basis.*
 - *They collect the data necessary for the identification of individuals or corporate bodies holding domain names and are data controllers of these data under Law No. 78-17 of January 6, 1978 relating to data, files and freedoms.*
 - *The Government holds all rights to the resulting database. To fulfil their mission and for the duration of this mission, registries have the right to use this database.*
 - *The provision of inaccurate data by the holder may result in the deletion of the registration of the corresponding domain name. This can only take place after the registry has allowed the holder to regularize the situation.*

Why is the registrar not a data processor? (1/3)

- Article L. 45-5 of the French Electronic Communications and Telecommunications Act (CPCE) provides that:
 - " The **registries and registrars** (...) collect the data necessary for the identification of individuals or corporate bodies holding domain names and **are the data controllers of those data in accordance with the law** (...)
- Clear identification of roles and processing involved:
 - The Registrar is the data controller for the provision of services on domain names under the <.fr> TLD
 - Afnic is the data controller for the <.fr> domain zone
 - Each is the recipient of personal data for processing



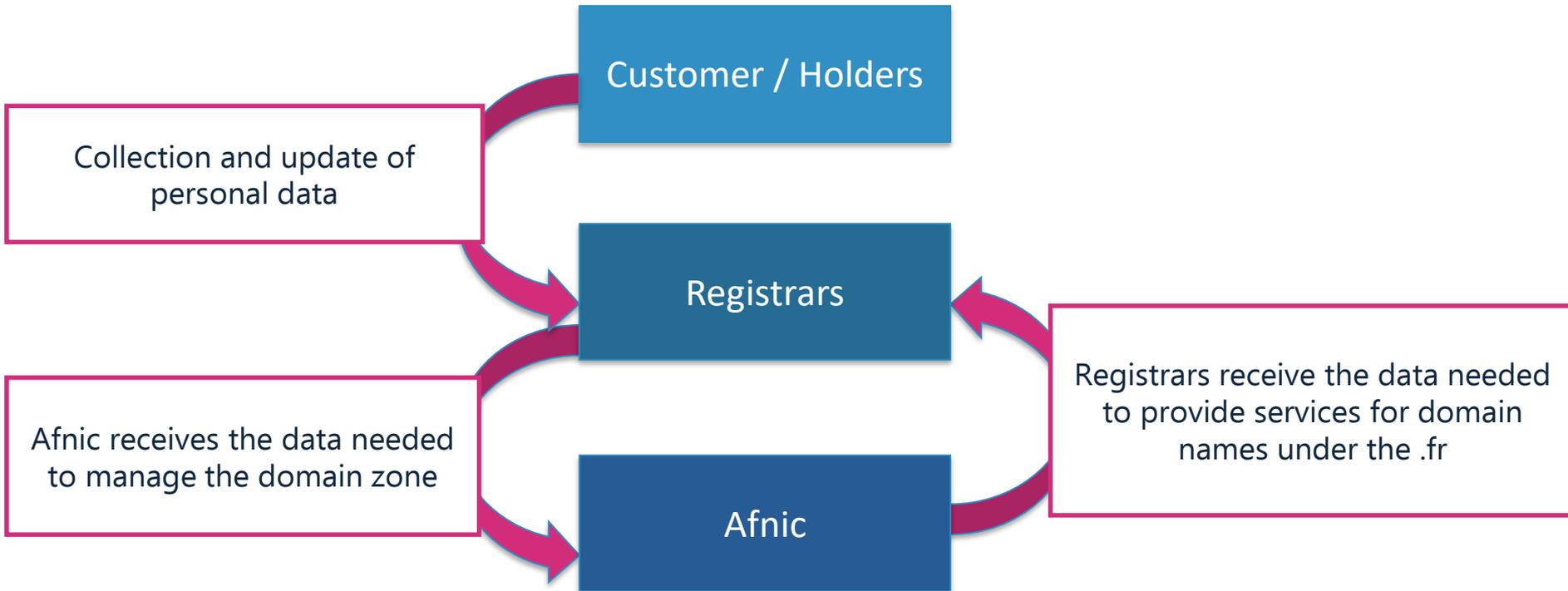
Why is the registrar not a data processor? (2/3)

- The identification of types of processing operations

	Registrar	Afnic
Processing operations	Services for .fr domain names	Naming under the .fr
Legal basis	Contract & French Law	French law & Public service remit
Data subjects	Customers	Registrants of domain names under the .fr
Data processed	Those needed in order to provide contractual services Direct collection	Those needed in order to manage the .fr - Indirect Collection via the Registrars

Why is the registrar not a data processor? (3/3)

- Data flows



What is the legal basis for the processing operations in which you require the personal data of the holders for the registration and the management of a domain name?

- Articles L45 et seq. of the French Electronic Communications and Telecommunications Act (CPCE)
- Afnic as the registry for the .fr
 - *Designation order of June 25, 2012*
 - *Order of April 5, 2017 extending the designation of Afnic as the registry of the .fr*

Would you be willing to enter into an agreement on the processing of personal data so that we can comply with Article 28 of the GDPR when we act as data processors?

- The registrar is not a data processor but is the data controller of personal data processed for domain names under the .fr (see issues dealt with above).
- There are no plans to issue a specific agreement.
- In the context of their relations, Afnic and the registrars must actively cooperate in order to satisfy all the persons involved in the processing of personal data under the .fr whether they are holders or requests from third parties.
- In order to contribute to the information and the transparency of processing operations, before May 25, 2018, Afnic will provide registrars accredited by the .fr with a specific information document on the processing of personal data by the Afnic.

Will there be any changes to the publication of data in the Whois?

- NO
- The .fr Whois is already compliant with the GDPR
- Prior to the opening of the .fr to individuals in 2006, Afnic discussed the issue with its national authority for the protection of personal data, the CNIL
- Since 2006, the .fr Whois protects individuals whose personal data are, by default, considered to be restricted information:
 - *Article 8.4 of the Naming Policy "Restricted information"*

Will Afnic continue to collect information on the administrative contact and the technical contact?

- YES
- The holder of the domain name can choose whether these fields are identical or not to the holder fields.
- For the time being, these fields are required and allow holders to choose how to manage their domain name by delegating, or not, the administrative and/or technical issues involved in the domain name. In this case, Afnic and the Registrar must know these contacts in order to properly and fully manage the domain name.

What is the legal basis for the collection of data on the administrative contact and technical contact?

- Article 5.1.c) of the GDPR "Personal data must be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ('data minimisation')"
- The data relating to the administrative contact and the technical contact are adequate, relevant and limited to what is necessary with regard to the purposes of the administrative and technical management of .fr domain names.

Will Afnic accept "bogus" data for the identification of contacts other than the holder if the holder is located in Europe?

- NO
- Article 5.1.d) of the GDPR "Personal data shall be accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay ('accuracy')"
- Article L45-5 of the CPCE last § "The provision of inaccurate data by the holder may result in the deletion of the registration of the corresponding domain name. This can only take place after the registry has allowed the holder to regularize the situation."

At the committee meeting you talked about providing us with a document that we could use and distribute to our customers. What is it about? When will it be available and how?

- Chapter III of the GDPR: Rights of the data subject and in particular:
- Articles 12. 1 (Transparency) and Article 13 (Information) of the GDPR
- To enable information and transparency on the processing of personal data by Afnic, before May 25, 2018, Afnic will provide .fr accredited registrars with a specific information document on the processing of personal data by Afnic.
- Before the purchase of a domain name, the customer must be informed in a precise, clear and transparent way of the processing to which their data will be the subject, as a holder of a domain name under the .fr.
 - Afnic will therefore produce this document so that the information regarding its role and the processing operations it carries out can be forwarded.
 - This document will be made available to Registrars so that it can be:
 - Provided to their customers before purchasing a domain name under the .fr
 - Held freely at their disposal at all times

Is there an obligation to designate a DPO?

- For cases where this designation is mandatory, see:
 - *Section 4 of the GDPR "Data Protection Officer"*
 - *Guidelines for data protection officers adopted on 5 April 2017 by the WP29, the future "European Data Protection Board", for the implementation of the GDPR*
- Each registry, registrar and other stakeholders in the domain name sector must analyze whether it should and/or wishes to designate a DPO
- For the .fr, Afnic wishes to:
 - *Ensure that its registrar partners are organized to meet the obligations of the GDPR*
 - *Ensure their active cooperation to respond to the rights of those affected*
- Consequently, Afnic asks registrars to communicate:
 - *Either the complete information about their DPO if there is one*
 - *Or the complete information about the person in charge of protecting personal data within their entity.*
- For non-EU entities, Afnic also requests the appointment of a Representative
 - *Article 27 of the GDPR*

With regard to the appointment, within the registrar, of a specific contact as well as the current billing, technical and other contacts. What role will this new contact fulfil?

- For the .fr, Afnic wishes to:
 - *Ensure that its registrar partners are organized to meet the obligations of the GDPR*
 - *Ensure their active cooperation to respond to the rights of those affected*
- Consequently, this contact must ensure within their entity that the protection of personal data is effective and compliant with the GDPR:
 - *Implementation of the fundamental principles on processing operations and data*
 - *Transparency*
 - *Information*
 - *Respect for the rights of the data subjects*
 - *Data breach management*
 - *Etc.*

Do we have a specific space as a registrar with which to report the designation of a DPO? Or is it done by email?

- Afnic requests that accredited registrars communicate by email to the customer relationship officer :
 - *Either the complete information about their DPO if there is one*
 - *Or the complete information about the person in charge of protecting personal data within their entity*
- For the registrars that have yet to be accredited, this information will be collected at the time of accreditation
- As with all the information they provide to Afnic, registrars will have to keep this contact data up-to-date, at least, with their customer relationship officer.

Where can I find the link to the contract template on your site?

- [In the French version](#)
- [In the English version](#)

How does the new contract come into effect?

- It automatically comes into effect from May 25, 2018

Does Afnic use data processors?

- YES
- For some personal data processing, Afnic uses data processors
 - *Example: data escrow providers for the .fr whois database*
- Both the registrars and the persons involved in the processing of personal data in .fr naming will have this information, as well as the identity of the recipients by personal data processing in the document that Afnic will provide to .fr accredited registrars before May 25, 2018:
 - *Specific information document on the processing of personal data by Afnic (for more information see the questions on this document above).*

With regard to the letter to ICANN from the WP29 on the concept of free consent and the mandatory provision of holder information, is this likely to change later?

- With regard to the letter to ICANN from the WP29, there is no impact on the .fr as long as the registrars respect:
 - *The GDPR*
 - *The French legal framework*
 - *The naming policy*

Are you going to impose or advocate a specific data retention period or will this not change?

- NO
- It will not change
- For the time being, there is no "modelling" of the periods in our sector of activity.
- Therefore, as the data controller, each entity defines its retention periods based on the purpose of its processing.

Which email address can we use to contact you if we have questions?

- Please contact your customer relationship officer
- Any new questions will be added and answered in this FAQ

Is there a precise definition of what is personal data: which fields? only individuals and not companies? Others?

- The GDPR protects individuals, not corporations
- Article 4 (1) Definitions of the GDPR
 - *"Personal data" means any information relating to an identified or identifiable **natural person** ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, (...);*
- Under the .fr, corporate holders ('legal persons') can identify themselves by using only the data of the legal person and the professional contact details not attached to individuals.
 - *Examples: contact@entreprise.fr, telephone number of the department in the company and not the telephone number of so and so*
- For the particular assumptions where personal data is used to identify the legal person, our analysis is as follows:
 - *These personal data form an integral part of the identity of the legal entity and it must be possible to hold latter legally accountable => publication in the whois*
 - *Examples of implementation of this analysis in company registers, in industrial property registers*

Should not the personal data of corporations (family name / first name of an officer, for example) be treated in the same way in the whois?

- NO
- Under the .fr, corporate holders ('legal persons') can identify themselves by using only the data of the legal person and the professional contact details not attached to individuals.
 - *Examples: contact@entreprise.fr, telephone number of the department in the company and not the telephone number of so and so*
- For more details, see the answer provided above to the previous question

What about holders who are not individuals? Are they protected by the GDPR?

- The GDPR protects individuals, not corporations
- For more details, see the answers provided above to the two previous questions

How will Afnic ensure that published data are not personal data?

- There is no control
- When holder identify themselves, if they fill in the "organization" field, they are corporations otherwise they are individuals
- It is fundamental that this information be known and understandable before the acquisition of a domain name under the .fr
- "Restricted information" (= non-publication) must be applied by default to the personal data of individuals

Are we responsible for informing the holders to do the same with their own users of websites (they also have personal databases)? As a site editor, are we data controllers for the data collected on the site?

- Registrars as site editors are effectively responsible for the processing that they operate on their sites
- They therefore inform users about their processing operations and in particular about the recipients of the data which they process such as Afnic for the processing related to naming under the .fr
- To enable information and transparency on the processing of personal data by Afnic, before May 25, 2018, Afnic will provide .fr accredited registrars with a specific information document on the processing of personal data by Afnic. (for more information on this document see above)
- As for informing customers about their responsibilities on the internet, it is up to each registrar to define its services, their contents and their responsibilities in relations with their customers.

Is there no impact on Afnic open data and the SYRELI procedure (already anonymized)?

- As part of the implementation of its [open data](#) service, Afnic:
 - *Has applied the privacy by design and by default (article 25 of the GDPR)*
 - *Allows data subjects to exercise their rights when needed via a contact form ([See the caveat in French](#))*
- As part of its alternative dispute resolution procedures (SYRELI and Expert ADR), Afnic has already ensured the confidentiality of personal data:
 - *The identity of the holder of the domain name is not necessary in order to open a file on the basis of Article L45-2 of the CPCE*
 - *The decisions rendered do not enable the identification of individuals whether they are the parties to the proceedings, their representatives or third parties concerned by the file*
 - *The data subjects are informed about the processing operations ([see the implementation of information on the Expert ADR platform](#) in French)*

In the long run, will the GDPR restrict the actions possible for Intellectual Property right holders (waiving anonymity, etc.)?

- NO
- Afnic has implemented since 2006 a [procedure](#) enabling access to the personal data of the holders of domain names under the .fr
 - *See article 8.4 of the Naming Policy "Restricted information"*

If the anonymization of whois is extended, could "mass" anonymity waiving procedures be possible?

- For the time being, it is out of the question, given that:
 - *The confidentiality of personal data is a fundamental right of the data subjects*
 - *The exceptions are those subject to:*
 - Application of the law
 - Application of a court order
 - A prior analysis on a case-by-case basis is made by the legal department, of both the application and the supporting documents of the rights relied on by the applicant in support of this application with respect to Article 6.1 f) of the GDPR. To enable this analysis, Afnic has set up a specific [procedure](#).

Is there transfer of personal data when changing registrars? Is there transfer of personal data when changing registrants?

- In order to know if there is transfer of personal data in these hypotheses, please refer to the relevant articles of the GDPR and in particular articles 44 et seq. of the GDPR

Should we - Afnic and Registrar - delete the personal data of a domain name holder when the latter asks us to do so? Is processing based on the contract or consent?

- A cancellation request is granted in the cases mentioned in article 17 of the GDPR.
- Depending on the processing, the legal basis of the processing may be the contract, consent or on other grounds of article 6 of the GDPR
- It is up to each entity, data controller, to carry out an inventory of its processing operations and its compliance in which it identifies the legal bases for its processing of personal data - Article 5.2 of the GDPR (accountability)

Looking forward: if certifications are set up by the supervisory authorities, could this become a condition for accreditation by Afnic?

- NO
- This will not be a requirement for accreditation
- This will be an element in support of the applicant for accreditation as to its compliance with the GDPR

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contact@afnic.fr
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Facebook : afnic.fr

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