



GPA

Global Privacy Assembly

Future of the Conference Working Group

Report – adopted October 2020

Information Commissioner's Office – WG Chair

Table of Contents

Contents

Table of Contents	1
Executive Summary	3
Introduction.....	5
Working Group Activities	6
Forward looking plan 2020-2021	11
Conclusion	12
Annexes	13
Executive Summary	15
1. Background.....	16
2. Benefits of Establishing the Secretariat as a Separate Legal Entity	17
3. Challenges of Creating the GPA Secretariat as a Separate Legal Entity	18
4. Risks of Establishing the Secretariat as a Separate Legal Entity.....	20
5. Funding	22
6. Conclusion	23
7. Recommended Next Steps	24

Executive Summary

The Future of the Conference WG (hereafter FOTC WG) was constituted in 2018 following the adoption, at the 40th Annual Meeting, of the Resolution on a Roadmap on the Future of the Conference. Although the FOTC WG was mandated no action under the 2019 – 2021 Conference Strategic Direction, its work is of key importance as recognised at the 41st conference in Tirana, as it aims to lay firm foundations for the GPA, including through the establishment of plans for the development of a funded and stable GPA Secretariat.

The adopted Resolution mandated the FOTC WG to carry out work on five work streams. Three of these workstreams concluded at the 41st Annual Meeting in Tirana, 2019. The 2019 – 2020 WG workplan focussed on the remaining two workstreams:

1. GPA Permanent Secretariat
2. GPA Secure Online Platform

The **key WG outputs** in relation to these workstreams are as follows:

1. GPA Permanent Secretariat

The WG developed a **new paper** exploring the establishment of the **GPA Secretariat** as a **separate legal entity**. This was a new element of the work stream on the GPA secretariat which originated from the 2019 Annual Meeting following the concerns raised by some member authorities during the closed session over the proposed phased implementation approach presented in Tirana. These concerns were due to a perception that some authorities would be placed at a disadvantage because of the inability to receive the funding via the collection of fees in their jurisdictions.

The new paper – which draws from a combination of literature research and examination of Secretariat models of other networks¹ – highlights a number of **benefits** for the GPA of establishing the Secretariat as a separate legal entity. As outlined in previous work², these include: **enhanced financial transparency and accountability** as well as **better consistency** and **independence** in the delivery of the Secretariat services.

However, in light of this analysis missing from previous work on the subject, the paper also stresses that this option would entail **additional challenges as, by shifting financial accountability to the legal entity, the adoption of this secretariat model would result in less flexibility and resilience to respond to potential funding challenges**. Challenges include: necessity of setting up a Bidding Process, additional administrative burden due to the need to ensure compliance with relevant

¹ Namely the APPA Secretariat and the AFAPDP Secretariat.

² <http://globalprivacyassembly.org/wp-content/uploads/2015/02/Proposal-Proposed-workable-Plan-to-Fund-the-Conference-Secretariat-August-2015.pdf> and <http://globalprivacyassembly.org/wp-content/uploads/2015/02/Working-paper-Elements-of-a-workable-plan-to-fund-the-Secretariat-and-associated-core-Conference-expenses-MayJune-20151.pdf>.

applicable corporate laws and regulation and a financial uncertainty due to independent financial accountability.

2. GPA Secure Online Platform

The FOTC WG presented a paper at the 41st Annual Meeting on the possibilities and modalities for the creation of a GPA members-only online platform. The paper identified three possible options: a software-based collaboration solution; an enhanced version of the existing GPA website; and a new GPA website including a log in area. As an additional step, at the beginning of 2020, the WG ran a survey to consult the membership on the preferred option for the creation of the GPA Secure Online Platform. The survey delivered no conclusive results as only a minor portion of the membership responded. Within this sample, the preferred option was the creation of a new website including a log-in area.

Next Steps:

The WG convened on 4 and 5 June 2020 to discuss its 2019 – 2020 activities and agree on the next steps ahead of the 2020 virtual closed session. Specifically, the WG agreed:

- in recognition of the current COVID-19 situation and the Executive Committee’s decision of postponing the 2020 physical annual meeting, to recommend to the GPA membership the postponement of the decision on the GPA secretariat to the 2021 Annual Meeting;
- in recognition of the lack of appetite in the membership about pursuing the implementation of the creation of a new GPA virtual space and of the fact that work is continuing in the GPA’s IEWG on a platform to support regulatory cooperation, to conclude its work on the GPA Secure Online Platform;
- focus its 2020 – 2021 workplan on the gathering of the necessary financial information – including exploring external sources of funding – for the funding of the GPA Secretariat. In addition, the workplan foresees the running a consultation with the membership to identify what are the issues in specific jurisdictions with regard to the implementation of the Secretariat model presented at the 2019 closed session.

Introduction

The Future of the Conference work is rooted in the Resolution on a Roadmap on the Future of the Conference adopted at the 40th Annual Meeting (2018). The FOTC WG was constituted following the adoption of this resolution.

Currently, the WG is chaired by the UK Information Commissioner's Office and comprises the following members: **Albania, Argentina, Canada, France, EDPS, Germany, Gibraltar, New Zealand, Italy, the Philippines, Switzerland, USA, Hong Kong, Burkina Faso**. At the beginning of 2020, the AFAPDP Secretariat was also admitted to the WG in its GPA observer capacity.

The Resolution on a Roadmap on the Future of the Conference mandated the FOTC WG to carry out work on five work streams:

1. Drafting a paper containing recommendations in relation to the annual meeting format;
2. developing a background document on the interpretation of the membership and independence criteria;
3. writing a detailed proposal on the creation of a GPA contact group with external stakeholders, in particular civil society organisations;
4. evaluating the possibilities and modalities, including technical and financial requirements, for the creation of a GPA member online platform; and
5. establishing plans for the development of a funded, stable Secretariat, in place for renewable terms of three years or more, and for the establishment of membership fees and its modalities.

Workstreams 1, 2 and 3 concluded at the 41st Annual Meeting (2019). The activities of the WG during 2020 focussed on the development of a new paper on the creation of the GPA Secretariat as a separate legal entity and a membership consultation on the preferred option going forward in relation to the creation of a GPA Secure Online Platform. The FOTC WG was mandated no action under the 2019 – 2021 Conference Strategic Direction. However, it regularly reported on its activities to the Strategic Direction Sub-committee, including by participating to a deep dive analysis of its activities on 18 June 2020.

Working Group Activities

The WG activities during 2019 – 2020 focussed on two remaining workstreams:

1. GPA Permanent Secretariat
2. GPA Secure Online Platform

1. New Paper on GPA Permanent Secretariat

The proposal put forward for consideration by the FOTC WG at the 41st Annual Meeting recommended a **phased implementation approach** towards the establishment of a permanent GPA Secretariat, whereby the **Secretariat** would initially be a **funded** entity separate from the Chair but **serviced by a member authority** for renewable terms of four years. This model largely resembles the secretariat model of the APPA Network. The rationale behind this approach was to test the feasibility of de-linking the Secretariat from the GPA Chair whilst allowing the Assembly to explore in more detail the necessary legal requirements and to examine workable plans to establish the GPA Secretariat as a separate legal entity in the future.

Whilst this approach was supported by the majority of working group members, reservations were expressed in the Working Group by some member authorities which raised concerns that they would be placed at a disadvantage if the above model were to be implemented due to the inability of these authorities to receive the funding via the collection of fees. These concerns were raised also during the discussion at the 2019 Annual Meeting in Tirana, where some member authorities expressed the view that a new paper investigating the implications of setting up the GPA Secretariat as a separate legal entity should be produced. This would ensure the Assembly could make an informed decision on the next steps to take.

As a result, the FOTC WG was mandated with a new action – developing a new paper setting out the implications of establishing the GPA Secretariat as a separate legal entity.

Paper on the Creation of a GPA Secretariat as a Separate Legal Entity

The new paper exploring the establishment of the GPA Secretariat as a separate legal entity was completed in mid-March 2020 and draws from a combination of literature research and examination of Secretariat models of other networks, namely the Secretariat of the APPA and AFAPDP Networks. The Chair of the FOTC WG, UK ICO, led on this work. WG members were given 8 weeks of consultation to provide comments and changes to the paper.

As already indicated by previous work³, the argument put forward in the paper is that the option of creating a legal entity would offer a **number of benefits** to the Global Privacy Assembly, including **enhanced financial transparency and accountability** as well as **better consistency and independence** in the delivery of the Secretariat services. However, as this analysis was missing from previous work on the subject, the paper stressed that this option would also **entail additional challenges** as, by shifting financial accountability to the legal entity, the adoption of this secretariat model would result in **less flexibility and resilience to respond to potential funding challenges**.

The challenges are those associated with:

- the **legal diversity** embedded in the Assembly;
- the necessity of **setting up a bidding process** to guide the membership in the selection of the country where the Secretariat will be based, and
- the **additional administrative burden** stemming from the creation of the separate legal entity to ensure compliance with applicable laws and regulations.

As for **the additional challenges related to financial stability and resilience**: this would stem from the **Secretariat** being an entity with its own legal personality and, as such, **fully** and independently **accountable** for any **incurred liabilities**. This would entail a higher initial cost for the membership resulting from the need of setting up a guarantee fund to cover for the eventuality of the entity's winding up.

³ <http://globalprivacyassembly.org/wp-content/uploads/2015/02/Proposal-Proposed-workable-Plan-to-Fund-the-Conference-Secretariat-August-2015.pdf> and <http://globalprivacyassembly.org/wp-content/uploads/2015/02/Working-paper-Elements-of-a-workable-plan-to-fund-the-Secretariat-and-associated-core-Conference-expenses-MayJune-20151.pdf>.

If the GPA membership wishes to pursue this option, it seems reasonable to assume a **lead-in time of around five years** before the Global Privacy Assembly can expect the legal entity functioning as the Secretariat to be created.

This is because moving in this direction would require a number of additional steps which are highlighted below:

- **Seek expert legal advice** in order to map out the legal requirements, including the financial requirements and liabilities, for the creation of the entity. This is a complex area and it would be unwise for the Assembly to proceed further without detailed and professional input;
- **Set up a bidding process** to guide the membership in the selection of the country where the Secretariat will be based;
- Once the location has been chosen, in order to lower costs, **negotiate an agreement** with the organisation providing office facilities to agree on e.g. the provision of office equipment, exemption to the payment of rental costs and related bills as well as to the payment of IT suite licenses. Where this agreement is not possible, the Assembly will need to take into account these additional costs when drawing up the budget forecast to meet the required level of funding.

As a result of these considerations, the paper concluded that the phased implementation approach presented at the 2019 Annual Meeting – that is the model of a funded Secretariat embedded in a member authority separate from the Chair – is the optimal way forward for the GPA at this stage.

The reasons for this are:

- A quicker lead-in time of two years;
- Smaller administrative burden due to fact that the infrastructure, including the corporate governance infrastructure, would already be in place in the member authority hosting the Secretariat;
- Lower financial risk due to a higher level of predictability associated with the existing corporate governance infrastructure of the member authority hosting the Secretariat;
- A transition period allowing the Assembly to explore in detail the requirements to establish the Secretariat as a separate legal entity, including legal requirements as well as the setting up of a bidding process ;

- Easier to reverse to the *status quo* if separating the Chair from the Secretariat proves unachievable or problematic.

2. GPA Secure Online Platform

The Resolution on a Roadmap on the Future of the Conference mandated the FOTC WG to ‘evaluate the possibilities and modalities, including technical and financial requirements, for the creation of an ICDPPC [now GPA] members online platform at the 41st conference in 2019’.

The proposal, presented at the 41st Annual Meeting in Tirana (2019) identified three possible solutions:

- Software-based solution (e.g. Office 365 or an open software);
- Enhanced existing GPA website;
- Creation of a new GPA website including a log-in area for Conference’s members only.

Given the lack of consensus in the FOTC WG on a preferred option, the 2019 paper concluded by suggesting members’ preferences be tested through a survey in relation to a GPA secure virtual space or for a continuation of the *status quo* – including promoting enforcement cooperation via platforms hosted by other networks such as the Global Privacy Enforcement Network (GPEN)⁴.

The survey was launched in January 2020 and closed on 28 February 2020. Following comments raised by some member authorities at the 41st Annual Meeting, the questionnaire included a question relating to the possible use of CIRCABC⁵ as the preferred open software-based solution.

A total of 42 member authorities responded to the consultation. Of these, 39 responded that it would be beneficial to have a secure online platform. The preferred option (16 respondents) was the creation of a new website including a log-in area; 13 respondents stated they would be happy with the use of an open source software such as CIRCABC (although it should be noted that, of these, 10 respondents are based in the EU and, therefore, likely to already have a CIRCABC account).

⁴ <https://www.privacyenforcement.net/>.

⁵ CIRCABC is a platform hosted by the European Commission. Whilst there is an open source version of the software, from a conversation with EDPS which is currently using it in its role of Secretariat of the AI WG, this version has not been updated since 2013. Using CIRCABC would therefore entail having a GPA member authority from the EU managing the platform.

As only a minor portion of the membership responded to the consultation, the WG concluded that there is a lack of appetite in the membership about pursuing the implementation of the creation of a GPA Secure Online Platform.

Forward looking plan 2020-2021

As agreed at its meeting on 4 and 5 June 2020, the FOTC WG intends to focus its 2020 – 2021 workplan on the following activities:

- Stakeholder mapping to identify organisations with which to engage to seek funding for the GPA Secretariat (Jan – May 2021);
- Gather the necessary financial information via the 2020 Census to establish the relevant fee tier for the funding of the GPA Secretariat (May – June 2021);
- running member consultations ahead of the 2021 closed session – including via the GPA Regional Networks – to identify what are the issues are in specific jurisdictions with regard to the implementation of the Secretariat model presented at the 2019 closed session (Jan – May 2021).

As mentioned, the FOTC WG has no action under the GPA Conference Strategic Direction although its importance has been recognised by the 41st conference Closed Session. However, the FOTC WG will seek the 2020 (42nd conference) Closed Session participants' support to renew its mandate under the Resolution on a Roadmap on the Future of the Conference adopted in 2018.

Conclusion

The WG convened on 4 and 5 June 2020 to discuss its 2019 – 2020 activities and agree on the next steps ahead of the 2020 virtual closed session. Specifically, the WG agreed:

- in recognition of the current COVID-19 situation and the Executive Committee’s decision of postponing the 2020 physical annual meeting, to recommend to the GPA membership the postponement of the decision on the GPA secretariat to the 2021 Annual Meeting;
- in recognition of the lack of appetite in the membership about pursuing the implementation of the creation of a GPA virtual space and of the fact that work is continuing in the IECWG on a platform to support regulatory cooperation, to conclude its work on the GPA Secure Online Platform;
- focus its 2020 – 2021 workplan on the gathering of the necessary financial information – including exploring external sources of funding – for the funding of the GPA Secretariat. In addition, the workplan foresees running a consultation with the membership ahead of the 2021 closed session to identify what are the issues in specific jurisdictions with regard to the implementation of the Secretariat model presented at the 2019 closed session.



Working Group on the Future of the Conference
*Paper on the Creation of a GPA Secretariat
as a Separate Legal Entity*

In accordance with the mandate given to the Working Group on the Future of the Conference by the *Resolution on a Roadmap on the Future of the International Conference* adopted at the 2018 GPA Annual Meeting, this paper examines the implications of establishing the GPA Secretariat as a permanent entity with legal personality with the aim of providing an overview of benefits and challenges of this solution, thereby allowing the Assembly to make an informed decision in relation to the next steps towards the plans for the establishment of a GPA funded and stable Secretariat.

Contents

Executive Summary	15
1. Background	16
2. Benefits of Establishing the Secretariat as a Separate Legal Entity	17
3. Challenges of Creating the GPA Secretariat as a Separate Legal Entity	18
4. Risks of Establishing the Secretariat as a Separate Legal Entity	20
5. Funding	22
6. Conclusion	23
7. Recommended Next Steps	24

Executive Summary

This paper seeks to examine the implications of creating a **permanent separate legal entity** to function as GPA Secretariat. Specifically the paper highlights that – whilst this option would offer a **number of benefits** to the Global Privacy Assembly, including **enhanced financial transparency** and accountability as well as **better consistency** in the delivery of the Secretariat services – it would also **entail** greater **challenges** and a **higher financial risk**.

The **challenges** are those associated with the **legal diversity** embedded in the Assembly, the necessity of **setting up a Bidding Process** to guide the membership in the selection of the country where the Secretariat will be based, and the **greater administrative burden** stemming from the creation of the separate legal entity to ensure compliance with applicable laws and regulations. As for the **higher financial risk**, this would stem from the **Secretariat** being an entity with its own legal personality and, as such, **fully** and independently **accountable** for any **incurred liabilities**. This would entail a higher initial cost for the membership resulting from the need of setting up a guarantee fund to cover for the eventuality of the entity's winding up.

In light of the above, the **phased implementation approach** enshrined in the proposal presented at the 2019 Annual Meeting **may offer the optimal way forward**. This would allow the GPA to **move more quickly** towards the establishment of a funded Secretariat whilst allowing the Assembly to explore in detail the legal requirements for the creation of a separate legal entity to serve as the Secretariat for which it seems reasonable to assume a lead-time of at least five years.

1. Background

Within the GPA community, the debate about the need for establishing a permanent Secretariat to provide a more institutionally structured support for the work of the Assembly dates back to 2015 when it was first identified by the Strategic Direction Working Group⁶ as a key step for the GPA towards becoming a more structured organisation, rather than only an annual gathering of data protection authorities. However, it was not until 2018 that the Assembly committed – through the adoption of the [Resolution on a Roadmap on the Future of the International Conference](#) – to start scoping out concrete plans for the establishment of a funded and stable Secretariat.

As a result, the Working Group on the Future of the Conference was mandated to prepare a proposal mapping out plans for the establishment of a stable Secretariat, including practical means to collect membership fees and proposed changes to the Assembly’s Rules and Procedures. The [proposal](#) put forward for consideration at the 41st Annual Meeting recommended a **phased implementation approach** towards the establishment of a permanent GPA Secretariat whereby the Secretariat would **initially be a funded entity separate from the Chair but serviced by a member authority** for renewable terms of four years. The rationale behind this approach was to test the feasibility of de-linking the Secretariat from the GPA Chair whilst allowing the Assembly to explore in more detail the necessary legal requirements and to examine **workable plans** to establish the GPA Secretariat as a separate legal entity.

However, when the proposal was presented at the 2019 Annual Meeting in Tirana, some member authorities voiced doubts about the proposed way forward which would temporarily put on hold the possibility of establishing the Secretariat as a permanent and separate legal entity, and expressed the view that this possibility should be explored in further detail before the Assembly could make an informed decision on the next steps to take.

Therefore, this paper seeks to examine the implications of creating a permanent separate legal entity to function as GPA Secretariat – with the ability to receive and disburse funds – and to set out the main benefits and potential challenges.

⁶ The Strategic Direction Working Group produced several outputs in relation to the creation of a permanent and funded ICDPPC Secretariat. These can be accessed at the following links: <http://globalprivacyassembly.org/wp-content/uploads/2015/02/Proposal-Proposed-workable-Plan-to-Fund-the-Conference-Secretariat-August-2015.pdf> and <http://globalprivacyassembly.org/wp-content/uploads/2015/02/Working-paper-Elements-of-a-workable-plan-to-fund-the-Secretariat-and-associated-core-Conference-expenses-MayJune-20151.pdf>.

The paper highlights that the establishment of the Secretariat as a separate legal entity could be **beneficial** for the Global Privacy Assembly **in the longer-term** but would also **entail greater challenges** and **higher financial risks**.

In addition to this, it is important to note that the establishment of a new legal entity is a very complex area. This paper sets out some of the key issues and considerations. If this option is to be pursued, a more in-depth technical examination and expert legal advice would be required as the next step.

2. Benefits of Establishing the Secretariat as a Separate Legal Entity

As highlighted also in the paper “Proposed Plans for the Establishment of an ICDPPC Stable Secretariat”, presented at the 41st Annual Meeting, there are **several benefits** for the Assembly of having stability in the provision of the secretariat function.

These benefits – which would be further enhanced were the Secretariat to be established as a separate legal entity – can be summarised as follows.

Firstly, by providing continuity over time, it would **strengthen consistency** in the delivery of the secretariat services. The present arrangement, whereby the authority serving as the GPA Chair is entrusted with providing also a secretariat function, has often translated into fluctuations in the scope of work and level of service of the Secretariat as these variables are often dependant on the availability of resources for the authority serving as the Chair. By contrast, a permanent entity acting as the GPA Secretariat could ensure consistency in file management and preservation of GPA generated information, harmonisation and standardisation of the Assembly’s organisational procedures such as the Accreditation and Host Bid processes, as well as enhanced coherence of the Assembly’s communication strategy.

Secondly, and related to the above, a permanent Secretariat could **defuse the risk of loss of institutional memory** through improved retention of the Assembly’s knowledge and capability. Currently, the rotating nature of the Secretariat – coupled with the absence of a secure online platform which could function as a central repository of non-public documents of institutional value – can result in the dispersion of GPA generated information as well as of accumulated knowledge, especially during the handover process between secretariats. Conversely, a permanently established Secretariat would act as the central institutional repository of the Assembly’s knowledge, building

and strengthening expertise over time. This would result in a more efficient support to the GPA Chair, Executive Committee and, ultimately, the Assembly as a whole because the Secretariat would not be placed in the position of going through a learning process at regular intervals. Rather, relevant knowledge and expertise would be stored within a single organisation, responsible for adapting processes over time as required.

Finally, the creation of a separate legal entity would entail a **higher level of financial transparency and accountability**. This is because the entity would have its own business account to handle sources of income and expenditures. In addition to this, the entity would have a clear legal obligation – and full and independent responsibility – for keeping accounting records. Both the bank account and accounting records would be auditable.⁷ This would also be the case with the Secretariat model presented at the 41st Annual Meeting, i.e. a Secretariat serviced by a member authority other than the Chair. The only difference between the two governance frameworks would be that – were the Secretariat to be serviced by a member authority – accounting responsibilities would be incorporated into the broader accounting records of the member authority itself. However, as outlined by some member authorities at the 41st Annual Meeting in Tirana, a drawback of the latter governance framework would be that it places at a disadvantage those member authorities unable to receive funds due to the nature of their constitution as they would not be in a position to hold the Secretariat function. By contrast, establishing the GPA Secretariat as a separate legal entity would take this issue out of the equation whilst creating a fully accountable body with the ability to receive and disburse funds.

3. Challenges of Creating the GPA Secretariat as a Separate Legal Entity

In the previous section, we have explored the benefits for the Global Privacy Assembly of having a permanent Secretariat with its own legal personality rather than embedded in a member Authority.

However, the creation of a legal entity is a complex legal task with far reaching and lasting implications which need to be properly considered and understood before the Assembly makes the decision to move in this direction. What follows below is a lay analysis of a very complex legal area.

⁷ Although exceptions may apply across jurisdictions for small-sized entities.

Should the membership make the decision to pursue the option of establishing the Secretariat as a separate legal entity, it would require greater examination – including seeking expert legal advice.

Before giving an overview of the implications of taking this approach, it would be helpful to briefly outline the characteristics of a body with its own legal personality. A separate legal entity is a legal construct, a form of business organisation to which the law recognises legal rights and duties, that is a legal personality. This gives the organisation the ability to enter into legally binding contracts, raise finance, own property, sue and be sued in its own name. Having separate legal personality also places on the organisation a number of obligations such as being liable to pay taxes and incur other liabilities (e.g. debts).

For a community such as the GPA, taking this approach would pose a number **challenges**.

Two related challenges stem from the **legal diversity** embedded in the Assembly and the greater complexity of the task associated with the creation of a separate legal entity. Different countries recognise different kind of legal entities and, even in those instances when types of entities are described as roughly the same in different national settings, the regulations, specific rules and administrative requirements will vary across jurisdictions. This situation is further complicated by the fact that some countries have a federal system which means rules may differ at state level. On this premise, the first challenge facing the Assembly will be to reach a consensual **decision** about which **country** will **host** the permanent **Secretariat** and – once this decision has been made – reach an agreement on detailed issues such as what kind of legal entity the Secretariat will be, where the office will be registered, the Secretariat's constitution, and who would act as Director. It is important to note that, depending on the type of chosen legal entity and jurisdiction, the Director may also incur personal liabilities such as – for example – tort liabilities or liabilities associated with breaches in Health and Safety regulations. Reaching a decision on these issues may prove harder for the Assembly compared to the model of a Secretariat embedded in a member authority separate from the Chair as, in this instance, most of the corporate infrastructure would be already in place.

Related to the above, there would be the challenges for the new body associated with the **greater administrative burden** stemming from the creation of the separate legal entity to ensure compliance with applicable laws and regulations such as the obligation to keep accounting records ready for inspection and auditing responsibilities. As mentioned in the previous section, such obligations would not be absent in the secretariat model presented at the 41st Annual Meeting in Tirana. However, they could be dealt with within the existing corporate infrastructure of the member authority hosting the Secretariat.

Finally, there would be the challenge for the Assembly of **setting up a Bidding Process** and , establishing the rules for managing this, including how federal states will be allowed to participate. As setting up the GPA Secretariat as a separate legal entity would entail a fundamental and permanent change in the structure of the Assembly, it will be key to ensure the process of selection of the country which will host the permanent Secretariat is handled fairly and transparently by giving all member countries the opportunity to compete

4. Risks of Establishing the Secretariat as a Separate Legal Entity

The examination above has highlighted the new possibilities the establishment of the GPA Secretariat as a separate legal entity would open for the Assembly whilst also shedding some light on some of the challenges associated with this task. Whilst these challenges may prove demanding and time-consuming for the Assembly, they can also be overcome with enough work and preparation.

However, in order to draw a complete picture of the implications of establishing a permanent Secretariat and allow the Assembly to make a truly informed decision, it is important to note the risks for the GPA of creating a separate legal entity, where risks are defined as the potential of incurring a loss as result of dealing with circumstances which are unpredictable and beyond the scope of our control. On this premise, the adoption of a secretariat model involving the establishment of a separate legal entity would entail a **higher risk** for the GPA community than the adoption of the secretariat model outlined in the proposal presented at the 41st Annual Meeting in Tirana.

This is for **two** main **reasons**. The **first reason** is that it would **not allow** the Assembly to **test** whether splitting the Secretariat from the GPA Chair is a feasible and effective option. As outlined in the “Proposed Plans for the Establishment of an ICDPPC Stable Secretariat”, presented at the 2019 Annual Meeting, a **decentralised governance framework** based on de-linking the Chair from the Secretariat is not free from drawbacks. Specifically, the main risk associated with separating the Chair from the Secretariat would be a potential loss of efficiency due to the higher level of coordination required between the Chair authority and the Secretariat, which could impact upon the work of the Executive Committee as well as of the Assembly as a whole. This risk could be exacerbated if the option of establishing the secretariat as a permanent and separate legal entity is pursued from the outset without allowing for enough time to test whether de-linking the Chair from the Secretariat is

a workable solution. Should the separation not prove successful, this would entail a greater cost for the Assembly as the option of a separate legal entity is harder to reverse.

The **second reason** is because of the **higher financial risk** the establishment of a legal entity entails. In the case of the GPA Secretariat, this risk would be particularly high due to a greater unpredictability when forecasting the budget. For example, should a funding model based on the collection of membership fees be adopted – in the absence of a fixed source of income – budget forecasting would depend on variables such as the number of member authorities eligible for a fee exemption or potential issues stemming from non-payment. As mentioned in the previous section, a legal entity has its own legal rights and obligations. Whilst this would give it the ability to raise finance (borrow money) more easily, it would also make it fully accountable for any incurred liability, including payment of outstanding debts. By contrast, a framework whereby the Secretariat is funded but serviced by a member authority would – to a certain extent – offset this risk because a safety net would be represented by the member authority itself. This is because an existing organisation would offer a higher level of predictability and there would be a reasonable expectation for the member authority hosting the Secretariat to have an understanding of the scope of work it could accommodate⁸ and a plan of action to mitigate any risks stemming from a Secretariat income shortfall.

⁸ As highlighted in the proposal presented at the 41st Annual Meeting, this would not represent an obstacle for less resourced authorities to host the Secretariat because secondment frameworks could be put in place to support in the delivery of the Secretariat services.

5. Funding

The previous section has outlined some of the risks for the Assembly associated with the adoption of a Secretariat model as a separate legal entity, including the higher financial risk stemming from the fact the secretariat would be fully and independently accountable for any incurred liability.

In terms of funding, there are **two ways** in which the Assembly could **deal** with the increased **financial risk**.

The **first way** is by **increasing** the initial **capital amount** required for funding the Secretariat. This increase would be necessary because – were the Secretariat to be established as a separate legal entity – the funding would need to cover not only the costs for the provision of the secretariat services but also the existence of an emergency fund to cover for any temporary drop of sources of income as well as of a guarantee fund covering for the eventuality of the entity's winding-up. A guarantee fund would be necessary because, as mentioned in section 3, a key feature of an entity with legal personality is being independently accountable for any incurred liabilities. This means that the GPA Secretariat as a separate legal entity would be responsible for meeting redundancy and any other costs associated with being wound-up. This would require a higher level of funding – at least initially – which could be met through a combination of membership fees and complementary sources of funding such as grants from international organisations whose strategic objectives are in alignment with those of the GPA.

The **second way** for the GPA to mitigate the financial risk would be to adopt a **funding model** which would include a **stable and fixed source of income** rather than a funding model whereby membership fees constitute the primary source of income. Similarly to the point made above, this need could be met by exploring external sources of funding such as a regular funding arrangement with international organisations. However, the Assembly would have to consider two things. The first is the possibility that this funding could be withdrawn at any given time. The second thing to consider is the potential implications of this option in terms of the Secretariat's independence as well as considerations concerning additional requirements about setting up reporting mechanisms to monitor the financial expenditures relating to the externally sourced portion of the budget.

In addition to the above steps, a further way for the Assembly to mitigate the financial risk inherent in the creation of a separate legal entity would be by starting with the creation of an entity

of a small size focussing on the delivery of core secretariat functions such as information management, support and liaison work and the treasurer function. This could be achieved through one full-time employee employed directly by the Secretariat and three secondees⁹ - this could ensure the entity is of a manageable size at the initial stage, thereby allowing to accrue capital for the emergency fund with the prospect of subsequently expanding the Secretariat's portfolio of functions.

6. Conclusion

The purpose of this paper was to offer an examination of the benefits and challenges for the Global Privacy Assembly of establishing the GPA Secretariat as a separate legal entity from the outset. If the GPA membership wishes to pursue this option, it seems reasonable to assume a lead-in time of at least five years before the Global Privacy Assembly can expect the legal entity functioning as the Secretariat to be created.

This is because moving in this direction would require a number of additional steps which are highlighted below:

- **Seek expert legal advice** in order to map out the legal requirements, including the financial requirements, for the creation of the entity. This is a very complex area and it would be unwise for the Assembly to proceed further without detailed and professional input;
- **Set up a bidding process** to guide the membership in the selection of the country where the Secretariat will be based;
- [Once the location has been chosen], in order to lower costs, **negotiate an agreement** with the organisation providing office facilities to agree on e.g. the provision of office equipment, exemption to the payment of renting costs and related bills as well as to the payment of IT suite licenses. Were this agreement not be possible, the Assembly will need to take into account these additional costs when drawing up the budget forecast to meet the required level of funding.

⁹ For example, the GPA could consider the establishment of a framework similar to the one adopted by the Asia Pacific Privacy Authority - <https://www.appaforum.org/resources/secondments/>.

7. Recommended Next Steps

This paper should be considered alongside the paper on the “Proposed Plans for the Establishment of a Stable ICDPPC Secretariat” presented at the 41st Annual Meeting which suggested the adoption of a phased implementation approach, whereby the Secretariat would initially be a funded entity separate from the Chair but serviced by a member authority for renewable terms of four years.

Having a fuller picture of the implications of creating a permanent legal entity to serve as the GPA Secretariat, the GPA membership is now called to decide which option it wishes to pursue. That is, i) proceed with the implementation of the model presented at the 41st Annual Meeting for a Secretariat hosted by a member DPA or ii) move towards the establishment of the Secretariat as a separate legal entity.

As highlighted in the proposal presented at the 2019 Tirana Conference, **a phased approach might offer the optimal way forward**. This is because **this option** would offer the advantage of being **easier** to implement in the short-term whilst **allowing** the Assembly to **test the feasibility of separating the Chair from the Secretariat** as well as of exploring in detail workable plans and associated legal requirements to establish the Secretariat as a separate legal entity.