

From the ICANN Bylaws – Annex A-1: GNSO Expedited Policy Development Process

Section 4. Council Deliberation

Upon receipt of an EPDP Final Recommendation(s) Report, whether as the result of an EPDP Team or otherwise, the Council chair will (i) distribute the Final EPDP Recommendation(s) Report to all Council members; and (ii) call for Council deliberation on the matter in accordance with the PDP Manual.

Approval of EPDP Recommendation(s) requires an affirmative vote of the Council meeting the thresholds set forth in Section 11.3(i)(xiv) and (xv), as supplemented by the PDP Manual.

(...)

Section 11.3(i)(xiv) and (xv)

(xiv) Approval of EPDP Recommendations: requires an affirmative vote of a GNSO Supermajority.

(xv) Approve an EPDP Recommendation Imposing New Obligations on Certain Contracting Parties: where an ICANN contract provision specifies that "a two-thirds vote of the council" demonstrates the presence of a consensus, the GNSO Supermajority vote threshold will have to be met or exceeded.

From the GNSO Operating Procedures – PDP Manual:

13. Council Deliberation

The GNSO Council is strongly encouraged to allow sufficient time for Stakeholder Group, Constituency and Councillor review of the Final Report prior to a motion being made to formally adopt the Final Report. However, the GNSO Council is also encouraged to take formal action on a Final Report in a timely manner, and preferably no later than the second GNSO Council meeting after the report is presented. At the request of any Council member, for any reason, consideration of the Final Report may be postponed for no more than one (1) meeting, provided that such Council member details the rationale for such a postponement. Consideration of the Final Report may only be postponed for a total of one (1) meeting, even if multiple Council members request postponement. The GNSO Council may, if deemed appropriate, schedule a separate session with the PDP Team to discuss the Final Report and ask any clarifying questions that might arise.

The GNSO Council is expected to vote on the recommendations contained in the Final Report. Approval of the PDP recommendations contained in the Final Report requires an affirmative vote meeting the thresholds set forth at Article 11, Section 3(i) viii – x.

In the event that the Final Report includes recommendations that did not achieve the consensus within the PDP Team, the GNSO Council should deliberate on whether to adopt them or remand the recommendations for further analysis and work. Although the GNSO Council may adopt all or any portion of the recommendations contained in the Final Report, it is recommended that the GNSO Council take into account whether the PDP Team has indicated that any recommendations contained in the Final Report are interdependent. The GNSO Council is strongly discouraged from itemizing recommendations that the PDP Team has identified interdependent or modifying recommendations wherever possible. In the event the GNSO Council expresses concerns or proposes changes to the PDP recommendations, it may be more appropriate to pass these concerns or recommendations for changes back to the respective PDP Team for input and follow-up.

EPDP Phase 2 Final Report Specifics:

- Eleven (11) recommendations obtained a full consensus designation:
 - #1 - Accreditation
 - #2 - Accreditation of Governmental Entities
 - #3 - Criteria and Content of Requests
 - #4 - Acknowledgement of Receipt
 - #11 - SSAD Terms and Conditions
 - #13 - Query Policy
 - #15 - Logging
 - #16 - Audits
 - #17 - Reporting Requirements
 - #19 - Display of information of affiliated and/or accredited privacy / proxy providers
 - #21 - Data retention
- Three recommendations obtained a consensus designation:
 - #7 - Requestor Purposes
 - #20 - City field
 - #22 - Purpose 2
- Six (6) recommendations obtained a strong support but significant opposition designation (#5, 8, 9, 10, 12 and 18)
 - #5 - Response Requirements
 - #8 - Contracted Party Authorization
 - #9 - Automation of SSAD Processing
 - #10 - Determining Variable SLAs for response times for SSAD
 - #12 - Disclosure requirements
 - #18 - Review of implementation of policy recommendations concerning SSAD using a GNSO Standing Committee
- Two recommendations obtained a divergence designation:

#6 - Priority levels

#14 - Financial sustainability

- The EPDP Team has indicated that “Only in relation to the SSAD related recommendations, the EPDP Team considers these interdependent and as a result, these must be considered as one package by the GNSO Council and subsequently the ICANN Board.”

Options for consideration

Below are a number of options for leadership to consider how to manage the EPDP Phase 2 Final Report consideration by the GNSO Council. Of course, Council leadership could also decide to discuss these options with the GNSO Council before an approach is recommended. Note that this are not listed in any particular order or preference, nor is it intended to be an exhaustive list as variations of the options listed below may also be considered. It may also be important to remind the GNSO Council that as the Manager of the PDP, it is expected to focus on whether proper process was followed in developing the recommendations and delivering the Final Report, not to second guess or redo the policy deliberations that took place in the EPDP Team.

Option	Pros	Cons	Precedent / Applicable procedures
a. Consider all recommendation as one package / one vote	• Avoids separating out recommendations that might impact the implementability of SSAD if not adopted • Follows the EPDP Team guidance that the SSAD recs should be considered as one package.	• Does not factor in different levels of support achieved for the different recommendations. • Could result in priority 2 recommendations (which are not deemed interdependent) not being adopted if there is a lack of support for SSAD related recommendations.	• Phase 1 recommendations were also considered as one package, even though recommendations had different levels of support, incl. divergence. • <i>“Although the GNSO Council may adopt all or any portion of the recommendations contained in the Final Report, it is recommended that the GNSO Council take into account whether the PDP Team has indicated that any recommendations contained in the Final Report are interdependent. The GNSO Council is strongly discouraged</i>

			<i>from itemizing recommendations that the PDP Team has identified interdependent or modifying recommendations wherever possible.”</i>
b. Consider SSAD recommendations as one package (rec #1 - #18) and considerer priority 2 recommendations as a separate package (Rec #19 - #22)	• Avoids separating out recommendations that might impact the implementability of SSAD if not adopted • Follows the EPDP Team guidance that the SSAD recs should be considered as one package. • Avoids linking fate of priority 2 recommendations to that of SSAD recommendations.	• Does not factor in different levels of support achieved for the different recommendations	• <i>“Although the GNSO Council may adopt all or any portion of the recommendations contained in the Final Report, it is recommended that the GNSO Council take into account whether the PDP Team has indicated that any recommendations contained in the Final Report are interdependent. The GNSO Council is strongly discouraged from itemizing recommendations that the PDP Team has identified interdependent or modifying recommendations wherever possible.”</i>
c. Consider SSAD recommendations that achieved full consensus & consensus support as a package, consider all other recommendations individually.	• Allows factoring in of different levels of support achieved for the different recommendations.	• Would likely result in an SSAD policy that is not implementable as certain building blocks might not be adopted on which adopted recommendations would depend. In addition, there is significant cross-referencing throughout the recommendations –	• <i>“Although the GNSO Council may adopt all or any portion of the recommendations contained in the Final Report,..”</i>

		untangling those linkages would require rewriting of recommendations.	
d. Consider all recommendations individually.	Allows factoring in of different levels of support achieved for the different recommendations	Would likely result in an SSAD policy that is not implementable as certain building blocks might not be adopted on which adopted recommendations would depend. In addition, there is significant cross-referencing throughout the recommendations – untangling those linkages would require rewriting of recommendations.	<i>“Although the GNSO Council may adopt all or any portion of the recommendations contained in the Final Report,..”</i>
e. Send back the report and recommendations to the EPDP Team for further analysis and work.	Could result in modifications that may result in consensus support for more recommendations.	Unlikely that there is willingness to further deliberate and/or likelihood of significant changes as most issues were discussed extensively by the EPDP Team.	<i>“In the event that the Final Report includes recommendations that did not achieve the consensus within the PDP Team, the GNSO Council should deliberate on whether to adopt them or remand the recommendations for further analysis and work.”</i>

Proposed Timeline

