

**Task:**

As requested by the GNSO Council, a small team of Council members met to review and consider the possible next steps to address the expected remaining EPDP priority 2 issues, namely:

- a) Legal vs. natural persons
- b) Feasibility of unique contacts to have a uniform anonymized email address
- c) Accuracy and WHOIS Accuracy Reporting System

**Background**

As a reminder, in order to organize its work for phase 2, the EPDP Team agreed to divide its work into priority 1 and priority 2 topics. Priority 1 consists of the System for Standardized Access/Disclosure to nonpublic registration data (SSAD) and all directly-related questions. Priority 2 includes a number of topics that were deferred from phase 1 to phase 2 as well as some items that were part of the annex to the Temporary Specification which was also included as part of the EPDP Team's charter. None of these priority 2 items were considered to be on the critical path for delivery of a Final Report on SSAD. However, this does not imply that these topics were not considered to be important. The majority of priority 2 topics were addressed together with the priority 1 topics in the SSAD Final Report, but for a couple of items this was not possible due to: dependency on a study that was only recently delivered (legal vs. natural), lack of time to consider specific proposals in detail (feasibility of unique contacts) and lack of guidance in relation to scope of issue (accuracy and WHOIS Accuracy Reporting System).

**Objective**

In considering how to address these issues, the small team had the following objectives in mind:

- Ensuring efficient use of people's time and resources;
- Ensuring that due consideration is given to topics that many consider important, while at the same time creating acceptance that it may not always be possible to achieve consensus and prolonging deliberations may not change that;
- Ensuring conformity with GNSO PDP Manual and Bylaw requirements;
- Oversight of the GNSO Council will be essential to ensure that conditions / requirements set by the Council are adhered to.

**Proposed approach for legal / natural & feasibility of unique contacts**

Taking into account the familiarity of the EPDP Team with the topics of legal vs. natural and feasibility of unique contacts, and considering that both of these topics are part of the EPDP Team's charter, the small team recommends that the GNSO Council, in its role as the Manager of the PDP, provides the following instructions to the EPDP Team:

As the GNSO Council understands that the EPDP Team has not completed consideration of all topics that were part of its charter, the GNSO Council will direct the EPDP Team to:

1. **Reconfirm its membership** and make any required changes to the membership;
2. **Reconvene the EPDP Team** to further consider:
  - a. Legal vs. natural persons - the EPDP Team is expected to review [the study](#) undertaken by ICANN org (as requested by the EPDP Team and approved by the GNSO Council during Phase 1) together with the [legal guidance](#) provided by Bird & Bird as well as the substantive input provided on this topic during [the public comment forum on the addendum](#) and answer:
    - i. Whether any updates are required to the EPDP Phase 1 recommendation on this topic (“Registrars and Registry Operators are permitted to differentiate between registrations of legal and natural persons, but are not obligated to do so”);
    - ii. What guidance, if any, can be provided to Registrars and/or Registries who differentiate between registrations of legal and natural persons.  
Groups that have indicated that this topic is a priority are expected to come forward with concrete proposals to address these questions.
  - b. In relation to feasibility of unique contacts to have a uniform anonymized email address, the EPDP Team is expected to review the legal guidance and consider specific proposals that provide sufficient safeguards to address issues flagged in the legal memo. Groups that requested additional time to consider this topic will be responsible to come forward with concrete proposals to address this topic. This consideration is expected to address:
    - i. Whether or not unique contacts to have a uniform anonymized email address is feasible, and if feasible, whether it should be a requirement.
    - ii. If feasible, but not a requirement, what guidance, if any, can be provided to Contracted Parties who may want to implement uniform anonymized email addresses.

For clarity, the GNSO Council is not directing any particular outcome on either topic, but as manager of the PDP, it is sharing its expectations with regards to which questions are expected to be addressed as part of the EPDP Team’s deliberations.

3. **By 30 November at the latest**, the Chair of the EPDP Team and GNSO Council Liaison to the EPDP will report back to the GNSO Council on the status of deliberations. Based on this report which is expected to include an update on progress made and the expected likelihood of consensus recommendations, **the GNSO Council will decide on next steps** which could include providing additional time for the EPDP to finalize its recommendations or termination of the EPDP if it is clear that no progress is being made or consensus is unlikely.

Consistent with the PDP Manual, the GNSO Council does expect that all the required steps are followed in the consideration of these issues which may include further public comment

on an Initial Report and a Final Report that would be considered an addendum to the EPDP SSAD Final Report.

### **Proposed approach for Accuracy and WHOIS Accuracy Reporting System**

In alignment with the Issue Scoping phase of the PDP, a scoping team would be tasked to “facilitate community understanding of the issue; assist in scoping and defining the issue; gather support for the request of an Issue Report, and/or; serve as a means to gather additional data and/or information before a request [for an Issue Report] is submitted”. This also aligns with the guidance provided in the recently published “[Consensus Playbook](#)” to assess the situation and right-size the problem as important steps to get to a common understanding and increase chances of a successful outcome. As part of this scoping phase, the scoping team is expected to consider:

1. What has been the impact, if any, of GDPR and other privacy legislation on existing accuracy requirements and the WHOIS accuracy reporting system? Note, this may require further data gathering or study. Also consider whether a review of the impact on the Whois Data Reminder Policy (WDRP) and the Restored Names Accuracy Policy (RNAP) could/should be part of this scoping effort (see also Wave 1 Rec #27 report and assessment).
2. Based on the impact identified, determine what further work, if any, is required. This could include requesting an Issue Report (PDP) or another path (if Consensus Policy, or modifications to existing Consensus Policies, is not an expected outcome).

In order to help inform the scoping team’s deliberations, the scoping team is expected to review the recent correspondence on this topic:

- <https://gnso.icann.org/en/correspondence/marby-to-drazek-05dec19-en.pdf> (5 Dec 2019)
- <https://gnso.icann.org/en/correspondence/drazek-to-marby-15oct19-en.pdf> (15 Oct 2019)
- <https://gnso.icann.org/en/correspondence/marby-to-drazek-21jun19-en.pdf> (21 June 2019)
- Bird & Bird legal advice:  
<https://community.icann.org/download/attachments/111388744/ICANN%20memo%209%20April%202020.pdf?version=1&modificationDate=1588031082000&api=v2> and  
<https://community.icann.org/download/attachments/102138857/ICANN%20-%20Memo%20on%20Accuracy.docx?version=1&modificationDate=1550152014000&api=v2>
- Substantive input provided on this topic during the [public comment forum on the addendum](#)

The scoping team may also consider reaching out to ICANN org to better understand the impact, if any, on ARS and enforcing existing accuracy requirements.

The Council will need to consider the best timing to form this scoping team and/or consider whether any of the groups that have expressed a specific interest in this topic may want to take

a first stab at identifying relevant information that will facilitate the scoping team's consideration of this topic.

### **Issues for separate consideration by the GNSO Council**

- Timing - some small team members are of the view that both efforts should commence as soon as possible, while others have indicated that this should commence only after the EPDP Phase 2 Final Report has been approved (currently anticipated to happen at the earliest in Sept/Oct timeframe). The Council should further consider this question taking into account urgency, bandwidth as well as pre-work that could be carried out. For example, groups that are eager to start work on these topics could already prepare specific proposals for consideration by the EPDP Team / Scoping Team keeping in mind the framework above, to kick start further consideration of these topics.
- Leadership - For both efforts, the Council should consider and likely conduct a selection process to identify a Chair and/or Liaison. The small team suggested that skills such as neutrality, chair experience and familiarity with PDP / Council processes would be important. In the case of the EPDP, the Council should consider whether both a Chair and Liaison are necessary, or whether the Liaison could fulfil the role of Chair as the effort is expected to continue for a limited period and is expected to happen with close Council oversight, taking full account of the GNSO Working Group Guidelines (Section 2.1.4.2) and PDP 3.0 Improvement #5. A search & selection process may also impact the timing.