

## EPDP Phase 2 Small Team Preliminary Report to the GNSO Council – [DATE]

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*This is a preliminary report provided to the GNSO Council by the EPDP Phase 2 Small team on the status of its work. Although the small team had initially indicated that it would aim to complete its work by the end of March, some additional deliberations are necessary to present the Council with a full set of responses. Nevertheless, this update should provide the Council with an indication of the current thinking. The Council is invited to provide any further input or directions it may have for the small team during the Council's April meeting. If there is support for the approach outlined below, the GNSO Council may also wish to provide the ICANN Board with an update on the expected next steps and timing.*

### Introduction

The EPDP Phase 2 Small Team was formed by the GNSO Council to consider the concerns outlined in the [ICANN Board letter](#) and with these concerns in mind analyze the [SSAD Operational Design Assessment](#) and provide the Council with its feedback on:

- Whether the ODA has correctly interpreted the intent of the SSAD recommendations in the proposed implementation;
- Whether the ODA has overlooked any key aspects of the SSAD recommendations that should be factored in by the ICANN Board when it considers the recommendations;
- Its view on the concerns identified by the ICANN Board and potential options that could be considered, either in the form of changes to the proposed implementation or the policy recommendations themselves, to address these concerns (note, these are expected to be high level suggestions at this stage);
- Any other aspects that help inform the Council's deliberations and consultation with the ICANN Board.

The formation of the small team was preceded by a number of events that can be found in the background section in Annex A.

The Small Team commenced its deliberations on 9 February. As a first step, members of the Small Team reviewed the ODA and identified a set of clarifying questions that were submitted to the ICANN org ODA Team. The responses to these questions can be found here [include link]. In preparation for ICANN73, the Small Team lead, Sebastien Ducos, shared with the GNSO Council a [high-level summary of findings](#) based on the input received until that point which were also shared with the ICANN Board during the [GNSO Council – ICANN Board joint session](#). Following that, the Small Team focused its attention on the Council's assignments through online work, meetings as well as engagement with the ICANN Board GDPR Caucus. Below you will find the responses from the Small Team to the questions put forward by the GNSO Council. The Small Team remains available to provide any further clarifications and/or further assignments the GNSO Council may have in relation to this topic.

### **1. Whether the ODA has correctly interpreted the intent of the SSAD recommendations in the proposed implementation**

It is important to remember that the ODA illustrates one possible way to implement the SSAD recommendations. The design outlined in the ODA should not be seen as final or the only way in which these recommendations can be implemented. Having said that, the Small Team noted a couple of areas in which the ODA may have chosen a path that is not what the EPDP Team had in mind when it developed its recommendations. These include:

- The ODA seems to assume that the SLAs (recommendation 10) apply to the length of time the CP has to respond to a disclosure request letting the requestor know if their request has been approved or denied and that a separate timeline would exist for the CP to provide the data. That is not quite what the working group had in mind. The working group considered that SLA to be the amount of time the CP has to either respond with the data requested or provide a reason why the request has been denied.
- The ODA assumes that the various governmental and non-governmental accreditation authorities will also be the access point to the SSAD for requestors. That is not what the working group had in mind. The intent was for the Central Gateway to be the single point of entry for all SSAD users (thus the name). When accrediting a new user the Central gateway would leverage the applicable Accreditation Authority to verify the identity of SSAD users. The intake and processing of disclosure requests would be done directly to the Central Gateway (not via the accreditation authority).
- The diagram on page 77 of the ODA shows a separate process for the requestor to go directly to the individual contracted party to get the non-public registration data (once approved). That isn't how the working group envisioned the SSAD working. Our expectation was that the Central Gateway would be the requestors single interface for requesting and receiving access to non-public registration data. This separate processes of going directly to the CP defeats some of the intended benefits and utility of having a single centralized system.
- The concept of Signed Assertions is not captured in the ODA.

The Small Team does not know if changes to these aspects would have a significant impact on the overall conclusions of the ODA. Nevertheless, the Small Team wanted to flag these here so that in case these recommendations are adopted and moved to an Implementation Review Team (IRT), these findings can be factored in.

In relation to the costs, the actual net operational costs of the system (that is, the costs not recovered directly from users) was \$4.8 million per year for the low volume scenario and \$7.3 million for the high-volume scenario. This is very different from the high-level presentations only presenting the overall costs (\$14-\$107 million), the bulk of which would be paid by users. Similarly, amortization of the system development costs were included in the operational costs of the system. The Board could consider as an option to recover only a portion of these costs and contribute to the operational costs which would further reduce the costs to users.

## **2. Whether the ODA has overlooked any key aspects of the SSAD recommendations that should be factored in by the ICANN Board when it considers the recommendations**

Most small team members are of the view that the ODA does not provide enough information to confidently determine the cost / benefit of the SSAD recommendations. Some point to the inability to predict costs based on usage, the high variability and range of costs and lack of information on the specific costs of the different components of the system. As a result, the Small Team considered what further information may be needed and how this information can be obtained, to allow the GNSO Council as well as the ICANN Board to confidently determine the cost / benefit and/or determine if modifications need to be made to the SSAD recommendations to achieve a better cost / benefit balance. The response to question #3 provides further details on how from the Small Team's perspective further information can be obtained.

## **3. Its view on the concerns identified by the ICANN Board and potential options that could be considered, either in the form of changes to the proposed implementation or the policy recommendations themselves, to address these concerns (note, these are expected to be high level suggestions at this stage)**

As noted in its response to question #2, from the small team’s perspective, further information is needed to be able to confirm the Board’s concerns. Similarly, such further information would help inform whether changes to the proposed implementation or the policy recommendations themselves are warranted to address these concerns. As such, the Small Team is considering recommending to the GNSO Council that it suggests to the ICANN Board that consideration of the EPDP Phase 2 SSAD recommendations is paused while a Proof of Concept is implemented. Hereunder are further details on the current thinking of the small team in relation to the Proof of Concept. The small team had an initial conversation with ICANN org about the feasibility of implementing such an approach. They have committed to consider this approach and provide the small team with further information in relation to the feasibility and expected timeline to implement such an approach by [insert date]. Following that, the small team intends to finalize this report and submit it to the GNSO Council for its consideration.

[Copy / paste SSAD Proof of Concept Outline text]

**4. Any other aspects that help inform the Council’s deliberations and consultation with the ICANN Board.**

For the Council’s information, the Small Team met with members of the ICANN Board’s GDPR Caucus as well as members of ICANN org to float the idea of a Proof of Concept as well as discuss technical feasibility. No formal conclusions can be drawn from these conversations at this point, but some important questions were raised that have helped the Small Team further refine its approach and recommendations. As indicated above, further updates may be made as a result of further information received from ICANN org on the feasibility of the Proof of Concept approach.

## Annex A - BACKGROUND

On 3 December 2021, Philippe Fouquart [shared](#) on the GNSO Council mailing list that the SSAD ODP Team is in the process of finalizing its analysis, including work related to the SSAD Cost Model. As such, and in connection with the Council's request for a consultation (as captured in the [Recommendations Report](#) and elsewhere) with the ICANN Board related to concerns around financial sustainability, the next phase of that consultation will be scheduled in January 2022.

Ahead of the January consultation, an [update session](#) for the Council and GNSO appointed EPDP Team members was scheduled for 20 December 2021, focusing on the SSAD Cost Model information. During that meeting, the Council, GNSO appointed EPDP Team members, and GDPR Board Caucus members discussed the findings from the Operational Design Assessment ([presentation](#)) and the implications on the viability of the SSAD. On 4 January 2022, Philippe Fouquart [shared](#) a summary paper capturing the different ideas and suggestions that were made during that meeting. The Council scheduled a follow-on call on Wednesday 12 January 2022 to determine if there is convergence within the Council on possible next steps (see [recording](#), [presentation](#) as well as [follow up email](#) sent on 17th January 2022 with an updated SSAD ODP Next Steps [document](#)). While the Council received an early update, a general [webinar](#) on the SSAD ODP was held on 18 January 2022.

During [its meeting](#) on 20 January, the Council further considered procedural options (see [slides](#)), as well as the proposed approach for analyzing the ODA which is seen as an essential step before being able to make any determination about next steps. The Council considers that a small team of Council members with the support of EPDP Team representatives would be best positioned to analyze the ODA and provide guidance to the Council on possible next steps.

The Council met with the ICANN Board on 27 January (see [recording](#)) as the next step in its consultation related to concerns around financial sustainability of the SSAD. In advance of that meeting, the ICANN Board sent the GNSO Council [a letter](#) outlining some of its concerns as well as questions it hoped to receive input on from the Council.