

From David Olive, on behalf of Cherine Chalaby: Response to the letter from the GNSO Chairs/Co-Chairs on the GNSO Council – ICANN Board meeting to discuss next steps following the Board’s adoption of the temporary specification - 12 June 2018

Hereby the responses to the outstanding questions identified:

SCOPE:

(5) The Temporary Specification reasoning for including WHOIS as a security and stability issue is based on the new ICANN Bylaws; at time of contract signing, that wasn't the case. Doesn't that open a possible avenue to challenge it altogether? Wouldn't phasing the EPDP allowing a quick Consensus Policy made of uncontroversial parts of the Temp Spec increase the assurances that this wouldn't hamper ICANN Org's compliance ability?

The Board has not had time yet to discuss this question but once it does, it will provide its feedback to the GNSO Council.

(8) The Temporary Specification covers a number of additional policies that go beyond the requirements of the RA and RAA as they relate to Registration Data Directory Services. How does the Board believe the GNSO Council should handle these areas of overlap?

The GNSO Council may want to consider taking the same approach that it currently uses in policy development processes for considering existing consensus policies that may be impacted by a proposed new consensus policy. However, the Board and ICANN Org stand ready to work with the GNSO Council on these issues as needed and if/when they arise.

(9) Does ICANN have/will ICANN develop a list of policies and contractual clauses that are impacted by the temporary specification (beyond what is currently identified in the Annex)? This would help with scoping the work.

ICANN Org is preparing a document that will show which areas of the existing agreements and consensus policies are changed as a result of the GDPR. It is expected that this document will be shared with the GNSO Council prior to its meeting.

(11) How does the Board expect the EPDP to follow and/or to incorporate ICANN's ongoing legal strategy and the decisions of EU country courts?

Ongoing discussions and pending court cases could have an impact on issues such as these, but the PDP on the temporary specification is not expected to deliberate on these issues, unless these are reflected in modifications that are made by the ICANN Board to the temporary specification.

PARTICIPATION:

(3) What is the Board's expectation with regard to the Council's ongoing communication with Board/involvement of Board during the scoping process? (In particular here the notes reflect our discussion on the need for instant two-way consultation between the Board and the GNSO Council. As follow-up questions, it would be helpful if the Board could consider its ability and willingness to appoint a liaison to the EPDP to facilitate this communication on ongoing basis, and further reflect on the role of the Board once the PDP is established and working.)

As suggested during the meeting, if welcomed by the GNSO Council, the Board would be more than happy to appoint one or two liaisons to the PDP Team to facilitate communication on an ongoing basis.

I hope that this input will facilitate the upcoming extraordinary Council meeting. As noted above, I also expect to send you the list of policies and contractual clauses that are impacted by the temporary specification as soon as it is available.