ICANN Transcription

GNSO Temp Spec gTLD RD EPDP – P2A

Thursday, 19 August 2021 at 14:00 UTC

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JULIE BISLAND: Good morning, good afternoon, and good evening, everyone. Welcome to the EPDP P2A Team Call taking place on Thursday the 19th of August 2021 at 14:00 UTC. In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. If you're only on the telephone, could you please let yourself be known now?

All right. We have apologies today from Melina Stroungi (GAC), James Bladel (RrSG), Alan Woods (RySG), Brian Beckham (co-chair), Sarah Wyld (RrSG), and Chris Lewis-Evans (GAC). They have formally assigned Owen Smigelski (RrSG), Amr Elsadr (RySG), and Ryan Carroll (GAC) as their alternates for this call and for remaining days of absence.

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All members and alternates will be promoted to panelists for today's call. Members and alternates replacing members, when using the chat, please select Panelists and Attendees or Everyone in order for everyone to see your chat. Attendees will be able to view chat only.

Alternates not replacing a member are required to rename their line by adding three Z's to the beginning of their name, and add in parenthesis "-Alternate" at the end, which means they're automatically pushed to the end of the queue. To rename in Zoom, hover over your name and click Rename.

Alternates are not allowed to engage in the chat, apart from private chats, or use any of the other Zoom room functionalities such as raising hands or agreeing and disagreeing.

As a reminder, the Alternate Assignment must be formalized by way of a Google Assignment Form. The link is available in all meeting invite e-mails.

Statements of Interest must be kept up to date. If anyone has any updates to share, please raise your hand or speak up now. Seeing no one, if you do need assistance updating your Statement of Interests, please e-mail the GNSO secretariat. All documentation and information can be found on the EPDP Wiki space.

Please remember to state your name before speaking. Recordings will be posted to the public Wiki space shortly after the end of the call. As a reminder, those who take part in ICANN multistakeholder process are to comply with the Expected Standards of Behavior.

Thank you, and over to our chair, Keith Drazek. Please begin.

KEITH DRAZEK: Thank you very much, Julie. Hi, everybody. Welcome to the EPDP Phase 2A meeting #37 of Thursday the 19th of August. Thank you all for joining, and we will get very quickly here into the review of the comments and updates on Section 3 of the draft final report. Before doing so, I did want to flag the timeline that we're on. We are within the last two weeks of our work here to finalize and deliver the final report by the 2nd of September.

On the agenda down below a little bit, you will see the proposed timeline that we've got, that we're working towards. So I did just want to remind everybody that we are in the final stages here and that it's just very, very important that we all focus on the text of the final report so we can make whatever final adjustments and tweaks are necessary. We've got some substantive work to resolve over the next week and a half, basically. But it's just really critically important that we focus on the text of the report as we work through this.

I did also want to note that the e-mail that I sent to the list yesterday—and apologies for the relatively short turn. I'm guessing that many of you probably haven't had a chance to fully review and digest it, but the proposal that I put forward to the group was to have a small team or a small working group focus on a very, very concrete and focused area of work on the question of values associated with any standardized data element.

And so I want to speak to that here for a few minutes. I want to give folks the opportunity to react, respond, to get in queue. But I want to keep that conversation relatively brief because we do have a quite a bit to get through in terms of the actual text of the final report and the ongoing discussions of the recommendations.

So just to summarize, I think there's some value in having a small group work on some recommended language related to the assigned values of any standardized data element. And again, that's not the term "value" in the sense of benefit. It's values in terms of the defined characteristics of the standardized data element if one is to be supported.

Just to flag here, I think it's really important to note that where we are with the standardized data element now is that the contracted parties have signaled a willingness to support the development of a standardized data element with the caveats that the use of such a standardized data element be optional, and that the display of any data associated with that standardized data element be within some sort of a restricted system such as SSAD.

And I think that is a key question, maybe a gating question for the further development of the values and further development of the standardized data element discussion.

So I think we have, really, a question as to whether the recommendation on the creation or the establishment of a standardized data element for the purposes of distinction between legal and natural and/or personal versus non-personal data is worth doing, and whether folks who originally wanted a mandatory use of any such flag or field that would result in public display,

whether a standardized data element that is optional and that it would be used in an SSAD-like system is sufficient to reach consensus.

And that's really what it gets down to at this point. Can we come together as a group with consensus on the establishment of a standardized data element that would be optional for registrars to use and where the outputs would be included in an SSAD-like restricted access system rather than resulting in open publication.

So I think that's a fundamental question that we will have to answer. We don't have to answer this at this moment, but it is something that I think we all need to recognize as a key question for the work that we're trying to do around this question of a standardized data element.

So let me stop there. Hadia, I see your hand. If anybody else would like to get in queue, please go ahead and do so. But what I've suggested in the e-mail that I sent yesterday is that we create a small group that would focus on this key question of the values for the data field. And I put forward a recommendation for a handful of individuals from our group who have been engaged on this issue previously and contributed to the discussions previously.

Again, I don't want to over engineer or restrict it, but I want to make sure that we've got a small group that can, in very short order, get together separately and then come back to us with some recommendations around that discussion.

So let me stop there. Hadia, I'll turn to you. And then I see a hand also from Jan. Hadia.

HADIA ELMINIAWI: Okay. Thank you, Keith. So my question is in relation to the usage of the data element. So, as you mentioned, the usage of the data element would be restricted to SSAD or similar tools. And my question. What does this really mean? So if a registrar, for example, has implemented this data elements and is using it and would only disclose data based on that element—if it's using the SSAD or similar tools—but if it receives a request from outside SSAD, like not through a certain tool, then it will not use it?

KEITH DRAZEK: Thanks, Hadia. It's a good question, and I think it's not a question … I think the registrar in question could still use it, but it's a question of how the flag is used and whether data is provided in response to requests. I think we know registrars today have processes in place to receive requests for data, and that they go through the processing of that and handle the response in their own way.

I think the question around is there an opportunity to use a standardized data element within the context of an SSAD to help facilitate maybe more rapid responses and perhaps even more automated disclosure at some point within an SSAD for registrations that are deemed both legal person and not including personal data. Right?

I'm not sure if that answered the question directly, but I think the thinking here is that the standardized data element could be a useful tool for all of us as we look ahead to developing more

automated systems, including the SSAD; that essentially, this flagging capability would facilitate that down the road.

So let me stop there. And I certainly welcome registrars and registries to speak for themselves, but that's my sense. I have hands from Jan, from Steve, and then from Alan Greenberg. Jan.

JAN JANSSEN: Thank you, Keith. I think it will come as no surprise that the IPC would want to put at least a possibility for the element to be made public. And so the question about gauging it seems like a bizarre question, even if it's a voluntary issue. At the very minimum, the registrar should also have the—or registry—should have the capacity to publish it. So even if it is voluntary, we don't see a reason there to do have it necessarily gated behind SSAD or whatever system.

And I don't know, but I don't think this the appropriate field to say, "Okay, this how we are going to implement all of this, and this how we're going to publicize it or via SSAD and how that's going to be done." Because there could also be a choice further down the road of registrars who, on a voluntary basis, want this to be made public anyhow. And others might have a preference to have a gate system. But I think, really, deciding here in this EPDP on that issue would be incorrect. Thank you.

KEITH DRAZEK: Thanks, Jan. I'll respond. And my use of the term "gating" is really intended to highlight the point that what we have to decide here as a group is whether we can reach consensus on a

recommendation around the institution or the installment of a standardized data element. And the contracted parties, as I have read and have seen, have indicated a willingness to consider at this point—which is a move from their original positioning—but would be willing to consider and support the development of a standardized data element, provided it is optional to use and that any output or the use of the data element would be focused in a restricted system or SSAD as it relates to risk management.

And so I guess what I'm trying to do is to bring that point and that question to a head here so we all understand that that really is the question before us. Can we reach consensus as a group on that recommendation? And so that was my intent there. Certainly implementation can take a range of different approaches, but my hope here is that we can at least focus on this and determine whether there's consensus among the group to move forward on that path.

So let me stop there. I want to get back to the queue. And again, we don't have to answer that this moment, but I think it's a key question for us as we look at the work over the next week.

Steve and then Alan.

STEVE CROCKER: Thank you, Keith. So I think the good news is that, as I read things, we're in broad agreement that this should exist. The way you phrased it, Keith, raised two subordinate points which have engendered some responses from us. Let me see if I can frame

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those. And you may want to decide to phrase what you said slightly differently.

Yes, the data element should exist. I think the wording you used suggested that it would only be visible and only be used within SSAD. Hadia asked, "Well, what happens if the registrar wants to use it themselves for other things?" And the question was also raised. Well, why can't that data also be made visible—just the fact be made visible publicly?

I think both of those are operating at the edge of what your intention—if I might guess—was really at. The main point is that by having that piece of data, it then becomes available to us within the restricted context. But that doesn't preclude, subject to further discussion, that that piece of data might or might not be made publicly available. And it certainly doesn't preclude the registrar from using it for whatever they choose to use it for in other contexts.

KEITH DRAZEK: Thank you, Steve. That's well said and well captured. I think that's correct. So I hope that clarifies. And if anybody else would like to get in and push back on that, feel free to get in the queue. But I think you captured it well, Steve. Thanks.

Alan Greenberg, go ahead.

ALAN GREENBERG: Thank you. I'm not going to push back at all against what Steve said. I agree strongly. I think it's really important to identify SSAD

or comparable tools as a possible and perhaps even likely use of it. I don't believe we want to tie the existence of it to such things. Among other things, the SSAD is years out at this point and we don't want to defer implementation of the element and allow registrars who choose to use it to start that process until the SSAD already exists or we have firm plans for it.

So I think SSAD and comparable tools—or for that matter, manual tools, has Haida implied—is a potential use for it, but let's not confuse that with the element itself. And as Steve pointed out, at this point it may have no publication. I believe, at the very least, if there's an SSAD, it should go to the SSAD. But that's something that can be debated. But let's not confuse the discussion with the uses because those are separate decisions that can be made separately. And they, in fact, may change over time, of course, with the agreement of all the appropriate people in the multistakeholder environment. Thank you.

KEITH DRAZEK: Thanks, Alan. And I think there's also a distinction here that we should keep in mind that there's the possible display of the flag itself, the indicator of what values have been assigned. And then there's also what happened. You know, what does the use of the standardized data element trigger in terms of output, in terms of the actual output of registrant data? Right?

So I think there are two different things there and we need to be careful not to confuse or conflate them. And I'm saying that more for my own benefit than anybody else at this point, just to make sure that we recognize that when we're talking about the use of a

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flag or the display of a standardized data element, is it the flag that we're talking about— the indicator? Or is it the follow-on possible output or display or response with data that we're discussing? And I think those are important distinctions. But Alan, thank you for the comment.

Mark SV, you're next. And then we should probably draw a line under this one and move it to a small group discussion, if no one objects. And then we should move to the questions of Recommendation 3. So Mark SV, go ahead.

MARK SVANCAREK: Thanks. Listening to these conversations here, I think what I would propose is just that we have a very permissive policy recommendation. I don't see much need to restrict it. We're talking about things that are optional, so you may use the standardized element or not. Should you elect to do it, I think our policy should allow you to use it however you'd like without restrictions.

So if you want to use it internally, you can use it internally. If you want to use it as part of your manual disclosure process, you can use it that way. If you'd like to use it in an automated process; if you'd like your automated process to be part of SSAD or distinct from SSAD; if you would like to share it with other contracted parties or your business partners or whoever in band or out of band, you should be allowed to do that.

And if a small group comes up with a format for it to be part of public RDDS output, you should be allowed to do that too. Since this all starts from it being optional, I think that whoever is taking

that option should be able to do all of those other things without restriction. So as long as our policy recommendations don't have any prohibitions in them, that all of these cases can be accommodated, we don't need to list them all unless, for clarity, I suppose. That would be the policy recommendation I would look for at the very least.

It's already a collection of things that are optional. Just make sure that everything is optional. I don't see any of those things that need to be restricted for any reason. And leave it at that. Hopefully that's helpful.

KEITH DRAZEK: Thanks very much, Mark SV. I see a hand from Marc Anderson. Marc, go ahead. And then we will move on to the next item on our agenda. Thanks.

MARC ANDERSON: Thanks, Keith. As I said in chat, I'm happy to participate in the small group discussion and try and answer your question if we can come to agreement on the creation and use of this data element.

I think I have to point out, though, that I think almost everybody that has raised their hand has done so to, in some way, object to sort of the terms of the assignment as you laid out. Having a very focused work on if there's general agreement for this data element for the very specific purpose you laid out. All of the interventions I heard argued for a broader scope than that.

And that's a little bit frustrating to me. But also, Stephen, in his interventions said, I think, that there is agreement that this element should exist. And I have to say that's not completely true from a Contracted Party House perspective. There's not broad agreement within the Contracted Party House for that. In fact, there's a lot of hesitation.

We're trying very hard to come up with something that we can get our stakeholder group to get behind in and support. And in the mediated discussion I participated in, I think it was Chris Lewis-Evans that sort of challenged me a little bit and said, "Okay, well what is the minimum you could support?" And so I sort of took that challenge to heart and I've been trying to work within my stakeholder group to identify what is the minimum we could support.

And so that is what I'm working towards and what I'm encouraging other people to work towards. But I want everybody here to appreciate that there is a lot of hesitation and it's not a slam dunk that we can support this at all. So I feel it's important to raise that here. I'm happy to participate in the small group and have further discussions there, but this conversation, I think, helps fuel that hesitation that I'm hearing from any of my colleagues.

KEITH DRAZEK: Thanks, Marc. So let me just clarify that I think that the task of the small group is very focused and is very narrow in terms of trying to come up with a recommended set of values for the use of a potential standardized data element. I don't feel like that has changed. I think that is still the assignment for the small group.

And I don't want that small group to focus on the bigger picture questions because that's really more of an issue for our plenary.

But I think a lot of the reaction that you heard from others on the call today was in response to me flagging in the conversation today and a bit in the e-mail that I sent yesterday; that we have a fundamental question here. Can we as a group reach consensus on the development of a standardized data element that is optional in use and where output would be limited to a restricted system such SSAD? And that is the fundamental question that we as a plenary will need to address.

I said that it was a gating question because I think if we can't agree on that at a very fundamental level, then we're probably wasting our time discussing a standardized data element in any form. So I don't want us to waste our time on the discussions of the values associated with a possible standardized data element if we simply, at this stage, aren't going to be able to agree with essentially the terms that have been laid out, which is development of a standardized data element with the recommended values that will be worked out here by the small group that is optional to us and where output would be limited to—at least for any potential future required output—would be limited to within a restricted system such as SSAD.

And again, we don't have to answer that this second or today, but it is a question that we need to wrestle with and get an answer to, to be able to move this to a final decision.

Mark SV, back to you. And then we'll move on.

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MARK SVANCAREK: Sorry for sticking up a hand at the end, even though you drew a line under it. I just wanted to be clear about my intervention. If the question is, "If there is an element, is mandatory publication of it only within the restriction system," my point was a little different than that. I was simply saying that our policy recommendation language shouldn't restrict anything, not oblige it. I'm not talking about obligations. I'm just saying that you have an optional thing. You shouldn't be restricted on how you use it. And should there …

The point I'm making is that we have some policy recommendations from previous phases that say, "You must not do X." And all I'm asking is please, small group, don't wind up with any "You must not do X" language in your recommendation. We're talking about an optional element which can be used in some optional ways. Please don't foreclose any of those ways. Make it so that the community can, over time, find ways that they want to use these things more work comprehensively if that's the path they want to go.

I don't see that as an expansion of scope, so hopefully I'm not triggering Marc Anderson's concern. I'm just saying don't close doors unnecessarily. I'm not saying you have to create new obligations. Thanks.

KEITH DRAZEK: Thanks, Mark SV. And no problem getting back in queue. It's a good dialogue that we're having, and an important one as we're

sort of in crunch time here. So thanks for that. Let us then move on.

Berry has noted in chat that the Doodle poll will be circulated for the meetings of the small group that will focus again on determining what the values would be and how the standardized data element might be constructed, not on the policy or the broader policy questions that the plenary group will need to work through over the next week to 10 days.

So with that, let us move then to our next agenda item, #3, which is to continue the review and updates to Section 3 of the final report. So I'm going to hand it over to Marika and Caitlin to help us walk through this.

MARIKA KONINGS: Thanks, Keith. I can kick this one off, although I think Caitlin already introduced this recommendation and the updates that were made during the last call. I actually just realized, when looking at this prior to the call, that this language—there are two updates that were made based on prior conversation.

Some groups expressed a desire to include some language here that would better reflect that legal person data is not protected, but at the same time that natural person data contained within legal person data is protected. And there were a couple of suggestions for text that was made on the mailing list, so I actually just added those to the table below. There was a suggestion from Chris Lewis-Evans. I think that was followed up by a response from Volker with alternative language. And I think then Alan Woods

also suggested language. So I think one conversation we may want to have here is which of these three versions the group would like to see included.

And then the second part of conversation in relation to this topic— and Berry, if you can scroll a little bit up—is a new recommendation, or it could be part of this recommendation, that we added based on some suggestions. And I think, specifically, it came out as well of the mediated conversations. And it's a suggestion that has come up before. Berry, if you can scroll up a little bit further to the recommendation itself.

Which is a recommendation around exploring the development of a Code of Conduct that would be submitted to the EDPB that would kind of reflect or build on the guidance that is provided here as a way to get further certainty around you whether this guidance meets the GDPR standards. And as such, there would be more certainty for those wanting to differentiate to follow this guidance.

So we had already included some language there. There were already some comments made that the development of the Code of Conduct should not be limited to just ICANN Org and contracting party so we've tried to reflect that here already in the language. At least from our read, it doesn't seem to be prevented the way it's described—at least how a Code of Conduct is to be developed—that others participate in that.

But obviously, the controllers do need to be on board with whatever is submitted to EDPB for its consideration. But there may be others, of course, in the group that have more knowledge

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or experience around what is required in relation to a Code of Conduct and the submission.

So again, I think there are two questions here. First off is, are there specific views on the three alternatives that we have now for language that will be included at the start of the guidance section to emphasize again that legal person data is not protected. But at the same time, it could include personal data which is protected.

And then secondly, the question around this new recommendation that would basically recommend that work is continued in the form of developing a Code of Conduct that would eventually be submitted to the EDPB for its consideration.

KEITH DRAZEK: Thank you very much, Marika. Would anybody like to get in queue? And you'll see on the screen here in the purple text that there's been some suggested additional language from leadership team and staff as a possible move forward.

I see a hand from Marc Anderson. Go ahead, Marc.

MARC ANDERSON: Thanks, Keith. I hesitate to try and speak for the entire Contracted Party House here, but I am going to try and I'm going to do that anyway here from a Contracted Party House perspective. We've had some preliminary discussions and I believe we are not okay with including other parties in the development and submission of the Code of Conduct. I think from a Contracted Party House perspective, that would be akin to including other parties in a

contract discussion as a Code of Conduct, in many ways, is binding on us.

So, again, I'm uncomfortable trying to speak for the entire Contracted Party House. And I think Owen has raised his hand, so he can correct me if I'm speaking out of turn here. But my read is that there's not support for this edit to include other interested parties in this.

KEITH DRAZEK: Thanks, Marc. Owen, I'll turn to you. And then I'll put myself in queue briefly. Owen.

OWEN SMIGELSKI: Thanks, Keith. In following up with Marc, yeah, the Registrars agree with Marc, I guess, speaking on behalf of all of us here. The Code of Conduct has a very specific—at least I can't speak for the RA, but for the RAA—there's a very specific trigger and terminology with the Code of Conduct that essentially makes that akin to a contract negotiation which involves the entire Registrar Stakeholder Group, etc.

So we could go down that path, but it would have to be something that would only be involving the Registrars, as with all other contract negotiations that happen between ICANN and the Registrar Stakeholder Group. Thanks.

KEITH DRAZEK: Thanks, Owen. So just to comment here. Understanding the hesitance and, well, the strong objection to including other parties in bilateral contractual negotiations on something like the RA or the RAA. I completely understand that. And I understand that a Code of Conduct could have material impact. But I think they are, in some ways, a couple of different things.

And I think there is some—and I'm certainly happy to hear from others and our staff colleagues as well—but there's some expectation that if were to submit a draft Code of Conduct to the EDPB for its consideration, that there's some expectation that other impacted parties, including other potential processors, be at least part of those conversations.

And again, I don't want to get too far out over my skis here. And Marika has put some text in the chat here as well, but I think that's a question that we need to find the right balance around.

Mark SV and then Marc Anderson. Go ahead.

MARK SVANCAREK: I just have to ask some direct questions here because I'm hearing the same rhetoric over and over lately. It seems to be, well, I won't say it.

There seems to be this feeling that if something is related to the RA or another contract development, that therefore only contracted parties should be able to participate in the creation of it. But it was my understanding that consensus policy as a whole was intended to influence contracts—RAA or otherwise. That that was always a fundamental aspect of it. Maybe not in every case,

but generally speaking. Otherwise, what's the point of having a multistakeholder environment? I mean, why would you have other parties coming together if not to influence these contracts which have bearing on all of us? Right?

So it just seems, to me, saying, "Only contracted parties can participate in discussions for a Code of Conduct which will ultimately find a place in a contract" is tantamount to saying, "We can't ever have consensus policy." Really, that's just what it sounds like to me. And it seems like this is a bad path to go down, staking out that position. So having people contribute to the language in a Code of Conduct is …

Sure, it's along the path towards revising the RAA, but just the fundamental argument that because it will eventually wind up in some way in the RAA means that only contracted parties can participate in it. I mean, should registries be able to participate in something that's going to be in a registrar agreement? I mean, that's an associated question.

But it just seems like it's the wrong position to stake out. And I don't really understand how that's intended to work. And I think you mentioned this just in your comment just a minute ago, Keith, that if this what you're saying—that only contracted parties should have any say in anything that might influence a contract, then what are we doing here?

I don't get it. Sorry if I'm being dense. I'm sure a lot of hands will go up to tell me I'm stupid or wrong. But, please, I really need to understand why? Thanks.

KEITH DRAZEK: Thanks, Mark SV. And I've got quite a queue building here. I want to note that Thomas Rickert has also put into chat—and I see his hand is up as well—but I did want to chat in chat that it says, "In my view, the COC discussions would need to include escrow agents, EBEROs, and those who are controllers and processors."

And I guess there's a question of how far down the processing chain does this extend? Do those individuals or entities requesting data and receiving data somehow become processors as well? So I think these are some important questions that we need to address.

I have hands from Marc Anderson, Brian King, Becky Burr, and Thomas Rickert. Marc Anderson.

MARC ANDERSON: Thanks, Keith. I raised my hand to ask about the potential processors part of that. I wasn't sure. Keith, you mentioned potential processors, and it's included here in the draft edit. And I wasn't sure what that referred to, though I know Thomas has suggested other potential processors as escrow agents and EBEROs. I certainly didn't envision a Code of Conduct getting down the chain, as you put it, to the escrow agents or EBEROs. I'm not sure what my other colleagues had in mind, but I suppose the Code of Conduct could get that to that point.

And I see Thomas has had his hand up. I guess I'd be curious to hear what he says on that. I hadn't thought of that and was really thinking of it in terms of the processing that contracted parties

specifically do. But I guess I'll allow that it's possible to include escrow agents and EBEROs in that conversation as well.

I guess, since I have the floor, I'll also try and respond a little bit to Mark SV. I can't imagine any other scenario where a third party would be invited to participate in contract negotiations where they're not party to the contract involved. I don't think, if anybody suggested that to your organization, you'd be all that keen to that.

On the other hand, our contracts specifically state that we must have we must participate in the consensus policy process and abide by the outcome of approved consensus policies. And so I think from my point of view—and this my view here—the consensus policy process isn't modifying our contracts. Our contracts require us to abide by the outcome of approved consensus policy.

And so that's what we're doing here. We're coming together to participate in the multistakeholder process and discuss the possible creation of new consensus policy which contracted parties, per their contracts, are obligated to follow.

So I hope that helps clarify, at least from my point of view.

KEITH DRAZEK: Thanks, Marc. And look, I want to note that this language before us, as suggested by the leadership team and staff, is new. Right? So it's important that we all understand what the intent was and what the meaning is behind the words. So I'm glad that we could have that further conversation about who might be included in

potential processors and the interested parties that have been referenced here.

And again, this recommendation, I just want to underscore, is to make sure that we have a draft Code of Conduct that can be submitted to the EDPB for its consideration. And so the collaboration that we're envisioning here as part of, or as a result of, this recommendation is really intended to help reach the threshold under which what could be a successful process.

So let me stop there. Brian King, Becky, Thomas Rickert, Mark SV.

BRIAN KING: Thanks, Keith. I wanted to clarify here. I think we're just talking about a Code of Conduct pertaining to legal vs. natural person data. Right? Because there's a Code of Conduct contemplated with the SSAD. It's in, I think, 1.4 in the SSAD in the Phase 2 recommendations, where we talk about doing a Code of Conduct there.

I just want to clarify that this isn't that. This is a Code of Conduct contemplated—which I think is a great idea—for contracted parties. ICANN and the GDPR does contemplate that the processors would be taken into account her. So the group that asked that this not be limited merely to ICANN and contracted parties, the European Data Protection Board is going to want to see that processors of this data—the end users, so to speak, of this data—have been consulted or are part of this Code of Conduct.

So [I guess] whether we recommend it or not, the Data Protection Board is going to require that. Certainly, we'll want to know that the processors have been consulted and are a part of developing this Code of Conduct. So with that in mind, we would like to include that here if we're going to be listing who will be involved in it.

And look, this a good thing for contracted parties and for ICANN. It would be a great way to get legal clarity around whether they can or can't, or what's required. What do they need to do in order to differentiate between legal and natural registrant data? And the groups that will be processing that data for their own purposes and therefore are also controllers—the requesters of WHOIS data—are going to have to be involved in this. Thanks.

KEITH DRAZEK: Thanks, Brian. Very helpful context and clarification. Becky, Thomas Rickert, Mark SV, and then Marc Anderson.

BECKY BURR: Yeah. I don't have a lot to add, other than to say I want to … The point that Marc Anderson made that the contract obligates contracted parties to comply with consensus policies is not the same as saying that the community negotiates the contracts. And that's a critically important thing.

But the other thing that I think that's going on here, and without regard to the substances, is that there is a specific reference to Codes of Conduct in the Registry Agreement. And there is some confusion, I think, in the conversation about whether we're talking

about that Code of Conduct in the Registry Agreement versus the kind of Code of Conduct negotiation which is quite an elaborate process under GDPR and was under the directive before it and are slightly different.

So I'm just listening to this conversation, hearing some confusion and conflation of those terms. And it's probably pretty important to be clear about what we're talking about.

KEITH DRAZEK: Thank you. Thank you very much for that very helpful clarification and putting a point on it. And again, it's important that we're having this conversation as a group so we're all ultimately on the same page of what we are discussing and the implications. So thank you for that.

Thomas, Mark SV, Marc Anderson. And then I'm going to draw a line under this.

THOMAS RICKERT: Thanks very much, Keith. And hi, everybody. I think that we must, by all means, avoid that discussion surrounding the Code of Conduct becomes something like the EPDP Phase, whatever. So we can't afford to have that turn into a place where all the arguments are going to be rehashed.

This group has been discussing the idea of a Code of Conduct numerous times over the last couple of years. And when we discussed this, I always had the understanding that the EPDP Team would come up with policy recommendations. And that with

that, the EPDP's mandate is completed and that the work on the translation of the recommendations into a Code of Conduct is done elsewhere. I think it would do the entire process a disservice if this were an exercise where the entire community was participating.

So I think that it should be limited to those who are actually affected by and governed by the Code of Conduct. So since we don't yet know what the data protection arrangements that are currently being developed as a to-do from Phase 1 are going to be like, it's difficult to say exactly who needs to be at the table. But it has to be the group of controllers. That's for sure. And to the extent to which processors need to be invited to the table needs a little bit of analysis. Do we actually have a lot of processors? Or do we have third parties being independent controllers? In which case they wouldn't need to be at the table.

Let's remember the Code of Conduct is a great tool for cases of legal uncertainty about borderline cases because if you get the blessing of the authorities and if you play by the rules of the Code of Conduct, you can't be sanctioned. Right? And therefore those who benefit from the legal privileges and who otherwise would be sanctioned if they don't abide by the Code of Conduct, they need to be at the table. And probably nobody else.

And having said that—and this is going to be my last point—I'd like to refresh your memory on Article 14 Section 4 which requires the Code of Conduct to have a mechanism to control whether the Code of Conduct is being abided by. And that would be relevant for processors as well. If ICANN has long-term contracts with

processors, the Code of Conduct wouldn't automatically change those contracts. Right?

And if we want to have additional control or audit or [censure] rights, then I think it would be good to make those processors part of the discussion so that everyone gets their buy in so that they can become part of this governing concept. That's it. Thank you so much.

KEITH DRAZEK: Thank you very much, Thomas, for that input. Very, very helpful.

So I have a couple of hands, but I just want to suggest and note that Marika has suggested in chat that perhaps we could add some language that makes it clear that what we're talking about here is not referring to the Code of Conduct currently referred to in the agreement. So to make that clear.

And I'm thinking out loud here that perhaps in the proposed purple text that we submitted to the team for consideration, maybe instead of "other interested parties including potential processors" we say "other impacted parties including potential processors." Maybe a little bit further distinction there between those with interest and those who are actually impacted. But that's just me thinking out loud for everybody's consideration.

Mark SV, then Marc Anderson. Then we will draw a line under this one for now.

MARK SVANCAREK: Thank you. Thanks to everyone for all of those useful interventions. I think we're getting closer to understanding. So, yeah, regarding Codes of Conduct, it does seem like we are going to need to clarify that this is different from that term that is being used in the agreements. This happens to us a lot where we're terms are overloaded or conflated. So that does need to be made clear.

And perhaps that's where this you-wouldn't-let-anybody-else-negotiate-in-your-contracts business is coming from because, to me, it seems like it was a circular argument. We create policy. The contract says "You must follow policy." Creating the policy is not the same as me sitting in on your contract negotiations. But that does seem to be a talking point that's coming up a lot, and that's what I was pushing back on. So if we can simply eliminate the use of that talking point by making this clarification, I think that would be great.

Thomas and Brian both talked about legal protections of Codes of Conduct, but those would be Article 40 GDPR Codes of Conduct. This recommendation or other Codes of Conduct mentioned in previous recommendations are not necessarily GDPR Article 40 Codes of Conduct, so we should make that distinction clear as well.

I agree that if we were to come up with an Article 40 Code of Conduct and take it to the Data Protection Board and get it blessed, that would indeed create protections for everyone involved. And that would be a great thing. But that long-term goal shouldn't stop us from creating something specific to our community right now.

And lastly, just a provocative point. We have talked about Codes of Conduct for other parties in this system, for instance for requesters requesting data. And by the logic of the previous discussion, one would say that contracted parties could play a role in the creation of that Code of Conduct because they're not impacted by it.

Now if we take this term "impacted," maybe that's the criteria. Right? So everybody who's impacted by the use of this natural/legal flag or the distinction or whatever, if "impacted" is the word then maybe we get the right people at the table. But if it's more narrow than that, then we have to think about the Codes of Conduct that are binding on other parties in the system as well.

So hopefully that clears up some things. And thanks to everybody for working forward on this.

KEITH DRAZEK: Thanks, Mark SV. And again, as we look to wrap this one up, let's focus on the text and the proposed language and any potential amendments or edits that we need to make the text to try to reach consensus on this moving forward.

Marc Anderson and then Stephanie Perrin. And then we do need to move on.

MARC ANDERSON: Thanks, Keith. So it's a shame that Alan Woods is not here for this conversation. This text came from him, and he has been a

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proponent of an Article 40 Code of Conduct really going back to very early in Phase 1.

I heard Brian King maybe ask or state if this was specific to the legal vs. natural distinction, and I feel pretty confident saying that when Alan Woods proposed this he did not intend it to be specific just to the legal vs. natural distinction. I think what Alan has been a proponent of, really like I said all along, is that once we come out the end of this policy development process, and as Thomas very rightly pointed out, once the contract negotiations—the data processing arrangements as called for in Phase 1—are complete and we have a clear picture of who the controllers or processors are and how we're processing that data, that a Code of Conduct be developed and submitted in line with Article 40 of the GDPR.

The intent of that is to document, in fact, how we are processing data and get it reviewed and approved by the EPDP as confirmation that what we are doing, in fact, is in line with the GDPR. And as Thomas pointed out, that we have legal assurances that what we're doing is in fact compliant.

So two points there. First, I don't think the intent was ever to limit it to simply legal vs. natural. I think the intent was that this cover all the processing that contracted parties are doing [to] have a complete picture of the processing activities.

My other point is that I think that this would have underscored why we would not want to include interested parties in this. In the development of the Code of Conduct, we would be attempting to capture in writing how we are in fact processing the data. And that would be an exercise in documenting how registries and registrars

are processing that data, and really not something that we would be inviting third parties to tell us how we're processing that data. We would be capturing how we are, in fact, processing that data, documenting it, and submitting it to a legal body for review of that processing.

So I hope what helps. And I do wish Alan was here for this conversation because I'm sure he would have some pithy remarks to add. But I'm sure he'll be excited that we talked about it when he returns.

KEITH DRAZEK: Marc, thanks for that. And perhaps the path forward here, then, is to note that, because the scope of our group is focused right now on legal and natural, that this recommendation be clear that we are recommending that the legal/natural distinction and the processing of that be included in a Code of Conduct to be submitted in line with Article 40 of the GDPR, etc.

So I think just in terms of the scoping aspect of your point, perhaps that's the approach. Our group is responsible for making recommendations as it relates to legal and natural, and that perhaps we recommend that this point be included in a broader discussion of a Code of Conduct to be submitted to the EPDP. So, just a thought.

Stephanie and then Brian. And then we really do need to move on.

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STEPHANIE PERRIN: Yes. I don't wish to seem too negative, but I'm alarmed at the thought of going through all the processes we have and then going to the process of developing a Code of Conduct where I'm not quite clear that everybody understands what that means.

The reason I really raised my hand was the discussion of the word "impact." Surely one of the key players that is impacted here is the registrants, and I would like to know how we propose to involve the folks who represent the registrants because this not just a topic to be determined between the requesters of the data and the data controllers and data processors.

If indeed we take the path where a code is developed by our group—and that would be the normal process, I believe—and then it is taken for ratification to the EPDPs, then fine. [All this is] is EPDP #49. But I'm very nervous about taking a few issues that have not been resolved here outside to an outside group, including the European Data Protection supervisors to seek their guidance on unsolved issues such as the distinction between legal and natural. Thanks.

I hope I didn't mix those two concepts so completely that you didn't get my point, but I'll stop now.

KEITH DRAZEK: Thanks, Stephanie. I think, on the first point, the question of interested parties are impacted parties, I think what we're recognizing here is that there are other potential controllers and/or processors in this mix that would need to be factored into the conversation as we would prepare input on a Code of Conduct on

this particular point. And so I guess the question is, how do we achieve that acknowledgement and that recognition while still keeping it manageable? And I guess the question is, how do we move that forward?

The current text says "other interested parties." I suggested maybe we perhaps narrow that to "other impacted parties." And maybe we need to further wordsmith that a little bit, but I think the goal here is to make sure that we've got the key controllers/co-controllers/processors in the mix in the conversation.

But let me stop there. Brian you're next, and then we will move on.

BRIAN KING: Thanks, Keith. I just wanted to clarify, seeing that we were coalescing in the chat on that clarification that you made that I thought was pretty helpful. So I just wanted to kind of formalize that this is ended to be about the legal vs. natural distinction, but we're recommending that that be included in the overall Code of Conduct that was called for during the Phase 2 policy. So that's a helpful clarification.

In that case I think it's even more important that we do include other whatever the word you said, Keith—"other impacted parties" I think—because requesters will be processing data and will be impacted because there are going to be legal obligations on the requesters. And as Stephanie mentioned, this is going to need to take into account data subjects as well.

So if we need to list out those two groups specifically, I think that probably does it, along with ICANN and contracted parties. And

we should be specific and include those two groups here because they are all going to be part of the ecosystem here about how this personal data is being processed. Thanks.

KEITH DRAZEK:

Thanks very much, Brian. Very helpful. And I think it's important, just as a final point, to note that the language here does say to collaborate to translate this guidance into a Code of Conduct. It does not necessarily give sign off or approval authority to anybody. It's basically a note to collaborate in the development of this translation. So I think that's an important point to note.

All right, we need to move on. Marika, I'm going to hand it back to you. I see your hand. Go right ahead. Thank you.

MARIKA KONINGS:

Thanks, Keith. Just before moving to the next item, just to encourage everyone to look at the three different versions that are in the table and kind of indicate which one there's a preference for. That is included in the section just proceeding where the guidance starts. And I think, based on the conversation today, staff support team will work with leadership to see if we can come up with some new language that kind of reflects this notion of recommending that this part is taking into the broader conversation that's expected to happen after Phase 1 implementation and DPA agreements as part of the Code of Conduct.

So then moving on to the next one on the list, which is Recommendation 5, if I'm not mistaken, [Keith] already introduced that as well during the last meeting. There's proposed language

that has been put forward by the Registries Stakeholder Group that would replace the language that went into the initial report. I think there was one comment provided by the ALAC that suggested that, in addition to the language at the Registry Team has put forward, the Bird & Bird summary table would also be added. So I think we're looking for feedback here from the group whether there's support for replacing the language as it was originally in the initial report with the language proposed by the Registries Stakeholder Group.

And then, secondly, whether there's support for also adding the Bird & Bird summary table that you also see here on screen.

KEITH DRAZEK: Thank you, Marika. Any questions? Any follow up? Any comments? Matthew, go right ahead. Thank you.

MATTHEW CROSSMAN: Yeah. Hi, everyone. Just to comment on the proposal to include the chart. Thanks for those comments, Hadia. I do think, though, that …. I'm not sure I agree with including the chart here. I'm not sure that it helps the guidance. And let me just explain sort of our thinking on that.

First, I think that distinction in the risk levels between the registration- based and the registrant-based addresses that's reflected in the chart, I think that's covered in sort of a descriptive way in Bullet 3. I think if you find value in that medium/low language in the chart, then perhaps we can make some edits to

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that bullet to reflect that. But I think that distinction is at least already covered.

And then secondly, we sort of intentionally omitted the discussion about automated disclosure in this guidance because the recommendation is specifically about publication in the RDDS. And this automated disclosure risk assessment that's summarized here assumes a number of things in the opinion, including built-in verification and validation of the motives of a request, the source of the request, audit and monitoring function.

That's all important context for that conclusion, and it seems more relevant to the SSAD discussion. So I think introducing this concept of automated disclosure in guidance about publication in the RDDS … I'm concerned that maybe that introduces some sort of unnecessary confusion here. Obviously, we're still pointing folks to the underlying legal opinion, so all this information is still there and available. But I'm not sure it's helpful to flag that concept of automated disclosure in guidance where we're specifically talking about providing guidance for those who want to publish this information in the RDDS. Thanks.

KEITH DRAZEK: Thank you, Matthew. And I note that Stephanie has said in chat that she's not sure that the chart adds greater clarity. If anybody else would like to get in queue, please do so at this point. The queue is open.

Okay. Marika, I'll hand it back to you. Any next steps on this one?

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MARIKA KONINGS: Thanks, Keith. I think we're taking here, the silence, as agreement to at least move the Registry language into the table so everyone can have a second look at this. And I think we'll come back to it in the form of a second reading. Of course, if there's further input, please use the table to provide that in advance of the next meeting.

So with that, I think we can move on to the next agenda item.

KEITH DRAZEK: Perfect. Thank you, Marika. Go right ahead.

MARIKA KONINGS: For the next one, we basically go back to Recommendation 1. We've labeled this in our agenda as the second reading of this recommendation and some of the updates that we've made, of course. If further readings are necessary, that is definitely not excluded. But we hope, of course, that at some point we'll be able to put a final point on it.

So what staff, in collaboration with the leadership team, has done here is made a further update to this language. As you may recall, during the last conversation, there was some concern around the last sentence and what that reflected and what it might need to cover. So the proposal here is just to remove that last sentence and only have the first sentence in the reports, not as a recommendation but as a response to the Council's instruction which specifically asked about this part of Recommendation 17.

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So I think that the question here is, is that something that groups are able to live with for inclusion in the final report, or if there are further comments or suggestions that people want to put forward.

KEITH DRAZEK: Thanks. Very good. I see some hands going up. Alan Greenberg and Margie Milam.

I want to note here that probably, I think that the status of this fairly straightforward. I think the more concise our text can be in this regard, probably will save us some time. But I want to hear what others have to say.

Alan and then Margie.

ALAN GREENBERG: Thank you. My comment is very much in line with that. I believe it should say "Recommendation 17 Part 1 or Recommendation 17.1" because that's the part we're talking about. There are two other parts to the recommendation that are not relevant to this discussion and we should make it quite clear what we're focusing on. Thank you.

And for the record, the GNSO statement of our task should have been worded that way. But just because they didn't doesn't mean we shouldn't be precise. Thank you.

KEITH DRAZEK: Thank you. Margie.

MARGIE MILAM: Hi. I would take it a step further and say that we need to address Recommendation 17.3. So I'm advocating for the language that we suggested in the BC comment— that the group could not resolve the legal/natural person distinction—be included in the report so that we've adequately done what we needed to do for Recommendation 17.

KEITH DRAZEK: Thank you, Margie. Would anybody else like to get in queue? Okay. Marc Anderson, go ahead.

MARC ANDERSON: Thanks, Keith. From a Registry perspective, I think we can support the staff proposal. As you said, I think this reflects our task. As far as limiting it to Recommendation 17.1, I'm not sure I agree with that because I believe our task was specifically … The task were charged to undertake here in Phase 2A was specifically the task of Item 3. If were have not been debating to resolve legal vs. natural here and in Phase 2A, then I don't know what we've been doing so.

So I think this our outcome. I think this exactly the outcome of Item 3 Recommendation 17. I think the outcome of that, our resolution, is that we did not reach consensus on changes to that. And if that isn't our outcome, if that isn't what we've been doing, then I don't know what we've been doing in Phase 2.

So I support the staff language and I disagree that this specific to task 1. I think this is our task for all of Recommendation 17.

KEITH DRAZEK: Thank you, Marc. Stephanie, you're next.

STEPHANIE PERRIN: Thank you. And I do apologize if I'm missing the train of thought here. I support the language. I think it's clear. And I don't wish to drag in that word "resolve" again, as Margie had suggested there. But I'm having read quite a few final reports of various ICANN processes, I'm always struck by the opacity. As we can agree on language that everybody likes, we wind up reducing it to a very simple statement. And the casual reader coming in years later doesn't really get a sense of why we didn't reach agreement. Where would I find that discussion of all the various issues and arguments in the document? Thanks.

KEITH DRAZEK: Thanks, Stephanie. I think it's a good point in terms of making sure that we have shown our work as a PDP Working Group, that we've captured the substance of the discussion so there is a clear record. And I think that there's certainly an opportunity to do that, whether that's in references/ footnotes/text/appendices/minority statements. I mean, there's a whole range of opportunities and options that we have to capture and to show our work.

But I think when it comes to any recommendations that are coming from the PDP Working Group, they really ought to be as

clear and concise as possible to provide a response to the Council instructions, to provide an indication of where the group either agreed or could not agree to make changes to prior recommendations or prior consensus policy. So anyway, that's my thought in reaction to Stephanie's comment.

Marika I see a hand. Go ahead.

MARIKA KONINGS: Yeah. Thanks, Keith. This just, I think, picking up on a suggestion we made before because, as you may recall, there is language that precedes this recommendation—or, now, a response—that explains the different positions and kind of, I think, shows why there is no agreement between those different views. I think there is support for removing that from here.

But, of course, what we can do is include a reference proceeding this recommendation that says something like "for those interested in more context around how [inaudible] please look at the initial report as well as minority statements that we've indicated" that groups can use to further elaborate on their views on this topic.

So I think, hopefully in that way, the context is present, or at least it should be easy to find, for those that want to go back and say, "Hey, this says, they didn't reach consensus. Why was that?" And they should have pointers, then, where to find that information.

KEITH DRAZEK: Okay. Thanks, Marika. Margie, you're next.

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MARGIE MILAM: Sure. To address Marc Anderson's comment. The reason why I've been leaving the language just as it is, [as] problematic is because it implies that there was consensus to Recommendation 17.1. And that's the whole point of raising the Recommendation 17.3 issue because the consensus was that we would talk about it in Phase 2, not that Recommendation 17.1 was the answer going forward. And so the reason that the language is troubling is because it leaves the implication that there was consensus for Recommendation 17.1 as a stand-alone, and it was part of a three-part recommendation.

So that's the reason that the report should indicate language that addresses all parts of Recommendation 17.

KEITH DRAZEK: Thanks, Margie. Marc, you're next. And then I'll put myself in queue.

MARC ANDERSON: Thanks, Margie, for the clarification. I'm not sure I agree with you, but I guess I'd like to ask a follow up question. I've had enough EPDP. I'm ready for it to be done. So I'm concerned that your proposed revision sort of leaves the door open, saying that additional work is needed.

And so I guess my question is, how do we get resolution to this? If your concern is that Recommendation 17.1 is not agreed to, then should we say we failed to reach consensus for changes,

therefore Recommendation 17.1 should be repealed? And we want to take away language that says "registries and registers are permitted to differentiate between legal and natural persons, but not obligated to do so."

I guess I'm looking for how we resolve this and move on, and I'm not quite sure what we need to do to get resolution here.

KEITH DRAZEK: Thanks, Marc. Margie, you're next. Then Amr, and then Alan.

MARGIE MILAM: Sure. And I mentioned this on a prior call. I'm not advocating for any more phases on this topic. What it would mean is that the recommendation would include both parts, and then the Council will decide what it wants to do, and the Board decide what it wants to do. It's not any different than what happened in Phase 2 where we had some recommendations that had consensus and some that didn't.

So in the end, you'll probably end up with the same scenario, which is that the differentiation is optional. But we can certainly clarify that no additional work is suggested at this point.

KEITH DRAZEK: Thanks, Margie. Amr and then Alan.

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AMR ELSADR: Thanks, Keith. And thanks, Margie, Allen, and Marc. I think this discussion has been helpful.

If I could suggest the way I kind of see this. The substance of what were asked by Council to resolve was indeed Recommendation 17.1. I believe the inputs that we were required to consider in order to resolve the substance of the recommendation was in 17.2, along with a few additional inputs that the Council specified in its instructions to us. And Recommendation 17.3, to me, is really the process that was meant to carry out the changes were meant to do. Of course, Recommendation 17.3 referred to Phase 2 which we never got around to doing for different reasons, specifically, missing inputs. So this was deferred to Phase 2A.

But ultimately, I think I agree with what Alan Greenberg said earlier, in that the substance of the change, indeed, is in Recommendation 17.1. If we want to refer very specifically, if we want to be really, really specific about what we've been doing, we could really kind of like lay that out in a clear fashion saying that Recommendation 17.1 is the substance that the EPDP Team failed reach consensus on, and Recommendation 17.2 is part of the input that we considered consistent with the instructions from Council, and Recommendation 17.3 was the process we used, although this was deferred to Phase 2A instead of Phase 2.

So that to me would be an all-around, comprehensive response to Recommendation 17 in its totality. But really, the substantive bit that we were asked very specifically by the GNSO Council to address wasn't Recommendation 17.1. Thanks.

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KEITH DRAZEK: Thanks very much, Amr. Very helpful, very clear. Alan, I'll turn to you next. But, Amr, I may ask you to help us with some proposed text or language that would help us move forward on this. I think the language before us is quite clear and quite concise, but we need to find a path forward to come to agreement on the text. So thanks, Amr, for that in advance.

Alan Greenberg, you're next.

ALAN GREENBERG: Thank you very much. To try to put to rest the fears of people that this a nefarious way to get this thing reopened again or continue the EPDP, I believe all we're talking about here is ensuring that the language reflects the process that has gone on, and to be honest, the level of dissatisfaction that some of us have with how this has worked.

Ad, yes, we did have consensus on Recommendation 17, but that assumed certain things, some of which didn't happen; some of which have happened in a way that was not envisioned at that point. And all we're looking for is to make sure that someone who cares enough to read this afterwards does not come away with the wrong impression. We are not trying to change the outcome—sadly, perhaps—but we are not.

We just want to make sure that the reality of how this process has unfolded is recorded reasonably. Thank you.

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KEITH DRAZEK: Thanks very much, Alan. And in the interest of time, we should probably draw a line under this. But I think, just to remind everybody that we do have the option of a group submitting points and comments and clarification in their minority statements as well.

But let's turn to Amr for any input that he has. I think it's perfectly legitimate and beneficial to capture the discussion, capture the reality, capture the facts. But I do want to make sure that the recommendation language that we have is as concise and clear as possible.

Alan, is that a new hand or an old hand? Sorry.

ALAN GREENBERG: It's a follow-on, Keith.

KEITH DRAZEK: Sure, go ahead.

ALAN GREENBERG: And I think it's really important. When people go back and read these things, they read the recommendations. They read the summaries. They don't go back and read all the minority statements. So there's a substantive difference between making sure that our positions are reflected in the report as our positions, but not to say we can state them in a minority statement. That just doesn't get the same level of focus. And I think it's a cop out to say that we have that result, that option. Thank you.

KEITH DRAZEK: Thanks, Alan. And I think that perhaps the question is whether there could be clarifying language or a description or an explanation of the views and the positions in the text of the report. But again, focusing on the language that is quite clear and concise that the EPDP Team did not reach consensus on recommending changes to the EPDP Phase 1 Recommendation 17.1, I think, is quite factual and quite clear and quite concise.

If there is additional clarification that is desired, then let's consider that. But I think, as far as the actual language here on this preliminary Recommendation 1 that we're now considering for the final report, I think it's pretty straightforward.

But let's take this for some offline work. Please provide input into the document table so we can all have it in a centralized location. But let's try to find a path forward on this one.

Okay. With that, Marika, I'll hand it back to you. We just have five minutes left.

MARIKA KONINGS: Yeah. Thanks, Keith. So, indeed, if Amr is able to provide any [suggestions] [inaudible] I think the different steps in what the group has done and include that in the table [inaudible] of course at the next meeting, all of us can have a look at that and see if that provides a more complete picture than what we currently have, and the group can decide how to move forward.

So [if we can] maybe quickly look at the next recommendation which is Recommendation 2 for which we're also in, basically, a second reading mode. As you may recall, this the recommendation that … Well, it's no longer a recommendation either. It's currently a proposal, or labelled as a proposal, to the GNS Council which basically talks about expectations in relation to a possible further analysis that takes place and noting impact of potential and legislative developments that are ongoing.

So what we've done here, again in consultation with leadership, is make a slight tweak to add the second paragraph. I think that there was a suggestion from the Registry Team to completely remove that, as I think there was a preference to focus more on referring to existing processes and procedures that could be followed. But I think others kind of supported the idea of providing a bit more guidance on how the Council could approach this.

So we've suggested some updated language here. It that would basically say "the GNSO Council to follow existing procedures to identify and scope possible future policy work following the adoption of NIS 2 and confirmation of EU member states implementation plans. So we hope that finds a balance between those that may want to focus on that—that the process and procedures need to be followed—and at the same time, I think, also recognize the conversations and suggestions that came out of the mediated conversations that it is important to review and scope possible work that may be the result of new legislation such as NIS 2.

And I think I should note that the Council has been quite diligent in using scoping teams to undertake that work to really identify what

is the issue and whether or not further policy work or other activities are necessary. And again, this a suggestion to the Council. It doesn't bind the Council in any way or form.

So this what leadership has put forward, and I think we're looking for input on. I know that we're almost out of time here, so maybe this input that can be provided as part of homework if this is something groups are able to live with for inclusion in the final report.

KEITH DRAZEK: Thanks very much, Marika. Amr, you're. Then I'll put myself in queue.

AMR ELSADR: Thanks, Keith. I was actually going to respond to the second paragraph in its current form, but if you'd prefer that I do this over homework, then I can go ahead and do that.

KEITH DRAZEK: Go right ahead, Amr, please. We've got a few minutes. Thanks.

AMR ELSADR: All right. Thank, Keith. Yeah, like Marika said, this a proposal to the GNSO Council. It isn't binding in any way, and I do appreciate that. However, EPDPs, it is in their nature to be very tightly scoped.

And NIS 2 which is still a draft directive—and we don't know when it will be finalized or what form it will be in—to me, at least, is clearly outside the scope of this EPDP. I don't think that there are any dangerous or substantive drawbacks to including this in this proposal, but to be honest, I just think it's bad form that we're not following GNSO Operating Procedures are the EPDP manual in suggesting this to the GNSO Counsel.

But also, I find this to be largely unnecessary. You know, the initiation of a PDP is done using a request for preliminary issues reports. Then the GNSO Council in its totality doesn't need to do this. Councilors representing different groups—the IPC, the BC, the Registries Stakeholder Group—can go ahead and request the preliminary issues reports. The ALAC can request it. The SSAC can. The ICANN Board can, which would mean that the [EPDP] would progress without the Council votes on it in the first place. The Council would just need to adopt the charter.

So largely, I don't see why this necessary at all, and I don't think it's a terribly good precedent for members of the ICANN community in terms of following the EPDP manual and the GNSO Operating Procedures. Thank you.

KEITH DRAZEK: Thanks, Amr. Much appreciated. I have hands from Marika and Hadia. I just wanted to note that, hoping to drive towards consensus, there was clear discussion and interest among many parties in our discussions and deliberations over the last several months about the potential impact of NIS 2 on the discussions in the proceedings. And I've noted repeatedly that while it's not final

and has a ways to go in terms of approval and member state implementation in the transposing process, that directionally it's significant; that there are potential impacts.

And we also noted, in the Contracted Party and Registry input, that there's a strong preference to refer to and follow existing procedures in terms of identifying and scoping future policy work. So I believe and I feel like this text is a reasonable compromise that hopefully will bring us together in acknowledging the potential future impact. And there could be some further wordsmithing here.

For example, "to encourage the GNSO Council to follow existing procedures and engage with ICANN Org to identify and scope possible future work." We could also include reference to the other possible regulatory developments beyond NIS 2. But I really feel like this is some compromise language that I'm hoping folks can come and rally around.

But let me stop there. Marika, you're next. And I saw Hadia's go down. And I know we're running short on time. Marika.

MARIKA KONINGS: Thanks, Keith. And I know we're already beyond our allotted time. I just want to say that, of course, Amr is correct. There are ways in which groups can immediately asked for a preliminary issue report. But at least speaking here from a staff perspective, I think we've really [welcomed] the scoping teams that the Council has and is using, as it is a way of determining is policy development needed. Because, of course, if you immediately jump to a preliminary issue report, you're already on the policy track.

And it's very hard, then, to turn back from there while, through a scoping effort, to really understand what is the impact and is policy necessary. Or are there other things that could or should be done to address potential issues? Is there a really helpful way to make sure that resources are used in the most efficient way? So I think that is at least, I think, a direction that the Council has been taking in recent efforts and what I think the language also reflects.

And what I think groups have said as well, some have indicated that they don't think there is any impact that would need to be addressed in any shape or form. Others think there is. This is a way that could be assessed, and further details would be available at the time to make an informed decision of what steps, if any. need to be taken next.

KEITH DRAZEK: Thanks, Marika. Hadia, I'm going to turn to you for the last word. We're over time now, and I have a minute of just wrap up. Hadia.

HADIA ELMINIAWI: Okay, thank you. So I just want to remind us why we actually attempted to put the scope and possible future policy work in this recommendation. This was a result, actually, of the mediated conversations with Melissa. And maybe because Amr was not part of that, he doesn't really understand why there is a need to have it. But I would urge us to go back to those mediated conversations because this a result of that. Thank you.

KEITH DRAZEK:	Thank you, Hadia. All right, so with that let's take any further input on this one to the table to make sure that if anybody has suggested textual changes, that they're captured in one place.
	And we need to wrap up. Apologies for going over time. If I could just remind folks that, especially those on the small team who have agreed to participate, there's been a Doodle poll circulated. So please complete that so we can schedule the small team breakout session on the values associated with the standardized data element. Thank you for that.
	And then just looking ahead, we have our next team call, EPDP Team meeting on Tuesday at 14:00 UTC. Please, everybody, continue to focus on the text. Focus on the tables. Let's make sure that if we're providing input, that it's input that is designed to bring us together around consensus language. We have less than two weeks to go in this.
	So thank you all very much, and we'll go ahead and wrap up today's call. Thank you.
JULIE BISLAND:	Thanks so much, Keith. And thank you, everyone, for joining. This meeting is adjourned. You can disconnect your lines, and have a good rest of your day.

[END OF TRANSCRIPT]