
ICANN Transcription

GNSO Drafting Team to Further Develop Guidelines and Principles for the GNSO's Roles and Obligations as Decisional Participant in the Empowered Community.

Wednesday, 07 August 2019 at 21:00 UTC

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https://icann.zoom.us/recording/play/YtO_zNXohuHoUo2LMMqll4mSStnpQ3LpVbv3E-Dd6VUQQaxyNc93mWm8CSh2Yxkl

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ANDREA GLANDON:

Good morning, good afternoon, good evening. Welcome to the GNSO drafting team call being held on Wednesday the 7th of August 2019 at 21:00 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 audio bridge, could you please let yourselves be known now? Thank you. Hearing no names, I would like to remind all participants to please state your name before speaking for transcription purposes and to please keep your phones and microphones on mute when not speaking to avoid any background noise.

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With this , I will turn it over to Heather Forrest. Please begin.

HEATHER FORREST:

Thanks, Andrea, very much. Hello to everyone. I will just check. David, it looks like we have you online. We'll see. And we've got Tatiana joining as well, which is brilliant. That's great. David's sorting his sound. Perfect.

So you see that Ariel has the agenda for us up in the Zoom room. A quick review of the agenda before we get started. Plenty to do today, and David, sometimes Zoom is so frustrating. I couldn't agree more.

Okay, quick review of our agenda. So as on my last-minute e-mail blast – and Julie and Ariel have done a great job of keeping us on track with things – today is our final call for anything in relation to 1.3. We're going to continue our very weighty discussion on 2.2 and 2.3, and then we will simply set the next meeting day or remind ourselves of the next meeting time, and that will take us through to the end of the hour. I'm pretty confident we're going to need the whole hour.

Does anyone have updates to their SOI? I see no hands, I hear no shouting. That's great. And I confess to it, it's early in the morning here. It's dark and cold and winter, and I looked at Andrea's message which says "Go to the bottom where your mic is" and I thought it said "Go to the bathroom." So forgive me for giggling at this hour in the morning. I'm clearly not fully awake.

David, you can try that too, go to the bathroom. Alright, let's see if – just take a pause real quick. David, how are you going there? Are you making any progress? Yes. Super. Good stuff. Alright.

Great, what I'd like to do then is the first thing is 1.3, that's the approval action community [forum] stuff. I have had a look at what came in over my nighttime, and I saw only the question from Wolf Ullrich which was responded to by Julie. Wolf-Ullrich, can we just check, are you comfortable with where that landed? And no further points in relation to your question, you happy with that one?

WOLF-ULLRICH KNOBEN: Yeah. Hi. Yes, I'm fine with that. Thank you very much, Julie, for clarification.

HEATHER FORREST: Excellent. Thanks, Wolf Ullrich. Thanks, Julie. And Welcome, Tatiana. Lovely to have you with us. And thanks, Ariel, for putting up 1.3 in the screen, although I don't think we necessarily need it for too much longer.

Does anyone have any final points to make on 1.3? Our final call was yesterday. I didn't see anything else in there other than Wolf-Ullrich's comment overnight. It looks to me like we can wind up our work with 1.3. David says none here. That's great. Steve, over to you, please.

STEVE DELBIANCO: Yeah, I looked ahead, and what Wolf-Ullrich put in on our second agenda item, when he brings up the idea that in GNSO it isn't just a stakeholder group, a constituency, but also individuals. Turning to the 1.3, which is an approval action community [forum,] do we have the

same issue here where our procedures need to articulate who initiate an approval action community forum request?

I just don't want to be inconsistent when we describe who is empowered to get things started in the GNSO.

HEATHER FORREST:

It's a good question, Steve. And of course, all these things, I've been feeling a bit more knowledgeable the further along we get in this package of stuff and thinking "I wonder what we did in a previous item."

Let's have a quick look now. I'm actually in the Google doc as opposed to the Zoom screen, and I'm only on one screen this morning, so forgive me if I don't see a hand up just yet.

STEVE DELBIANCO:

Yeah, Heather, if I could continue just a second longer on that, I realize that an approval of something the EC [turns] to the GNSO and says, "Look, you guys want to approve or not?" At that point, the question of who initiates it is not relevant. I realize that. But as far as the people that consider themselves active in GNSO, we restrict input to just ACs – constituencies and stakeholder groups, or do we allow any individual to give input to the GNSO?

HEATHER FORREST:

Yeah, it's a good question. So Steve, 4.2 as I read it says the GNSO rep to the EC admin will request the council to provide input or feedback from the stakeholder groups and constituencies on support for objection to

or abstention from the approval action, and somebody's just highlighted the relevant text there.

STEVE DELBIANCO: Yeah, that was me.

HEATHER FORREST: That's you. Okay. So I suppose, Steve, having reviewed the relevant bylaws provision on this, there was nothing to suggest that the GNSO had to go beyond stakeholder groups and constituencies, but I suppose, is there an argument to be made for it? Actually, David's got his hand up. David, over to you.

DAVID MCAULEY: Thank you, Heather. I appreciate Steve's question and Wolf-Ullrich's point, but I disagree with the conclusion that an individual – and as I understand, Wolf-Ullrich's point came to the rejection actions which we're going to get to.

STEVE DELBIANCO: No, David, I brought Wolf into this because of something that's coming up later in the agenda. Nobody suggested that individuals should be added to 4.2. What I brought up is let's be consistent that within the GNSO world, if we are opening things up to individuals like we do with the latter half of today's call, why don't we open up to individuals within GNSO on something like [input on approval act.]

there's no proposed change, David, I'm just wanting us to be consistent.
Thank you. Sorry for the interruption.

DAVID MCAULEY: Thanks, Steve. I think consistency would be good. I would come down on the side of saying individuals don't have such a right. Thank you.

STEVE DELBIANCO: We're not going to write that in here, we would just leave it alone as is, and if we were asked why aren't they there, we'd say, well, this [isn't an initiation,] it's an approval within GNSO, and individuals can give their inputs to whatever stakeholder group or constituency they're part of, and leave it at that. If we're all on board, I am too.

DAVID MCAULEY: I'm certainly on board with that. Thank you.

HEATHER FORREST: Yeah. Thanks, Steve. I am too, and I've made a comment in the chat. We'll turn to Wolf-Ullrich.

WOLF-ULLRICH KNOBEN: Yeah. Thanks, Heather. I didn't see [inaudible] commenting on the [petition side here.] In this case [inaudible] 4.2 community feedback. So for me, it's clear that the feedback is done [within] the groups, stakeholder group and constituencies, but it's put forward by the constituencies and the stakeholder groups to the council.

So Steve, I'm not sure [whether I got] your point exactly here. So I wouldn't have a problem with how it is written here in this text, because from my point of view, it's the usual procedure as we're acting and discussing and commenting within the GNSO. So we are all individuals within the constituencies and put forward our opinion there, and then it comes up to the council via the constituency or the representative of the constituencies.

So I really don't have a problem with how it is here done in the 4.2. Thank you.

STEVE DELBIANCO:

Okay. Good by me. Why don't we move on to Heather and Wolf Ullrich's other comments down below?

HEATHER FORREST:

Thanks, Steve, and thanks, Wolf-Ullrich. As I understand it, that was my initial check with Wolf-Ullrich at the start of the call, was, were they happy with Julie's response to that question, and he said that he was. And I posted on the list about 24 hours ago that I was satisfied with my discussions with Julie and Ariel and other staff members on the characterization of 14 days versus seven days and what I think we ought to do with that, which is simply make a note for council that that's not clear. I'm not sure that it's material here.

STEVE DELBIANCO:

Should we mark both of those as resolved in the Google doc then?

HEATHER FORREST:

Yes, let's go ahead and dot that. I think with that, unless there's any other concerns or comments about 1.3, as I read through the document, everything is resolved and we're good to go. I'll give a second for hands. Note Mary's helpful comments in the chat. Thanks, Mary. Lovely to have you with us.

Okay. Alright. With that, Julie, Ariel, let's consider 1.3 finalized, and let's turn our attention to 2.2 and 2.3, please. Okay. Now, what I propose – and Ariel's given you the link if you want to navigate through the Google doc, thanks very much Ariel. And the only thing I want to ask Ariel is, can you make your screen a little bit smaller? There we go. Can we bring the comments over so we can see them in the Zoom room? Now they've gotten bigger. I'm hoping we can see both the document and the text. That'll help us. There we go. Perfect, Ariel. Thanks very much.

And you see Ariel's given you the link to the Google doc as well if you want to navigate yourself. So as I'd proposed on the list, what I think we ought to do here is it's a lengthy document, it combines 2.2 and 2.3 and [the motion] templates for each one.

Let's go ahead and focus on the comment in the margin, because if we go paragraph by paragraph, we'll be here for hours. So let's focus on the comments or questions or edits that remain.

The first one here that shows on the screen is my suggested edit in the introduction which I think is a minor point, but we had taken the introduction and we might want to go back and look, Julie and Ariel,

now that I've said these things are finalized, on the previous guidelines and templates and the introduction.

I think because we ripped that introductory paragraph from the initial document that staff had worked on when we started our work, I suspect that they all refer to staff, and it's the case that we can say here in the introduction really it's the [DT] now in cooperation with staff that have put together the guidelines and templates. So I think that should be a fairly uncontroversial change unless Julie or Ariel point out to me that I misunderstood something or did something silly there.

Introduction paragraph, yeah. Consistent, yeah. Okay, great. Super. And David says that's fine with him. Great. And I've added in there as well maybe something for consistency across all of the introductions in all of our work. It seemed to me that it would make sense to say add that explicit statement, not only these steps forward in the GNSO's existing processes and procedures but that they don't require any changes to the GNSO operating procedures. That should reassure council that the work that we have here does not require any active change on their part.

Any objections to the introduction? No? Alright, super. Thanks, David. Alright, let's scroll down, Ariel, to the next edit or change or comment. By the way, thanks very much to Julie and Ariel for putting in that graphic. That was really helpful, I think. That was something we requested last time. And of course, the table is something that we've seen before.

Okay, that takes us to Wolf-Ullrich's comment here that brought us to that question of 1.3, and who is eligible to submit their rejection action petition to the GNSO council?

My sense on this is this, as Wolf-Ullrich has said – and of course, there's been more comments in the chat about this in the meantime, and we'll give credit where credit is due that Steve drew these steps on a white pad in Dublin – I am thinking that within the stakeholder groups and constituencies, we have internal processes with our members and with others for collecting input and then that goes via a councilor up to council. I'm not inclined to say that we should be dictating how [an SG or C] takes that input from its members or from others. I am inclined to say, as has been pointed out in the chat, that what we're looking for is feedback from a decisional participant, and to the extent that an [SG or C] considers that that feedback should come from members, I'm inclined to support that view. And Steve's point, as I understood it, was that this wasn't maybe an opportunity for – maybe it wasn't Steve. Someone said they were not inclined to extend this to individuals.

How are we on this? Do we agree – so Steve has said, “The bylaws say, subject to the procedures and requirements developed by the applicable decisional participant,” which tells me that's the GNSO, so it really is within the GNSO's powers to decide how they want to do this. I'm inclined to say given the structure of the GNSO that that should fall to the stakeholder group or constituency. Maxim says no individuals.

Alright, are we comfortable with this language as it is? Wolf-Ullrich.

WOLF-ULLRICH KNOBEN: Yeah, I am. Thanks, Heather. My take is I was just referring to the section from the bylaws where the individuals are mentioned there. I was wondering how this is reflected here in the process now that there are individuals behind.

So I don't have a problem with that to say that the entities, the constituency or stakeholder groups should be the ones to put forward the petition, but from this text, I read it in that way, that the petition should come from the GNSO stakeholder group or the GNSO constituency. That means that there should be a certain process behind that, and it's on behalf of the GNSO constituency.

So I wonder whether with regard to petitions, which is a really specific item, I really wonder whether for example a case could happen that an individual from a constituency is coming up with that petition, but the constituency may not, let me say, formally accept this petition but agree that this petition is being put forward to the next step.

So that is what I'm missing here. I'm not sure whether you can see that [inaudible] but I'm missing that flavor of an individual input here a little bit. Thank you.

HEATHER FORREST: Yes. Thanks, Wolf-Ullrich. And I do I think understand your point. I've just had a chat with Mary in the chat about it. I think then we probably ought to be explicit. While I was thinking that it was sufficient to simply leave the text as is, I wonder if the prudent approach would be to say something along the lines of – and I'm in the document quickly, so I'm going to try and draft on the fly, which might be a bad thing – GNSO

council will consider a petition from – and Ariel, I see you're [poised] where I am too. Just give me a second, I'm going to try and type it.

Will consider petition from a GNSO stakeholder group or constituency which may transmit such petition to the council from any member or individual. Something like that. That at least holds a placeholder for us. What do we think of that? I'm going to go back to the Zoom room so I can see your hands. David, over to you.

ANDREA GLANDON:

David, currently both your computer audio and your phone audio are muted. I'm not sure which one you were wanting to use. I will unmute your computer audio. Okay, you're unmuted on your computer now. Okay, I will unmute your phone audio. Okay, go ahead on your phone.

DAVID MCAULEY:

Thanks. I never muted my phone, so I don't know what happened there. Very frustrating. In any event, it's such a nuanced point that that's why I want to speak up. I thought Steve did us a favor because he quoted the bylaws language here, and so the bylaws say in 2.2(b) that subject to the procedures and requirements developed by the applicable decisional participant, an individual may submit a petition to that decisional participant, meaning the GNSO seeking to reject a rejection action

In the preceding paragraph 2.2(a), it talks about the decisional participants shall inform their constituents. So it seems to me that the noun "individual" here is referring to an individual who is within the constituency, in this case of the GNSO. So individual does not mean

anybody on the planet, it just means a person within them. And I think an individual within the GNSO should be able to get the GNSO to consider a rejection action petition drawn up by that individual. It would be the GNSO itself that would submit it later on. That's the way I take it. Thanks very much.

HEATHER FORREST:

T hanks, David. I'm [weaseling] in here. I think your suggestion is a good one, as is Steve's. I'm channeling both of you here to say I think what we need to do is actually quote the bylaws. So I've got in there – and maybe Ariel, if you take over – as per bylaws 2.2(b) – we need to clean it up – an individual may submit a petition to the SG or C, something like that. Does that get us there?

Maybe what we do – can I suggest? I'm mindful of the time. We're 25 past. If I summarize the point and then we follow up with this one offline – David's got his hand up and Mary has her hand up. I'm inclined to give Mary the floor for a final word on this and then we move on and do this one offline. David is an old hand. Mary, over to you, and help us move on from this one.

MARY WONG:

Thanks, Heather, and hi, everybody. Thanks for letting me crash your call again. I agree, I think in terms of how you want to craft the language, you might want to spend some time thinking about it and finalizing it by e-mail. I just wanted to make a couple of points from the bylaws perspective. One is that this is a really important point because when you look at petition to remove directors for example, which is a

different EC power as you all know, you're going to have the same issue because there you also have individuals being able to submit [petitions to decisional participants.]

So if you're going to have language here, you're probably looking at making that language consistent across the various EC powers. That's just point number one.

Point number two, I think the GNSO is in a fairly unique position amongst the decisional participants, and here's why, because you've got the GNSO as a supporting organization, but then you've got the various stakeholder groups, constituencies who, as Maxim pointed out earlier, have their own charters.

So here's where the nuance that Wolf-Ullrich spoke to becomes critical. And I think Heather, you said it, and Wolf too. The distinction is between the rights of an individual to submit a petition to the GNSO, and the method by which that petition is transmitted.

And it seems to be that everybody agrees that yes, an individual should have the right to do it, and secondly, on the method of transmission, that should go to an SG or a C.

Where I think the nuance also becomes quite important is for the GNSO, is it [conceivable] that one of the SGs or one of the constituencies might end up with a charter that basically says, "You know what? We're not going to accept petitions from individuals?" That could then have the effect of somehow diminishing an individual's right to submit a petition.

This may be outside the remit of this particular drafting team, but I just wanted to raise it as a scary possibility, even as remote, but in terms of your drafting right now, I think you just need to make sure that there is in fact a route for an individual to go through an SG or a C to get the petition to the council. I hope that's helpful, Heather.

HEATHER FORREST:

yeah, it's super helpful, Mary. Thank you very much. If not the least, but say although I'm not suggesting it's only helpful for this reason, but there is a foundational issue you pointed out here, and it's a critical one.

So what I'm going to suggest is Ariel, can you – so you suggested some text there, Ariel. Can you flag that one, highlight it or somehow tell us that we have to come back to 4.1? And let's do the drafting carefully offline. We'll review what Ariel's got here and come back to this afterwards. So thanks, Ariel. That's brilliant. Julie's highlighted it. Awesome. Thank you.

Important point, we'll come back to it. Let's move on to the next point and see where that is, and that's in 4.2.1. This is a change that I made. Within the first ten days after the start of the rejection action petition period, any constituent – the only reason I changed from listed to identified there is we really actually didn't have a list in the section we were just in. We simply said that SGs and Cs were in a position to make these things. So it seemed to me that list was an odd term to use there.

That should be fairly uncontroversial, but if anyone's concerned about that, shout. Julie's highlighted where we are. No one's screaming. Great. Ariel, let's go down to the next one, please. What have I done? A simple

typographical change. I can't see that anyone would be too worried about that.

Mary's put another comment in the chat that we'll come back to when we start looking more carefully at 4.1 offline. I made a change here to 4.2.3 to specify the GNSO council mailing list because at various times, we gave the secretariat the job of posting to both the council list and the SGC mailing list, and here I thought it was useful just to differentiate since we're specific in the later references, specify here that it's the council mailing list. So I'll ask everyone to have a look at that, just make sure it makes sense. I can do that offline.

Ariel, down we go, I think. Typo changes, I don't think we need to worry about that. Likewise, punctuation. Yeah, typographical changes.

Just before 4.2.6, there were a few references to council call, but actually, these provisions deal with a meeting. Yes, council in its ordinary course of events, other than public meetings, would meet in a call, but it might well be the case that for whatever reason, maybe this overlaps with a public meeting and we call a special council meeting in person.

In any event, we really don't in the operating procedures or anywhere refer to a council call, capital C Call, so I thought it made sense to call it a meeting as opposed to a call. If anyone has any concern about that, they can shout, and that gets us to 4.2.6 which Julie has highlighted.

Now, there's two points here. One is Ariel's and the other ones should just be typographical or stylistic I added [in Annex D] so that it was absolutely clear.

Let's take up Ariel's point. Ariel, "Should the liaison be a different person?" So this deals with the role or the responsibility of within that 24-hour period after the council's decision, and the decision is to accept the rejection petition, says here the GNSO representative on the EC admin now acting on behalf of the GNSO will promptly provide a rejection action petition notice.

Now, as I understand it, if we go up in terms of what happens, the council meets and then the council informs – Ariel, could you scroll up fore us? The council meets, the council has a decision, the GNSO secretariat publishes the council decision and the secretariat informs the rep on the EC admin.

At this point, I think it needs to stay in the hands of the EC admin, and I think Steve is agreeing to that in the chat. I'll leave it to the rep for the EC. Yes. Okay. And Ariel, if you could scroll back to this point that you flagged. I'm comfortable with where this is, that it's the rep to the EC admin. I think that person has the primary responsibility under the bylaws for carrying this out.

Is there anyone that disagrees with that and thinks that it should be some other party that notifies the EC admin? To me, it makes sense that it's the rep on the EC admin that notifies the EC admin.

STEVE DELBIANCO: A question.

HEATHER FORREST: Steve, go for it.

STEVE DELBIANCO: Yeah, Ariel, I'm curious about why you think a different person – are you aware of any place in this entire exercise where we appointed someone else as a liaison other than our rep to the EC? Because I want us to be consistent and want us to have one person who knows the whole fire drill. And of course, if that person were otherwise unavailable, GNSO has capabilities of appointing an interim replacement as the GNSO rep who would cover everything.

So I'm agreeing with Heather that it ought to be just always our GNSO rep, but what motivated you to suggest a different person?

ARIEL LIANG: The reason why I want to flag it is when we're developing these guidelines, we referenced what ccNSO developed, and they actually created a special role for this particular interaction. They call it something like rejection action manager or some type of position. But in our review, we think GNSO representative on the EC administration is the most straight forward person to handle all these, but because ccNSO has this particular position created, so we just want to flag it and confirm that our understanding is consistent with the DT that we should have this GNSO rep to be the person rather than having somebody selected specifically for that role. That's why we flagged this.

STEVE DELBIANCO: Ariel and Julie, thank you for being thoughtful and making the suggestion. I think you'll hear for us that we'd always like it to be the

GNSO rep so that if you're aware of any place else where we designated anyone else that we would want to be consistent. But thanks for bringing that up as a suggestion.

HEATHER FORREST:

Thanks, Steve, and thanks, Ariel. And I think Steve, where we have done this in previous guidelines had this similar kind of discussion, is – and I know Steve, you supported this point as well – where I suggested that we amend references to the GNSO chair and make that the EC admin.

So I think we are being sufficiently careful in bearing that in mind and we'll keep that on front of mind as we go forward. So Ariel, I think, yeah, we can resolve that one. I'm good to go and Ariel's going to just make a note for us to remind us. Perfect. Thanks, Ariel.

In terms of the list, I simply [dropped] – if we scroll down a bit, Ariel, just over the page – oh, hang on. Go back up. What have I done? The question. So Ariel made a question here too which I think is a good one.

So the council's rationale for accepting the petition, what it does very clearly say in Annex D 2.2(a) – and there's a long list there, that little roman I (a) through (e), there was nothing there that suggested to me that the rationale had to be doubly explained, but Steve and David can maybe correct me if I'm wrong, or [put us all right] here.

What it says is there needs to be a rationale for the petition, and it doesn't say that it has to come from any particular party. So what we have here is a distinction between the rationale is made by the

petitioner and the rationale being made by, if you like, the decisional participant.

David says he's comfortable with where this has landed. It seems to me that by deleting that text, we still leave it open for the council to provide a rationale. We're not foreclosing that opportunity. And the council would do that in a motion. Steve, over to you.

STEVE DELBIANCO: Yeah, right in the middle of that would be for us to say the council decision, period, council may provide rationale for its decision to accept, but it is not required.

HEATHER FORREST: Yeah. I think that's okay, Steve. I think the silence communicates that as well, albeit not explicitly. David, so let's go to Maxim, and then David, I'd like to hear your point in the chat or wherever on Steve's suggestion. Maxim, over to you.

MAXIM ALZOPA: I believe council is capable of providing reasoning. We don't need to develop it, because council needs flexibility. Thanks.

HEATHER FORREST: Thanks, Maxim. Mary's going to check to see if we need the rationale. To Mary's point, my understanding is the rationale has to be there, but

it's a case of, does it come from the Petitioner, does it come from council, does it come from both? Mary, over to you.

STEVE DELBIANCO: [There's] a rationale for the original petition, and now on the second bullet, it's something completely different. It's the rationale for council's decision to approve.

HEATHER FORREST: Yeah, correct. Mary, over to you.

MARY WONG: Yeah, and I get that that was not necessarily talking about the same rationale. So just going back to Annex D, the rejection action petition notice has to include the rationale upon which that petition seeks the rejection. And I think as everybody knows too, there's a requirement for that rationale. So for example where you're talking about ICANN budget or budget plan, then the rationale itself has got to be based on something raised in public comment.

So I haven't thought this through, I just thought I'd stick up my hand, and you guys may have already thought about it. Depending on what the petition really deals with and depending on what the GNSO council's deliberations and decisions are, I just wonder whether you want to accommodate that by saying that the council's rationale could also be listed so that there's no question about it. And it looks like by saying that, that allows them the ability to do that, that might address the situation. Thanks, Steve.

STEVE DELBIANCO: If I might, just to continue, the reason I have that there is that we have to convince our other ACs and SOs to accept the petition. And if we've accepted and we have a really good reason to accept it, we'd want to invite council to stick that reason out there so that the GAC and ccNSO and others would see it. So just a reminder here. It's not required.

HEATHER FORREST: Okay. What I think we ought to do, again, and Ariel and Julie have done that, let's flag this text. We've got it in brackets. Let's come back to it, because again, I think it's an important point, and we'll have the benefit of Mary's detailed comments in the chat as well. And Mary's just put her hand down. Great.

On some of these, I'm afraid to draft on the fly because I think they're important points, so let's come back to them. And Ariel, let's take us down to the next point. I here tinkered with the language in this highlighted paragraph that you see only to suggest that the use of the motion template is not mandatory. So I've made the language passive rather than active. The motion template should be used by the council immediately, whereas before, it says the GNSO council shall use the motion template, and I didn't think that that was quite what we wanted to convey there.

So I'll leave everyone to – I can't imagine that would be crazy controversial, but if anyone has a concern about it –

STEVE DELBIANCO: You're a legal scholar, so, "should" and "shall" have a distinction that's meaningful to you. I believe that if it's recommended, let's say it's recommended, but "should" sounds as mandatory as "shall" to a nonlawyer.

HEATHER FORREST: Thanks, Steve. It wasn't actually the use of the word "should" or "shall" that bothered me, it was the construction. So when I say the GNSO council – whether it's shall or should – shall use a motion template, that to me suggests, use the motion template. And that's actually not the point. The point really is council needs to have a motion. That's really the only – it's not so much the use of the template. The template is the vehicle.

So yeah, my concern wasn't "shall" or "should." It's more –

STEVE DELBIANCO: [Didn't mean to soften when you] went from "shall" to "should." You didn't mean to soften the mandatory nature. You just changed the way the sentence is arranged, so "should" became a "shall?"

HEATHER FORREST: Correct.

STEVE DELBIANCO: I'm fine with that.

HEATHER FORREST:

I also think that it's – and David says "should" is exhortatory, encouraging but not requiring. And I think that's appropriate here. So the point being council can use the motion template, or it can draft its own motion. We don't care. The point is that council needs to do it, and more to the point, they need to do it immediately after it accepts the rejection action petition. The point here is more about the timing of what council does as opposed to the vehicle that it does so.

Okay. Again, that one's highlighted so we can come back to it. I'm going to encourage everyone in peace and quiet after the call to come back to that and make sure that they're happy with it. You see I've simply added EC administration because that word was missing in the paragraph there. I again tinkered with the grammar in that list just to see that it's clear what is requested.

We've only got 15 minutes, so let's try and spend our time on the substantive comments. So let's stop there, Ariel. Day 12. I went back and reread all the previous paragraphs to this point and found that in fact, the determination of whether the rejection action petition meets requirements was done per our previous paragraphs by council leadership. So I added in leadership there.

What I need for everyone to do is just go back and double check that you agree. I don't want to take us back there now, but it's really just a cross checking what's in the table against what's in the previous paragraphs. So I'm going to suggest that we leave that there and come back to it if it needs to be there.

And is council leadership [the defined term in GNSO procedures?] No. It isn't, Steve. It's a term that I can tell you the origin of, it's a term that I started using as council chair because I was convinced that it wasn't appropriate – that the council chair is not some almighty position. And I am using lowercase leadership there intentionally. I think that's for each leadership team to determine what that means until such time as we think it's appropriate to codify in the GNSO operating procedures, which is where that would go, council leadership.

But we have used the lowercase L leadership earlier in the document, so as I say, the task for us is just to go back and double check my – and Julie and Ariel, I'll ask you to do that too just to make sure I'm making sense.

Okay, let's scroll down to the next point. [Ariel's got a comment, capture that.] Yeah. Cool. Thanks, Ariel. Alright. So Wolf-Ullrich has a comment, and let's see, "Shouldn't this have been done upon 4.3.2, upon notice, upon receipt of the board notification of a rejection action, the chair will schedule a council meeting."

And Wolf-Ullrich, you're saying that should be done at an earlier time or a later time?

WOLF-ULLRICH KNOBEN: Yeah, thank you, Heather. I think it's [solved,] because I think from my logic, it should be [about to] determine a meeting after it is clear that a petition is going to be – or another decisional participant is seeking support.

So this in 4.3.1 is only after the board notification where it's not clear that there will be a decisional participant [who'll speak for the board.] So that was my comment here, but I think it is solved if you scroll down I think to further pages in the next table. So it is said that this meeting shall be kind of placeholder meeting, what I understand, [so in case, says,] "Shall be no request from any decisional participant, this meeting is going to be cancelled."

So leave it as it is. [With] the following table, I am okay. Thank you.

HEATHER FORREST:

Thanks, Wolf-Ullrich, and I noted your helpful comments on the list as well. And I understood this exactly as you've described it, this is a placeholder meeting. So I think, Ariel, we can mark Wolf-Ullrich's comments as resolved so that we know we're done with that. Now, in the next paragraph, I have simply copied the language that we've used earlier in the document to make sure that we're consistent, and we had initially informed the community accordingly, and I think we can be more specific there and say inform the SGs and Cs via that mailing list. So that's consistent there.

Ariel, over to you.

ARIEL LIANG:

Thanks, Heather. I'm sorry for going back to the previous point, I just thought about, should we add a sentence saying this meeting will be cancelled if the GNSO council didn't receive the notice from the other decisional participant to support a rejection action petition? Because

the reason we have this sentence is to say there's a placeholder meeting, but there's a possibility of cancelling, and I think it may be helpful to clarify that in this paragraph.

HEATHER FORREST:

Ariel, it sounds like a good suggestion to me. Anyone object to that? Steve doesn't object, no one else is screaming. Ariel, let's go ahead and – yeah, cancellation. Good. Thanks, Ariel. Good catch.

Okay, so no one screamed on my comments on 4.3.2. 4.3.3, I simply played with the grammar to make it a little bit more direct. Council leadership will work with the support staff to categorize and summarize. I made it more active verbs than passive there, and I'll have everyone go back and double check my grammatical tinkering after the call.

Okay, let's move down to the next substantive comment. Grammatical stuff. Likewise, just shifting "By written notice." Grammatical stuff. Okay, that gets us to the final table, and Ariel, if you can scroll up just a tiny bit, we'll see the comment there.

So my comment was, "Am I correct in thinking that council meetings should not happen prior to day 21? Because up to the end of day 21, someone could file a rejection action petition, hence the council meeting would be between day 22 and 27." And Ariel has made a comment there that's her understanding as well.

Does everybody agree with that? Does that make sense to everybody? So I simply added in the council meeting after day 21 but no later than day 27. Okay, Julie says that seems right, that's good. David says that

seems right. Great. Okay, so that just gives council – because you don't want council to get confused here and jump the gun and set its meeting for day 20 and then suddenly a petition comes in on day 21 and we're stuffed.

Alright, nobody is shouting, so that seems that I'm on the right track there. Ariel, let's scroll down, see what else we have. Grammatical stuff. Now, we had language that came out. Ariel, you pulled some language out. And Ariel, do you want to give us some insight into your thinking here?

ARIEL LIANG:

Thanks, Heather. The reason I reorganized this language is because this section is about community feedback within the GNSO, and the language I deleted is about the procedure, how the EC representatives were being formed and how the council [would take decisions and] vote. So I think the [inaudible] language belongs in the following section.

And then I think the reason why I added the second paragraph here is also regarding the whole community input within the GNSO, so I added this language here. So it's basically a reorganization of the paragraphs, not really a substantive change per se. But I haven't read through what my changes are, so hopefully I didn't say something incorrect.

HEATHER FORREST:

Fair enough. Thanks, Ariel. And Mary says in the chat as long as there's enough time to get support from other decisional participants during that seven-day period. Indeed.

Any concerns about the clarity change that Ariel has made here? [It] might go over the page as well to see where that leads us. So it says after that, following a rejection action community [forum and] prior to taking a decision, the council needs to consult the SGs and Cs. So we move on to how that consultation happens.

My question about that was, there are times in these documents where we start talking about consultation. With language like “if such a consultation occurs,” it makes it seem or feel to me like the consultation is some kind of a meeting. I think probably “occurs” is the word that concerns me. And Ariel says “A formal meeting as I understand it.” So Ariel, does that suggest to you that this happens in a council meeting, that the council calls a meeting and says, “Okay, councilors from SGs and Cs, we need to hear your input on this particular point?”

ARIEL LIANG:

If we read the previous paragraph – I can't remember which one, but in this section, the consultation is actually through the GNSO stakeholder group and constituency representative on that council, so as I understand it, the consultation is conducted among the councilors already so it seems like a formal meeting will be sufficient.

I think it's in this paragraph. The GNSO council should consult the GNSO stakeholder groups and constituencies via their representative council

members. So that's why [I understand that] the consultation is actually a meeting.

HEATHER FORREST:

Thanks, Ariel. The reason I've raised the question is it's certainly a case that individual councilors, representatives of SGs and Cs can express views on a particular point via for example the council mailing list. And Mary's asking a question, should we have "should" or "shall" here? I think, Ariel, can you highlight for us "Should" there so that we come back to it as should it be "should" or "shall?"

What I suggest we do, I think David makes a really valid point here, which is we need to be consistent with the bylaws. It's not just our understanding. I wouldn't have understood that we needed a meeting here, but I would suggest, Ariel, can you flag on this paragraph or even in my comment, maybe if you reply to my comment about a consultation, to check the bylaws to see if a formal meeting is required? And I'd like us all to go back to see how we feel about this point. Great. Thank you. Alright, so let's use time after the meeting, each of us, to check the bylaws and come to a view on this.

I'm mindful of time. We have three minutes left. We're very close to the end of the document. I'd like to get us in a position where we can individually come back and review the documents, make any final comments and tidy up some of these points, but with the time to think.

So 5.3, council decision to support, object or abstain. This text has come out, and as I understand it, Ariel, that text has just been shifted. Is that right?

ARIEL LIANG: Yes, that's correct.

HEATHER FORREST: Okay. Alright, so it's the case that the text is there but we just moved it. If we scroll down, all grammatical changes, [I've] specified bylaws-mandated deadline. The last point is the 14-day point. That's the one that I noted on the DT list, is I don't think this is our problem to solve, this question of whether EC business is policy or admin under the GNSO operating procedures for the purposes of the notice role. But I do think it's something that we should use or that we should flag to council so that council can look at it. Julie, over to you.

JULIE HEDLUND: Sorry, Heather. Actually, I raised my hand prematurely. My point was with the note that you have down on page 16 that has to do with waiving the time frames.

HEATHER FORREST: Okay, Julie. Let's just see, does anyone object to we put this question of admin versus policy on council's radar? I didn't see any replies to my e-mail screaming, but we'll give it some time. If anybody does think that that's not a sensible thing to do to put the items in the parking lot to council with our package of guidelines and templates, they can make that point.

I notice Mary's comment in the chat as well. We'll come to that. Ariel, if you'll scroll down to where Julie needs to make her point, so that's in our templates, and let's make this the final point. Maxim's had to drop and we are at time.

Julie, final point is yours and then we're going to wind up.

JULIE HEDLUND:

Thanks, Heather. Actually, what I'll do is – I have some text that's I can put in here as a comment to this comment. There is actually some text in the latest version of the GNSO operating procedures that specifically speaks to the ability for the council to waive timeframes in cases where they aren't able to operate under the timeframes in their procedures. But I'll put that in so that we can all see it here.

HEATHER FORREST:

Thanks, Julie. That's very helpful. And in fact, that's really the end of the document. There's just a tiny little bit over the page. Mary's made a further comment about our point about does it need to be a meeting that consultation. I think the chat for this meeting is going to be super helpful because we have some subject matter experts who've made some comments in the chat.

So as usual, staff will circulate all of our meeting documents here. It's great that we've had good attendance on the call. I really appreciate – I know some of you are super busy, Tatiana and others busy with EPDP and that kind of thing, but it was a great call to be on.

What I suggest we do is this: I'm happy to work with staff to tidy up this document just to resolve any points that might be outstanding that might clean it up a little bit, and then highlight in particular these points that we have to come back to. Where we can do it, staff can put in some language. I see, Ariel's found another comment for me. That's alright.

It means we have to do our homework after the call, because we do need to tidy this one up and move on. We'll get this document as clean as we can. It'll go around and then we'll have to do our work sort of out of the call. It is a long document, Steve, or David. We'll do our work out of the call to finish this one off and work, let's say, offline.

Really outstanding effort from everybody today. I understand for you northern hemisphere folks it's summer holidays too and this is the last thing you want to be thinking about, but it is an important package of work and this one in particular.

So thanks very much to everybody for being on the call. Any final points, comments, questions, concerns before we wind up for today? No? Great. Julie, old hand?

JULIE HEDLUND: Very old. Sorry.

HEATHER FORREST: Awesome. Alright. Thanks very much to Ariel and Julie. They've done a lot of work here to keep us on track, and Ariel's done a great job of driving the document today.

Alright, everybody. Have a wonderful day, evening, whatever it is in your time zone, and we will follow up with documentary work to be done offline. So thanks, everyone. Andrea, you can shut us down.

ANDREA GLANDON: Thank you. This concludes today's conference. Please remember to disconnect all lines and have a wonderful rest of your day.

[END OF TRANSCRIPTION]