ICANN73 | Virtual Community Forum – Joint Session: ICANN Board and GAC
Wednesday, March 9, 2022 - 09:00 to 10:00 AST

GULTEN TEPE: This session will now begin, thank you.
Good morning, good afternoon and good evening.

Welcome to the ICANN73 GAC meeting with the ICANN Board session being held on Wednesday, 9th of March at 13:00 UTC. Recognizing that these are public sessions and other members of the ICANN community may be in attendance the GAC leadership and support staff encourage all of you who are GAC members to type your name and affiliation in the participation chat pod. This is to keep accurate attendance records.

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raise your hand. Once the facilitator calls upon you please unmute yourself and take the floor.

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Finally, this session like all other ICANN activities is governed by the ICANN Expected Standards of Behaviour. In case of disruption during the session our technical support team will mute all participants. This session is being recorded and all the materials will be available on the ICANN73 meeting's page. With that, I would like to leave the floor to GAC Chair, Manal Ismail. Manal, over to you, please.

MANAL ISMAIL, GAC Chair: Thank you very much, Gulten. And good morning good afternoon and good evening everyone.

Welcome to the Board GAC bilateral. I would like to start by welcoming all Board members in the GAC Zoom room. As always, we very much appreciate and value our exchange with the Board. We have one hour for our session today and we have a full agenda as you can see on the screen. But before we get started I would like to first hand over the floor to Maarten for opening remarks.

MAARTEN BOTTERMAN: Thank you, Manal, and thank you, GAC, for having us for this informal interaction which we are used to do during the meetings, and we really appreciate because it's an opportunity to exchange opinions and listen to each other and to learn from each other and to do so in the purpose of serving ICANN's interest.

The dialogue with GAC is one that is very much valued, because we really appreciate the presence of so many governments willing to share their wisdom and advice, advice to ICANN, that helps us to take those aspects into account explicitly.

So, for today it's really a number of subjects that are of high interest to us all. I look forward to progress this together, so very good to be here. And you will hear initial responses from some Board members on some topics where they are best placed, but I really look forward to beyond that for an open discussion. So, Manal?

MANAL ISMAIL, GAC Chair: Thank you very much. Yeah, thank you very much, Maarten. And so we already have two questions from the Board to the GAC, and we have three areas identified from the GAC side with I think maybe six questions so, yeah. Please let's get started and your first question was asking about GAC's key priorities for 2022 and how these priorities help achieve ICANN's common objectives as expressed in the strategic plan and also how community, Board and org can move forward together to achieve them.

So if we go to the following slide, and I hope you had the chance to go through the GAC compiled response to this. I will also try to spare everyone the word-by-word reading, so just to give you the essence of the compiled response GAC top priorities include the next round of new gTLDs, DNS Abuse Mitigation, and determining an appropriate access system for registration data. And we believe that these GAC priorities contribute to strategic objectives, namely strengthening the security of the Domain Name System and improving the effectiveness of ICANN's multistakeholder model for governance.

All these issues are impacted by a larger expectation that ICANN's inclusive and representative multistakeholder model achieves timely and effective outcomes that serve the public interest.

So, I'm pausing here to see if there are any follow-up from GAC colleagues or initial reactions from Board members before heading to the second question.

And if not, then if we can go to the following slide, and the second question asks, if any, what suggestions would the GAC have to enhance ICANN's effectiveness and efficiency with regards to the process of implementation after adoption of a PDP or review recommendations, and if we go to the following slide again summarizing what have been compiled from GAC colleagues so mostly four points here.

First, the long delays between the launch of the policy development process, the conclusion of these processes, and the completion of the

following implementation may lead to obsolete policies by the time they would actually be implemented.

And second, on the importance of keeping track of implementation progress that can help identify difficulty or delays, and prompt remedial actions. Two examples were flagged in this context, ccTRT and SSR2 recommendations where regularly updated dashboards would help monitor the implementation work.

And the -- on the third point, it is with respect to pre-implementation policy recommendations where it appears to some GAC members that advice coming from ICANN advisory committees, including the GAC, has little impact on the wording of the recommendations where clash between supporting organization policy recommendations and advisory committees' advice -- whenever there is a clash the Board refers back to the community, which is normally the GNSO to find a way to resolve this disagreement.

And if we go to the following slide on the final point before getting to the three questions, so in addition there are questions about how the Board treats GAC advice when that advice involves potential policy work by the GNSO, or other parts of the community. For example, when the GAC issued advice on DNS Abuse the Board response was that as this was not an issue for the Board, it could not act on the advice.

So, with that -- this discussion led to a number of related questions, so allow me to -- would you like me to stop after each question or maybe read the three and then you can comment on the three?

MAARTEN BOTTERMAN: Maybe it becomes a little more interactive if you stop after each question.

MANAL ISMAIL, GAC Chair: Okay I will. So first question is what is the value of GAC advice regarding GNSO policy recommendations? To what extent may such advice serve to adapt, change or complement GNSO policy recommendations?

MAARTEN BOTTERMAN: Yeah. Well, let me start on the first question. The GAC constitutes the voice of governments and intergovernmental organizations in ICANN's multistakeholder system and created under ICANN Bylaws the GAC is an advisory committee to the ICANN Board. And the GAC's key role it to provide advice to ICANN on the issues of public policy especially where there may be an interaction between ICANN's activities or policies and national laws or international agreements.

And GAC advice has a particular status. Its advice must be duly taken into account by the ICANN Board and where the Board proposes actions inconsistent with GAC advice we must give reasons, as you know in doing so, and we intend then to reach with you a truly acceptable solution.

As part of the IANA stewardship transition process the ICANN Bylaws were updated to specifically require a vote of no less than 60% of the Board in case we would want to reject the -- sorry -- reject the advice, as you know.

Sorry for this. I got some technical issues here. So, what we do try is to improve the [processing, checking of] GAC advice has been fundamental to the focus of the Board and the GAC for some time. In 2011 and to address recommendations from the first accountability and transparency review team the original Board GAC review implementation working group was the primary vehicle for the regular dialogue between the Board and the GAC members on this topic and together we've grown this into an improvement in how we communicate together over time.

So in that way we also try to make sure that all the advice that we get is properly understood, and well taken into account. So, I hope that that helps to understand where we are, and how much we value that as we put that process in place to ensure that it's well under understood, and we come back with the right responses. I hope that helps.

MANAL ISMAIL, GAC Chair: Thank you very much, Maarten. So I'm pausing here. Any follow up from GAC colleagues? And if not, thank you again, Maarten, and the second question reads what is the role of the Board regarding GNSO policy recommendations? Is it according to its own understanding able

to adapt, complement and/or change such recommendations, or does it limit itself to adopting or rejecting them in full or in part?

MAARTEN BOTTERMAN: Thank you for that question, and also there, the Bylaws provide a detailed process for interaction and dialogue between the Board and the GNSO where the Board believes that the GNSO policy recommendations may not be in the interest of ICANN or the ICANN community.

And while the Board has to final responsibilities of determining whether or not to adopt the recommended policy, and thus move into implementation the Board does not have the authority to unilaterally modify community developed consensus recommendations. However, we've relied on the Bylaws consultation process including with the GAC, to try to ensure that the community's policy recommendations are ultimately in the best interests of ICANN and the ICANN community.

So, the ICANN articles of incorporation make it clear that the determination of a global public interest shall be made by the multistakeholder community through an inclusive bottom up multistakeholder community process. While the Bylaws include a commitment to ensure that the bottom up multistakeholder process is used to [ascertain] the global public interest. So the shepherded development of a Global Public Interest Framework and earlier this week Avri worked with you to explore that with you, and we hope that that helps to make the global public interest determination more

explicit rather than implicit as it has always been a part of what we took into account.

So we always also -- part of the multistakeholder process is that we also always seek the input from the community on matters, and we always listen and take that into account, but the way we deal with the advice is as explained earlier predetermined by the Bylaws. Now, as you know, more recently we reached out also to see whether we could assist you up and beyond the more formal regulations, by addressing in particular, the issue of -- what was the issue again? Sorry --

GÖRAN MARBY: Closed generics.

MAARTEN BOTTERMAN: Closed generics, indeed, where we see if we can assist the GNSO and the GAC to come together to see what makes the most sense. In the end we do what we can to make sure that these issues are properly addressed, and in that, in how we ultimately act on it we refer and rely on the Bylaws formulated restrictions. I hope that helps.

MANAL ISMAIL, GAC Chair: Thank you very much, Maarten, and indeed we have discussed the Board's invitation yesterday on closed generics and we are preparing an affirmative reply to your letter, and I think the GAC is welcoming very much the Board's standing to facilitate such discussion.

And also, I would like to grasp the opportunity to thank Avri for being there for her briefs to the GAC on the global public interest making her -- availing herself twice. Once during our preparations and again during the meeting week.

So thank you. And moving to the third question --

GÖRAN MARBY: Can I ask a question?

MANAL ISMAIL, GAC Chair: Please.

GÖRAN MARBY: Sorry, I can come -- the questions you're raising is very interesting, but they sort of, in a way, contradict some of the statements that have been done earlier from GAC members about the importance of the multistakeholder model and the importance of the bottom-up process.

Because the question that I -- maybe I'm wrong and it's very early in the morning -- but the foundation of ICANN is the multistakeholder model and its bottom-up process where the Board has a very important role, but it has to come from the community which consists of people in hundreds of countries and thousands of volunteers. So I'm not -- I probably don't really understand, and if someone can help explain that to me -- if the GAC believes that there was something wrong with that model, and also thinking that the GAC in 2016 signed onto this model.

Do you think there is specific things that the community should look at from this perspective? Thank you.

MANAL ISMAIL, GAC Chair: Thank you very much, Göran, and I'll give it a try, and, of course, if GAC colleagues would like to chime in, please raise your hand.

So, yeah, we fully appreciate and recognize the multistakeholder model of ICANN and this is how we work. We have been engaging early in all discussions again to benefit from the multistakeholder nature of the organization. I think what the GAC is trying to reach here is maybe a more active leadership role from the Board side should things come to contention.

So, a good example here is the closed generics where the Board -- the GAC, I mean, very much appreciated that the Board stands ready to facilitate the discussion should there be need, so I think this is the type of intervention the GAC is looking for, but definitely nothing to mess up with the multistakeholder model and nothing to ask for a top-down model by all means.

So I see Jorge's hand.

MAARTEN BOTTERMAN: So the responses I gave I had to read because it's relating back to how it's formulated in the Bylaws, but over the years I think what we've established between the Board and the GAC is a very good interaction

where we explore things together. While still respecting the bylaw-mandated rights that we have from how to deal with these things.

So in that way I can see that the question may come up in the GAC, but for sure we are also engaging via the BGIG the Board GAC interaction group, to always see how we can improve process so there's constant line next to dealing with the content which we do formally and constructively to also always see, so, and is there anything we can improve in the process? So if there's any specific concerns, I would also encourage the GAC to raise it in that context because we are open to see how best we can handle, within the multistakeholder model and within the Bylaws, as you know.

MANAL ISMAIL, GAC Chair: Thank you very much, Maarten, and thank you for the reference to the excellent vehicle we have in place with the BGIG. Indeed. So Jorge, please?

JORGE CANCIO: Thank you very much, Manal. I'll try to put my camera on also, and hello everyone, and good morning, good afternoon, good evening. And thank you to Maarten and Göran and the rest for their responses, and elaborations.

I think we all here, or at least speaking for myself, we strongly support the multi-stakeholder model but it is like democracy it's never-ending

process of perfecting the model and of improving. I think we've done a lot of work in the last year in order to strengthen our co-operation especially with the GNSO, which is the main policy development organization within ICANN, so I think we can take that for granted.

The idea of the question, at least in my eyes, is when is the input from the GAC or from any other advisory committee, most opportune. Most efficient because if -- when it comes after the recommendations are finalized by the GNSO, for instance, and the decision is already before the Board, and the GAC or ALAC or some other advisory committee issues an advice on those recommendations, which would, for example, imply that some of the recommendations are adopted, if the Board's role in your understanding is not to change those recommendations, it's not possible to say okay, recommendation 6 says we will do A, B and C but ALAC and GAC say that we should also do D, so we ask the Board to decide that the final recommendation has to be A, B, C and D. If that is not your role, then this calls a little bit into question what is the effectivity, the efficiency of such advice at that moment of time. That also, I think, has to lead us to some process of thinking and improving when we, we participate and to what extent we participate in policy development processes.

At least to my understanding, the community is all the sub organizations in ICANN, so it's not only the supporting organizations, it's also the advisory committees, but of course it depends on that reading of the Bylaws. And as said before, we have done, I think in the last ten years, and if you compare how things were done before in the

first round, and how they are being done now there's a huge difference in how the GAC has engaged in the policy development process beforehand, not after the recommendations were made.

And also, on the GNSO side, the big openness that was led by the likes of Jeff, of Cheryl, and of Avri to open up, to leave space to GAC participants, to ALAC participants in that policy development process. So that's a bit the thinking at least on my side, and it's with the intention of further perfectioning this system, and I think that's all we have in our intentions on all sides of the community. Thank you.

MANAL ISMAIL, GAC Chair: Thank you very much, Jorge, and I bring to everyone's attention also the active chat, and I have Becky next and maybe we can move to the last question as we have only Becky and Avri and then we can move on. Becky, please go ahead.

BECKY BURR: Thank you. Jorge, I don't think that anybody would choose the bottom-up multistakeholder model as an example of efficiency, and that clearly isn't its virtue, but I do think that the GAC's early involvement in the processes, including statements about its views that the Board itself cannot act on because the Board does not have the authority under the Bylaws to develop policy, are still very much paid attention to by the community, taken into account throughout the process.

And, of course, the community knows that in the end if the Board -- if the GAC issues advice the Board has to respond to that advice. They may not have to accept it, but it has to take great steps to justify why it is not taking that advice. So the views of the GAC are relevant and taken into consideration throughout this process by all parts of the community. I think the fact that the GAC has been willing to engage early in several processes has made a huge difference, but the Bylaws are very clear, the Board does not have the authority or ability to make policy.

And unfortunately, you know, at the core of the multistakeholder model is the concept that every part of the community is part of the multi, and what comes out in the end may not be perfectly aligned with the views of one particular group or another, but all of the policy production will have benefited by the input from all of the parts of the multistakeholder arrangement.

This has been a challenge that lots of the community are struggling with, the sort of policy comes out and it's not what we asked for or what we wanted, what we advocated for, and I think it is a challenge to the multistakeholder model that we have to come to grips with, that you know in the end, that product of policy development may not be perfectly aligned with the views of any one part of the multistakeholder community.

MANAL ISMAIL, GAC Chair: Thank you very much, Becky. Let me give the floor directly to Avri next so that we can move on, please.

AVRI DORIA: Thank you. And I have very little to say beyond what Becky said, except for one thing. That we see that that -- that you have already worked to make more effective the use of your advice because by coming in early, it has motivated many of the conversations and processes that we are engaging on, that you know we are working our way through now. So I think we are already seeing some effectiveness from the way the process has been evolving of having advice early, being able to talk about early, being able to have consultations with the GNSO, and such.

So I think it is working. Perhaps more of the same, but it is working I think. Thanks.

MAARTEN BOTTERMAN: If I may make a final on that. I remember a couple of years ago what happened was that a PDP came. The Board looked at it. The GAC talked to the Board and then the Board had to talk to the PDP originator and back. What we have seen over the last years is early engagement more and more, and I also saw in the chat some people -- some expressions of appreciation of that. It's in the early phases where the advice is most useful, and it's very good to see how that is happening.

So, thank you, Becky and Avri for clarifying it as well further. Excellent words. Thanks, Manal.

MANAL ISMAIL, GAC Chair: Thank you very much Becky, Avri and Maarten, and just to stress that no one is asking to change the multistakeholder model and again as Jorge mentioned in the chat we very much appreciate the initiative on closed generics, and this was the type of thing the GAC was looking for. So, much appreciated.

GÖRAN MARBY: I know, Manal, I shouldn't do this. We have had the same discussion now for I think three or four sessions when it comes to the role of the Board and how the policy making process in ICANN works, and Jorge has been friendly enough to have this conversation with us several times. Is there any way we can progress the discussion and sort of come away from it? If there's anything I can do from org to engage with the GAC to talk about the Bylaws and how it works and process -- the process diagram how this actually works. We have actually done that. We -- the hubbabubba project, named by me, is a way we can do that. So to help to progress the discussion but there are tools the GAC can use, for instance, doing an issue report, etcetera, etcetera that puts the GAC in a -- in a -- the GAC needs to put themselves into position in a policy making process. Would that be beneficial, Manal?

MANAL ISMAIL, GAC Chair: Thank you very much, Göran. I think it would. I think we need more time to complete the discussion and have a common understanding of each other, so thank you for the offer to discuss this further beyond this

limited time set up, so we can definitely allocate more time and have that discussion. Thank you for the offer. We will follow up on this offer.

So, the last question here before we move onto the GAC questions to the Board is on those occasions, examples there is with the topic of DNS Abuse, where the GAC seeks actions which rest with the wider community and not just the Board, what expectations, if any, should there be for the Board to react to the advice by initiating a conversation with the community to seek views on the GAC advice?

I think we may have touched on parts of this, but if there are any final reactions here?

MAARTEN BOTTERMAN: Sorry, I had to unmute. No, I think we touched upon that. It's really that in early phases contributing and engaging in the discussion is most useful, and there's also a session later on on DNS Abuse which I, no doubt, the GAC will participate too as well.

As a Board we are constantly interested in your thoughts, your advice, and as you know, in our engagement we also go into that, so the arguments that you bring and that are for us, on top of our agenda as well are arguments we consider as well, and chew on.

In the end, the work on the DNS Abuse is policy development which is done ultimately by the GNSO. But, for sure, benefit from the input, and please continue to engage early, as you do.

MANAL ISMAIL, GAC Chair: Thank you very much, Maarten, and Nigel, please, very briefly go ahead. U.K.

UNITED KINGDOM: Yes, thank you, Manal, and good afternoon to you, and other colleagues, and thank you for the opportunity for the -- for this discussion.

On this third point I just wanted to make a brief point in that this isn't really so much about the Board taking note, or -- of the GAC advice. It's really in relation to sort of communication in that in our advice, in the GAC advice, sometimes the -- the operational part of the advice can impinge on the Board asking the Board to do things, but the advice sometimes, as the Board pointed out, is better taken forward by the organization itself, or by one of the -- or by the GNSO or perhaps by another part of the community.

And I suppose what we're saying here is that we would hope that where this is the case that the Board might communicate the appropriate GAC advice to that entity within the community, or to the organization as appropriate. Clearly, we have excellent channels, thanks to Jeff and others with the GNSO, and we had an excellent session yesterday, but there are times when the GAC advice perhaps touches on issues which need to be relayed to the GNSO on a more formal basis. Thank you very much.

MANAL ISMAIL, GAC Chair: Sorry, I muted myself. Thank you very much, Nigel.

GÖRAN MARBY: Can I ask a question from Nigel?

MANAL ISMAIL, GAC Chair: Go ahead, Göran.

GÖRAN MARBY: So, Nigel, wouldn't that be seen as we are actually interfering in the ICANN community processes when it comes to working on for instance a PDP, because this is the same discussion we had really as the CCT review where the CCT review adds things or -- some of the reviews adds things that actually belong to the community processes. The bottom-up process that we all agree is important.

So if the Board takes a side in that conversation, especially since the GAC are active in those, wouldn't that have an effect of the Board sending a message which is -- would be against the Bylaws but also the idea about the multistakeholder model? And also, that the Board might -- I mean, I'm just theoretically saying the Board might as a competence group might not agree with some of the assumptions in for instance the discussions about DNS Abuse?

UNITED KINGDOM: Thank you, Göran, and -- I'm sorry, Manal.

MANAL ISMAIL, GAC Chair: It's okay, Nigel, but briefly please. We need to move on. Go ahead.

UNITED KINGDOM: Of course. Thank you, Göran. Certainly there's no intention at all here to interfere in the policy development process or in contradiction of the Bylaws. This was really just to facilitate a communication channel that where we ask something in GAC advice, and the Board consider it and think it's more appropriate that our communication is dealt with by the GNSO or by the ccNSO or by some other part of the community that there is a communication channel of that advice to that part of the community. Thank you.

MANAL ISMAIL, GAC Chair: Thank you, Nigel. And I sense great appetite for more discussion so again, Göran, indeed we will have a separate discussion. For now I think we need to go to slide nine. We have six questions. We have 20 minutes, so maybe less than four minutes each.

So if we can -- yeah, I'm sorry, slide 10 maybe. Yeah. Directly to the questions, and the first question, so in the reference -- in the reference scorecard the Board notes that an update on the pending recommendations stemming from the SSR2 review final report was expected by the 22nd of January. So could the Board share with the

GAC the findings of this update, and the Board's first reaction to these findings?

MAARTEN BOTTERMAN: Yes, of course, may I ask Danko to respond to this one initially?

DANKO JEVTOVIC: Sure, Maarten. I will try to be brief because of the time. Hello, Manal and GAC. As you know SSR is the keystone of the ICANN's remit, so this review is very important for us. And thank you for the opportunity to report back on the current progress.

We have divided the recommendations in few groups, and the org is processing them in coordination with implementation shepherds from the review team, so the first group of the recommendations is almost ready for the Board action. These are the recommendations that were grouped as likely to be approved.

The second group of recommendations that we need more information on is communication in between org and Board shepherds -- Board (interruption audio).

Okay, thank you for that. The Board has set up the focus group that I'm chairing that is overseeing this process, and as you probably know for every review there is a dedicated page in website, and also we are looking to improve this public view of the process of all the

recommendations, in order to bring more clarity to the implementation of the process.

So I'll try to be brief, and I'm open for any questions. I see Nigel's hand is up.

MANAL ISMAIL, GAC Chair: Thank you very much, Danko. Nigel, is it a new hand? And if not, any follow-up from GAC colleagues? Okay, seeing no requests for the floor then thank you very much Danko, and let's ----

DANKO JEVTOVIC: One small additional note. There was a GAC session also on the implementation -- recommendations that the Board resolved, already implemented and the org is preparing also a report on these, and, of course, in the next iteration of the reviews all of the implementations of the implemented recommendations will be evaluated by the next review in our, at this moment, changing structures of the review. Thank you.

MANAL ISMAIL, GAC Chair: Thank you very much, Danko.

So if we go to the following slide, please, and topic here is Global Public Interest Framework. And what conclusions does the Board draw from the pilot SSAD use case of the GPI framework? And how does the Board see the evolution of the Global Public Interest Framework?

MAARTEN BOTTERMAN: Yes, thank you for the question. I enjoyed also the session between -- that Avri facilitated with Ergys with the GAC earlier this week so I think most of the answer is given, but maybe, Avri, if you can expand on this?

AVRI DORIA: Sure, thank you. And this is Avri speaking. First of all, I want to start and say I appreciated the chance to you know talk with the GAC and happy to do so any time, as the issue evolves.

So, so first the thing I've often said on this is it's still early -- we're still at the first part. We've got the ODA. We are -- and the annex and that. You know, and we are looking at since the PDP itself is where most of the expressions of public interest are in there, they're in there perhaps, you know, in different words and such but those are the issues that are often and largely discussed in the PDP so it has been -- and I think the ODA shows this to a large extent -- it has been -- oh, and I should say the Board doesn't have any conclusions yet. There are impressions and I've relating some impressions, and the impressions aren't necessarily only mine.

That we see in the ODA that it was able to be applied to basically look at things that had been said. Look at things that had been discussed in the PDP, map them to those categories, get some sort of -- apply some

of the methodology and see that there was a fit at times, and to come to a certain set of you know, first impressions on it. You know in terms of where it's going to go, you know, the Board is now listening to just about everything we can listen to during 73, and gathering, you know, as much extra information as we can that relate to these issues.

We're going to discuss it all and weigh it, and balance it, and you know, do all that. And then, you know apply it to making that decision. And then after that there will be an initial evaluation of how it worked in the SSAD. Then we are going to use it in SubPro. Go through that same sort of process. Perhaps, you know, look at things at different timings and such and use, evaluate, talk at the end of the ODA with that when there is one, and there is an evaluation on it, and at the end of that we are going to do an overall evaluation of did the pilot work? Did we learn anything? How can we change it? How have people recommended we change it?

You know, has the community bought into it in any way? Do we see the community taking this anywhere and sort of saying, oh, we can use this in our process this way? We can use that in our process that way? And if that happens sort of include that in the analysis. And then you know, consult with the community and see where we go with it from there.

So if that's looking at how the pilot -- that's sort of how I envision it going on. I think that's how it's planned to go on, you know, precisely I'm not sure but it's there. There are milestones. There will be webinars. There will be papers to discuss, and we are going to keep

talking about this until everybody tells us to go away and say, we've had enough of this. Thank you.

MANAL ISMAIL, GAC Chair: Thank you very much, Avri. Sorry, Maarten.

MAARTEN BOTTERMAN: If I may add one thing. Of course GAC appreciates the early outreach and the invite to help explore it, and if you embrace it and learn from it, love to hear from that, of course, from our side to continue and share for sure.

MANAL ISMAIL, GAC Chair: Thank you very much, Maarten and Avri. And seeing no hands up I think we are good to move on. Velimira, please, European Commission briefly.

EUROPEAN COMMISSION: Yes. Very briefly, Manal, thank you and many thanks to Avri and Maarten for the clarifications. Apologies I don't manage to put my camera on.

Avri, I was just wondering whether with the group people with whom you are working on this there is already a time-line proposed, you know, for the evaluation. From what I remember I think the development is to be done by the end of financial year '23 is this correct?

AVRI DORIA: I believe so. I don't have the time-line in front of me. There is one. It's got milestones on it, and you know, but I'd have to dig that out. But I don't have it in front of me, but I believe that's the case, yes.

EUROPEAN COMMISSION: Okay. But you don't -- you don't have -- I mean, there is no time-line developed so far in terms of the different milestones you were referring to?

AVRI DORIA: Yes, there is a mile -- there is a milestone chart. I think it was in some of Ergys's presentations and I would have to dig it up and I'll certainly make sure that the GAC has that, you know, available.

I just don't have it in front of me and remembering dates other than the next milestone I have to meet is -- but yes, I believe that is the case. Basically, we're doing the one on the SSAD. There will be then a report after the SSAD on how well it worked when the Board makes its decision, you know right after the Board makes its decision.
And then there will be the SubPro following along with the ODA we received from SubPro. Then there will be the same sort of consultative period and then there will be a report at the end of that, and yes, the hope is that by the end of '23, you know, it's there.

EUROPEAN COMMISSION: Thank you.

MANAL ISMAIL, GAC Chair: So thank you very much, Velimira and Avri. Let's go to the following slide. And we have a question on registration data, SSAD, and according to the appendix ICANN Board will have additional considerations in addition to the GPI before deciding if recommendations are within a best interest, and there was reference here to potential costs as the cost may rise to a high enough level that ICANN Board might have to consider how those costs impact ICANN's ability to continue to serve the mission and public interest.

So, what is the Board's view of the statement which implies that the SSAD could not be implemented due to the cost identified in the ODA?

MAARTEN BOTTERMAN: Okay. Well, for that obviously the GNSO is still contemplating, and we are talking with them, but specifically on this, Becky, can you dive in?

BECKY BURR: Yes, thank you, and thank you for the question. The, the Board has not made a decision with respect to whether the SSAD serves the global public interest or not, and the, the application of the GPI in the ODA did not account for costs, but costs are part of the consideration because the question really comes down to will it -- will the SSAD serve the purpose for which it was intended?

And here, where we have a concern that the SSAD will not fundamentally alter the problem of access, because it is not designed to alter the problem of access, nor could it, because we are talking about compliance with law -- so the question is, should we -- the question is, among other things -- is enough, is this enough of a contribution to the global public interest in terms of a central intake system that it, that it is worth the expense given the fact that we know that it does not answer the concern of many parts of the community with respect to access to the data itself?

We have -- we are engaged in a conversation with the, with the GNSO council that is very productive conversation, and it really involves brainstorming about these issues. We've heard conversations about potential pilots or building some parts but not all parts of the system. As I said, the Board has not reached a decision. It very much -- it is benefitting from its engagement with the GNSO council on this particular piece.

With respect to registration data accuracy, we want to highlight that the Board is very committed to furthering the work that's under way with respect to the accuracy of registration data. The maintenance of accurate and up to date registration data is a fundamental part of ICANN's mission. It is in the -- what I like to call the picket fence but also in the Bylaws through annexes as well.

The -- because ICANN is not able to access the bulk of registration data to proactively check, it hasn't been able to produce the accuracy

statistics that it did up until 2018, it is able to access data in response to a report of inaccuracy, but in order to establish a baseline we really do need to understand what is the nature of the in accuracy. Are they preventing contact or other purposes they are intended to serve and how prevalent is that across the Board.

And the Board discussed the absence of baseline information that is reliable and broadly accepted across the community and has decided that it is going to pursue some questions with the European Data Protection Board to understand whether, and how ICANN could access data on a bulk basis, and not simply in response to individual identification of potentially inaccurate data.

But we also want to make sure that we are confirming that contracted parties do have a responsibility with respect to accuracy of the data. It is not simply a procedural. They -- a registrant has an obligation to provide accurate data to contracted parties, and contracted parties in the -- in response have obligations with respect to confirming that data at the time, and periodically thereafter, and to investigate and respond in -- when they receive reports of inaccurate information.

So there seems to have been some confusion about what the obligations of contracted parties are here, and we want to make sure that it is quite clear that the contracts with ICANN, in particular the registrar accreditation agreement, do impose substantive obligations on contracted parties with respect to, with respect to accuracy.

And then finally, as I said ICANN org will be requesting guidance from the European Data Protection Board with respect to accurate -- access more broadly for the purpose of creating an accuracy baseline. We know that that is not the only step that needs to be taken. We need to reach agreement with the contracted parties on those issues, but we feel confident that we can address those concerns as well.

And finally, we would very much welcome the GAC's support for our request for guidance to the European Data Protection Board. We will try to make our questions very precise and very granular and provide a variety of scenarios to maximize the chance that we will get actionable guidance.

MANAL ISMAIL, GAC Chair: Thank you very much, Becky, and if we can move onto the last slide where we have three more questions on registration data, data protection agreements and data accuracy.

So allow me to read them quickly and then give you the last -- the last word to the Board to address them as much as we can in the remaining minutes. What is the status of the negotiation of data protection agreements between ICANN and the contracted parties?

Is ICANN able to access registration data under the GDPR on the basis that it has a legitimate interest in checking the accuracy of the data? Has ICANN ever received or plans to receive legal advice on the topic?

And finally, if the Board were to reject the GNSO Phase 2 final report, what would be the next steps regarding access to registration data?

So you may have touched on some aspects, but I'm handing over the floor, and it's yours until the end. Go ahead.

MAARTEN BOTTERMAN: Okay. Well, for sure we haven't -- not yet determined whether or not to accept the SSAD recommendations but -- and we are engaging with the GNSO to look at that. But should in the end we decline to accept the recommendation obviously we go into the Bylaws required consultation process.

On the data protection agreements, Becky or Göran? Becky, are you --

BECKY BURR: With respect to the data protection agreements, I think I should defer to org on that. My understanding is that they are under way, and we hope to revitalize the conversation and drive to conclusion after ICANN73. With respect to question five regarding access to registration data, as I mentioned, ICANN is able to register -- to access registration data in response to a complaint that the data is inaccurate or for other compliance reasons, but that is on a case by case basis.
What we think is unclear is whether GDPR permits proactive bulk access and processing of the many millions of records that are at issue here. We've asked about legal advice on the topic. I think those of you -- and there were many GAC participants in the EPDP Phase 2A legal team

discussion, understands that the advice we are likely to get in response to a question like this, and I'm not saying whether ICANN has or has not received legal advice -- but what I am saying is I think we all know that the answer will be it depends, and it's not clear.

And I mean that in the nicest possible way, which is why we feel we have to get clarity from the European Data Protection Board. And -- yes, go ahead.

GÖRAN MARBY: When it comes to the agreement I think, could you -- because we have answered this question before and I'm just getting curious. And for the dialogue, why is this agreement in such a particular interest for the GAC? You know I think maybe because we answered the question a couple of times. And I just realized we might have not answered it the right way because the question comes back. So if it's possible for someone to explain why this question is important for the GAC, so maybe I can give you a better answer? Sorry, I mean, because you know the answer. We answered the same way the last three times.

MANAL ISMAIL, GAC Chair: So I see Gemma's hand up from European Commission, with apologies to our interpreters we're two minutes over time. I hope we can finish in the remaining three minutes or so. Please, Gemma, go ahead.

GEMMA CAROLILLO (EC): Manal, well understood. I was not meaning actually to address the question from Göran. I wanted to react on the SSAD, but I will react to Göran's questions to the extent I can.

So unless I have missed some discussions, but I think we had it in the prep meeting GAC Board, it was completely unclear what is the status of the negotiations of the data protection agreement. So either there was some failure from myself to understand the reply, but I don't think we ever got a clear reply on what is the status.

And why is this important to the GAC? I mean, first of all, I think the GAC has every right to raise the questions we believe are important but in the context we are describing, one of the issues that has been put forward a few times is that there has been a lack of clarity as regards the responsibilities and the roles, the roles and responsibilities between ICANN and the contracted parties as regards the processing of personal data in the context of WHOIS. This is why this is an important element.

So I think perhaps we would benefit -- apologies for the repetition of the answer if this was already given in clear terms in the past -- but this is the reason why it's important. And I will take the opportunity since I am intervening, and I will then stop because Manal already made it clear we are late -- I think I wanted to react to Becky's point.

We fully appreciate from European Commission the ICANN [inaudible] accuracy. We have read carefully the statement that went out that you recalled in this moment, Becky. But going back to the SSAD, its -- I

mean, this is where our best hopes lay now as regards solving the issues of accessing to WHOIS. So for us it's a really concerning to see that this might never see the light of the day.

And this is why we are asking whether this estimate regarding the costings or the time-line, we are asking repeatedly perhaps we are a bit annoying in asking always the same questions but because this is -- we really want this to be a success. We want this to work because this is where the community has put so much effort on and this remains the best hope for a solution at the moment.

So we insist a bit of learning perhaps in the next occasion what are the views of the Board regarding the possible implementation of the SSAD. Thank you. Sorry, Manal.

GÖRAN MARBY: Manal, I need to have one minute. First of all, now I understand your interest. Sorry, Gemma. The agreement between ICANN org and the contracted parties when it comes to this will not increase the possibility for ICANN to get access to the data. We need data protection board's guidance on this one. The contract will come later after we have the guidance. So I hope that the European Commission again will stand up and help us with this as it is their role, as the Belgian Data Protection Authority has asked you to do.

The second thing I would like to point out, that ICANN the institution and the community and everybody else three times has stood up and

asked to give ICANN the possibility to be legally responsible for the disclosure of the data. So far that has not happened. That is the solution. To bring to the ICANN community to come up with a solution that is actually if you think it is a problem. If you actually think it's a problem it was directed by the GDPR.

All the work we've done, the Temp Spec, the Phase 1, Phase 2 is all directly in relation to a law enacted by the European Union opposed by the -- proposed by DG CONNECT. I think -- can you just focus on the problems and actually see where we can go to solve them? I think that would be beneficial for all of us. Right now we are down in the weeds. We need further guidance from the Data Protection Board to be able to go further, to be able to do what ICANN wants to do.

ICANN wants, in the end, to be supportive of access to the information, so I please ask you from DG CONNECT, can you please support our recital proposal into NIS 2 to make ICANN org legally responsible for the disclosure of the data. I would very much [love] an answer to that question. Thank you.

GEMMA CAROLILLO (EC): Can I reply? This is becoming -- otherwise it's difficult. I don't want to skip the question.

MANAL ISMAIL, GAC Chair: In 30 seconds.

GEMMA CAROLILLO (EC): So three things. First of all, it's great, ICANN seeking advice from the Data Protection Board. We are an independent body, the Commission from the Data Protection Board. So in a way we can facilitate the discussion, but we are, of course we are -- the Data Protection Board is no way under influence from European Commission.

Second of all, I understand the status of the negotiation is on hold pending receiving further guidance from the Data Protection Board. So finally, perhaps I understood that the negotiations are not progressing pending the advice.

Last but not least, we cannot make anybody controller by law. This was I think acknowledged several times by ICANN as well. And so, I'm sorry, I mean this is not the way we discuss the legislative proposals but in a short answer given the context and the timing, the answer is no, this is not possible. But again, Manal, I will definitely stop. I think we take it another time.

MANAL ISMAIL, GAC Chair: Thank you. Thank you very much, Gemma, and thank you, Göran, Becky, Maarten, Avri and all Board members and all GAC colleagues for the interactive discussion, and sincere apologies to our interpreters. So many things to follow up on through the BGIG and through yourself, Göran, and Maarten, of course.

For GAC colleagues, we are meeting back here at 12:30 Seattle, 16:30 UTC. Thank you very much everyone. Apologies for the lousy time management.

MAARTEN BOTTERMAN: Thanks, Manal. Thanks, GAC, and thanks everybody.

Wishing you good day.

AVRI DORIA: Bye. Thank you.

[END OF TRANSCRPT]