**Small Team #1 – Legal vs. Natural Person (Status 25 October 2018)**

h)     **Applicability of Data Processing Requirements – Draft responses**

*h3) Should Contracted Parties be allowed or required to treat legal and natural persons differently, and what mechanism is needed to ensure reliable determination of status?*

We seem to have agreed that yes, contracted parties should be allowed to treat legal and natural persons differently but the mechanism by which this should or can be done should be further explored. The GAC would go further and recommend that the temporary specification require contracted parties to treat legal and natural persons differently because, consistent with prior GAC advice and comments on interim models, the GDPR does not cover processing of personal data which concerns legal persons. Hence, the personal information of legal persons should be part of the publicly available WHOIS data. We recommend that contracted parties develop mechanisms that ensure a reliable determination of natural or legal person status for registrants going forward (post- implementation of new contract specifications) and for their legacy registrants and recognize that these procedures will likely require a phased approach that allows more time for contracted parties to deal with their legacy customers.

*h4) Is there a legal basis for Contracted Parties to treat legal and natural persons differently?*

Recital 14 of the GDPR provides that the GPR “does not cover the processing of personal data which concerns legal persons and in particular undertakings established as legal persons, including the name and the form of the legal person and the contact details of the legal person.” Hence, we agreed that under GDPR there is a legal basis.  While the focus of this EPDP is GDPR compliance, we did note that not all jurisdictions have this same distinction so we have to make sure our policy recommendations are flexible enough to take this into account.

*h5) What are the risks associated with differentiation of registrant status as legal or natural persons across multiple jurisdictions? (See EDPB letter of 5 July 2018).*

The main risk seems to be that while legal persons don’t have the same protections under GDPR, natural persons employed by a legal person (and who may be designated as the admin or technical contact) are still natural persons with rights/protection under GDPR. This risk may be minimized through educational resources as recommended below.

**Proposed Preliminary Policy Recommendation for inclusion in the Initial Report**

The EPDP Team recommends that:

* The distinction between legal and natural persons is useful and necessary for GDPR and some other data protection laws.
  + However, the EPDP Team recognizes that there are challenges in making this distinction in the context of domain name registrations as well as the potential implementation of any new functionality that would apply to pre-existing registrations.
  + Additionally, other jurisdictions may have other categories of protected groups or other requirements that would need to be factored in.
* The EPDP Team recommends that GDD staff who will be tasked with the implementation of these policy recommendations commence research by investigating how ccTLDs and contracted parties currently distinguish between natural and legal persons to inform the EPDP Team.

* Following the receipt of the research, the EPDP Team will explore in a timely manner how this distinction can be made in the context of domain name registrations in a satisfactory way.
  + The EPDP Team should also consider the timeline needed to implement, which could follow a phased approach whereby implementation would start immediately following completion of the further work and agreement on a satisfactory manner to distinguish between legal and natural persons for new registrations while existing registrations would be phased in upon renewal or by other means.
  + The EPDP Team should also consider which data fields (if any) need to be added to accomplish this distinction. This could require further liaising with the IETF if data fields in RDAP need to be added or changed.

* The EPDP Team recommends that registries, registrars and ICANN each develop (educational) resources available that help registrants understand the distinction between a domain name that is registered by a natural person vs. legal person / entity. These resources and communications should highlight that the name and contact information of legal persons will be disclosed in the public WHOIS and therefore encourage legal persons to provide non-personal information for their email address and other contact information.