

ICANN Board Seat 11, ccNSO Nomination Report

6 February 2020, v2

Executive Summary

- This Nomination Report, prepared by the Nomination Manager, is to be discussed by the ccNSO Council.
- By adopting the Report, the ccNSO Council formally nominates the candidate Patricio Poblete ([Section 10.3 \(i\) of the ICANN Bylaws](#)). The ccNSO Council Chair is expected to inform the ECA and ICANN secretary after the ccNSO Council decision has become effective.
- The designation as Nominee by the Empowered Community in accordance with [ICANN Bylaw section 7.2 \(1 October 2016\)](#), becomes effective after the ccNSO Council decision becomes effective, according to [Rules of the ccNSO](#).
- In the course of the nomination process, the Nomination Manager noted four (4) issues. Further details are included in chapter 5 of this document.
 - i. The due diligence verifications lasted well over 2 months.
This could be resolved in future rounds by extending the period allotted to the background checks. This implies that the nomination process should start earlier, namely during or around the ICANN policy forum in June.
 - ii. Unclear definition of the milestones in the timeline.
Suggested is to resolve this by improving the definitions as suggested in chapter 5 of this Nomination Report.
 - iii. The Guideline is clear on which ccTLD Managers may and cannot nominate or second a candidate: the ccTLD Manager needs to be a member of the ccNSO prior to the start of the nominations and secondments. The guideline has not defined who may vote: ccTLD managers who are a ccNSO member at the start of the of nomination/secondment phase? ccTLD Managers who are a ccNSO Members at the start of the voting phase?
It is suggested to resolve this issue by adjusting the language and bringing it in line with the Guideline: ccNSO Council election.
 - iv. The Guideline currently includes placeholders.
Suggested is to resolve this by completing the Guideline.
- Additionally, the Nomination Manager makes the following observations (see chapter 5 of this document):
 - i. The nomination Manger used various channels to inform and remind the ccNSO members about the nomination process, to ensure all members were aware of the process, inviting them to participate in the voting. Despite these efforts, there are still ccNSO members with outdated contact details.
 - ii. During the nomination process referred to in this report, the due diligence verification and the Q&A with the candidates were conducted in parallel, as a transitional arrangement.
 - iii. One candadidate informed the Nomination Manager he amended his election statement to rectify a mistake included in the original candidate statement.
 - iv. One member of the ccNSO - at times supported by a second member -, repeatedly (3 times) expressed concerns about the validity of the Guideline and actions taken under the Guideline, specifically: the seconding of multiple candidates, the inclusion of the option "none of the above" in the ballot, and finally the validity of the applicable

- Guideline. The ccNSO Council discussed the matters raised at its Council meeting and concluded it did not see a reason to revoke or change the nomination process.
- v. The original timeline for the elections was amended by the Nomination Manger. The matter was discussed by the ccNSO Council and the ccNSO Council subsequently adopted an online [resolution](#), confirming the adjusted timeline of the ccNSO member selection process in the ICANN Board Seat 11 nomination procedure.
 - vi. A concern was raised on the ccNSO members, ccTLD community and ccTLD world mailing lists about ballots being accepted ahead of the official vote start. This was not the case: as foreseen, votes coming in as of the start of the elections on 15 January 2020 (00:01 UTC) were counted, and voting ended 31 January 2020 (23:59 UTC), as per the update to the Election Notice.

1. Introduction

As ICANN Board Seat 11 becomes vacant at the end of the ICANN Annual General meeting in 2020, a call for nominees to fill the seat was conducted. The timeline of the launch of the nomination period was defined following the [ccNSO Rules and Guidelines](#) and was approved by the ccNSO Council on 22 August 2019. The timeline took into account the following factors:

- the possible need for a run-off vote;
- the fact that ccNSO members have the possibility to ask direct question to the candidate(s) at the ccNSO members meeting in Montreal (ICANN66);
- the need to calculate adequate time for the due diligence verifications See ICANN Board resolution from 2 November 2017 (<https://www.icann.org/resources/board-material/resolutions-2017-11-02-en#2.c>) regarding the screening of Directors to the Board;
- the practical need that a new board member is invited to attend the Board Workshop in May of the year in which the candidate is expected to fill the seat;
- and the 22 April 2020 deadline for the Empowered Community Administration.

Joke Braeken was appointed Nomination Manager at the ccNSO Council Telephone Conference on 22 August 2019.

2. Nominations

2.1. Nomination launch

In accordance with the approved timeline, the nomination period was launched on 11 September 2019 (00:01 UTC). The [call for nominations](#) was posted on the ccNSO website on 10 September 2019, and shared on the same day with the ccnsso-members@icann.org and ccnsocouncil@icann.org mailing lists.

2.2. Nomination closure

In accordance with the approved timeline, the nomination period closed on 2 October 2019 at 23:59 UTC. The Nomination Manager posted an [announcement](#) on the ccNSO website on 3 October, and shared it on the same day with the ccnsso-members@icann.org and ccnsocouncil@icann.org mailing lists.

2.3. Nomination results

On 11 September 2019, **Patricio Poblete** was nominated by Pablo Rodriguez (.pr). The nomination was seconded as follows:

- on 11 September by Margarita Valdes (.cl);
- on 12 September by Ernesto Heberto Bojórquez Floriano (.mx);
- on 12 September by Eberhard W Lisse (.na);
- on 23 September by Demi Getschko (.br);
- on 2 October 2019 by Jimmy Imossi (.gi).

On 17 September 2019, Antonio Dodinho (.mz) nominated **Calvin Scott Browne**. The nomination was seconded on 18 September by Daiva Tamulioniene (.lt)

On 1 October 2019, Bruce Tonkin (.au) nominated **Nigel William Phair**. The nomination was seconded on Wednesday, 2 October by Jimmy Imossi (.gi).

The nomination archives can be found at: <http://forum.icann.org/lists/ccnso-boardnominations>

2.4. Nomination irregularities

Jimmy Imossi (.gi) submitted 2 secondments:

- On Wednesday, 2 October 2019 at 07:40:25 UTC he seconded Nigel William Phair.
- On Wednesday, 2 October 2019 at 08:59:38 UTC he seconded Patricio Poblete.

Article 3.4 of the relevant guideline mentions the following:

[...]

Each ccNSO member can nominate one person for a seat to be filled on the ICANN Board and each member can second one person.

[...]

The first secondment by Jimmy Imossi was submitted according to the rules.

On 7 October 2019, Jimmy Imossi sent the email below to the ccnsossecretariat mailing list:

From: Jimmy Imossi <xxxx@sapphire.gi>

Date: Monday, 7 October 2019 at 08:33

To: "ccnsossecretariat@icann.org" <ccnsossecretariat@icann.org>

Subject: Re: [Ccnsossecretariat] Seconding a Nomination to the ICANN Board

Hi

I've just realised that I have sent two secondments when I can only have one secondment.

I would therefore second the first candidate I supported via email, Nigel Phair (see copy of email below), as per DNS rules, first come first served.

Apologies for any confusion created. I wish all the candidates the best.

Thanks.

Best regards

Jimmy Imossi

Sapphire Networks

2.5. Nomination Acceptance and next steps

Nigel Phair accepted his nomination on 3 October 2019, Calvin Browne also accepted the nomination on 3 October 2019, and Patricio Poblete accepted the nomination on 9 October 2019.

In accordance to the applicable rules, three candidates were nominated, seconded and have accepted their nomination. Consequently, an election needed to be held according to the timeline previously agreed upon by the ccNSO Council.

3. Due diligence verifications

3.1. Start due diligence verifications

Mid-October 2019 - in accordance with the approved timeline - the ccNSO Council Chair sent the full names, contact details, country of domicile or residence, candidate statements and CV's as submitted by the candidates to ICANN legal for due diligence verifications.

The candidates warranted, confirmed they are aware of, and consented to:

1. The Country of Citizenship or Domicile included in the nomination form;
2. Not to hold a position as an official of a national government or a multinational entity ([section 7.4 \(a\) of the ICANN Bylaws \[icann.org\]](#));
3. [Section 7.4 \(b\) of the ICANN Bylaws \[icann.org\]](#);
4. [Section 7.4 \(d\) of the ICANN Bylaws \[icann.org\]](#);
5. Fully cooperate to undergo a due diligence screening by an external provider, which includes providing necessary consent to ICANN to transmit personal data to the due diligence provider.

The candidates explicitly confirmed they consent to the processing of their personal data in accordance with the ICANN [Privacy Policy](#) for the purposes of providing it to the Mintz Group to conduct due diligence.

3.2. Completion due diligence verifications

Staff from ICANN org's legal department informed the ccNSO Council Chair, Vice-Chairs and the ccNSO Secretariat on 8 January 2020 that following the due diligence verifications, there are no red flags for any of the candidates.

For one of the candidates, the due diligence verification provider was unable to verify attendance at a university listed in the candidate's CV, due to unresponsiveness of the university. ICANN legal confirmed this did not seem significant, since nothing was inconsistent with what the candidate reported on his CV.

Following successful completion of the due diligence verifications, an election needed to be held according to the timeline previously agreed upon by the ccNSO Council.

4. Elections

4.1. Start of the elections

A formal [Election Notice](#) was published on the ccNSO website on 13 January 2020, and shared that same day with the ccns-members@icann.org and ccnsocouncil@icann.org mailing lists. The Election Notice contained, among others, the following information:

- The names of the Candidates
- Information on how the election will be conducted
- Election opening and closing dates.
- Candidate statements as submitted by the candidates
- A recording to the ICANN66 Q&A session with the ICANN Board Seat 11 candidates
- The timeline approved by the ccNSO Council
- The relevant guideline

In accordance with the approved timeline, the election opened on 14 January 2020 (00:01 UTC). The ballots were sent on 13 January by the e-mail address tally@icann.org, to the e-mail address of the primary contact of each ccNSO Member, as listed in the ccNSO Members database.

4.2. Election irregularities

On 14 January 2002, a few hours after the voting process started, the Nomination Manager was made aware that the ballot circulated on 13 January 2020 did not allow to vote for one of the three candidates.

After this was determined, the following actions took place:

- the election was closed in tally, the voting tool
- the Nomination Manager informed the ccNSO Council and ccNSO membership via email
- the Nomination Manager published an [update to the Election Notice](#) on the ccNSO website
- on 14 January 2020, the Nomination Manager announced a new round of voting and sent new ballots to the primary contact of each ccNSO Member, as listed in the ccNSO Members database.

The new election round opened 24 hours later than originally foreseen, on 15 January 2020 (00:01 UTC) and closed on the same day as originally foreseen, on 31 January 2020 (23:59 UTC).

The matter was discussed by the ccNSO Council during its January meeting. The ccNSO Council subsequently adopted an online [resolution](#), confirming the adjusted timeline of the ccNSO member selection process in the ICANN Board Seat 11 nomination procedure. The ccNSO Council believes that the adjusted timeline is well within the margins for the duration of the voting period - between two (2) and three (3) weeks - as required under the relevant Guideline, and given the issue at hand was within the power of the Nomination Manager to resolve.

4.3. Close of the Elections

In accordance with the announcement in the [update to the Election Notice](#), the new election round closed on Friday, 31 January 2020 (23:59 UTC). The results were shared with the ccNSO Council and ccNSO members mailing lists, and were published [here](#) on Monday, 3 February 2020.

4.4. Election Results

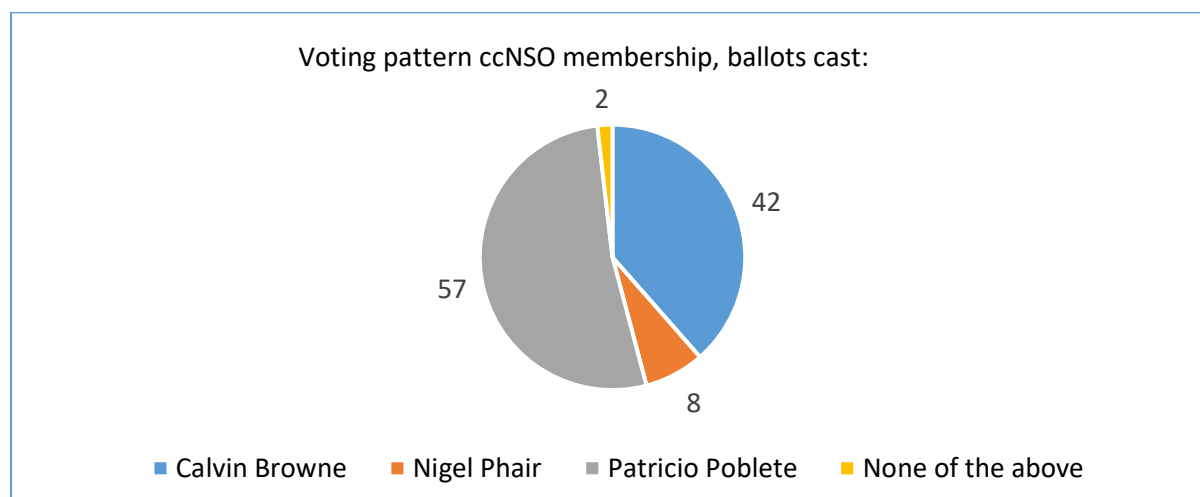
Out of 172 members of the ccNSO, 109 members (63%) cast their votes:

Calvin Browne received 42 votes;

Nigel Phair received 8 votes;

Patricio Poblete received 57 votes;

2 members selected the option “none of the above”.



5. Issues

Issue 1

The ccNSO Council Chair informed ICANN legal mid-October 2019 about the list of candidates, including their full names, contact details, country of domicile or residence, candidate statements and CV's - as submitted by the candidates. Due diligence verifications were formally completed on 8 January 2020, whereas the approved timeline foresaw elections to start on 13 January 2020. The timeline for the nomination process, as approved by the ccNSO Council during its meeting on 22 August 2019, originally foresaw due diligence verifications to be completed by 17 December 2019.

Advice:

When determining the timeline for future nomination rounds, the ccNSO Council should calculate sufficient time for the due diligence verifications to be completed, prior to the start of the voting rounds by the ccNSO membership. The Nomination Manager suggests to allocate a period of minimum 3 months to the due diligence verifications.

Issue 2

Further to issue 1, the timeline for the nomination process, as approved by the ccNSO Council during its meeting on 22 August 2019, was in some aspects subject to improvement. For instance:

- The label "results vetting process": it is not very clear what is meant here. The Nomination Manager assumes this refers to the deadline by which the ccNSO Council should be informed about the results of the due diligence verification process.

The relevant ccNSO guideline mentions the following:

3.5. Acceptance of candidacy

[...] "The Chair of the ccNSO Council will update the full Council (with exception of a potential candidate who is still a Councillor) on the results of the due diligence, i.e., whether no concerns have surfaced, or concerns were raised which warrant further consideration and decisions." [...]

- There is no reference in the timeline to the date by which the ccNSO membership and ccNSO Council should be informed about the results of the voting rounds. The Nomination Manager informed the ccNSO membership and Council about the results on the first day after closure of the voting process.

The relevant ccNSO guideline mentions the following:

3.8. Closure of Election process

[...] As soon as possible, but no later than two (2) weeks after closure of the election, the Nomination Manager shall inform the ccNSO Chair and the Candidates of the results of the election. The Nomination Manager will issue the results to all ccNSO members and publish them on the ccNSO website. [...]

- Some of the actions in the timeline clearly mention who should execute them (e.g. nomination manager informs ...etc), others don't (e.g. inform ECA)
- The timeline does not specify when the second, final round of elections is to be held, in case 50% or less of the members have cast their votes.
- The label "closure ccNSO election process" might create confusion. What is meant here is the deadline as determined by section 7.8. of the ICANN bylaws. The designation as Nominee by the Empowered Community in accordance with [ICANN Bylaws section 7.2 \(1 October 2016\)](#) becomes effective after the ccNSO Council decision becomes effective, according to [Rules of the ccNSO](#).

Advice:

When determining the timeline for future nomination rounds to fill the ccNSO seats on the ICANN Board, the ccNSO Council is requested to take into account the following advice:

- replace “results vetting process” by the following: “Council chair to inform the ccNSO Council about the results of the due diligence verifications”, and to include a date by which this should have been completed (e.g. latest 2 business days prior to the start of the elections)
- include a date by which the Nomination Manager should inform the ccNSO membership and ccNSO Council about the results of the voting rounds
- clearly specify who performs the actions in the timeline
- align the possible second election round with that of the run-off election
- replace “closure ccNSO election process” by “deadline nomination process, as per the ICANN bylaws”.

Issue 3

The [guideline](#) says:

3.4 Call for Candidates

[...] Nomination of, and seconding of a candidate, is limited to ccTLDs who are ccNSO members as of the date the call for nominations is published. [...]

However, there is no specific reference to when a ccTLD Manager should be a ccNSO member, in order to be able to *vote* in case of elections.

Advice:

The council is advised to request the Guideline Review Committee to review the [Guideline: ccNSO Nominations Process ICANN Board Seats 11 and 12](#), and to add relevant wording specifying by when a ccTLD Manager should be a ccNSO Member in order to be able to vote in case of elections. The wording should take into account - and preferably be in analogy with - the revised Guideline: Election Council Members.

Issue 4

The [Guideline: ccNSO Nominations Process ICANN Board Seats 11 and 12](#) currently still contains some placeholders, namely

- 3.1.2 Initiation of Board Seat Nomination process in case of vacancies (Article 7, Section 7.12(a))
- 3.1.3 Initiation of Board Seat Nomination Process when all Directors are recalled (Article 7, Section 7.12(b))

Advice:

The council is advised to request the Guideline Review Committee to review the [Guideline: ccNSO Nominations Process ICANN Board Seats 11 and 12](#), and to replace the placeholders once possible.

6. Observations

Observation 1

The ballots were sent by the e-mail address tally@icann.org, to the e-mail address of the primary contact of each ccNSO Member, as listed in the ccNSO Members database.

Repeated reminders to vote were sent to the ccNSO members and ccNSO council mailing lists, and included in the monthly ccNSO Newsletter, January 2020 edition. The Nomination Manager also e-mailed all ccNSO Member primary contacts individually, with an invitation to locate the ballot and to participate in the voting process. The online voting tool by ICANN org (tally) allows to send reminders to all that have not yet voted: this final reminder was sent on 30 January 2020, a day before closure of the elections.

Observation 2

The [guideline](#) says:

3.5. Acceptance of Candidacy

[...] After a satisfactory conclusion of the due diligence process, i.e., there are no concerns resulting from the due diligence review regarding the candidate(s), the process continues with the Q&A session by the ccNSO Members at the first face-to-face ccNSO meeting following the conclusion of the due diligence process. [...]

However, for the current nomination round, the Q&A was held while the due diligence verifications were ongoing as foreseen in the timeline approved by the ccNSO Council.

Observation 3

On Monday, 27 January 2020, Calvin Browne informed the Nomination Manager he noticed a mistake in his candidate statement (mixing up Latvia and Lithuania). He asked the Nomination Manager to replace the previously submitted candidate statement.

For reasons of transparency, the Nomination Manager posted the second version of his candidate statement in the links section of the [Election Notice](#), referring to the first version of the candidate statement as version 1 and to the revised version as version 2.

Observation 4

Eberhard Lisse repeatedly raised concerns on the ccNSO members, ccTLD community and ccTLD world mailing lists. Based on the email correspondence, the Nomination Manager summarizes Eberhard's concerns as follows:

1. *Double seconding*

Eberhard Lisse objects against Mr Phair having been duly seconded. He notes that staff seems to have taken the decision to accept only the first secondment submitted by Jimmy Immosi (.gt) – for Nigel Phair, and to disregard the second secondment – for Patricio Poblete.

2. *Ballot*

The inclusion of the option “none of the above” is not acceptable in Eberhard Lisse's view and he questioned the introduction of this option. In his email from 20 September 2019, Eberhard mentioned it seems to contradict the bylaws, and he could not recall a membership decision regarding this.

3. *The validity of the relevant guideline*

According to Eberhard Lisse, there is an attempt to replace the *rules of the ccNSO* which require a 66% affirmation by the ccNSO Members, by internal rules, guidelines and procedures, which should all be presented to the ccNSO membership for a vote.

Feedback

Eberhard's email dated 13 January has been forwarded to the ccNSO Council mailing list, as well as previous iterations of the same concern and possible responses by either the Nomination Manager,

or the ccNSO Council Chair. As per the ccNSO Council Chair's response from 21 October 2019, sent to Eberhard Lisse and the ccNSO mailing lists: *"The ccNSO Council noted your concern, however, did not see a need to either revoke the nomination and/or revoke the Board Seat 11 process."* Recordings of the 2019 Council meetings can be consulted here: <https://community.icann.org/display/ccNSOCWS/Council+Meetings+-+2019>

Background

1. Double seconding

The issue of the double secondment is also addressed in chapter 2.4 of the current document.

2. Ballot

Paragraph 3.7 of the [ccNSO Guideline: ccNSO Nominations process ICANN Board seats 11 and 12](#) mentions the following:

The election will be conducted in the following manner:

[...]

- *The ballot will include the name(s) of the candidate(s) and "None of the above", "None of the above" will mean that a ccTLD Manager believes the candidate(s) listed is / are not qualified to serve on the ICANN Board of Directors.[...]*

3. The validity of the relevant guideline

The [ccNSO Guideline: ccNSO Nominations process ICANN Board seats 11 and 12](#) was discussed by the ccNSO Council (including the introduction of the "none of the above" option) and adopted by the ccNSO Council on 22 August 2019 ([see resolution Resolution 153-04 from 22 August 2019](#)), and published on the ccNSO website that same day. Recordings and minutes of the 22 August Council meeting can be found [here](#).

The resolution became effective seven (7) days after publication on the ccNSO Website, as per the [2004 rules of the ccNSO](#), which mention the following:

6. Ratification or Veto of Council Decisions

6.1 *The Council is required to publish to the appropriate ccNSO lists, all of its decisions and resolutions within five days of making them.*

6.2 *The Council decisions will not become operational until seven days have lapsed since publication*

6.3 *If during that seven day period, 10% or more of the members notify the Council Chair of their objection to the decision, it shall automatically trigger a membership vote to ratify or veto the decision.*

The GRC started discussing the need to update the 2004 rules of the ccNSO some time ago. At ICANN67 in Cancun, during day 1 of the ccNSO Members Meeting, a session will be held, entirely dedicated to this topic. Consult the draft members meeting agenda here: <https://community.icann.org/display/ccnsowkspc/ccNSO+Members+Meeting+%7C+ICANN67>

Observation 5

On 14 January 2020, a few hours after the voting process started, the Nomination Manager was made aware that the ballot circulated on 13 January 2020 did not allow to vote for one of the three candidates.

After this was determined, the following actions took place:

- the election was closed in tally, the voting tool
- the Nomination Manager informed the ccNSO Council and ccNSO membership via email
- the Nomination Manager published an [update to the Election Notice](#) on the ccNSO website
- on 14 January 2020, the Nomination Manager announced a new round of voting and sent new ballots to the primary contact of each ccNSO Member, as listed in the ccNSO Members database.

The new election round opened 24 hours later than originally foreseen, on 15 January 2020 (00:01 UTC) and closed on the same day as originally foreseen, on 31 January 2020 (23:59 UTC).

The matter was discussed by the ccNSO Council during its January meeting. The ccNSO Council subsequently adopted an online [resolution](#), confirming the adjusted timeline of the ccNSO member selection process in the ICANN Board Seat 11 nomination procedure. The ccNSO Council believes that the adjusted timeline is well within the margins for the duration of the voting period - between two (2) and three (3) weeks - as required under the relevant Guideline, and given the issue at hand was within the power of the Nomination Manager to resolve.

Observation 6

On 14 January 2020, Eberhard Lisse (.na) raised a concern on the ccNSO members, ccTLD community and ccTLD world mailing lists about ballots being accepted ahead of the official vote start.

Feedback

The Nomination Manager investigated the matter by doing some tests, and saw no reasons for concern. The Nomination Manager confirmed that incoming votes as of 15 January 2020 (00:01 UTC) would be counted. Voting ended 31 January 2020 (23:59 UTC), as per the update to the Election Notice. The Nomination furthermore confirmed that early or late submissions are not taken into consideration. The Nomination Manager sent her response in reply to Eberhard's e-mail, to the ccNSO members, ccTLD community and ccTLD world mailing lists and to the ccNSO Council mailing list.

Background

Following the concern raised by Eberhard, the Nomination Manager informed the ccNSO Council Chair and Vice-Chairs on 14 January 2020, that tests have been completed in tally, the voting system used for the ICANN Board Seat 11 elections. Following these tests, the Nomination Manager confirmed that voting results are only accepted as of 15 January 2020 (00:01), as per the instructions in the update to the Election Notice to the ccNSO membership.

Voting based on the revised and corrected ballots started Wednesday, 15 January 2020 (00:01 UTC) and closed on Friday, 31 January 2020 (23:59 UTC). The corrected ballots were distributed on Tue, 14 Jan 2020. When ccNSO members clicked on the link to access their individual ballot prior to 15 January 2020 (00:01 UTC), they got an error message, saying that voting has not yet started:

Error:

Sorry, election (election number) won't open until 2020-01-15 00:01 UTC

Eberhard Lisse tweaked the URL to his individual ballot, leaving out the part after the ampersand. By doing this, he did not receive the aforementioned error code, but could see the text of the ballot, ahead of the official start of the voting. When attempting to cast your vote ahead of the official start, you receive another error message:

Error:

INVALID Ballot

Effectively, the settings of the voting system only start counting votes once the election opens (i.e. on Wed 15 January 2020 at 00:01 UTC) and stop counting once the election closes (i.e. on 31 January 2020 at 23:59 UTC).