

Hi Alejandra –

Here's some information back in response to your request:

Under Section 8.8, while that person is serving as a delegate on the Nominating Committee, under the Bylaws that person could not be nominated to serve (or return) to the ccNSO Council (or any other body to which the NomCom selects). So even though that person is already a councilor, they cannot seek to be re-elected as a councilor while they are serving on the Nominating Committee. The Bylaws do not differentiate between whether the person is seeking selection/re-election through members or through the NomCom.

We also note that there is no prohibition on contemporaneous service on both the Nominating Committee and an entity to which the NomCom appoints – the Bylaws issue arises only when the person is standing for selection (or re-selection) to the entity while they are on the NomCom. When entities have sought guidance on whether they should appoint someone that already is serving on an entity such as council to also serve on the Nominating Committee, while there is no Bylaws issue, we have encouraged the selecting body to consider if the person had sufficient time to dedicate to both obligations. This may become more of an issue as we return to hybrid ICANN meetings, as entities reported in the past that the NomCom schedule during public meetings often had significant overlap with their planned council/AC programming at the same meetings, thereby making it difficult for one person to participate in both.

Please let us know if you need any other information or have further questions.

Sam

From: Alejandra Reynoso Barral <alejandra.reynoso@gmail.com>
Date: Wednesday, October 19, 2022 at 3:04 AM
To: John Jeffrey <john.jeffrey@icann.org>
Cc: Samantha Eisner <Samantha.Eisner@icann.org>, ccNSO Secretariat <ccnsosecretariat@icann.org>
Subject: [Ext] Bylaw article 8.8 - request of clarification

Dear John

Recently the ccNSO Council has run into an issue regarding our NomCom appointee, and we would appreciate your opinion on the question.

We had selected for our NomCom ccNSO appointee an individual who is also a ccNSO Council member. However upon subsequent close review of the Bylaws we considered that the appointment was problematic and at risk of breaching the Bylaws. The relevant provisions are set out in Section 8.8:

“Section 8.8. INELIGIBILITY FOR SELECTION BY NOMINATING COMMITTEE

No person who serves on the Nominating Committee in any capacity shall be eligible for nomination by any means to any position on the Board or any other ICANN body having one or more membership positions that the Nominating Committee is responsible for filling, until the conclusion of an ICANN annual meeting that coincides with, or is after, the conclusion of that person's service on the Nominating Committee.”

If we read this section correctly, our representative to NomCom would not be eligible to re-stand as an elected member of the ccNSO Council at the end of their term next year.

Going forward, the ccNSO Council would appreciate your opinion on the scope of Section 8.8 to ensure the ccNSO internal selection procedure will be aligned with the Bylaws again, specifically:

Does the proper construction and understanding of Bylaws Section 8.8 restrict the ability of the appointee to stand for (re-)election to the ccNSO Council? Would it make a difference if this person was selected by the ccNSO members or appointed by NomCom?

Any guidance you are able to provide on this specific question, or indeed more generally, would be gratefully appreciated.