

The CCWG-Accountability proposes a response to Stress Test 18 to amend the ICANN Bylaws such that only consensus advice would trigger the obligation to try to find a mutually acceptable solution. The proposal is to amend ICANN Bylaws, Article XI Section 2 clause j as seen below. (Addition is **bold and underlined**) Clause k is also shown for completeness but is not being amended.

j: The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice.

With respect to Governmental Advisory Committee advice that is supported by consensus, the Governmental Advisory Committee and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.

k: If no such solution can be found, the ICANN Board will state in its final decision the reasons why the Governmental Advisory Committee advice was not followed, and such statement will be without prejudice to the rights or obligations of Governmental Advisory Committee members with regard to public policy issues falling within their responsibilities.

Note that the proposed Bylaws change for Stress Test 18 does not interfere with the GAC's method of decision-making. If the GAC decided to adopt advice by majority voting or methods other than today's consensus process, ICANN would still be obligated to give GAC advice due consideration: "advice shall be duly taken into account, both in the formulation and adoption of policies."

Moreover, ICANN would still have to explain why GAC advice was not followed: "In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice."

The only effect of this Bylaws change is to limit the kind of advice where ICANN is obligated to "try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution". That delicate and sometimes difficult consultation requirement would only apply for GAC advice that was approved by consensus.

From the beginning of ICANN through the present, the GAC has used a strong consensus rule for its decisions, "consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection." The proposed bylaws change recognizes that GAC may amend its consensus rule to something less than "in the absence of any formal objection" while still requiring ICANN to try "to find a mutually acceptable solution."

NTIA gave specific requirements for this transition, including advice that Stress Test 18 is a direct test of the requirement to avoid significant expansion of the role of governments in ICANN decision-making. The proposed Bylaws change is therefore an important part of the community's proposal.

It is noted that GAC Representatives from Argentina, Brazil, and France do not support the proposed Bylaws change, and the GAC is continuing to discuss the proposal.