(The analysis of comments 223-267 that drives this summary is available to view/comment on at the following location:
<https://docs.google.com/document/d/1XlXvyyIfkpl3Vrn7iAnDp0M5TZtBS1iLip4in7RP7Yo/edit?usp=sharing>)

This brief summary (draft 2) analyses the 45 comments in response to questions on the Mechanism to Empower the Community. It offers some high level observations from the Rapporteur; looks at the key issues and the community's view on these as evidenced in the comments; sets out some broader or more general themes that came through in the comments; and summarises the tags applied to the comments.

Rapporteur's observations:
- The lack of publication of the questions in this area has made the summary task very challenging
- There is broad support for most ingredients of the model the CCWG has proposed, without specific or fundamental alternative proposals getting wide support
- The CCWG faces the need to make a clear decision regarding enforceability (and the necessity of creating legal entities), as most comments in the categories "concerns" and "divergence" relate to that subject
- The CCWG faces the need to clarify the membership model and the role of UAs or other legal persons, and to tease this out constructively and openly with the community at BA.

KEY ISSUES - THE COMMUNITY'S VIEW AS SHOWN IN COMMENTS

Per category
- Agreement: 32
- Concerns: 19
- Confusion: 6
- Divergence: 7

On the membership model:
- Broad-based support for the CCWG's proposal to create a membership based around existing SOs and ACs (at least 19 comments)
- Membership model clearly preferred to a designator model, or to simply relying on ICANN bylaws reforms
- Concerns centred on implementation details:
    o Avoid creating new legal risks for ICANN participants
    o Avoid making participation more difficult for particular ICANN participants (non SOAC involved stakeholders and governments)
    o Perceived complexity of the model
    o Whether legal persons or natural persons should exercise membership powers
    o The need to keep those exercising membership powers accountable to the whole community and prevent conflicts of interest and capture
    o Impact of different SOs / ACs choosing different forms of involvement
- Opposition to a membership model was limited to around 4-6 comments
- A general desire to see more detail on the model

On voting weights or influence in the community mechanism:
- Split opinion, with roughly ten comments in favour of the proposed allocation of support, and around 11 suggesting changes
- The changes proposed generally dealt with the following:
    o Some seeking more influence for the GNSO
    o Some seeking GAC, RSSAC, SSAC to remain advisory only, not members/with voting rights
- **Important**: both SSAC and RSSAC have indicated in their comments that they wish to remain purely advisory

On the need for enforceability of community powers:
- General understanding that the membership model delivers enforceability
- Clear preference for enforceable powers (10 comments)
- Opposition for enforceable powers (4 comments)

<mark>Remark Roelof: I am not sure about the above; I have counted 14 (negative) remarks about the UA's: to complex, legals risks, introducing court intervention Remark by Jordan: Good point to discuss; some of those were about seeking to use individuals in membership roles rather than UAs, in my count?</mark>

On the mechanism:
- General support for a community empowerment mechanism
- Need to clarify the nature of it - an assembly, or votes being cast

OVERALL / GENERAL THEMES
(that emerged besides the specific areas of focus):
- The need to ensure the system does not allow for insider capture of ICANN or its accountability
- Whether the SO/AC system is a broad enough linkage to the "global multistakeholder community"
- Promoting effective government involvement (esp on public policy matters) and ensuring reforms do not compromise it
- Mutual accountability and the "who watches the watchers" issue
- The desire to avoid any courts having influence over ICANN's work
- Improving and safeguarding diversity of participation

Actions for CCWG:
- Re-cut voting weights
- Discussions on UAs
- Discussion on enforceability

The Google Doc with the raw material also includes other specific suggestions and new suggestions for the CCWG to consider. Please review that document along with this summary at the following URL:

<<https://docs.google.com/document/d/1XlXvyyIfkpl3Vrn7iAnDp0M5TZtBS1iLip4in7RP7Yo/edit?usp=sharing>>

Readers are strongly urged to review the comments themselves, to cross-check this summary for fairness and accuracy.

Second draft amended by Roelof Meijer and Matthew Shears (tbc), from Draft 1 prepared by Jordan Carter.

<mark>**Summary for Question 8 comments (Reject Budget or strategy/operating plans (268--289):**</mark>

There were **twenty-two** comments in this section.

17 comments suggested **agreement;** 11 comments noted **concerns**.

There were no **confusion** rated comments.

There were three **divergent** rated comments.

There was **broad agreement that this power would enhance ICANN accountability**, but **significant concern** that this power would have to be implemented in a way that does not compromise ICANN's effectiveness.

The **main issue/s or concerns:**

- Impact on ICANN's operational effectiveness arising from this power
- Desire for more incorporation of all relevant community input in the planning process, so as to make rejection less likely

Specific concerns or suggestions for further follow up and WP1/CCWG discussion:

- Greater transparency earlier in the process & more complete reporting (270)
- Planning process must deal with all input on a fair and equal basis (271)
- Better quality staff/board/community interactions before plans are approved (272)
- Limit rejection of a plan to once per cycle (273)
- Limit rejection of a plan to twice per cycle (281)
- Concern for impact of sustained rejection, some limit (275, 277, 283, 286, 289)
- Improved engagement and dialogue to prevent matters coming to the point of rejection (276, 282, 283, 285)
- Need greater IANA budget transparency (288)
- Clarify that aim is not to re-write a budget in the community mechanism, but to return to Board for adjustment (288)

Divergent comments:
- Doubtful of value or effectiveness, opposed to strengthening this power (278)

Proposed CCWG response/approach to resolution

- WS2 will look at the planning process to improve quality of engagement & inclusion of input between Board, staff and community, and lead to a lower likelihood of plan rejection
- CCWG will consider limit to number of times a plan/budget can be rejected
- CCWG will elaborate on caretaker approach where a plan/budget is rejected to minimise operational impact

==Summary on power to reject changes to standard bylaws (qu 9):==

There were **eighteen** comments in this section.
20 comments suggested **agreement;** 10 comments noted **concerns**.
There were 1 **confusion** rated comments.
There were no **divergent** rated comments.

There was **broad agreement that this power would enhance ICANN accountability**, but **moderate concern** that this power would have to be implemented in a way that does not compromise ICANN's effectiveness.

The **main issue/s or concerns:**
- More time needed for community review process – 2 weeks seen as too short.
- Impact on ICANN's operational effectiveness arising from this power

Specific concerns or suggestions for further follow up and WP1/CCWG discussion:
- Approval of any numerical change to SO/AC structure should require super-majority vote (292)
- Recommends a longer period for community review. Extend from 2 weeks to 30 days. (293)
- Encourages CCWG to further explore and explain member structure. (294)
- Recommends no supermajority but simple majority, to avoid majority of community not approving of a bylaw but being unable to block it (238 bis)
- Recommends a longer period for community review. Extend from 2 weeks to the end of next ICANN meeting beginning no sooner than one month before posts notice of adoption. (296)
- Recommends a 60-day window for community review. (299)
- Recommends a 2/3 majority vote instead of 3/4. (299)

- Concern about a procedural impasse; recommends introducing a consultation stage. (301)
- Recommends a longer time period for community review. Extend from 2 weeks to 30 days. (301)
- Recommends a 2/3 majority vote instead of 3/4 for first rejection. (301)
- Raises concern that a community approval/rejection process could cause ICANN to delay introduction of proposed bylaws changes. (305)
- Recommends creating a limit on the number of times the community can reject changes. (306)
- Recommends a longer period for community review. (307)
- Concern with Govts having too much influence in ccNSO, proposes more votes for other constituencies (Siva)

Proposed CCWG response/approach to resolution
- CCWG will consider extending the community review period from 2 weeks to a longer timeframe TBD.
- CCWG will continue to explore and explain member structure
- CCWG will consider lowering the vote threshold from 3/4 to 2/3.
- CCWG will consider mechanisms for limiting procedural impasse and possible delays.
- CCWG will consider a cap on the number of times this power can be utilized. Further clarification needed

<mark>Summary: Changes to "Fundamental Bylaws" (Qu 10)</mark>

There were **twenty-two** comments in this section.
21 comments suggested **agreement;** 4 comments noted **concerns**.
There were 1 **confusion** rated comments.
There was one **divergent** rated comments.

There was **broad agreement that this power would enhance ICANN accountability**, but **moderate concern** that this power would have to be implemented in a way that does not compromise ICANN's effectiveness.

The **main issue/s or concerns:** Impact on ICANN's operational effectiveness arising from this power.

Specific concerns or suggestions for further follow up and WP1/CCWG discussion:
- Emphasizes the need to empower the community when amending fundamental bylaws. (310)
- Cites the likelihood that enforcing this power will require a membership structure; calls on CCWG to further explore and explain membership.
- Cites concern regarding a potential trade-off between accountability enhancement and the ability for ICANN to complete its mission. Recommends further work in WS2 to amend or augment list of fundamental bylaws. (317)
- Supports consideration of new or amended fundamental bylaws in WS2. (318)
- Concern that the current proposal does not include a well-defined list of requirements in Sections 5.4 and 3.2.3. (319)
- Concern that insufficient detail is included in Sections 5.4 and 3.2.3. Calls for greater specificity. (322)
- Concern that adding a new approval layer may seriously hamper process flow. (325)

Proposed CCWG response/approach to resolution
- CCWG will continue to explore and explain member structure.
- CCWG will continue its work to augment and clarify Sections 5.4 and 3.2.3.
- CCWG will consider mechanisms for limiting procedural impasse and possible delays

<mark>Summary on Removing Individual ICANN Directors (Qu 11):</mark>

There were **twenty-five** comments in this section.
23 comments suggested **agreement;** 2 do not agree and 6 comments noted **concerns**.
There was no **confusion** rated comment.
There were 2 **divergent** rated comments.
There was **broad agreement** that this power would enhance ICANN accountability.
The **main issue/s or concerns:**
- The NomCom process/ procedure for removing a board member
- There is concern on having a similar transparent process across various SO/ACs vs allowing each SO/AC to have its own procedures

Specific concerns or suggestions for further follow up and WP1/CCWG discussion:

- Decision needs to be made on how the procedure will best work to enhance transparency and accountability and <u>equal</u> treatment of board members between various SOs and ACs and the NomCom

Proposed CCWG response/approach to resolution

==Summary on Recalling the entire ICANN Board (Qu 12):==

There were **28** comments in this section.
<u>25</u> comments suggested **agreement**; <u>3</u> **divergent** comments and <u>6</u> comments noted **concerns.**
There was <u>no</u> **confusion** rated comment.
There was **broad agreement** that this power would enhance ICANN accountability.
The main issue/s or concerns:

- The threshold for removing the entire board with recommendations for a higher option of 80%

Specific concerns or suggestions for further follow up and WP1/CCWG discussion:

- Spilling the board should be a last resort after all else has failed
- Need to clarify the circumstances that would lead to a Board spill
- Clarify details of continuity measures

Proposed CCWG response/approach to resolution

==Summary on AOC incorporation into the ICANN bylaws (Qu 13, 14):==

There were **number** comments in this section.

<u>29</u> comments suggested **agreement;** <u>9</u> comments noted **concerns**.

There was <u>1</u> **confusion** rated comment.

There were <u>1</u> **divergent** rated comments.

There was **broad agreement** that the incorporation of AOC principles and reviews into the bylaws would enhance ICANN accountability.

The **main issue/s or concerns:**

- Inclusion of location of incorporation in the fundamental bylaws (as part of the review text). As argued there is neither a consensus on this nor is it fundamental to the global community.
- What happens to the AOC following incorporation into the bylaws
- Composition of the various groups. How is full diversity of the community handled?

Specific concerns or suggestions for further follow up and WP1/CCWG discussion:

- Manner in which reviews can be sunset. While there seem to be general acceptance of reviews being sunset, there is concern with ATRT being responsible for doing so.
- Manner in which reviews are done; i.e. decision procedures, transparency and their responsiveness to comment
- Is every 5 years frequent enough for all reviews, especially for the first few cycles after the transition.
- Concerns about requirement for full transparency for review teams, yet a continued need for some issues to remain confidential with regard to full open disclosure.
- Degree to which ATRT is responsible for reviewing ICANN accountability in response to other reviews.
- Whether to require ICANN to implement review team recommendations, or rely upon community powers to challenge a board decision not to implement a recommendation (CCWG proposal)

Proposed CCWG response/approach to resolution

- Create an explicit proposal for how the AOC might be mutually cancelled as part of the transition.
- Add detail about the composition of the various review groups

- If all of the information does not need to be included in the ByLaws, create side document taking elements of the ICANN implementation of the AOC review as draft operating procedures for [these] reviews. Completing that document can be a WS2 task
- Continue discussion on whether it is appropriate to designate Bylaws Article XVIII (location of incorporation) as a Fundamental bylaw .