

1 Stress Test #18: Governments in ICANN’s Government Advisory Committee (GAC) amend their operating procedures to change from consensus decisions to majority voting for advice to ICANN’s Board	
2 Consequence(s): Under current Bylaws, ICANN must consider and respond to GAC advice, even if that advice were not supported by consensus. A majority of governments could thereby approve GAC advice that restricted free expression, for example.	
EXISTING ACCOUNTABILITY MEASURES	PROPOSED ACCOUNTABILITY MEASURES
<p>3 Current ICANN Bylaws (Article XI) require ICANN to try to find a mutually acceptable solution for GAC advice.</p> <p>4 This is required for any GAC advice, not just for GAC consensus advice.</p> <p>5 Today, GAC adopts formal advice according to its Operating Principle 47: <i>“consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection.”</i> But the GAC may at any time change its procedures to use majority voting instead of its present consensus.</p>	<p>6 One proposed measure would amend ICANN Bylaws (Article XI, Section 2, item 1j) to require trying to find a mutually acceptable solution only where GAC advice was supported by GAC consensus.</p> <p>7 The GAC could change its Operating Principle 47 to use majority voting for formal GAC advice, but ICANN bylaws would require trying to find a mutually acceptable solution only on advice that had GAC consensus.</p> <p>8 GAC can still give ICANN advice at any time, with or without consensus.</p>

- 9 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.
- 10 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.
- 11 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.

- 12 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."
- 13 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."
- 14 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.
- 15 The GAC currently uses the following 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 above recognizes that GAC may, at its discretion, amend its Operating Principle 47 regarding "Provision of Advice to the ICANN Board."
- 16 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.
- 17 It is noted that GAC Representatives are continuing to discuss the proposal.