

CCWG ACCOUNTABILITY - STRESS TEST 18
20 November 2015

Edited Denmark proposal

ICANN BYLAWS

Article XI Advisory Committees

[Section 1. GENERAL

The Board may create one or more Advisory Committees in addition to those set forth in this Article. [...] Advisory Committees shall have no legal authority to act for ICANN, but shall report their findings and recommendations to the Board.

Where the Board is required to try to find a mutually acceptable solution to an advisory committee's advice if the Board does not follow that advice, the Board is not obliged to try to find such a solution if that Advisory Committee's advice was not supported by consensus. Advisory Committees should ensure that their advice to the Board is clear.

It is understood that determining consensus does not include reaching a decision based on majority voting whereby a fundamental disagreement with or objections to the advice by a minority of the AC representatives may be overridden. It is also understood that "consensus" does not necessarily mean "unanimity" or a broad measure of agreement that would allow an AC member or a very small minority of AC members to block consensus advice.

Section 2, Item 1, relating only to the GAC

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. ***Any GAC Advice approved by a GAC consensus may only be rejected by a vote of more than two-thirds (2/3) of the Board.*** *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."*

Commentaire [w1]: Correct § from Denmark proposal

Commentaire [w2]: While certain definitions including percentage or "2 governments" were raised, they did not seem to get traction

Commentaire [w3]: Significant number of concerns expressed, and variant proposed by Brett Schaeffer :
Any GAC advice approved by a GAC consensus, which consistent with GAC Operating Principle 47 is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection, may only be rejected by a vote of two-thirds (2/3) of the Board. Any advice approved by the GAC, but falling short of consensus, may be rejected by a majority vote of the Board. In both instances,

Summary of key variant differences

	<i>CCWG 2nd report</i>	<i>Denmark</i>	<i>Variant based on Denmark proposal</i>
<i>2/3 of Board required not to follow Advice</i>	No such formal requirement	Consensus Advice, where consensus does not necessarily mean “unanimity” or a broad measure of agreement that would allow an AC member or a very small minority of AC members to block consensus advice.	Consensus advice as defined in OP47 (absence of formal objection)
<i>Simple majority Board decision not to follow Advice</i>	Consensus (not defined in Bylaws) advice.	All other Advice approved by the GAC	Any other Advice approved by the GAC