

CCWG Accountability

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Case

/Jukacz

Danish comments to the CCWG Accountability 3rd Draft Proposal on Work Stream 1 Recommendations

Denmark welcomes the CCWG Accountability 3rd Draft Proposal and commends the Community for its hard work and dedication to develop a proposal for enhancing ICANN's accountability as required for the IANA-transition.

It is our general assessment that the 3rd Draft Proposal contains necessary improvements to ICANN accountability in a post transition environment with important checks and balances, including a strengthened community and independent review process. Moreover, we believe, the 3rd Draft Proposal still meets the requirements from the CCWG accountability, and the requirements for the IANA Stewardship Transition, including the dependencies identified by the CWG Stewardship. As such, we are happy to express our general support for the proposal.

We note there are still outstanding issues concerning the Community Mechanism, the role of governments, the Mission Statement, and Stress Test 18, which have to be resolved but we are confident that the Community is able to come up with adequate solutions in the upcoming implementation phase and in Work Stream 2 in order to make a complete transition proposal.

An Empowered Community and the role of governments

Denmark supports empowering the community through the Community Mechanism "Consensus: engage, escalate, enforce". This Community Mechanism has the important purpose of encouraging the Community and the Board to engage and discuss with each other on specific key decisions in order with the aim of resolving any disagreements before the Community resorts to the powers of the Empowered Community. This is a central element of the transition proposal and in ensuring that ICANN is an accountable multistakeholder organization after the transition.

We believe the GAC shall maintain its advisory role in ICANN and that the GAC has an important role to play in the Community Mechanism on public policy related matters. We are of the view that the GAC could participate in the Engagement and Escalation phase, including in the Community Forum (Steps 1-5), which we see as procedural steps to resolve issues with the rest of community at an early stage. However, the GAC should not take part in taking the decision to use its powers (step 6 and 7) as this would turn the advisory role of the GAC into a more decisional/operational one. Instead the GAC could advise

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the Community of its views in the Community Forum. Likewise, the GAC should not participate in the Enforcement phase.

Mission Statement

With regard to the new definition of ICANN's Mission and the discussions related to future obligations, such as the Public Interest Commitments, we would like to reiterate our concern that the Board may be prevented to follow GAC advice, should it be deemed outside ICANN's mission. While we agree that it is important to clarify the Mission Statement, the Bylaw wording should not allow for interpretations that would restrict the GAC's obligation and ability to give effective public policy advice to the ICANN Board nor should it restrict the Board's obligation to duly taking into account advice from the GAC.

A clarification and legal assessment of these issues would be appropriate in order to know what the possible effects of the new Mission wording would be on such obligations.

Stress Test 18

Denmark supports the amended Stress Test 18 (ST 18) proposal. In our view ST 18 addresses the GAC Dublin Communiqué in a satisfactory manner. The new text is a compromise text carefully drafted to meet the differing positions in the CCWG Accountability.

The suggested change of Article XI, Section 2 clarifies the situations in which the ICANN Board is obliged to engage in the process of trying to find a mutually acceptable solution with the GAC – namely when the GAC advice is supported by consensus (as currently defined). The proposed text also makes clear that the GAC still preserves its autonomy to define consensus.

We also believe that the requirement that a decision by the Board to reject GAC Consensus Advice requires support by 2/3 of the Board members is an important element in ensuring that advice from the GAC is taken seriously within the Board.

Denmark is committed to continue working with all stakeholders to complete a timely and truly global multistakeholder-based transition proposal.

Yours sincerely,

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