

INTRODUCTION & OVERVIEW

Following the discussion at the GRC meeting in Helsinki on the impact of the new Bylaws and impact of the CWG-Stewardship and CCWG-Accountability proposals, it was agreed to start with a gap analysis between the expected new processes & procedures and those already in use. This analysis is contained in the table below and should be treated as a starting point for discussion by the GRC. Note that the table is subject to further updates pending final checks against the Bylaws, implementation of aspects and evolution of the work of the GRC.

As noted in the analysis below the new ICANN Bylaws contain a number of new provisions that may require the ccNSO and broader community to develop (additional) mechanisms to effectuate the newly envisioned ccNSO responsibilities and/or to allow for the ccNSO's effective participation in the envisioned Empowered Community.

Details on how the Empowered Community will exercise its powers in all the areas where these powers apply are contained in Annex D Empowered Community Mechanisms of the revised Bylaws. This Annex provides step-by-step descriptions of these mechanisms, however it could be that the ccNSO needs to implement specific processes and procedures to effectuate its powers (for example with respect to the removal of a ccNSO appointed Board member). Because of the complexity of Annex D, a separate analysis will be needed.

The following is a brief description of the types of responsibilities and actions the ccNSO may need to undertake to implement the new Bylaws and hence the CWG-Stewardship and CCWG accountability WS1 proposals. Staff also has prepared a table with analysis detailing the respective sections in the revised new ICANN Bylaws where these changes are located, identifying possible new or existing procedures that can apply, and noting comments for the Council's consideration.

1. Responsibilities of the ccNSO as a Decisional Participant of the Empowered Community

As stated in Article 6 Section 1.1(a) on Empowered Community, concerning the composition and organization of the Empowered Community (EC), "The Empowered Community ("EC") shall be a nonprofit association formed under the laws of the State of California consisting of the ASO, the ccNSO, the GNSO, the ALAC and the GAC (each a "Decisional Participant" or "associate," and collectively, the "Decisional Participants")." As a Decisional Participant, the ccNSO has responsibilities that are set forth in the New ICANN Bylaws, both in Article 6 and elsewhere. Examples include:

- 1) Actions relating to the Post-Transition IANA Entity (PTI);
- 2) Engaging in consultations;
- 3) Providing comments in public forums;
- 4) Requesting mediation processes;
- 5) Deciding how to address a petition from an individual to a Decisional Participant (in this case the ccNSO);
- 6) Engaging in processes for removing Directors and recall of the ICANN Board;
- 7) Engaging in Independent Review Processes (IRP);
- 8) Initiating reconsideration requests; and
- 9) Voting.

As noted above, the details on how the Empowered Community exercises its powers in all the areas where these powers apply are contained in Annex D Empowered Community Mechanisms of the revised Bylaws. This Annex provides step-by-step descriptions of these mechanisms in the following articles and sections:

Article 1 Procedure for Exercise of EC'S Rights to Approve Approval Actions

Section 1.2 Approval Process

Section 1.3 Approval Action Community Forum

Section 1.4 Decision Whether to Approve an Approval Action

Article 2 Procedure for Exercise of EC's Rights to Reject Specified Actions

Section 2.2 Petition Process for Specified Actions

Section 2.3 Rejection Action Community Forum

Section 2.4 Decision Whether to Reject a Rejection Action

Article 3 Procedure for Exercise of EC's Rights to Remove Directors and Recall the Board

Section 3.1 Nominating Committee Director Removal Process

Section 3.2 SO/AC Director Removal Process

Section 3.3 Board Recall Process

Article 4 Procedure for Exercise of EC's Rights to Initiate Mediation, a Community IRP or Reconsideration Request

Section 4.1 Mediation Initiation

Section 4.2 Community IRP

Section 4.3 Community Reconsideration Request

2. Engagement in the new Customer Standing Committee

The ccNSO has obligations flowing from the creation of the post-transition Customer Standing Committee (CSC). According to Section 17.1 of the ICANN Bylaws (on Customer Standing Committee): *"ICANN shall establish a Customer Standing Committee ("CSC") to monitor PTI's performance under the IANA Naming Function Contract and IANA Naming Function SOW. The mission of the CSC is to ensure continued satisfactory performance of the IANA naming function for the direct customers of the naming services. The direct customers of the naming services are*

top-level domain registry operators as well as root server operators and other non-root zone functions.”

It is further stated that “The ccNSO and GNSO may address matters escalated by the CSC, pursuant to their operating rules and procedures.”

In summary the ccNSO’s responsibilities relating to the CSC include:

- 1) Appointment of an individual representing top-level domain registry operators (a position separate from appointments to be made by ccTLD registry operators and the gTLD Registries Stakeholder Group);
- 2) Selection of ccTLD members on CS, after consultation with RySG
- 3) Approval of initial proposed members and liaisons of the CSC and the annual slate of members and liaisons;
- 4) Periodic review of the CSC charter; and
- 5) Approval of amendments to the CSC charter.

3. Engagement in the RZERC (Root Zone Evolution Review Committee)

One of the new ICANN structure committees (not envisioned in the new ICANN Bylaws) is the RZERC. This new Committee will need to be consulted in case of structural changes to the architecture and new IANA services. The ccNSO is supposed to appoint one of the members by 1 October.

The ccNSO GRC has nearly completed the draft of the Guideline, so it is NOT included.

A NOTE ON ASSUMPTIONS AND THE SCOPE OF THE BALANCE OF THE DOCUMENT

To initiate further discussion a table was prepared to assist the GRC in defining its priorities and work load. First, the respective sections in the revised new ICANN Bylaws are detailed where changes are located which are relevant for the ccNSO, and good morning to you a identifying possible new or existing procedures that can apply, and noting comments for the Council’s consideration.

- 1) The table lists only new or additional rights and responsibilities for the ccNSO (Council) and community effected as a result of the latest revisions to the ICANN Bylaws. It does not address existing rights and responsibilities, even where language or other changes may have been made as part of the current revision process (e.g. any entity materially affected by an action of the ICANN Board and staff could – and still can – file a Reconsideration Request, so language changes to that part of the Bylaws are not included in the table).

- 2) The second column is on priority/what needs to be done first in order to be ready if and when the new Bylaws become effective. Note this is very much dependent on ending the current IANA Contract between ICANN and the USG NTIA.
- 3) The revised Bylaws include references to voting. The current ccNSO structure, as described in the ICANN Bylaws, foresees that any voting is conducted via the ccNSO Council (except in cases where a ccNSO Members vote is specifically required. The Election of Councillors being one case and the final vote on a ccNSO PDP being another). This assumption is based on the presumption that ultimately a limited number of Members can ask for a Members vote on any material decision made by the ccNSO Council. However note this is an internal rule of the ccNSO.
- 4) The table is a so called living document. To date it lists only new, modified or additional elements derived from the new ICANN Bylaws. Whether specific ccNSO procedures and/or Guidelines need to be in place needs to be determined.
- 5) The table does not include procedures that may need to be developed for the Empowered Community as a whole to exercise its rights, powers, responsibilities and obligations as it is the assumption that these will need to be developed through cross-community collaboration.
- 6) In the absence of new procedures or agreement on which procedures to be used, the default threshold to pass the ccNSO is a ccNSO Council resolution (a simple majority vote of the ccNSO Council).

In addition, the following color coding is applied to [be filled in]:

Green: [to be filled]

Yellow: [[Action may be necessary, but requires discussion]; and

Orange: [Action likely].

OBLIGATIONS RELATING TO THE ccNSO AS A DECISIONAL PARTICIPANT IN THE EMPOWERED COMMUNITY

ARTICLE 4 ACCOUNTABILITY AND REVIEW

4.3 INDEPENDENT REVIEW PROCESS (IRP) FOR COVERED ICANN ACTIONS

<i>New Bylaw Section</i>	<i>Priority/When does it need to be in place?</i>	<i>Any New Procedure Required?</i>	<i>Additional Comments</i>
<p>(b) A "Claimant" is any legal or natural person, group, or entity including, but not limited to the EC, a Supporting Organization, or an Advisory Committee that has been materially affected by a Dispute. To be materially affected by a Dispute, the Claimant must suffer an injury or harm that is directly and causally connected to the alleged violation.</p> <p>(j) ICANN shall, in consultation with the Supporting Organizations and Advisory Committees, initiate a four-step process to establish the [IRP] Standing Panel ... [SO/ACs] shall nominate a slate of proposed panel members from the well-qualified candidates identified per the process set forth in Section 4.3(j)(ii)(B).</p> <p>(n) An IRP Implementation Oversight Team shall be established in consultation with the Supporting Organizations and Advisory Committees and comprised of members of the global Internet community [to] develop clear, published rules for the IRP that conform with international arbitration norms and are streamlined, easy to understand and apply fairly to all parties.</p>		<p>NEW: SO/ACs expressly acknowledged as a possible Claimant for IRP (which may now be filed to cover enforcement of IANA contract and PTI service complaints); SO/ACs to be consulted as part of process for establishing Standing Panel (in coordination with the IRP Implementation Oversight Team);</p> <p>The ccNSO as one of the SO/ACs may nominate Standing Panel members from the list of qualified candidates. The ccNSO would need to agree on processes and procedures that would apply for each of the steps/items involved in an IRP.</p> <p>The ccNSO will also have to identify the process through which it will decide whether to be a Claimant for an IRP. Some of the questions could include,</p>	<p>The process regarding nominations for Standing Panel members may be within the current remit of the GNSO Council, with Councilors consulting with their respective SGs/Cs on the matter. Note that Standing Panel members are appointed for 5-year terms.</p>

		<p>but are not limited to:</p> <ul style="list-style-type: none">--How a decision to initiate an IRP is reached - not just the threshold, but what it covers--Who would represent them?--Who would pay for representation?-- How would a claim that is supported by the ccNSO be put forward? <p>In addition with respect to the standing panel, the questions are likely to be more related to the following:</p> <ul style="list-style-type: none">--What are the thresholds to agree?--Would it make sense to rely on the members?	
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4.6 SPECIFIC REVIEWS			
<i>New Bylaw Section</i>	<i>Priority/When needs to be in place?</i>	<i>Any New Procedure Required?</i>	<i>Additional Comments</i>
<p>(a) Review teams will be established for each applicable review, which will include both a limited number of members and an open number of observers. The chairs of the Supporting Organizations and Advisory Committees participating in the applicable review shall select a group of up to 21 review team members from among the prospective members nominated by the Supporting Organizations and Advisory Committees, balanced for diversity and skill:</p> <p>(A) Each Supporting Organization and Advisory Committee participating in the applicable review may nominate up to seven prospective members for the review team;</p> <p>(B) Any Supporting Organization or Advisory Committee nominating at least one, two or three prospective review team members shall be entitled to have those one, two or three nominees selected as members to the review team, so long as the nominees meet any applicable criteria for service on the team; and</p> <p>(C) If any Supporting Organization or Advisory Committee has not nominated at least three prospective review team members, the Chairs of the Supporting Organizations and Advisory Committees shall be responsible for the determination of whether all 21 SO/AC member</p>	<p>Note the first review team is SSR, which will need to be appointed in October 2016!</p> <p>Based on previous SSR Review there may be interest from the ccTLD community to participate.</p>	<p>NEW: Specific provision for appointment of review team members (these would be for the reviews mandated by the current AoC, which are being enshrined in the new Bylaws)</p> <p>Create Guideline for selection and appointment of ccTLD members (appointment by the ccNSO Council) of review teams. Could be generic. Based on CSC Guideline. For discussion/main issues:</p> <ol style="list-style-type: none"> (1) how will the ccNSO identify the up-to-seven nominees for any of the review teams it intends to participate (2) In case only max 3 candidates nominate ensure they meet the criteria. <p>How should the ccNSO Chair participate in the selection of the review team?</p>	<p>The current CSC Guideline could be used as blueprint to serve as a general procedure for nominating and selecting a limited number of review team members.</p> <p>Further guidance for the ccNSO Chair may need to be developed.</p>

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seats shall be filled and, if so, how the seats should be allocated from among those nominated.			
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4.7 COMMUNITY MEDIATION			
<i>New Bylaw Section</i>	<i>Priority/ When needs to be in place?</i>	<i>Any New Procedure Required?</i>	<i>Additional Comments</i>
(a) If the Board refuses or fails to comply with a duly authorized and valid EC Decision (as defined in <u>Section 4.1(a)</u> of Annex D) under these Bylaws, the EC Administration representative of any Decisional Participant who supported the exercise by the EC of its rights in the applicable EC Decision during the applicable decision period may request that the EC initiate a mediation process pursuant to this <u>Section 4.7</u> . The Board shall be deemed to have refused or failed to comply with a duly authorized and valid EC Decision if the Board has not complied with the EC Decision within 30 days of being notified of the relevant EC Decision.		<p>NEW: Procedure to request that the EC initiate a mediation process; ability to recommend individuals to represent the EC in the Mediation Administration.</p> <p>Most likely the ccNSO may need to define Internal Procedures on how to exercise its new EC powers under the new ICANN bylaws.</p> <p>Such a Guideline/Internal rules may be needed to ensure Accountability of the ccNSO Council itself.</p> <p>The ccNSO Council will request that the EC initiate Mediation, and recommend EC representatives for the Mediation Administration. Note, however, that how this procedure is defined may need to be done in consultation with the other Decisional Participants.</p> <p>More broadly, this type of process/decision can be related</p>	No current process specifically addresses this. However, it is envisioned that the ccNSO Council will make the request on behalf of the ccNSO, with applicability of the internal rules around a members vote.

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		<p>directly to how the ccNSO will define its participation in the EC. For example, how will the ccNSO make a decision that it should request the initiation if there is not a straightforward allegation of a violation?</p>	
<p>(b) If the EC Administration delivers a Mediation Initiation Notice (as defined in Section 4.1(a) of Annex D) to the Secretary pursuant to and in compliance with Section 4.1(a) of Annex D, as soon as reasonably practicable thereafter, the EC Administration shall designate individuals to represent the EC in the mediation (“Mediation Administration”) and the Board shall designate representatives for the mediation (“Board Mediation Representatives”). Members of the EC Administration and the Board can designate themselves as representatives.</p>			<p>At least one topic for consideration is what principles the ccNSO Council will use to guide its representative on the EC Administration and how it identifies its representatives to the Mediation Administration.</p>

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ARTICLE 6 EMPOWERED COMMUNITY

SECTION 6.1 COMPOSITION AND ORGANIZATION OF THE EMPOWERED COMMUNITY			
<i>New Bylaw Section</i>	<i>Priority, when needs to be in place</i>	<i>Any New Procedure Required?</i>	<i>Additional Comments</i>
<p>(a) The Empowered Community (“EC”) shall be a nonprofit association formed under the laws of the State of California consisting of the ASO, the ccNSO, the GNSO, the ALAC and the GAC (each a “Decisional Participant” or “associate,” and collectively, the “Decisional Participants”).</p>		<p>NEW: Procedures relating to Decisional Participants and decision making</p> <p>One point of discussion could be whether the ccNSO would act through the ccNSO Council if no other mechanism was determined or desired. Also, see comment above with respect to consultation with other Decisional Participants.</p>	<p>No current process specifically addresses the role of the ccNSO as decisional Participant. However, it is envisioned that the ccNSO Council will be the decision-making body for the ccNSO as a Decisional Participant. Council may (be required to) consult at a minimum the ccNSO Membership (note this is about ICANN Accountability).</p> <p>The ccNSO Chair, or designee, would then be the ccNSO representative in the EC Administration. The ccNSO Council may need to develop a Guideline to guide a designation.</p> <p>More generally, for a number of these new provisions relating to ccNSO Decisional Participation, the ccNSO might wish to consider whether different processes /principles are needed for different types (e.g. in impact or complexity).</p>

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<p>(g) Each Decisional Participant shall, except as otherwise provided in Annex D, adopt procedures for exercising the rights of such Decisional Participant pursuant to the procedures set forth in Annex D, including (i) who can submit a petition to such Decisional Participant, (ii) the process for an individual to submit a petition to such Decisional Participant, including whether a petition must be accompanied by a rationale, (iii) how the Decisional Participant determines whether to accept or reject a petition, (iv) how the Decisional Participant determines whether an issue subject to a petition has been resolved, (v) how the Decisional Participant determines whether to support or object to actions supported by another Decisional Participant, and (vi) the process for the Decisional Participant to notify its constituents of relevant matters.</p>		<p>NEW: Need for Guideline to exercise powers through ccNSO as Decisional Participant as described in (i)-(vi)</p>	<p>Clarity may be needed as to whether the ccNSO acts through the GNSO Council if no other mechanism is deemed to be needed.</p> <p>Default: ccNSO will act through ccNSO Council, taking into account internal RULES of the ccNSO.</p> <p>Also, see comment above with respect to consultation with other Decisional Participants and the weighting of decision to determine thresholds.</p>
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SECTION 6.3 EC ADMINISTRATION			
<i>New Bylaw Section</i>	<i>Priority/When needs to be in place</i>	<i>Any New Procedure Required?</i>	<i>Additional Comments</i>
<p>(a) The Decisional Participants shall act through their respective chairs or such other persons as may be designated by the Decisional Participants (collectively, such persons are the “EC Administration”). Each Decisional Participant shall deliver annually a written certification from its chair or co-chairs to the Secretary designating the individual who shall represent the Decisional Participant on the EC Administration.</p> <p>(b) In representing a Decisional Participant on the EC Administration, the representative individual shall act solely as directed by the represented Decisional Participant and in accordance with processes developed by such Decisional Participant in accordance with <u>Section 6.1(g)</u>.</p> <p>(c) In representing the EC Administration, the individuals serving thereon shall act as required for the EC to follow the applicable procedures in Annex D, and to implement EC decisions made in accordance with such procedures.</p> <p>(d) All communications and notices required or permitted to be given under these Bylaws by a Decisional Participant shall be provided by the Decisional Participant’s representative on the EC Administration. All communications and notices required or permitted to be given under these Bylaws by the EC shall be provided by any member of the EC Administration. Where a particular Bylaws notice provision does not require notice to the Secretary, the EC and the Decisional Participants shall provide a copy of the notice to the Secretary in accordance with</p>	<p>Needs to be in place by 1 October 2016, to allow the EC to take Admin decision as required under new Bylaws.</p>	<p>NEW: Procedures for Decisional Participants for appointment ccNSO representative on EC Administration (by default chair). Also needed procedure to provide guidance and how to act/exercise powers as ccNSO representative on EC Administration, in particular relating to items described in 6.1 (b)-(d)</p>	<p>Discuss advisability of designating ccNSO Chair as EC representative.</p>

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Section 21.5, and ICANN shall post it on the Website.			
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ARTICLE 10 country code NAMES SUPPORTING ORGANIZATION

SECTION 10.1 ccNSO			
<i>New Bylaw Section</i>	<i>Priority/When needs to be in place?</i>	<i>Any New Procedure Required?</i>	<i>Additional Comments</i>
(e) Other responsibilities of the ccNSO as set forth in these Bylaws.		By virtue of Bylaws ccNSO has additional responsibilities	Assigns responsibilities to the ccNSO. Is point of reference in Guidelines. Needs to be included.

<i>Section 10.3 ccNSO Council</i>			
<i>New Bylaw Section</i>	<i>Priority/When needs to be in place?</i>	<i>Any New Procedure Required?</i>	<i>Additional Comments</i>
(i) The ccNSO Council shall nominate individuals to fill Seats 11 and 12 on the Board by written ballot or by action at a meeting; any such nomination must have affirmative votes of a majority of all the members of the ccNSO Council then in office. Notification of the ccNSO Council's nominations shall be given by the ccNSO Council Chair in writing to the EC Administration, with a copy to the Secretary, and the EC shall promptly act on it as provided in Section 7.25.	NOTE this is high priority to ensure process is in place by new Board nomination process	ccNSO Guideline on Selection of Board members needs to be updated: <ul style="list-style-type: none"> - Clarify role of Council - Ensure that members still nominate and vote and Council administers process - Internal rule 10(3) k <p>Note all Guidelines need to be updated to reflect the new reference number (Article IX - > Article 10)</p>	Procedure needs to be adjusted slightly.

ARTICLE 16 POST TRANSITION IANA ENTITY			
ARTICLE 16.3 IANA NAMING FUNCTIONS CONTRACT			
<i>New Bylaw Section</i>	<i>Priority/ When does it need to be in place?</i>	<i>Any New Procedure Required?</i>	<i>Additional Comments</i>
<p>On or prior to 1 October 2016, ICANN shall enter into a contract with PTI for the performance of the IANA naming function (as it may be amended or modified, the “IANA Naming Function Contract”) and a related statement of work (the “IANA Naming Function SOW”). Except as to implement any modification, waiver or amendment to the IANA Naming Function Contract or IANA Naming Function SOW related to an IFR Recommendation or Special IFR Recommendation approved pursuant to <u>Section 18.6</u> or an SCWG Recommendation approved pursuant to <u>Section 19.4</u> (which, for the avoidance of doubt, shall not be subject to this <u>Section 16.3(a)</u>), ICANN shall not agree to modify, amend or waive any Material Terms (as defined below) of the IANA Naming Function Contract or the IANA Naming Function SOW if a majority of each of the ccNSO and GNSO Councils reject the proposed modification, amendment or waiver.</p>		<p>NEW: Majority of ccNSO Council rejects the proposed modification, amendment, or waiver.</p> <p>Basically amendment of the ccNSO Council Guideline would suffice, i.e. listing decisions that need to be taken. However one could argue, that in particular this decision has such an impact that a “voluntary” members / broader ccTLD community mandatory consultation is included i.e. Council acts as ensuring due process.</p>	<p>As PTI is relevant for all ccTLDs (independent of membership). Adequate documentation is needed to build trust in the system.</p> <p>Introduce and start working on Decision threshold list, to be included in the ccNSO Council Guideline?</p>

I. ccNSO OBLIGATIONS RELATING TO THE CUSTOMER STANDING COMMITTEE

ARTICLE 17 CUSTOMER STANDING COMMITTEE

SECTION 17.1 DESCRIPTION			
<i>New Bylaw Section</i>	<i>Priority/ When needs to be in place?</i>	<i>Any New Procedure Required?</i>	<i>Additional Comments</i>
The CSC is not authorized to initiate a change in PTI through a Special IFR (as defined in Section 18.1), but may escalate a failure to correct an identified deficiency to the ccNSO and GNSO, which might then decide to take further action using consultation and escalation processes, which may include a Special IFR. The ccNSO and GNSO may address matters escalated by the CSC, pursuant to their operating rules and procedures.		NEW: Consultation and escalation processes and Special IFR The ccNSO should discuss whether or not its current Guidelines and procedures are adequate to cover this situation.	As CSC is relevant for all ccTLDs (independent of membership). Adequate documentation is needed to build trust in the system

SECTION 17.2 COMPOSITION, APPOINTMENT, TERM AND REMOVAL			
<i>New Bylaw Section</i>	<i>Priority/When does it need to be in place?</i>	<i>Any New Procedure Required?</i>	<i>Additional Comments</i>
(b) If so determined by the ccNSO and GNSO, the CSC may, but is not required to, include one additional member: an individual representing top-level domain registry operators that are not considered a ccTLD or gTLD, who shall be appointed by the ccNSO and the GNSO. Such representative shall be required to submit a letter of support from the registry operator it represents. (c) Each of the following organizations may also appoint one liaison to the CSC in accordance with the rules and procedures of the appointing organization: (i) GNSO (from the Registrars Stakeholder Group or the Non-Contracted Parties House), (ii) ALAC, (iii) either		CSC Selection Guideline adopted. Still need to include procedure for selection of non ccTLD/gTLD operator.	This is currently covered by Guideline relating to the CSC.

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<p>the NRO or ASO (as determined by the ASO), (iv) GAC, (v) RSSAC, (vi) SSAC and (vii) any other Supporting Organization or Advisory Committee established under these Bylaws. (d) The GNSO and ccNSO shall approve the initial proposed members and liaisons of the CSC, and thereafter, the ccNSO and GNSO shall approve each annual slate of members and liaisons being recommended for a new term.</p>			
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SECTION 17.3 CSC CHARTER; PERIODIC REVIEW			
<i>New Bylaw Section</i>	<i>Priority/When needs to be in palce?</i>	<i>Any New Procedure Required?</i>	<i>Additional Comments</i>
<p>(b) The effectiveness of the CSC shall be reviewed two years after the first meeting of the CSC; and then every three years thereafter. The method of review will be determined by the ccNSO and GNSO and the findings of the review will be published on the Website.</p>	<p>Needs to be in place weel ahead of first review (Anticipated in August September 2018)</p>	<p>NEW: GNSO and ccNSO define method of review of the CSC charter.</p> <p>Possible new procedures, although current procedures for ccNSO Council approval via a vote on a resolution may be adequate.</p>	<p>Coordination needed between GNSO and ccNSO Councils</p>
<p>(d) Amendments to the CSC Charter shall not be effective unless ratified by the vote of a simple majority of each of the ccNSO and GNSO Councils pursuant to each such organizations' procedures. Prior to any action by the ccNSO and GNSO, any recommended changes to the CSC Charter shall be subject to a public comment period that complies with the designated practice for public comment periods within ICANN. Notwithstanding the foregoing, to the extent any provision of an amendment to the CSC Charter conflicts with the terms of the Bylaws, the terms of the</p>	<p>See above remark 17.3</p>	<p>NEW: Amendments to the CSC Charter by a vote of simple majority of the ccNSO Council.</p> <p>Possible new procedures, although current procedures for ccNSO Council approval via a vote on a motion may apply.</p>	

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Bylaws shall control.			
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ARTICLE 18 IANA NAMING FUNCTION REVIEWS

SECTION 18.2 FREQUENCY OF PERIODIC IFRS			
<i>New Bylaw Section</i>	<i>Priority/When needs to be in place?</i>	<i>Any New Procedure Required?</i>	<i>Additional Comments</i>
(c) In the event a Special IFR is ongoing at the time a Periodic IFR is required to be convened under this <u>Section 18.2</u> , the Board shall cause the convening of the Periodic IFR to be delayed if such delay is approved by the vote of (i) a supermajority of the ccNSO Council (pursuant to the ccNSO's procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO Council's members) and (ii) a GNSO Supermajority. Any decision by the ccNSO and GNSO to delay a Periodic IFR must identify the period of delay, which should generally not exceed 12 months after the completion of the Special IFR.		NEW: Delay of convening IFR subject to ccNSO Supermajority vote. Basically a amendment of the ccNSO Council Guideline would suffice, i.e. listing decisions that need to taken with a supermajority. However one could argue, tat in particular this decision has such an impact that a "voluntary" members (and even broader ccTLD community mandatory consultation is included i.e. Council acts as ensuring due process.	Introduce and start working on Decision threshold list, to be included in the ccNSO Council Guideline?

SECTION 18.6 RECOMMENDATION TO AMEND THE IANA NAMING FUNCTION CONTRACT, IANA NAMING FUNCTION SOW OR CSC CHARTER			
<i>New Bylaw Section</i>	<i>Priority/When needs to be in place?</i>	<i>Any New Procedure Required?</i>	<i>Additional Comments</i>
(b) (i) The IFR Recommendation has been approved by the vote of (A) a supermajority of the ccNSO Council (pursuant to the ccNSO's procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO Council's members) and (B) a GNSO Supermajority;		NEW: Approve IFR Recommendation by a ccNSO Council Supermajority Basically a amendment of the ccNSO Council Guideline would	Introduce and start working on Decision threshold list, to be included in the ccNSO Council Guideline?

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		suffice, i.e. listing decisions that need to be taken with a supermajority. However one could argue, that in particular this decision has such an impact that a “voluntary” members (and even broader ccTLD community mandatory consultation is included i.e. Council acts as ensuring due process.	
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SECTION 18.7 COMPOSITION OF IFR REVIEW TEAMS			
<i>New Bylaw Section</i>	<i>Priority/When needs to be in place</i>	<i>Any New Procedure Required?</i>	<i>Additional Comments</i>
Each IFRT shall consist of the following members and liaisons to be appointed in accordance with the rules and procedures of the appointing organization: (a) Two representatives appointed by the ccNSO from its ccTLD registry operator representatives; (b) One non-ccNSO ccTLD representative who is associated with a ccTLD registry operator that is not a representative of the ccNSO, appointed by the ccNSO; it is strongly recommended that the ccNSO consult with the regional ccTLD organizations (i.e., AfTLD, APTLD, LACTLD, and CENTR) in making its appointment;	First IFR is anticipated no later than [1 October 2017]	NEW: IFRT selection and appointment procedure appointments NEW: ensuring selection of one non-ccNSO member, in consultation with RO's	CSC Guideline could be used as blueprint. Note: Does this imply that two different selection procedures need to be in place? One for members and one for non-members?

SECTION 18.12 SPECIAL IFRS			
<i>New Bylaw Section</i>	<i>Priority/When needs to be in place?</i>	<i>Any New Procedure Required?</i>	<i>Additional Comments</i>
(c) A recommendation of an IFRT for a Special IFR shall only become effective if, with		NEW: Approval of Special IFR Recommendation by ccNSO	Introduce and start working on Decision threshold list, to be

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<p>respect to each such recommendation (each, a “Special IFR Recommendation”), each of the following occurs: (i) The Special IFR Recommendation has been approved by the vote of (A) a supermajority of the ccNSO Council (pursuant to the ccNSO’s procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO Council’s members) and (B) a GNSO Supermajority;</p>		<p>Council supermajority. Basically a amendment of the ccNSO Council Guideline would suffice, i.e. listing decisions that need to be taken with a supermajority. However one could argue, that in particular this decision has such an impact that a “voluntary” members (and even broader ccTLD community mandatory consultation is included i.e. Council acts as ensuring due process.</p>	<p>included in the ccNSO Council Guideline?</p>
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ARTICLE 19 IANA NAMING FUNCTION SEPARATION PROCESS

SECTION 19.1 ESTABLISHING AN SCWG			
<i>New Bylaw Section</i>	<i>Priority/when needs to be in place?</i>	<i>Any New Procedure Required?</i>	<i>Additional Comments</i>
<p>(b) The Board shall establish an SCWG if each of the following occurs: (ii) The SCWG Creation Recommendation has been approved by the vote of (A) a supermajority of the ccNSO Council (pursuant to the ccNSO’s procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO Council’s members) and (B) a GNSO Supermajority;</p>		<p>NEW: Approval of SCWG by a ccNSO Supermajority. Basically a amendment of the ccNSO Council Guideline would suffice, i.e. listing decisions that need to be taken with a supermajority. However one could argue, that in particular this decision has such an impact that a “voluntary” members (and even broader ccTLD community mandatory consultation is included i.e. Council acts as ensuring due process.</p>	<p>Introduce and start working on Decision threshold list?</p>

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SECTION 19.4 SCWG RECOMMENDATIONS			
<i>New Bylaw Section</i>	<i>Priority/When does it need to be in place?</i>	<i>Any New Procedure Required?</i>	<i>Additional Comments</i>
<p>(b) ICANN shall not implement an SCWG recommendation (including an SCWG recommendation to issue an IANA Naming Function RFP) unless, with respect to each such recommendation (each, an “SCWG Recommendation”), each of the following occurs:</p> <p>(i) The SCWG Recommendation has been approved by the vote of (A) a supermajority of the ccNSO Council (pursuant to the ccNSO’s procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO Council’s members) and (B) a GNSO Supermajority;</p>		<p>NEW: Approval of SCWG recommendation by ccNSO Supermajority.</p> <p>Note: the recommendation to create a SCWG is anticipated to come out of a Special or Periodic IFR (see above).</p>	<p>Basically amendment of the ccNSO Council Guideline would suffice, i.e. listing decisions that need to be taken with a supermajority. However one could argue, that in particular this decision has such an impact that a “voluntary” members (and even broader ccTLD community mandatory consultation is included i.e. Council acts as ensuring due process.</p>

SECTION 18.12 SPECIAL IFRS			
<i>New Bylaw Section</i>	<i>Priority/When needs to be in place?</i>	<i>Any New Procedure Required?</i>	<i>Additional Comments</i>
<p>(a) (i) The Remedial Action Procedures of the CSC set forth in the IANA Naming Function Contract shall have been followed and failed to correct the PTI Performance Issue and the outcome of such procedures shall have been reviewed by the ccNSO and GNSO according to each organization’s respective operating procedures;</p> <p>(ii) The IANA Problem Resolution Process set forth in the IANA Naming Function Contract shall have been followed and failed to correct the PTI Performance Issue and the outcome of such process shall have been reviewed by the ccNSO and GNSO according to each organization’s respective operating procedures;</p> <p>(iii) The ccNSO and GNSO shall have considered</p>		<p>NEW: (a) (i) Review of the outcome of the Remedial Action Procedures of the CSC.</p> <p>(ii) Review of the IANA Problem Resolution Process.</p> <p>(iii) Consultation with other SOs and ACs.</p> <p>(iv) Comment period requested by GNSO and Special IFR approval by GNSO Supermajority.</p>	<p>Possible new procedure. Needs to be developed with CSC?</p>

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<p>the outcomes of the processes set forth in the preceding clauses (i) and (ii) and shall have conducted meaningful consultation with the other Supporting Organizations and Advisory Committees with respect to the PTI Performance Issue and whether or not to initiate a Special IFR; and</p> <p>(iv) After a public comment period that complies with the designated practice for public comment periods within ICANN, if a public comment period is requested by the ccNSO and the GNSO, a Special IFR shall have been approved by the vote of (A) a supermajority of the ccNSO Council (pursuant to the ccNSO's procedures or if such procedures do not define a supermajority, two-thirds (2/3) of the Council members) and (B) a GNSO Supermajority.</p>			
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ARTICLE 19 IANA NAMING FUNCTION SEPARATION PROCESS

SECTION 19.1 Establishing a SCWG			
<i>New Bylaw Section</i>	<i>Priority/When needs to be in place?</i>	<i>Any New Procedure Required?</i>	<i>Additional Comments</i>
<p>(b. ii) The SCWG Creation Recommendation has been approved by the vote of (A) a supermajority of the ccNSO Council (pursuant to the ccNSO's procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO Council's members) and (B) a GNSO Supermajority;</p>		<p>No - the SCWG is anticipated to follow the soon-to-be finalized Uniform Framework of Cross-Community Working Group Principles.</p>	

SECTION 19.4 COMMUNITY REVIEWS AND REPORTS			
<i>New Bylaw Section</i>	<i>Priority/When needs to be in place?</i>	<i>Any New Procedure Required?</i>	<i>Additional Comments</i>
<p>The SCWG shall seek community input through</p>		<p>No - the SCWG is anticipated to</p>	

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<p>one or more public comment periods (such public comment period shall comply with the designated practice for public comment periods within ICANN) and may recommend discussions during ICANN’s public meetings in developing and finalizing its recommendations and any report.</p>		<p>follow the soon-to-be finalized Uniform Framework of Cross-Community Working Group Principles.</p>	
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SECTION 19.5 COMPOSITION OF SCWG			
<i>New Bylaw Section</i>	<i>Priority/When needs to be in place</i>	<i>Any New Procedure Required?</i>	<i>Additional Comments</i>
<p>Each SCWG shall consist of the following members and liaisons to be appointed in accordance with the rules and procedures of the appointing organization:</p> <p>(a) Two representatives appointed by the ccNSO from its ccTLD registry operator representatives;</p> <p>(b) One non-ccNSO ccTLD representative who is associated with a ccTLD registry operator that is not a representative of the ccNSO, appointed by the ccNSO; it is strongly recommended that the ccNSO consult with the regional ccTLD organizations (i.e., AfTLD, APTLD, LACTLD, and CENTR) in making its appointment;</p>		<p>NEW: SCWG selection and appointment procedure appointments</p> <p>NEW: ensuring selection of one non-ccNSO member, in consultation with RO’s</p>	<p>CSC Guideline could be used as blueprint.</p> <p>Same structure as IFRT (Article 18 new Bylaws)</p> <p>Note: Does this imply that two different selection procedures need to be in place? One for members and one for non-members?</p>

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SECTION 19.6 ELECTION OF CO-CHAIRS AND LIAISONS			
<i>New Bylaw Section</i>	<i>Priority/When needs to be in place?</i>	<i>Any New Procedure Required?</i>	<i>Additional Comments</i>
(a) The SCWG shall be led by two co-chairs: one appointed by the GNSO from one of the members appointed pursuant to clauses (iii)-(vi) of Section 19.5(a) and one appointed by the ccNSO from one of the members appointed pursuant to clauses (i)-(ii) of Section 19.5(a) .		NEW: Appointment of Co-Chair of the SCWG by the ccNSO. The ccNSO will need to agree on the identification of a co-chair from among the appointees selected from across the ccNSO community.	See comments under IFRT (above).

ARTICLE 22 FISCAL AND STRATEGIC MATTERS, INSPECTION, AND INDEPENDENT INVESTIGATION

SECTION 22.7 INSPECTION			
<i>New Bylaw Section</i>	<i>Priority/When needs to be in place?</i>	<i>Any New Procedure Required?</i>	<i>Additional Comments</i>
(a) A Decisional Participant (the “ Inspecting Decisional Participant ”) may request to inspect the accounting books and records of ICANN, as interpreted pursuant to the provisions of Section 6333 of the CCC, and the minutes of the Board or any Board Committee for a purpose reasonably related to such Inspecting Decisional Participant’s interest as a Decisional Participant in the EC. The Inspecting Decisional Participant shall make such a request by providing written notice from the chair of the Inspecting Decisional Participant to the Secretary stating the nature of the documents the Inspecting Decisional Participant seeks to inspect (“ Inspection Request ”)...[excerpt]		NEW: ccNSO (as decisional participant) requesting an inspection.	The ccNSO should discuss whether a new process should be developed to address this point.
(e) If the Inspecting Decisional Participant believes that ICANN has violated the provisions of this Section 22.7 , the Inspecting		NEW: Ability to seek appeals and initiate a Reconsideration Request.	

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<p>Decisional Participant may seek one or more of the following remedies: (i) appeal such matter to the Ombudsman and/or the Board for a ruling on the matter, (ii) initiate the Reconsideration Request process in accordance with <u>Section 4.2</u>, (iii) initiate the Independent Review Process in accordance with <u>Section 4.3</u>, or (iv) petition the EC to initiate (A) a Community Independent Review Process pursuant to <u>Section 4.3</u> of Annex D or (B) a Board Recall Process pursuant to <u>Section 3.3</u> of Annex D. Any determination by the Ombudsman is not binding on ICANN staff, but may be submitted by the Inspecting Decisional Participant when appealing to the Board for a determination, if necessary.</p>		<p>The ccNSO should discuss whether new procedures are necessary to decide whether to seek an appeal or initiate a Reconsideration request, or whether current procedures such as documented in the ccNSO Guideline for Council meetings may apply.</p>	
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SECTION 22.8 INDEPENDENT INVESTIGATION			
<i>New Bylaw Section</i>	<i>Priority/When needs to be in place</i>	<i>Any New Procedure Required?</i>	<i>Additional Comments</i>
<p>If three or more Decisional Participants deliver to the Secretary a joint written certification from the respective chairs of each such Decisional Participant that the constituents of such Decisional Participants have, pursuant to the internal procedures of such Decisional Participants, determined that there is a credible allegation that ICANN has committed fraud or that there has been a gross mismanagement of ICANN's resources,... [excerpt]</p>		<p>NEW: Joint written certification by 3 or more Decisional Participants.</p> <p>Similar observation to the general right of inspection – the ccNSO may wish to discuss the need to create and document a new process for either (1) the ccNSO to initiate or join a certification of a determination of allegation of fraud or gross mismanagement.</p>	<p>Consider incorporating this into any new process to be documented for investigations.</p>

VOTING THRESHOLDS

ARTICLE 4 ACCOUNTABILITY AND REVIEW

4.3 INDEPENDENT REVIEW PROCESS (IRP) FOR COVERED ICANN ACTIONS

<i>New Bylaw Section</i>	<i>New Obligation/Right for the GNSO</i>	<i>Any New Procedure Required?</i>	<i>Additional Comments</i>
<p>(b) A "Claimant" is any legal or natural person, group, or entity including, but not limited to the EC, a Supporting Organization, or an Advisory Committee that has been materially affected by a Dispute. To be materially affected by a Dispute, the Claimant must suffer an injury or harm that is directly and causally connected to the alleged violation.</p> <p>(j) ICANN shall, in consultation with the Supporting Organizations and Advisory Committees, initiate a four-step process to establish the [IRP] Standing Panel ... [SO/ACs] shall nominate a slate of proposed panel members from the well-qualified candidates identified per the process set forth in Section 4.3(j)(ii)(B).</p> <p>(n) An IRP Implementation Oversight Team shall be established in consultation with the Supporting Organizations and Advisory Committees and comprised of members of the global Internet community [to] develop clear, published rules for the IRP that conform with international arbitration norms and are streamlined, easy to understand and apply fairly to all parties.</p>	<p>NEW: SO/ACs expressly acknowledged as a possible Claimant for IRP (which may now be filed to cover enforcement of IANA contract and PTI service complaints); SO/ACs to be consulted as part of process for establishing Standing Panel (in coordination with the IRP Implementation Oversight Team); SO/ACs can nominate Standing Panel members from the list of qualified candidates.</p>	<p>The GNSO would need to agree on the voting threshold that would apply for each of the steps/items involved in an IRP if this is to be different from a simple majority vote. If agreement is that the threshold will be a simple majority vote then existing processes could apply.</p> <p>The GNSO will also have to identify the process through which it will decide whether to be a Claimant for an IRP. Some of the questions could include, but are not limited to:</p> <ul style="list-style-type: none"> --How a decision to initiate an IRP is reached - not just the threshold, but what it covers --Who would represent them? --Who would pay for representation? -- How would a claim that is supported by the GNSO be put forward? <p>For the standing panel, the questions are likely to be</p>	<p>The process regarding nominations for Standing Panel members may be within the current remit of the GNSO Council, with Councilors consulting with their respective SGs/Cs on the matter. Note that Standing Panel members are appointed for 5-year terms.</p> <p>As the Implementation Oversight Team (IOT) seems to be a one-time appointment, a new process will likely not be needed. It is noted that the IOT is already formed and working.</p>

		more related to the following: --What are the thresholds to agree? --Would it make sense to rely more on the SGs/Cs? -- How does their voice fit in?	
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ARTICLE 18 IANA NAMING FUNCTION REVIEWS

SECTION 18.2 FREQUENCY OF PERIODIC IFRS			
<i>New Bylaw Section</i>	<i>Priority/When needs to be in place?</i>	<i>Any New Procedure Required?</i>	<i>Additional Comments</i>
(c) In the event a Special IFR is ongoing at the time a Periodic IFR is required to be convened under this <u>Section 18.2</u> , the Board shall cause the convening of the Periodic IFR to be delayed if such delay is approved by the vote of (i) a supermajority of the ccNSO Council (pursuant to the ccNSO's procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO Council's members) and (ii) a GNSO Supermajority. Any decision by the ccNSO and GNSO to delay a Periodic IFR must identify the period of delay, which should generally not exceed 12 months after the completion of the Special IFR.	NEW: Delay of convening IFR subject to ccNSO Supermajority vote.	NEW: Delay of convening IFR subject to ccNSO Supermajority vote. Basically a amendment of the ccNSO Council Guideline would suffice, i.e. listing decisions that need to be taken with a supermajority. However one could argue, that in particular this decision has such an impact that a "voluntary" members (and even broader ccTLD community mandatory consultation is included i.e. Council acts as ensuring due process.	Introduce and start working on Decision threshold list, to be included in the ccNSO Council Guideline?

SECTION 18.6 RECOMMENDATION TO AMEND THE IANA NAMING FUNCTION CONTRACT, IANA NAMING FUNCTION SOW OR CSC CHARTER			
<i>New Bylaw Section</i>	<i>Priority/When needs to be in place?</i>	<i>Any New Procedure Required?</i>	<i>Additional Comments</i>
(b) (i) The IFR Recommendation has been approved by the vote of (A) a supermajority of the ccNSO Council (pursuant to the ccNSO's procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO Council's members) and (B) a GNSO Supermajority;		NEW: Approve IFR Recommendation by a ccNSO Council Supermajority Basically a amendment of the ccNSO Council Guideline would suffice, i.e. listing decisions that need to be taken with a supermajority. However one could argue, that in particular this	Introduce and start working on Decision & threshold list, to be included in the ccNSO Council Guideline?

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		decision has such an impact that a “voluntary” members (and even broader ccTLD community mandatory consultation is included i.e. Council acts as ensuring due process.	
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SECTION 18.12 SPECIAL IFRS			
<i>New Bylaw Section</i>	<i>Priority/When needs to be in place?</i>	<i>Any New Procedure Required?</i>	<i>Additional Comments</i>
(c) A recommendation of an IFRT for a Special IFR shall only become effective if, with respect to each such recommendation (each, a “ Special IFR Recommendation ”), each of the following occurs: (i) The Special IFR Recommendation has been approved by the vote of (A) a supermajority of the ccNSO Council (pursuant to the ccNSO’s procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO Council’s members) and (B) a GNSO Supermajority;		NEW: Approval of Special IFR Recommendation by ccNSO Council supermajority. Basically amendment of the ccNSO Council Guideline would suffice, i.e. listing decisions that need to be taken with a supermajority. However one could argue, that in particular this decision has such an impact that a “voluntary” members (and even broader ccTLD community mandatory consultation is included i.e. Council acts as ensuring due process.	Introduce and start working on Decision threshold list, to be included in the ccNSO Council Guideline?

ARTICLE 19 IANA NAMING FUNCTION SEPARATION PROCESS

SECTION 19.1 ESTABLISHING AN SCWG			
<i>New Bylaw Section</i>	<i>Priority/When needs to be in place?</i>	<i>Any New Procedure Required?</i>	<i>Additional Comments</i>
(b) The Board shall establish an SCWG if each of the following occurs: (ii) The SCWG Creation Recommendation has been approved by the vote of (A) a supermajority of the ccNSO Council (pursuant to the ccNSO’s procedures or, if such procedures do not define a		NEW: Approval of SCWG by a ccNSO Supermajority. Basically amendment of the ccNSO Council Guideline	Introduce and start working on Decision threshold list?

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<p>supermajority, two-thirds (2/3) of the ccNSO Council’s members) and (B) a GNSO Supermajority;</p>		<p>would suffice, i.e. listing decisions that need to be taken with a supermajority. However one could argue, that in particular this decision has such an impact that a “voluntary” members (and even broader ccTLD community mandatory consultation is included i.e. Council acts as ensuring due process.</p>	
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SECTION 19.4 SCWG RECOMMENDATIONS			
<i>New Bylaw Section</i>	<i>New Obligation/Right for the ccNSO</i>	<i>Any New Procedure Required?</i>	<i>Additional Comments</i>
<p>(b) ICANN shall not implement an SCWG recommendation (including an SCWG recommendation to issue an IANA Naming Function RFP) unless, with respect to each such recommendation (each, an “SCWG Recommendation”), each of the following occurs: (i) The SCWG Recommendation has been approved by the vote of (A) a supermajority of the ccNSO Council (pursuant to the ccNSO’s procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO Council’s members) and (B) a GNSO Supermajority;</p>	<p>NEW: Approval of SCWG recommendation by ccNSO Supermajority. Note: the recommendation to create a SCWG is anticipated to come out of a Special or Periodic IFR (see above).</p>	<p>Basically an amendment of the ccNSO Council Guideline would suffice, i.e. listing decisions that need to be taken with a supermajority. However one could argue, that in particular this decision has such an impact that a “voluntary” members (and even broader ccTLD community mandatory consultation is included i.e. Council acts as ensuring due process.</p>	