
MARIO ALEMAN: Thank you very much, Olivier. It is now 20h04, we've exceeded the scheduled start time of the call. Good morning, good afternoon and good evening everyone. Welcome to the EURALO Bylaws Taskforce Call on Wednesday the 31st May, 2017, at 20h00 UTC. On the call we have today Olivier Crépin-Leblond, Wolf Ludwig, Florian Hule, Erich Schweighofer, Roberto Gaetano.

We also have apologies from Oksana Prykhodko. And we have on the staff side Silvia Vivanco and Mario Aleman, myself, doing the call management. I would like to remind all participants to please just state your name before speaking. And with this I will turn it back over to you, Olivier. You can begin the call now.

OLIVIER CRÉPIN-LEBLOND: Thank you very much, Mario. Olivier Crépin-Leblond speaking. And I welcome you all to this call. We are following up on our last call where we were discussing the EURALO Bylaws. Florian had provided us with some details and things. And today we're going to be looking specifically at the draft. Again, just a quick status from the latest draft from Florian Hule. And then we will discussing again the table of proposed quorum since we couldn't find consensus last time. We filled a table and we now have more information from a lot more people. So anyway, I'm just going to ask first if there are any additions or amendments to be made to the agenda?

And I don't see anyone's hand up so the agenda is approved as it currently is. And then the next thing in our agenda is to look at the

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

review of our action items from the last call. I should add in this is from the call on the 10th, time flies. Most of the action items are just a review of what we discussed during our last call and the different topics.

So we have a full review of what's been discussed so far. The funding, the decisions that have been made on funding and the decisions that we are now faced with when it comes down to quorum. There are no specific action items, just to follow up with the work we currently are undertaking. Are there any comments on this summary of what we have discussed until now since the beginning of this new cycle? I don't see anyone putting their hand up so then let's just move on and let's go straight over to Florian Hule.

And Florian will take us through the Draft 31.05, which is today's date, and the amendments that he has made and improvements he has made since the last time that we have spoken. I note that the draft is in Doc format. I hope that this is okay with you. If you can't see that there is the EURALO draft in PDF form that is currently on the screen. And I don't know if staff are able to quickly try and put this PDF also in the agenda? Link it to the agenda so if you can't see the Adobe Connect very well, you can reload the agenda and read the PDF directly. Florian Hule, over to you.

FLORIAN HULE:

Thank you. This is Florian Hule for the record. Since the last time, I've added two provisions as agreed upon. The funding provision in Article 6 of the Bylaw. It's called Resources and Liability. Again, we have to state which resources we are intending to use under Swiss law. And also, as

an added security measure, I put the liability clause in it. That's not really necessary seeing all associations under Swiss law nowadays are Limited Liability Associations, but it doesn't hurt.

OLIVIER CRÉPIN-LEBLOND: If I can just jump in. The Resources and Liability is part number six, page number three. And I just wanted to check with everyone, have I unsynced the document? Can everybody scroll through the document on the screen? Anyone? Can you scroll? I think now this is synced, isn't it, like this? Or is that unsynced? Nobody's answering me.

SILVIA VIVANCO: Sorry, Olivier, I'm checking with Mario. Mario, can you please let us know? He's controlling the AC room. If we are able to scroll individually?

OLIVIER CRÉPIN-LEBLOND: I can never remember whether the button has to be dark or the button has to be light. Alright, now someone else is scrolling, okay, maybe I have to click this, and then everybody should be able to scroll through the document. Alright, back to you, Florian, sorry about this. It's just to make sure that we can all look through this. Excellent, Roberto says now he can, okay, excellent.

FLORIAN HULE: Okay, great. Again, we agreed upon that the funding should be mainly done by ICANN so for now I've limited the sole funding process to

ICANN in Clause 6.1. I also put in, in 6.2., the “Association” so EURALO will not levy membership fees. So I think we agreed upon that as well in the former call. I’m not entirely sure but as far as I can see in my notes we did that.

Then in 6.3. I limited the liability. Again, that’s not really necessary but it doesn’t hurt if we have it. And 6.4. is only to emphasize that the money we receive will be managed by the Board. This does not limit the General Assembly to make any decisions because the General Assembly is the highest organ, or the highest body of the Association. And the last part, 6.5., is only to emphasize that EURALO intends to use the funds to reach its purpose, which is also mandatory under Swiss law. Yeah, and that’s the easy part.

OLIVIER CRÉPIN-LEBLOND: It’s Olivier speaking. Let’s then open the floor to any comments or questions on the easy part. So then we can move on afterwards. So, are there any comments or questions on these one, two, three, four, five clauses? Five articles? I don’t see anyone putting their hand up. The only thing I could say is on 6.4. The “Association” holds its estate, which is managed by the...” and I believe maybe we should make sure by saying, “The Association’s Board,” rather than—

FLORIAN HULE: That’s not really necessary, I can put it into exclamation marks because it’s the Board that’s defined in the rest of the document and from the definitions. So every time we use “Board” or “Association” that’s defined in the front part.

OLIVIER CRÉPIN-LEBLOND: Okay, it's Olivier speaking, so why is Association in quotes, and Board, not in quotes.

MARIO ALEMAN: Because I forgot to put Board in, yeah.

OLIVIER CRÉPIN-LEBLOND: Okay, so you'll put the Board in quotes, okay, perfect, thank you. Because there's always a concern regarding Board, ICANN Board is often what people refer to as "The Board" and the ICANN—

FLORIAN HULE: No, no, the Management Board of the Association.

OLIVIER CRÉPIN-LEBLOND: Okay, excellent, thank you. Olivier Crépin-Leblond speaking. Any comments? Anybody else? I don't see anyone putting their hands up, so back to you, Florian, thank you for these five clauses, five articles. Let's move on.

FLORIAN HULE: Okay, then up to the hard part. This will be Article number 12. This is the De-escalation Process and the Dispute Resolution which we talked last time. I ran it actually by two attorneys to make sure we got it right. They are okay with it. We have the five de-escalation steps. We could

emphasize a bit more that it's really a mandatory process but that's not necessary.

Regarding the last step for the General Assembly, I have to do a bit more research and to find a draft or some clause and some bylaw to use for that one. Because for now I've not really found a sufficient clause. So that would be 12.2.4. for the last de-escalation step from the Arbitration Board to the General Assembly, and from the General Assembly to the Court. So I will do a bit more research upon that one and try to find some way to formulate that.

OLIVIER CRÉPIN-LEBLOND: Okay, thanks for this, Florian. Olivier Crépin-Leblond speaking. Could you take us briefly through each of the clauses then? I know that people are able to read it, but just to make sure there's an understanding. I note that you've put a couple of commentaries in the text as well there.

FLORIAN HULE: Yeah. First, 12.1. is only to say that this agreement will be governed by Swiss law, that's actually a standard clause. Just to make sure that no other international law will interfere with it. Then we have 12.2.1. Which tries to summarize all disputes, disagreements and any claim arising from the Articles. So we try to cover as much ground as possible through the de-escalation process.

The first comment, and all these disputes will be referred exclusively to the Board in the first step, as agreed upon. The first thing I commented

upon is we should ask ourselves if we want claimants to have a Mandatory Board meeting. So by bringing forward the claim they would have the power to force the Board to meet at least once and discuss the claim. Again, that's optional.

Then the second clause is 12.2.2. If the Board is not able to resolve the dispute, or if the Board is not impartial, the dispute will be referred to the Ombudsman. If the Ombudsman is not able to resolve the dispute between a certain timeframe, it will be referred to Arbitration Board. The Arbitration Board will be picked at random or from volunteers. We discussed that provision the last time.

There's one minor step we have to make clear upon. Who is actually doing the picking of the Arbitration Board members? It's not hard to define then that the picking should be limited to volunteers or that it should be random people, but the hard part will be to make sure who has the power to pick or who will do that. And then if they are not able to resolve the dispute within the timeframe, or if one of the parties does not accept their judgment or their arbitration judgment to be more precise, it will be referred to the General Assembly.

And again, if the General Assembly will not be able to resolve the dispute, it will be referred to the court. And that's more or less it. I've put a maximum time, a cap, on 12.2.5. that any way if the dispute is not resolved within three months, the claimants can go to court. We have to put that provision in to the Bylaws because otherwise it would seem like we would exclude anyone from the option to go to court and that would be unlawful.

OLIVIER CRÉPIN-LEBLOND: Okay, thank you for this walk through. And so I now open the floor and I notice that Wolf Ludwig has put his hand up. So, Wolf, you have the floor.

WOLF LUDWIG: Thanks, Olivier, can you hear me?

OLIVIER CRÉPIN-LEBLOND: Very well.

WOLF LUDWIG: Yeah, okay. It's Wolf Ludwig for the record. Thanks a lot, Florian, for this update that looks quite good to me. It's very structured. It's a minor question whether we should in one case put Board in inverted commas or not. That's a formal detail I think we really do not need to discuss here. I think your new elaborations have made the structure quite clear.

And the following steps, I have one first remark on who should decide on an Arbitration Board. I think this should be an open call among the members. It could be very strictly confined to the Board, but maybe the Board may be composed of members who are already somehow biased. Therefore, I would suggest for the composition of an Arbitration Board as an interim step of conflict resolution, with the most logic way that

comes into my mind is make an open call among the members and let the members decide, if necessary vote, on the composition of this Arbitration Board.

And if the Arbitration Board will not come up with a solution on acceptable proposal then it, according to Swiss laws, goes necessarily to the General Assembly. And you made the 12.2.4., in yellow, “Regarding the General Assembly, some more research is necessary, there seems to be a difference between disputes between the GA choosing to participate in a dispute and its power to decide one, For instance, FIFA Statutes...”

Okay, let me just say, forget about the FIFA Statutes. FIFA Statutes in Switzerland are commonly meanwhile known as the major abuse of Swiss Association Law. So this is a completely different category. Over the last couple of years I drafted at least five bylaw versions for different associations, including EuroDIG, etcetera, and whenever I discussed with Association lawyers in Switzerland and asking about the key elements, they all and unanimously told me, there is one major principle or philosophy in Swiss Association Law which is, the community is the most considerate element, and you can trace it back to the Middle Ages in Swiss history.

The Assembly of a Community, the Assembly of an Association, according to Swiss philosophy and understanding, must always be the upper body. Therefore I don't think there is much more research in this direction needed. If you want I can give you the reference of at least one or two Swiss lawyers who have advised me previously. So this is a must, that General Assembly, if without any doubts, or must be without

any doubts, the upper decision making body on Association affairs and disputes.

And no court will enter into the material without a prior decision by a General Assembly. If the decision of the General Assembly will afterwards be challenged by the complainant, of course, then there is a last possibility to go and consult the Swiss court, but no court in Switzerland will ever enter into material without a prior decision of the upper decision making body of an Association. That's all for the moment, thanks.

OLIVIER CRÉPIN-LEBLOND: Thank you very much for this, Wolf. Next in the queue is Erich Schweighofer. And then Florian Hule will be able to respond to both comments. Or, Florian, did you have a comment to respond specifically to what Wolf has said?

FLORIAN HULE: Yes, I actually want to because he's brought a few things up.

OLIVIER CRÉPIN-LEBLOND: Okay, so then I'll let you respond to Wolf and then I'll give the floor to Erich Schweighofer afterwards. Florian Hule, you have the floor.

FLORIAN HULE: Thank you. Yeah, just to be more specific, the general principle is not in question. It's just I need to do more research on how to formulate it in

a way that it will hold up. Because in a way that the General Assembly will be able to do exactly that. And that we won't run into any problems regarding competence. It's more in the formulation. It's not the general principle which is in question. That's it for the moment.

OLIVIER CRÉPIN-LEBLOND: Okay, thank you. Next is Erich Schweighofer.

ERICH SCHWEIGHOFER: Thank you, Olivier. Erich Schweighofer speaking. I'm a bit wondering about this arbitration clause because the main purpose is always to have give them some power, decided it's prudent not just to do mediation. So in my opinion, this clause is a bit weak because it just can try to solve a dispute but not have any decision making power. And concerning Wolf Ludwig, it's true that the General Assembly can decide any dispute, but still they're a minority, right? Maybe of one third.

And the General Assembly having no decision making power at the end, of course they are out voted by two thirds. And under which conditions then this would (inaudible), which is slow. I guess it must be done for security. So this may be also a strong principle in all European Continental jurisdictions and maybe also in Swiss law. It's minority protection not so much of majority protection where the General Assembly can always handle the issue. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thank you for this, Erich. Olivier Crépin-Leblond speaking. Florian Hule?

FLORIAN HULE: Yes, the request for minority protection brings us right back to quorums, because since the General Assembly would decide upon a dispute in a General Assembly, there would be the question of quorums and decision making and, yeah. So regardless of the framing or the formulation of the clause in question we will end up in a regular General Assembly with that one.

OLIVIER CRÉPIN-LEBLOND: Okay, thanks very much for this, Florian. Olivier Crépin-Leblond speaking. Let me plead devil's advocate on this when it comes down to the selection of the Arbitration Board. It was mentioned that there could be a call for members of the Arbitration Board and then a vote by what I believe would be the General Assembly to choose who the members of the Arbitration Board are. Does this mean that the General Assembly would already have an influence on the making up of the Arbitration Board, and as you know, by choosing the judges, you somehow are able to choose the decision at the end.

And I wonder whether there might be? Remember I'm playing devil's advocate here, just asking open questions here. Could it be an angle to have random selections from the various members that have volunteered, that have come forward to be members of the Arbitration Board? Wolf Ludwig?

WOLF LUDWIG:

Thanks Olivier. It's Wolf Ludwig for the record. I wouldn't over stress the element of calling extraordinary General Assemblies. So if it comes to the point where we really need to select, as an emergency or as a way out measure, an Arbitration Board, it would be my opinion, over stressing members, then calling an extraordinary General Assembly to select members for an Arbitration Board. And then afterwards, after we have found these guys, and postponing the whole process or delegating the whole process to an Arbitration Board, and then they come up with a conclusion or decision, then calling for another extraordinary General Assembly again, is a little bit over doing and over demanding General Assemblies.

I think the easiest way then would be, if you really as a next step need something like the interim, the Arbitration Board, we can simply, online, make a call for nominations who should be part of this Arbitration Board. We could even say, should not be necessarily members of the existing Board, because there should be a sort of difference between the regular Board and the Arbitration Board.

And once there is sort of a decision or approval of such an Arbitration Board they should act, and then at the end of their clarification process, then the next General Assembly should be the next must option to proceed. But therefore I would clearly argue in favor of a selection of an Arbitration Board could be easily done by an online call and within 7 or to 10 days, etcetera, and via online tools, and it doesn't necessarily need to convene a General Assembly. Thanks.

OLIVIER CRÉPIN-LEBLOND: Thank you, Wolf. It's Olivier speaking. I wasn't commenting on convening a General Assembly. Of course, there would be just an online vote. But the question was, could it be better to have, instead of an actual vote of the members, whether it would maybe be better to have a random selection, to make it more neutral.

WOLF LUDWIG: It could be an option if it would be generally agreed. It could be an option.

OLIVIER CRÉPIN-LEBLOND: Okay, let's go over to Erich Schweighofer.

ERICH SCHWEIGHOFER: Thank you, Olivier. Erich Schweighofer speaking. I propose that we vote at the General Assembly on this Arbitration Board or maybe a bigger Board if necessary, and select people on a call before, and they shouldn't be or have to be members of EURALO, it could be also someone nominated outside of it but having some experience in these kinds of disputes.

It's not quite appropriate to select Arbitration Board when there's a dispute. It's much better to do it before and then they have people available that they can handle this dispute. And that they don't come under any time pressure so it's who's available and can be asked to deal with questions and hopefully we find some people who are interested in this kind of business on a voluntary basis. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thanks for this suggestion, Erich. It's Olivier Crépin-Leblond speaking. And I agreed with you until, as you were speaking there, but then one of the concerns I've had is if we have a standing Arbitration Board that has already been selected somehow, there's always is a problem that the Arbitration Board would not know the topic.

Because a dispute is sometimes on a specific topic and I wonder if the competence of a standing Arbitration Board would be put to the test in that they would not necessarily be people that would know about the type of topic that is being disputed. And if we're dealing here, yes, for more general disagreements within EURALO, I'm sure a standing Arbitration Board would be great, but if it's to do with a specific thing I don't know. I'm not saying no, I'm just saying, yeah, let's discuss this. Florian Hule?

FLORIAN HULE: Hi, this is Florian Hule. Regarding the pending Arbitration Board. Well, they could easily familiarize themselves with the topic in question since both the claimant and the other party will have to describe their claim or their counter-claim regarding the dispute. So, because of that I think that the pending Board would be able to build up competence and knowledge regarding the specific question.

OLIVIER CRÉPIN-LEBLOND: Okay, thanks very much for this, Florian. I don't know if we need to go to that level of detail but I guess we do need to choose on whether we

want, I guess the first question is, do we want someone from within the membership or do we want people that are completely independent? I would agree with what's been said so far, which is that having perhaps people that are completely independent would probably be more neutral than having members as such. Or it could be both, it could be anyone.

So, we shouldn't preclude members from being able to be members of the Arbitration Board, but at the same time we shouldn't restrict it to just members. When it comes down to continuity in the Arbitration Board, I don't see any reason now that you've mentioned it there, I don't see any reason why we shouldn't have a standing Arbitration Board composed of three people that we select at the beginning of the year, or at the AGM every year and have those people standing in for the one year.

So, an open call for an Arbitration Board, that might never be called during the year, and hopefully they will not be ever called during the year, but you know that they are there. Wolf Ludwig, you have the floor.

WOLF LUDWIG:

Thanks, Olivier. Wolf Ludwig for the record. We are now on the best way to make everything more complicated and complex again. Always being oriented via a potential worst case scenario. I think we should be satisfied if we the meanwhile at the next improvement get a regular Board with a few committed Board members. Please be always aware

that we do not have endless capacity of people and therefore we should not overdo it.

In my opinion, such an Arbitration Board is an emergency, it's sort of an emergency exit. It should only be convened when necessary and in a concrete case. And in my opinion, this would be a typical German eventuality policy, there may be snow in the middle of July, let's have an emergency taskforce for the most improbable case. And therefore I'm completely against such a heavy structure which would be perfectly in line. You would get a lot of support of most probably among German ALS's who all tend, by their culture and background, to go for heavy and whatsoever structures.

If you really like to keep the next version of the EURALO bylaws light and easy, we should not introduce even new recommendations or parallel structures. We have a regular Board and if the regular Board cannot resolve the problem then we need an emergency Arbitration Board.

I think we should simply include the option, if absolutely necessary, and in the context of a dispute resolution, may be opportune, then we can as a final measure emergency, but I would strongly warn from introducing such a parallel structure or body between a regular Board and an Arbitration Board into the bylaws as a standing, let's say, emergency commission. If it's needed, okay, let's make a call for members for it, but not introduce such a parallel structure. Thanks.

OLIVIER CRÉPIN-LEBLOND: Thank you for reminding us of the light nature of our bylaws, the aim to have lighter bylaws and not heavy handed bylaws. Olivier speaking. I would like to also point you to the chat where Silvia Vivanco has quoted from the APRALO, the Asia Pacific and Pacific Islands region At-Large Organization. They have a reference to mediation as well. It mentions that, “The Chair is empowered to initiate or take action as agreed to by the APRALO with regard to performance and remediation.

Any such actions must be done with due sensitivity and consideration to cultural differences throughout the globally diverse At-Large Community to the extent possible. Such actions may include but not be limited to 11.7.1, Discussion of the issue with the APRALO Member or Appointee. And next also it speaks here of a use of an impartial third-party for mediation.”

So we’re going in much further detail so far in our escalation. I’m not saying it’s bad but we also do have to keep careful about how deep we want to go on this. Erich Schweighofer, you have the floor.

ERICH SCHWEIGHOFER: Thank you, Olivier. Maybe we do more research on the possibilities of arbitration under Swiss law. Because if it’s only mediation then the proposal for Ludwig is fine, because it’s just a mediation procedure. If it’s really arbitration (inaudible), then we should have this Arbitration Board or Committee. And just a remark from other experience, it’s one of the many roles you have to do in an Association and it’s somehow not anyhow a separate Board at all, it’s just there to be available in

some disputes and to have a dispute body before a dispute arises is always quite helpful and welcome. Thank you.

OLIVIER CRÉPIN-LEBLOND: Thanks for this, Erich. Olivier speaking. I mean, by the time it reaches any requirement for an Arbitration Board it will have gone through the process of the EURALO Board itself failing to be able to bring the dispute to a resolution. The ICANN Ombudsman failing to bring the dispute to resolution. That already is a significant amount of time that will have passed, so you know, it might actually bring time for an Arbitration Board to be convened by then.

But let's please check, because as you've rightly mentioned, there is here, Arbitration Board, but if it was a Mediation Board maybe that would be a different thing. Or, just mention for an impartial third party mediation, and keep it a little bit more less defined, so as to have a little bit more leeway as to what happens then. Bearing in mind what Wolf said, it's highly unlikely that we'll reach a dispute that will go that far. It hasn't in the ten years, well, in EURALO I don't think in the history of it, in the sort of eight or nine years of the assertion there's been a need for this.

There certainly has been a need for the Ombudsman on some occasions, and I'm speaking as ALAC Chair in the past. Not specifically EURALO, but in other RALO's. But it never really went that much further. They went to some kind of a help, external mediation help, but one also has to then bear in mind any costs if one looks at professional mediation.

So, please, Florian, if you can come back to us with a thing on this, so, Arbitration Board and Mediation Board. The other concern I had here was 12.2.5. where there is a mention of three months at most or the party of the dispute wishes to appeal, sorry, if the dispute is not resolved within three months, and from experience I have found that things don't happen to go that fast at ICANN.

I don't know whether is three months mandatory time or could we perhaps make that a longer time than three months. Simply because often, mediation and such discussions take place at ICANN meetings and it often is actually a lot easier to resolve something face to face with the Ombudsman, let's say, than if one was to do a conference call where sometimes, you know, there appears to be less goodwill, just because of the very medium by which one is communicating. Florian Hule?

FLORIAN HULE:

Yeah, regarding the three months, I actually took them from the notes from the last time because in the last call there was the sentiment that it should be done quickly and that not more than three months should pass. There is no mandatory rule at all regarding the time cap. We can do it at a slower pace easily.

OLIVIER CRÉPIN-LEBLOND:

Okay. Thanks for this, Florian. Sorry, who else is this speaking?

WOLF LUDWIG:

It was my voice in the back. It's Wolf Ludwig for the record. Just to confirm, there is, on the timing, nothing foreseen, always please keep in mind basically we are an association based on volunteers. We are not doing this in our every day shop, 8 hours a day and 40 hours a week or 50 hours a week, blah blah blah. We are doing this handling of an association in our free time.

Therefore I wouldn't impose strict deadlines, and even if, as an example, if they would appeal, or somebody, a complainant, would appeal to the ICANN Ombudsman, I don't know whether there are stricter rules for the ICANN Ombudsman, how many weeks he can take to respond or to resolve a dispute. So, if it goes to other institutions which are not under our control, more or less, therefore it could easily be more than three months, up to six months, I would not really put a time limit into it.

But if we think or need to put any timeframe into it then I would say within six months. Within six months this can meet, if possible it can be solved within three months, would be perfect. If circumstances for whatever reason don't allow to solve an issue which is extremely complex within three months, so we would have a longer timeframe of six months, which in my opinion, would be more appropriate. Thanks.

OLIVIER CRÉPIN-LEBLOND:

Thanks for this, Wolf. Olivier speaking. Florian, if you could sort of explain this clause to me. I mean, is it a mandatory clause under Swiss law, the first one. And secondly, does this mean that, if I understand

correctly, if a dispute is not done within a certain amount of time, that automatically it will actually go to court?

FLORIAN HULE: No.

OLIVIER CRÉPIN-LEBLOND: The reason why I ask this question, I'm concerned, because obviously that, yeah, okay. You know, I just wonder about costs and stuff, who's going to pay for this? Florian Hule?

FLORIAN HULE: Yeah. No, it won't automatically go to court. The claimant would still have to sue. So it just opens the option for him to go to court. Again, there's no mandatory timeframe or time limit. We should set a time limit or timeframe for the decision of the Board, and if possible, for the decision of the Ombudsman, or until the Ombudsman should try to mediate or resolve this. Because otherwise we might run into some slight problems regarding the right to sue or to bring claims to court. But otherwise, no, there won't be a problem if we enlarge the time limit up to six months. That's fine as well.

OLIVIER CRÉPIN-LEBLOND: Okay, thanks for this. It's Olivier speaking. And it would be helpful, had we had the Ombudsman on the call to let us know what their time limits are. I have a feeling that there's a whole process at the Ombudsman level with various time factors that are taken into account. Could we

perhaps have, rather than inviting, I mean, it's a simple thing, could we please ask the Ombudsman Office what their timelines are for issue resolutions?

And I don't know if by that point we can just refer to these timelines. So, you know, if the ICANN Ombudsman is not able to resolve the dispute within the timeframe being the timeframe described by the Ombudsman Office, then the dispute can be referred to the Arbitration Board. We can then choose how long we wish the Arbitration Board or the Mediation Board, whichever way we're going to call it, it can choose how long they can take. My feeling is that a handful of months would probably be less than a handful of months, would probably be a good timeline, bearing in mind the volunteer nature of everyone here.

And then after that, when it comes down to the General Assembly making a decision, that becomes quite tricky because the General Assembly might take a month or two months or three months, I really don't know. I have no idea. Do you want to suggest timings for the next call, Florian. Or even suggest timings on the mailing list and see what people come back with. Could that be a good way forward?

FLORIAN HULE:

Yeah, actually I don't think, we don't have to suggest specific time limits. It's a bit vague but we can come up with a resolution regarding time which does not put us to a certain number of months or weeks. We could come up with that one. That's not really a problem. It would be safe that the Ombudsman and the Board has to come to a decision within an appropriate time limit. So that would do it more on a case

basis. So each case would be considered specifically and in each case an appropriate time limit would be determined.

OLIVIER CRÉPIN-LEBLOND: Thanks, Florian. Wolf Ludwig?

WOLF LUDWIG: Thanks, Olivier. Wolf Ludwig for the record. I entirely agree with the last remark and recommendation of Florian. I had a long discussion with Swiss lawyers on this point. Always in the context under consideration, let me try to keep a draft for bylaws as simple and short and light as possible. And then they always said, "Okay, if you are not for any circumstances introducing time limits, then you use "appropriate, in an appropriate or due course of time."

Then it's more or less automatically understood, it should be within a year between two General Assemblies. But it's called to be (inaudible), so if you have a problem and it should be treated as soon as possible, maybe there are people among the members who are troublemakers and the Board doesn't want to deal with them, so if they make a motion at a General Assembly, and say the decision, okay, we now delegate the Board to do something about it. And if the board is not coming up within (inaudible) with recommendation or resolution to the problem,

then the person can come back to the following General Assembly. So, at due course, if in the worst case extended to one year, and then of course after one year there can be serious questions why the Board didn't deal with the issue, didn't reach the problem, didn't come up

with a proposal, with a resolution, blah blah blah. But if appropriate time in volunteer structures can go up to one year maximum, so we can either introduce six months or we can also write something like, “in due course of time,” which means, in the worst case, up to one year. Just for clarification.

OLIVIER CRÉPIN-LEBLOND: Okay, thanks for this, Wolf. Olivier Crépin-Leblond speaking. I’m concerned we haven’t discussed even quorum on today’s call. These are important discussions though that we’re having here, so notes are being taken. Florian, is there anything else that we need to discuss on this Applicable Law and Dispute Resolution?

FLORIAN HULE: No, not that I can see at the moment, no. I will prepare for the next time two versions, one “within due time,” or “within appropriate time,” and one with the six months limit.

OLIVIER CRÉPIN-LEBLOND: Fantastic. Super. Thank you very much for this. I see this taking shape. It’s laborious, it takes time, but it is taking shape, so that’s really, really good. And I think what we might also have is to ask for feedback online on the mailing list as well, since not everyone who is in this Working Group is taking part in these calls. So in the follow up to this call this draft could be shared with people on the mailing list and people should be referred, of course, to this call, to know what we’ve discussed. Let’s just turn to the—

WOLF LUDWIG:

Olivier, I would warn, don't over stress it. Don't make consultation on such details. And if the people have not been involved in the details of the call, what we are now discussing almost for an hour, and having discussed it before, everybody had a chance if she/he is interested to participate at the Bylaws Taskforce calls.

If they don't have the time, if they have not—so we don't now go back and ask them on each detail. In my opinion, it doesn't make much sense. One, we have a first real draft, then let's go and bring it to the Board, and after the Board has discussed it let's submit it to the members. But I politically warn you for any such interim consultations on minor details. If people haven't understood the context they come up with ever strange ideas.

OLIVIER CRÉPIN-LEBLOND:

Thanks, Wolf. It's Olivier speaking. I think you might have misunderstood me there. What I was mentioning is we should refer people to this call, this document is in this call's agenda, so for those people that have missed the call, they should listen to the call and they should consult the document on the call. I was not asking to have a consultation as such, no, that's no way forward. Especially not a consultation outside this Working Group.

Okay, we have one minute until the top of the hour but I'd like to spend five minutes on the other big issue which is to do with the quorum. There is a link to the quorum table, that is in your agenda. And I've noted that there is actually some agreement on some of the quorum.

And there's some disagreement on some of the other levels of quorum. I see a few people are now clicking on the EURALO Bylaws/Table of Proposed Quorum. And so we're scrolling down to where the names are. So there's row number nine says, "Please fill the table below with your preferences for quorum."

And we've got Wolf, Matthieu, Olivier, Oskana, Erich, Roberto, Andrei and Sandra that have responded. In the first column, well, the second column, "Funded Face to Face Meeting Quorum." Everyone has answered that the quorum would stand at half of the total number of members in EURALO, so I think that we have consensus on this. So that would be fine.

And by the way, I've made a mess of the lines. The rows number 23 and 24, it was for voting and stuff and I kind of made a bit of a mess on this. I've used these two lines now to tally up the responses above. So for the funded face to face meeting quorum we seem to have consensus that a simple majority, but half of the number of members, constitutes quorum. For a Funded Face to Face Meeting Vote there was two splits. There was two thirds majority.

So, most people were asking for two thirds majority and one person asked for a simple majority, a half. And that's when we conduct a vote. And of course the concern I get for putting two thirds of the members voting is in order to have the right numbers when a vote takes place, for the winning vote to represent a certain number of people.

Wolf and I had a chat a bit earlier before this call, and felt that perhaps two thirds of people needing to vote for a face to face General

Assembly certainly is a good way to put pressure on people to go to a General Assembly. That's obviously quite required. But at the same time, if we don't reach this two thirds of people, what's important is actually to have what is a qualified vote. Wolf, would you be able to explain to me what that effectively means?

WOLF LUDWIG:

Okay, thanks, Olivier. It's Wolf Ludwig for the record. This is now really very complicated and it can be easily misunderstood. If you usually, in bylaw, association law, talk about two third majority, there are only in the two thirds a level of (inaudible) if usually reserved or it's prescribed for amendments of the bylaw you need a majority of two thirds of votes.

And for the dissolution of an association, the barrier is as high as that you need an extremely high—it's like changing a constitution of a country. It cannot be done by simple majorities. So this is for the really nuts and bolts and for the basics of an association, the (inaudible) must be, and it's prescribed by law, very high. But for simple voting procedure you do not necessarily need a two thirds majority, therefore the (inaudible) is usually for voting is in the first round, a qualified majority.

And a qualified majority, there are different scenarios for this. If you include abstentions then the whole bloody thing can become even more complex. You could easily have half of abstentions, or one third of abstentions, one third of counter votes, and then one third of votes in favor of. This wouldn't constitute a qualified majority. Therefore I think

we should go with a qualified simple majority, and this is already prescribed in the present EURALO Bylaws, in the current version of the EURALO Bylaws, and this could be more or less adapted because it would also be prescribed by Swiss law.

So let's keep the two thirds for the big things like bylaw amendments and dissolution, but otherwise it would be a qualified majority. And I suggest to introduce them as a technical term, qualified majority for voting.

OLIVIER CRÉPIN-LEBLOND: Thanks very much for this, Wolf. It's Olivier speaking. So just to give you an example, three choices, if one has three choices, and let's say a fifth of the voters vote for choice A, two fifths vote for choice B, and, oh, we've got it wrong here. Okay, let's do it again. A qualified majority effectively means that more than half of the electorate should be voting in favor of something for that to be passed.

So it means that if you only have half of the electorates that vote, you cannot pass something, if of that half of the electorate 51% goes forward with it. Because otherwise it would effectively mean that only 25% of the people voting, sorry yeah, of the whole membership, 25% of the whole membership, could push something moving forward. You always need to have at least 50% of the membership to vote in favor of something when it comes down to the expressed vote. Does that make sense?

And Roberto asks, the 50%+1 or plain 50%? I think it's plain 50% I think is what we need for a quorum. Okay, I don't see any response to this

and let's do a bit of research on qualified majority and bring that to the table for the next call that we'll have. Because I think that makes sense that the whole thing of two thirds, of course, would be needed for important votes like bylaws, two thirds of the electorate needs to vote. When it comes down to normal votes, standard votes, I just wonder why one would want to have two thirds for a quorum. We're talking quorum here. It just doesn't make sense.

And I know that I've put two thirds but come to think of it now, I've kind of changed my mind and thought it's just weird to have two thirds as a quorum. But if we introduce the qualified majority, then it effectively means that any majority should be enough votes that would include more than 50% of the people voting in favor of whatever is being voted on.

And now I'm starting to confuse people. It is late so thanks everyone for having been on this call. We've moved a little bit forward today and so that's good. Thanks for all your help, Florian, on that. And we will reconvene, now I realize, of course, the next few weeks are going to be quite busy with a number of events in Europe. I'm also cognizant of the fact that ICANN 59 takes place in three weeks time already. I don't know, do we still have time to have a meeting in two weeks' time? Florian, I think I'm going really come down to you. Should we have a call in two weeks? The week of the 12th? Interpretation is not possible after June the 6th. But we don't have interpreters.

WOLF LUDWIG: We don't need interpretation for this call. Florian responded, yes, possible for me. It would be also feasible for me so let's at least try it.

OLIVIER CRÉPIN-LEBLOND: Okay, so let's put a Doodle up for the week of the 12th. Yeah, let's do a Doodle up for the week of the 12th that would be great.

Okay, thanks everyone. Nine minutes past the top of the hour. It's very late where I am, which is in Western Europe. I'm sure it's even later further East. So, thanks for being with us and thanks for helping out. This call is now adjourned. Have a very good night.

WOLF LUDWIG: Okay, thanks a lot. Bye bye. Bye bye, everybody. And thanks, Florian.

SILVIA VIVANCO: Thank you very much, bye bye.

MARIO ALEMAN: Thank you everyone. This call has been adjourned. Please remember to disconnect all remaining lines.

[END OF TRANSCRIPTION]