
ICANN Transcription

Council Committee for Overseeing and Implementing Continuous Improvement

Wednesday, 25 May 2022 at 12:00 UTC

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NATHALIE PEREGRINE: Good morning, good afternoon, good evening, everybody. Welcome to the Council Committee for Overseeing and Implementing Continuous Improvement call taking place on Wednesday 25th of May 2022. In the interest of time, there'll be no local. We'll be taking attendance via the Zoom room. We received no apologies from this call.

Statements of Interest must be kept up to date. If anyone has any updates to share, please raise your hand or speak up now. If you do need assistance updating your statements of interest, please email the GNSO Secretariat. All documentation and information can be found on the wiki workspace and recordings will be posted there at the end of the call. Please remember to state your name before speaking.

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As a reminder, those who take part in the ICANN multistakeholder process are to comply with the expected standards of behavior. Thank you ever so much. And over to our chair, Olga Cavalli.

OLGA CAVALLI:

Thank you very much, Natalie, Good afternoon from Belgium, I'm visiting my son who lives here in Belgium. So I'm in the same time zone of most of those of you in the call. And thanks for being with us this midday, and morning, evening, afternoon for those who are away from here.

So the agenda is pretty much the same as before. We will continue with the work that we have been doing. We have a table with the workplan status. And as you can see, we are adding more greens in the table, luckily, in column Z. And the idea is to work on the revision of the recommendation 2 guidelines for good faith conduct.

And remind please the different status designations. You can see them in the agenda that was sent yesterday and also you can see them on the screen. I won't read it. You can just take a look at them, complete, partially complete, action decision, required, not applicable for action, implementation planned, implementation ongoing, and won't be implemented.

So any comments about the agenda, any suggestions of changes or edits? Nothing in that chair, no hands. So I will ask my dear colleagues, Ariel or Marika who would like to continue with our revision.

ARIEL LIANG:

Thanks, Olga. So, we will start with the 2.1.2. We actually talked about this recommendation the previous meeting. But after two weeks, I highly doubt anybody remembers the substance and what we discussed. So maybe we should just start fresh. And so 2.1.2, it says must—that's talking about the petition for Board director removal. So the Board director removal petition must be believed by the indemnified party to be true, be in writing, contain sufficient detail to verify facts, if verifiable facts are asserted, 2.1.2.4, supplies supporting evidence, if available, applicable, include references to applicable bylaws and/or procedure If the assertion is that a specific bylaw or procedure has been breached, be respectful and professional in tone.

So this recommendation provides the criteria or content of the petition. So these are the requirements the petition must meet. And below the two screenshots you see the content from the GNSO Council guidelines for Board director removal. So one guideline is for the removal of directors nominated by Nominating Committee, and then the other is the guideline for a director appointed by a SOs and ACs, and they have very, very similar language.

And here, I want to just show you this is basically the requirements for these petitions. And they're very basic and doesn't have a lot of requirements. So what the GNSO Council asked is the names and affiliation of the petitioner, the names and the terms of the affected director, the rationale that petitioner seeks to remove such a director and confirmation that the director was not subjected to another director removal petition so that there's no repetition of process, overlapping process.

These are some really basic requirements for the petition. But the key sentence I want to highlight here is that the petition shall include at least the following. And so this sentence is kind of repeated in both guidelines. And what I want to note here is it's not an exhaustive list of requirements this petition must meet, it's just the minimum requirements for the petition and additional criteria, additional requirements can be added. So there's a lot of flexibility there.

And then, because of this, staff assessment for 2.1.2 is it's not complete, but implementation is planned. And I will provide you the rationale for this. So first, both petitions are not in conflict with the Work Stream 2 recommendation, because as we mentioned earlier, it offers a wide discretion for inclusion of other requirements, criteria and materials to be provided by the petitioner. And there's no restrictive language to say that additional requirements for the petitioner are prohibited to or cannot be considered. And nothing prevents the petitioner to satisfy the Work Stream 2 recommendation following the process outlined in the guideline.

So first, the existing guidelines do not conflict with the Work Stream 2 recommendation. But because the GNSO Council guidelines didn't draw specific and explicit attention to these mandatory requirements in Work Stream 2, from staff point of view, we believe it is necessary to draw that attention to Work Stream 2, because these requirements are mandatory.

And at the same time, there's already building kind of consideration for the GNSO Council to review these guidelines on a periodic basis, or after decisional participant or empowered

community power was triggered. So there's opportunity to review these guidelines and update them. So that's why we believe implementation is already planned, because there's opportunity for the Council to update these guidelines and include these mandatory Work Stream 2 recommendations.

And because of this logic, what staff suggests in terms of completing this recommendation, we have offered two options. But this group can think of additional options. Or if you'd like both, we can do both as well. So it's not really you must choose one, we can do both or we can do something else.

So one option is we could update the GNSO Council guidelines by inserting a phrase in between the petition shall and include at least the following. So we just include this phrase, in addition to satisfying the requirements set out in recommendation 2.1.2 of the Work Stream 2 final report. So I'll just show you what I meant here.

So you can see this highlighted sentence with the red underline and then this is the additional phrase, it's in a box hovering above it. It's in addition to satisfying the requirements set out in the recommendation 2.1.2 of the Work Stream 2 final report. So just insert that in between shall and include so that we take into consideration these [inaudible] requirements for Work Stream 2. And the petitioner, they need to satisfy all these requirements to submit the petition.

So that's one option. And another option is we can simply update the GNSO website where all these GNSO Council guidelines are published, and will just include a note that the petitioner must refer

to the mandatory requirements outlined in the recommendation 2.1.2 of the Work Stream 2 final report when submitting a petition for removing a board director. So we can just update the GNSO website. And we don't need to touch the guideline itself. Maybe that's simpler. But we can also do both, just to be very precise. So that's the two options that staff is offering. And if you like them, then we can do one of these options or both. And if you prefer something else, we're open to suggestions as well. So that's the 2.1.2 related deliberation or analysis from staff side. I will stop here and see whether there's any comments, questions.

OLGA CAVALLI:

Thank you very much, Ariel. I see Manchu, she votes for both. I would suggest also both. I think the more clarification, the better. I don't know, apart from Manju, what do other colleagues think about this suggestion? And thank you very much for the suggestion. Let me check the chat. Manju says both. Hello, Thomas. Welcome. Desiree, "Looks good," but I think it's a comment from before.

Reactions. Should we take silence as yes, we like both? Thomas says, "I do not really have a preference." Okay. I suggest both. and Manju also. So other comments? "No preference," Antonia. Sebastien, plus one to both.

SEBASTIEN DUCOS:

Yeah, to both. Frankly, it's not like I have a—yeah, plus one to both, I guess.

OLGA CAVALLI: Thank you. Desiree, “No preference.” My suggestion for both is that it could be more clarifying to have two sources of information about the same issue. But it's only—not a specific reference, but I think it's more clarifying. Okay, so could we agree in both? I'll take silence as a yes. Okay, that's it. Thank you very much for that. Thank you, Ariel. Very helpful. And thank you for all the suggestions. So we keep both.

ARIEL LIANG: Sounds good. So, we'll just note, the current status, the CCOICI agrees that it's implementation planned. And then I guess we probably need the Council's go ahead, agreement that we're going to do both options. So that will be put forward as a CCOICI suggestion how to complete this recommendation. And then if the Council agrees, and we get this implemented, then we can switch the status to complete.

OLGA CAVALLI: I have a hand up from Thomas. Hello, Thomas.

THOMAS RICKET: Yeah. Hi, Olga. Hey, Ariel, thanks so much for presenting this to us. I mean, we've been indifferent and said that we like both options. So you've done a good job in presenting us with two options that are totally workable. But my question to you is whether you would prefer us to have an opinion. Maybe it's easier for you to have something to lean on and say, “Okay, we've got guidance that we should take one or the other,” in which case I would suggest that we go for option two, just for the sake of

picking one. But you tell us if it's easier for you to go back to your team with a clear direction on how to move forward.

OLGA CAVALLI: That's a waste comment. Thank you for that, Thomas.

ARIEL LIANG: Yeah. Thanks, Thomas. Very considerate. So definitely option two is simpler because we don't need to touch the guidelines themselves. And if we do update the guidelines, then I suppose the Council may need to have at least just general consensus or some kind of simple voting. But maybe we don't need to go for a full-fledged vote, but it will be an official procedure to update the guideline. So if we don't touch the guideline, and then we just update the website, probably it's faster and simpler. So that's my assumption and I welcome Marika and Julie's input on this as well in terms of procedure.

OLGA CAVALLI: Just one comment. My only comment would be if we don't update the guidelines, maybe people just don't see the website. Maybe it's just an idea. This is why I was suggesting that both could be more complete. Marika is saying nothing to add to what Ariel said. Plus one from Julie. Okay, just a comment. But if you think that with option two, we are okay, I'm okay with that.

ARIEL LIANG:

I do think Olga made a really good point, because sometimes people just dismiss what is on the website and then go straight to the guideline itself and when we circulate the guideline, we probably just circulate the PDF of the guideline and don't circulate the webpage where the guidelines are published. So there is a chance someone may miss that important point about Work Stream 2 recommendations.

So yeah, for the sake of completeness, even if it's a little bit less convenience, I think it's the right thing to do to do both options. And it can just be a simple consensus agreement by the Council that we go forward with both options. I don't see anything controversial about that, and probably wouldn't be too difficult to implement.

OLGA CAVALLI:

You can disagree with me. Just this is my suggestion for both. But it should be a decision from the whole group. Marika says "As this is unlikely to be controversial, the Council may consider this at the same time as it considers the status designations." Question from Marika.

MARIKA KONINGS:

Yeah, I can maybe speak to that. I was just noting, I think as well, the point you made I think is a good one. Indeed, having an online website may not be sufficient for people to pick up on it. And of course, it's easier just to add something to the website. Changing the guidelines takes a little bit more time. But I think from an approval perspective, I think we may be able to kind of present

this as a package to the Council. So I think this shouldn't be anything that is controversial. So if that is the case, at the same time as a group presents the status designations, it could also say, "Look, from this specific one, we actually took the liberty to suggest a way to implement this so we can actually note this also as one recommendation that has been implemented." Of course if at that point, the Council says we disagree or we think something else needs to happen, they could still do so, but this doesn't seem to be a controversial issue. So it might be a way of indeed capturing it on both places and doing that at the same time as a Council considers the findings of the CCOICI.

OLGA CAVALLI:

I see new generations coming to the meeting, which is very good. New blood. Manju says, "Hello kid." So my suggestion would be keep both for the reasons that we have explained. But of course, I would be okay with number two as well. Any comments, reactions to that? I see none. Thomas, would that be okay with you? Because you made a very good comment about it. Sorry to put you on the spot without warning. Okay, let's keep both and see what GNSO thinks. And we can go ahead.

ARIEL LIANG:

So I guess so we can proceed to 2.2.1. That's the next recommendation from Work Stream 2. And I'll just to introduce the text of this. It says recommendations for guidelines with respect to procedures for consideration of Board removal notices by SOs and ACs to include reasonable timeframe for investigation by

SO/AC Councils or the equivalent decision-making structures if the SO and AC deems that an investigation is required.

So this actually has already been covered by the GNSO Council guidelines. And when we talked about the guidelines in a previous meeting, you probably remember, there's like six different steps how a board director removal could happen. And step two is regarding a dialogue between the affected director, the petitioner, the Board chair, or vice chair, and a GNSO representative on the EC administration to investigate the matter. And then step three in the guideline talks about how the GNSO community can provide feedback on the petition.

So you will see the yellow box indicate the section number of both guidelines regarding these two steps. And just want to note that for the nominating director removal, there's additional feedback period for the GNSO community regarding whether the GNSO wants to be a supporting group that supports another group's position for removing a NomCom appointed director.

So there's an additional opportunity there too. So basically, all these guidelines provide the opportunity to investigate the matter, and also the opportunity for the whole GNSO community to provide feedback and input on the position. And that's why we believe this recommendation is completed.

And the second element of this recommendation is about a reasonable timeframe. And I will show you next, but maybe I can just quickly show you the text in the guidelines about GNSO community feedback on the director removal petition. So this is

the language in the guideline. And it's almost the same for both guidelines.

So basically, it just says the stakeholder groups and constituencies will be asked to provide feedback, opinions or comments on the merit of the petition. And there will be a time period, the 15th day into the petition period, that's the deadline to submit those GNSO community input. And then the Council leadership will work with the support staff to compile the comments, categorize them to make it easier for the entire Council to consider the GNSO community input for this petition.

And then 4.3.3, that's talking about the GNSO community is another opportunity to provide feedback on a petition from another group regarding a NomCom director removal. So this is not related to removal of a GNSO appointed director, but for NomCom there's opportunity to do that.

And then this is the timetable for basically conducting the dialogue and providing GNSO community feedback on the petition. And you can see it's day 10 into the petition period. It's a deadline for invites parties to have a dialogue. And then day 15 is the deadline for the GNSO community to provide feedback on the petition.

And it's a really short period of time to do both things, to do those investigations. Because it's an ICANN bylaw mandated deadline, is by I think day 21 of the petition period, each group must decide whether they support the petition or not. So that's why we have the really kind of short time period to conduct these two things. And that's within the timeframe required by the ICANN bylaws.

So yeah, so with these considerations and because the guideline already provided these elements regarding mastication and regarding the timeframe, so we believe this recommendation is completed. So I will stop here and see whether any comments, inputs, questions about this recommendation.

OLGA CAVALLI:

No comments in the chat? No hands. I think I agree that it's complete. But what do others think? Desiree says, "We certainly didn't want to change the bylaw mandated deadline." Manju agrees. Sebastien, "I agree. It looks complete." Antonia agrees. Flip agrees, Wisdom agrees. I think we are okay. Thank you for that, Ariel. And yeah, we agree that it's complete. Wonderful.

ARIEL LIANG:

Thank you. So staff will record this as completed based on CCOICI's assessment. And thank you for everybody's input. So we can move on to recommendation 2.2.2. The recommendation reads, "Period of review by the entire membership of the SO/AC provided that SO/AC organizational structure customarily provides review for individual members, otherwise period of review by those empowered to represent the SO/AC in decisions of this nature."

So this one is very much related to 2.2.1 because it's related to the GNSO community feedback on the petition. And we already saw the language in the previous recommendation. And as a reminder, section 4.2.5 in both guidelines provides instructions or guidance regarding how the community of GNSO can provide

feedback on the Board director removal petition. And so that's why we believe this recommendation is completed, because yes, that guideline provides guidance regarding how to let the entire GNSO community membership to provide feedback, input on the merit of this petition so that the Council can take this input into consideration when making a formal decision of whether to support or object to such a petition. So that's why we believe this one is completed as well.

OLGA CAVALLI:

Many thanks, Ariel. Comments, reactions? Just reading the whole rationale. Okay, so I myself agree with the suggestion made by staff assessment on 2.2.2 as complete. I think we're okay. And let's take silence as that we agree. And then maybe some reactions in a moment. Agree from Sebastien. Desiree agrees. Antonia and Flip. Okay. Thomas. Thank you. Okay, I think we have enough momentum about the agreement. So let's go on.

ARIEL LIANG:

Thanks, everybody, for the input. So 2.2.2 is an easy one. And now we're at 2.2.3. The content is consistent and transparent voting method for accepting or rejecting a petition. Such voting may be by the entire membership, or those empowered to represent the SO/AC in decisions of this nature. So, again, from staff point of view, we believe this recommendation is also completed, because the GNSO Council guideline regarding step four, the Council decides whether to accept or reject the director removal petition, has already covered the voting method and different details, how the decision can be made.

And in particular, that section 4.2.6 in both guidelines, it talks about the Council decision on whether to accept petition. And then also in the NomCom director removal guidelines, section 4.3.4 is regarding how the Council can make a decision on whether to become a supporting decisional participant for a petition from another group regarding NomCom director removal. So it covers this voting method.

And maybe I can show you how it looks, like because I didn't take screenshots of that, because it's quite long. So you can see this is the SO/AC director removal guidelines. So basically a guideline how to remove a GNSO appointed board director. So it says the Council need to meet no later than the 20th day of the petition period to make such decision. And also, it talks about the voting threshold. So in order for the Council to accept such a decision, it needs at least three fourths of the GNSO house that appointed such a director. Nevertheless, the full council will participate in this vote. So the voting threshold is mandated in the ICANN bylaws and we repeated this bylaw requirement in the guideline as well.

And following this is regarding the factors were considerations when the Council take the vote on whether to support or reject such petitions or the rationale why such a petitioner seeks to remove the director and whether there's dialogue happened between the director, the Board chair and the GNSO representative on the EC administration. So one of the investigation element, whether that was done.

And then also the other feedback, input, views exchanged during the dialogue. And also feedback, views, input received from the GNSO community regarding the petition, and in the importance of

the matter for the GNSO community, and also other factors deemed relevant by the GNSO Council. So the decision making needs to take into account all these elements.

And then I think this part of the section talks about if Council decides to accept the petition, it needs to also request the ICANN to hold a teleconference call prior to the community forum to discuss the matter with the entire ICANN community. So that's bylaw required elements.

And I won't talk about the other part of this guideline. But you can see that the guideline provides a pretty good detail how the Council can conduct such votes to decide whether to accept or reject the Board director removal position. So that's why we believe 2.2.3, this recommendation is completed as well. So I will stop here and see whether there's any reactions, comments, questions for this recommendation.

OLGA CAVALLI:

I agree with the rationale and I agree that it's complete. Comments, reactions? No hands up. Manju, since it's a green dot, I think it's okay. Right? I'm not good with these reactions. I never see where to raise hand and all that. Thank you, Antonia. Agree. Manju agrees. Plus one from Sebastien. Wisdom agrees. Thank you. Thomas agrees. I think we are in agreement. Flip said he will be back in a moment. Desiree agrees I think we can move on and then check with Flip If he's okay with this. Oh, agrees. Okay, you're back. Thank you. Perfect agreement.

ARIEL LIANG:

Thank you, Olga and everybody, for the inputs. We're going very speedily. We're almost at the end of recommendation 2. And I think kudos to the drafting team that developed all these guidelines. So that's less work to do for the Council at this point in time. So definitely kudos to them.

This is the last recommendation, 2.2.4. It says documentation of the community process and how decisions are reached. So that's regarding when the Council made the decision whether to reject or accept the petition, it needs to have documentation about the process itself, and also inform the EC administration and other decisional participants so that they can reference all these materials and understand how the decision was reached.

And that, we believe, from staff's perspective, is also completed, because section 4.2.7 of both guidelines provide guidance regarding how the GNSO can inform the community and other decisional participants and the EC administration regarding the acceptance of the director removal petition. And in addition for the NomCom director removal guidelines, there's additional an additional step if the council decides to be a supporting decisional participant for the petition from another group, then there's a notification to ICANN, other decisional participants and EC administration regarding the acceptance of that petition.

So that's why we believe this is completed and then maybe I can take you to the guideline itself so you can take a look how the language looks like. So it's 4.2.7 in both guidelines. So we're looking at the guidelines for GNSO appointed Board director removal.

So it says within 24 hours after the decision is made regarding the acceptance of the petition, the GNSO representative on the EC administration shall promptly provide the petition notice to the EC administration, other decisional participant and ICANN Org, and in the notice it must include the petition, the rationale for the petition, the Council decision as supporting rationale in reasonable detail, the contact information for the EC administration's GNSO representative, a conference call prior to the community forum as requested, and statement as to whether the community forum is to be held during the next ICANN public meeting.

So this is some of the requirements for the petition notice. And I just wanted to highlight that it needs to include the rationale for the petition and also the GNSO Council's decision and supporting rationale in reasonable detail so that these two items satisfy the requirement for 2.2.4 of the Work Stream 2 recommendation. So that's why we believe this recommendation is also completed. And I will stop here and see whether there's any comments, input, reactions.

OLGA CAVALLI:

So the text that you just read with all those details that will be informed is what we say it's informed. So this is what we're referring. Can you go back to the slide, please? When we say inform the community, it would comprise all these points, bullets that you just showed? Okay.

ARIEL LIANG: Yes. So the bullets I showed is—so to inform the community, there needs to be some kind of official notice or statement from the Council. And then the guideline provides what needs to go into those notice, and in particular, the rationale why the Council decides to support the petition, it needs to include there, and also the original rationale provided by the petitioner. So those are all required elements for such a notice. And so in that way, it serves as the documentation of the process how the decision was reached.

OLGA CAVALLI: Okay. Comments, agreements, reactions? I don't want to influence the audience. Okay, I see no reactions. I personally think that I agree with the fact that you consider it complete. Sebastien, "Looks complete to me too." Desiree, "Seems complete." Manju, thumbs up. Flip, "Indeed." Plus one from Antonia. Thomas, plus one. Wisdom, "Good." Okay, I think we are in agreement. Thank you very much for that, Ariel.

ARIEL LIANG: Thanks, everybody, for the input. So we have successfully completed the assessment of recommendation 2 of Work Stream 2. So I'm wondering from Marika or Olga, what you think, should we continue and start tackling recommendations 6? Or should we stop at this point and give folks back some time? I'm open to suggestions. And I just want to note that for recommendations 6, there's no slides. My original plan is to just look at the background briefing document because it provides pretty sufficient detail. And also, these recommendations are much more straightforward

compared to recommendation 2, because it's related to the existing practice and accountability related procedure in the GNSO Council. So we don't really need a lot of refresher or background briefing on these. They can just be talked about amongst ourselves. And I see Desiree says "Some extra time is always appreciated." I'll stop here and see whether others have input.

OLGA CAVALLI:

Thank you very much, Ariel. And thank you, Desiree, for the comment. My suggestion would be that we stop here. Marika, what's the idea for the weeks before the ICANN meeting? Are we having CCOICI meeting right before ICANN, or we're just meeting there? What's the idea for the agenda?

MARIKA KONINGS:

Thanks, Olga. The next meeting is scheduled in principle for Wednesday, the 8th of June at the moment. But of course, if that impacts anyone's travel or work leading up to the meeting, we can of course discuss if that doesn't work. I think we haven't scheduled the next meeting yet. But I think the idea is to give people the week off after the ICANN meeting and basically push it to—I'm looking probably at, I don't know if Nathalie has the dates at hand, because I remember talking to someone about that. And I'm just looking at my calendar.

So I think that takes us kind of two weeks after the Hague meeting, so people have the week after off and then kind of restart conversations again. that's at least at the current planning. But as

said, if there are challenges with meeting the week before the ICANN meeting, we can of course reconsider that.

OLGA CAVALLI:

Do we have due dates for our work that we have to comply with, something that we have to have in mind in relation with our agenda?

MARIKA KONINGS:

No, in principle, not. I think we're actually going pretty smooth. As a Ariel said, we're going through these quite swiftly. From my perspective, if we could have the meeting on the 6th of June and try to get through the accountability recommendations—and I'm probably looking at Ariel, I think quite a few of those are also straightforward and already being dealt with.

So if we could kind of do that, because then I think the last remaining item is to look at the human rights framework, which is probably a bigger question. And we probably need a bit of time as well from the staff side to get our head around it and see how to best frame that conversation. So if people are willing and available, it would be good to meet on—I think that's the 8th of June. And then of course, we would reconvene after, we can give everyone maybe a break after the ICANN meeting to take a rest before we restart conversations.

OLGA CAVALLI:

Thank you very much, Marika. My suggestion, if you agree, we could start here and reconvene in two weeks and go on with our

work. And then after ICANN meeting, we can see—in two weeks, we can decide when is our next meeting. What do you think? Does that sound as a good plan? I see Sebastien nodding. Thumbs up. Check the chat.

Sounds good for Manju. Antonia agrees. Okay, I'd take silence from the rest of the group as agreement. So we have 10 minutes for you to your day. So thanks for all the work. Thanks very much, Ariel, Marika, and all staff for preparing all these documents which are very clear and very helpful to understand what we have to decide.

Thank you for the group for all the comments and agreements. Have a nice rest of the day and nice weekend. We meet in two weeks. Bye.

NATHALIE PEREGRINE: Thank you all for joining. This concludes today's call. Have an excellent rest of your days and evenings. Take care, everyone.

[END OF TRANSCRIPTION]