

Registries Stakeholder Group Statement



Pilot Holistic Review Draft Terms of Reference

Date statement submitted: **10 November 2022**

Reference url:

<https://www.icann.org/en/public-comment/proceeding/pilot-holistic-review-draft-terms-of-reference-30-08-2022> .

Background¹

The Third Accountability and Transparency Review Team (ATRT3) recommendation to initiate a new Specific Review, the Holistic Review, along with the Board direction to implement it as a pilot, will have implications for various community structures and groups. These implications include, for example: community members' participation as part of the Pilot Holistic Review Team for a period of 18 months; engagement and input of Supporting Organizations, Advisory Committees and the Nominating Committee based on the scope of work of the Pilot Holistic Review Team as stated in the Draft Terms of Reference; and potential implications on how the various structures are organized and evaluated in the future.

Considering the potential implications on the ICANN structures and work, the Board is seeking input on whether the Draft Terms of Reference seems fit for purpose, and whether it is tailored to the community's expectations based upon ATRT3 recommendation 3.5. The ICANN Board would also welcome input on the Pilot Holistic Review scheduling and timing in light of other community and stakeholder work.

As set out in Section II of the [Pilot Holistic Review Draft Terms of Reference](#), the ATRT3 recommendation 3.5 focuses on four objectives: (1) the effectiveness of collaboration mechanisms between ICANN structures, (2) the structures' accountability to their members and constituencies, (3) continuing purpose of structures, and potential changes in structures and operations to improve the overall effectiveness of ICANN as well as ensure optimal representation of community views, (4) continuous improvement efforts of structures.

Documents

[Draft Terms of Reference for Holistic Review Pilot \(pdf, 202.59 KB\)](#)

Holistic Review webinar (11 October) : [recording and slides can be found on the wiki](#) .

Related RySG comments

[RySG comment on the Third Accountability and Transparency Review Team \(ATRT3\) Final Report](#) (31 July 2020)

[RySG comment on the Third Accountability and Transparency Review Team \(ATRT3\) Draft Report](#) (31 January 2020)

[RySG comment on Updated Operating Standards for Specific Reviews](#) (19 February 2019)

[RySG comment on Operating Standards for ICANN's Specific Reviews](#) (2 February 2018)

¹ Background: intended to give a brief context for the comment and to highlight what is most relevant for RO's in the subject document – it is not a summary of the subject document.

Registries Stakeholder Group Comment

The Registries Stakeholder Group (RySG) welcomes the opportunity to provide comments on the Pilot Holistic Review (PHR) Draft Terms of Reference. The RySG comments are based on and largely in line with the comments prepared by the ccNSO Council on the PHR Draft Terms of Reference.

I. Summary

1) Do you support the Pilot Holistic Review Terms of Reference as drafted?

The RySG cannot support the Pilot Holistic Review Terms of Reference until fundamental concerns are first addressed by the ICANN Board and staff. (see below).

2) Does the Holistic Review Program outlined in Section II of the Draft Terms of Reference provide a clear approach to accomplishing the ATRT3's objectives, as set out in the same section, while addressing the information gaps identified by the ICANN Board set out below?

No. The RySG believes that the proposed approach is anything but clear. We do not understand the motivations of the ICANN Board and staff for apparently glossing over important procedural steps for such potentially impactful work. The RySG notes that moving directly to a pilot from a recommendation, with obvious significant open questions, is not transparent, efficient, nor ultimately effective. The RySG recommends a 3-phased process of first clarifying the scope for the review, second agreeing on the approach to a pilot, and third conducting the pilot. Likewise, we are concerned that the current proposal, if pursued without clarification and due process, would be at risk of undermining the transparency and accountability values that should be at the core of ICANN's bottom-up, multi-stakeholder process.

3) Do the steps and the deliverables associated with each ATRT3 recommendation 3.5 objective, as described in Section II of the Terms of Reference, clearly outline the scope of work for the Pilot Holistic Review?

No (see above).

4) Do the steps and the deliverables associated with each ATRT3 Recommendation 3.5 objective, as described in Section II of the Terms of Reference, explain clearly how Supporting Organizations, Advisory Committees, Nominating Committee, as well as their constituent parts will participate in the process of establishing a Holistic Review Program?

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II. General observations on the Pilot Holistic Review

The RySG believes that the proposed Draft Terms of Reference for the proposed PHR do not set out a pilot program. Rather, the current Draft Terms of Reference meld three different and distinct tasks into a single initiative. As it currently stands, the starting conditions for the Pilot are sub-optimal.

The RySG's view is that the lack of clarity and other deficiencies will mean there is a high risk that the majority of the work of the PHR will be taken up arguing about its scope and intentions. The RySG believes that a Pilot is not the appropriate place to address such fundamental issues. Rather, the purpose of a pilot is to identify gaps and flaws with a proposed way of working and to course-correct before moving forward with a full effort.

Therefore, the **RySG recommends a 3-phased process of first clarifying the scope for the review, second agreeing on the approach to a pilot, and third conducting the pilot.**

Scope and Dependencies.

It is the RySG's understanding that – as noted in Section II Background – a number of community groups have varying “interpretations of the intended scope and purpose of the Holistic Review.” This divergence in interpretation was confirmed by the questions, responses and discussions of community members, members of ATRT3 and staff during the 11 October 2022 webinar. For your reference, we have included a summary of some questions and statements from the webinar.

It is also our understanding that the varying interpretations relate to the scope of the review, specifically whether or not to include a review of the purpose and structure of SOs and ACs and their constituent groups in the Holistic Review and what the impact would be of such a review (some of the participants on the 11 October webinar even referenced the 2002-2004 Evolution and Reform Process, which resulted in a complete redesign of ICANN). The RySG also joins those voices on the webinar, noting a lack of clarity around the scope and power of the review, which are fundamental to any work.

Regarding reviewing the purpose and structure of the GNSO, we note that this is one of the core questions of “Organizational Reviews” (ICANN Bylaws section 4.4). The RySG believes that the implications and impact of inclusion of purpose and structure in Holistic Reviews must first be understood and agreed upon by potentially affected parties. **It is inappropriate for this work to be done within the PHR.** Without proper phasing and gating, there is a high risk that this topic will adversely impact the Pilot itself and that it will be very difficult to mitigate any outcomes from the PHR that sections of the community disagree with.

Further, it is clear from the Scorecard document that “A Holistic Review should also be looked at in light of other dependencies, including those relating to, or included in, other Specific and Organizational Reviews and **related workstreams** (emphasis added).” **Again, it is inappropriate for this work to be done within the PHR.**

To understand these and other dependencies and hence the scope of the Holistic Review and a PHR, there should first be a fact-finding process. This could map all activities related to an item to be

reviewed within the Holistic Review and a PHR. Such fact-finding would lead to understanding if and/or how various workstreams and/or processes focus on the same element(s) included in the scope of the Holistic Review and a PHR. For example, SO/AC accountability is a topic of the Implementation WS 2 Accountability, the Holistic Review, part of the evolution of the Multi-Stakeholder Model initiative and is a component of Organizational Reviews (see also the scorecard pages 9 and 10). Initiating the PHR without a thorough understanding of the interdependencies and the impact on the review itself risks significant duplication of work, re-litigation of matters already agreed upon, and undermining the purpose of conducting a PHR.

The RySG is also concerned by the omission of external review of structures moving forward. This is a concern the RySG raised in previous comments on the ATRT3, and we are conscious that this omission stems from the ATRT3 recommendation. However, given the complexity of the process and challenges we have identified with the Holistic Review, the RySG feels it is appropriate to reiterate this concern. The RySG understands and agrees that a program of continuous improvement is important and appreciates that structures have the option of including external review in their continuous improvement efforts. However, the RySG is concerned that **not mandating instances of external review risks mitigating the effectiveness of continuous improvement programs and encouraging capture of those groups.**

The RySG also understands from the Scorecard document that this major initiative is presented as a 'Pilot' to "remove the initial dependency on amending the Bylaws before the review can proceed. This will also allow for better scoping of the Holistic Review as a Specific Review within the Bylaws. Though no Bylaws change is required to initiate the Holistic Review pilot, there will still be a large dependency on widespread ICANN community participation in the piloting of the first Holistic Review."

While some might support avoiding Bylaws changes by calling this exercise a "Pilot", the RySG firmly believes that trying to structure the effort as one process where there is a real lack of clarity on scope and dependencies will lead to members of the PHR team focusing on interpreting, discussing and negotiating the scope of the PHR without any real feed-back and support from the community groups. In addition, while a "Pilot" would avoid a Bylaws change, it should then be fit for purpose and function as a pilot, NOT as essentially a full-fledged Specific Review with the associated scope and weight to outcomes.

Structure of the Pilot Holistic Review and volunteers.

It is the understanding of the RySG that the PHR is expected to include at least the following three components:

- Address "information gaps",
- Develop a program for review elements,
- Conduct an assessment and report using the elements from addressing the "information gap" activities and using and testing elements from the holistic review program.

The RySG notes that the skills and experience to complete one work item may differ completely from those required to complete another one. For example, developing reviews and conducting a review on continuous improvement, requires people with a different skill-set, knowledge and experience to those

required to consider how various SO/AC would be held accountable for implementing the recommendations from the Holistic Review.

Second, based on the Terms of Reference of the PHR, 21 volunteers are expected to be actively involved for 18 months. This not only impacts them and their community group, but, maybe more importantly, the organization for which they work. In addition, the community groups are expected to provide feedback and updates during these 18 months and will therefore need to monitor progress actively. With the uncertainties already discussed in this process, it will be the subject of extensive lobbying, negotiations and possibly conflict and disagreement within and between various stakeholder groups. All of this will draw large amounts of community energy and attention and require large amounts of work from all volunteers selected for the duration of the PHR as proposed to meet the specified timeframe.

The RySG believes that both aforementioned aspects with respect to members of the PHR volunteers and expectations of the RySG and other groups, will create a natural bias of the review team towards volunteers from larger organizations. The RySG also believes that expecting the RySG and others to stay actively involved over 18 months on top of their priority work items, is unrealistic.

Third, one of the questions the PHR Team is expected to answer during the PHR is around budget, resourcing etc. In the view of the RySG this is a specialist area in which an SO or AC should appoint subject matter experts who may be different from those appointed to the PHR Team.

Fourth, the RySG highlights our understanding of a pilot – to identify gaps and flaws with a proposed way of working and to course-correct before moving forward with a full effort. In addition to the different skill sets required by each phase of this effort, the RySG believes it is important to have different participants in each phase to ensure that the instructions and work from the previous phase is well understood. If the scope and tasks are not clear enough for “fresh eyes” to understand, then it suggests that the review is poorly scoped. In order to properly future proof any Holistic Review, there needs to be a distinction between the people scoping the review and conducting the review.

III. Detailed observations on the PHR Terms of Reference

In addition to the general observations above, the RySG makes the following detailed observations with respect to the proposed Terms of Reference. A fundamental concern throughout is the scope and weight of the proposed PHR. Some language seems to suggest that the PHR is not of itself an actual Specific Review, yet in other places in the document it seems clear that it is, in fact, an actual Specific Review with the associated weight to outcomes. These would be two significantly different efforts and certainly impact the approach to the PHR.

ToR Section II - Mission

Whilst this is the mission for the Holistic Review set out in the ATRT 3 report, it is unclear whether it is intended to be the mission for the PHR. Further, of course, it has already been acknowledged that there

is considerable variation in the interpretation of scope and purpose of the holistic review and clearly the same issues arise in respect to the PHR. For example, Bullet Point 3 implies a structural review of SO/ACs. It is unclear what the status of any recommendations on structure would be, but the RySG believes that any recommendations in respect to the structure of the GNSO is a matter for the GNSO and such a process should at a minimum include similar consultation mechanisms as are currently in place.

ToR Section II - Objectives, Deliverables & Timeframes

This suggests that the PHR will address “information gaps”. As noted above, the purpose of a review (whether pilot or regular) should not be to address information gaps, but rather to run a process and identify gaps to be addressed in future.

Bullet Point 3 indicates that the PHR should consider dependencies and how they would factor into the scope of not just future Holistic Reviews but also into the actual PHR itself. Again, this is work that should not be done within the PHR but must, of necessity, take place prior to the launching of a pilot.

Bullet Point 4 asks the PHR to propose the skill sets required for future Holistic Review teams. This implies that the PHR is not of itself an actual review yet in other places in the document it seems clear that it is, in fact, an actual review. In any event, nowhere is there any mention of the skill sets required for members of the PHR team. Even if it is NOT an actual review there is significant work to be done to ensure that those on the team have the necessary skills to conduct it.

It appears that all of the objectives and deliverables listed in the 8 bullet points are requirements for what a Holistic Review should do. The RySG believes that such work should be carried out prior to the launch of a PHR and that the PHR should be used to test whether the objectives and deliverables decided on are actually workable. The RySG believes that the work currently being contemplated as a PHR is better undertaken through a staged process by a Holistic Review Structure Cross Community Working Group.

ToR Section II - Objectives, Deliverables & Timeframes - Holistic Review Program (subheading)

Bullet Point 4 tasks the PHR with developing a program under which a review of changes to SO/AC structures and operations would be done. Whilst there has been an acknowledgement that there are differing views about whether ATRT 3 recommends that a holistic review should examine SO/AC structures, this Bullet Point seems to be saying that a holistic review should review structure. In respect to this, please see our comment above on the Mission set out in the ToR.

Objective and Deliverable chart

The deliverables listed against the objective ‘Pilot Holistic Review’ are NOT deliverables one would expect from a pilot but rather matters resulting from a structuring exercise or full Specific Review. As we say above, this work should be undertaken by a CCWG tasked with structuring the intended PHR but clearly and specifically **NOT** tasked with conducting any actual review, whether a pilot or otherwise.

The deliverables listed against objective A – of these, 2, 3 and 4 are relevant to the structuring of a review. Point 1 is an actual review matter and not appropriate at the planning stage.

The deliverables listed against objective B – of these, 2, 3 and 4 are relevant to the structuring of a review. Point 1 is an actual review matter and is inappropriate at the planning stage.

The deliverables listed against objective D – of these, 2, 3, 4 and 5 are relevant to the structuring of a review. Point 1 is an actual review matter and is inappropriate at the planning stage.

IV. Recommendations

The RySG is supportive of the recommendations proposed by the ccNSO Council:

1. Set up a **Holistic Review Structure Cross Community Working Group** to:

- Phase 1 - ***Define Scope of the Review, Identify Dependencies, and fact-finding***. Discuss and reach an agreement on scope and dependencies and research the current state of affairs with respect to topics to be included and dependencies to understand what will and will not be reviewed.
- Phase 2 - ***Define the approach to and methods for the Pilot Review***. Based on the scope, develop and define the approach, methods to be used, including whether external parties should be involved and the respective roles of review team members, community, Org and Board. The criteria to assess whether the Pilot Holistic Review is successful should be developed during this period.

2. **Set up a Pilot Holistic Review Team** to:

Conduct the Pilot Holistic Review as defined during Phase 1, using the method and approach agreed in Phase 2 and evaluate the outcome against the criteria developed in Phase 2.

The timing and schedule of the PHR will need to be re-assessed in light of the above.

Annex: Observations on the 11 October Webinar.

The comments paraphrased below were made at the [11 October webinar](#). They indicate a lack of understanding (even amongst those who were members of the ATRT3 team) about what the Holistic Review (HR) recommendations are supposed to achieve and what the purpose of this pilot is.

- “We will be doing something that has not been done since 2002 when a full structural review led to ICANN 2.0.”
- “The HR is to review the effectiveness of the Continuous Improvement (CI) efforts of SOs and ACs, not to change the SOs and ACs themselves.”
- “Should we use the public comment phase to suggest structural changes to SOs?”
- “The HR is not a way to shape or review specific items within an SO or AC but should address how CI is going.”
- “But how can the HR do this when there has been so little time for CI exercises to be put in place?”
- “The reason for calling it a pilot is that the bylaws would need to be changed before doing it. In reality, it is not a pilot – we are doing an HR – it is named a pilot, but it is a real review.”

Questions were left unanswered or left for the pilot review itself to decide, including

- Why is there a lack of independence – why self-assessment only?
- What is the mandate of the pilot HR team?
- What will the status of any recommendations be?
- Why not design it first?

Summary of Submission:

The RySG cannot support the Pilot Holistic Review Terms of Reference until fundamental concerns are first addressed by the ICANN Board and staff. The RySG believes that the proposed approach is anything but clear. We do not understand the motivations of the ICANN Board and staff for apparently glossing over important procedural steps for such potentially impactful policy work.

The RySG notes that moving directly to a pilot from a recommendation, with obvious significant open questions, is not transparent, efficient, nor ultimately effective. The RySG recommends a 3-phased process of first clarifying the scope for the review, second agreeing on the approach to a pilot, and third conducting the pilot.

Likewise, we are concerned that the current proposal, if pursued without clarification and due process, would be at risk of undermining the transparency and accountability values that should be at the core of ICANN’s bottom-up, multi-stakeholder process.