

**DETERMINATION BY THE
BOARD ACCOUNTABILITY MECHANISMS COMMITTEE (BAMC)
RE: URGENT CONSIDERATION OF
RECONSIDERATION REQUEST 24-1**

11 April 2024

I. Introduction and Brief Summary

The Requestor, Sergio Walter Salinas Porto, seeks urgent reconsideration of alleged ICANN staff action regarding a pilot travel policy initiated by the At-Large Advisory Committee (ALAC) for selecting ALAC funded travelers for the ICANN80 Public Meeting. In Request for Reconsideration 24-1 (Request 24-1),¹ the Requestor alleges that ICANN staff facilitated implementation of a revised travel policy “without properly warning about potential conflicts with ICANN’s mission” and did not “properly involve the community in the decision-making process.”² In addition, the Requestor claims that “the newly implemented travel policy significantly constrains our ability to participate equitably in ICANN meetings by relying on the discretion of ALAC leadership to decide who gets to travel to those meetings.”³

The Requestor asks that Request 24-1 be considered on an urgent basis pursuant to Article 4, Section 4.2(s) of the ICANN Bylaws. The Requestor claims that urgent reconsideration is warranted “to ensure that all ICANN stakeholders can fully and effectively engage” at the “fast-approaching ICANN80 Policy Forum, scheduled for June 10-13, 2024, in Kigali, Rwanda.”⁴

Article 4, Section 4.2(s) of the ICANN Bylaws provides for urgent reconsideration,

¹ Request for Reconsideration 24-1, 9 April 2024, <https://www.icann.org/en/system/files/files/reconsideration-24-1-porto-request-redacted-09apr24-en.pdf>.

² *Id.* § 3.

³ *Id.* § 6.

⁴ *Id.* § 12a.

where appropriate, of only “Board action or inaction,” not staff action or inaction or the action or inaction of other individuals or groups.⁵ As discussed in further detail below, the BAMC concludes that Request 24-1 does not meet the requirements for urgent reconsideration because the Requestor has not identified any Board action that was taken related the revised travel policy that was implemented by the ALAC. Nor can the Requestor do so, because the Board has not taken any actions related to the revised travel policy (and while beyond the scope of this particular evaluation, whether the challenged action was taken by ICANN staff will be addressed as part of the procedural evaluation for Request 24-1).

The BAMC’s determination set out here is limited to its assessment of whether Request 24-1 meets the requirements for urgent reconsideration. A substantive review of the merits of the Requestor’s claims is beyond the scope of this determination.

Notwithstanding that Request 24-1 will not be treated as urgent under the ICANN Bylaws, the Requestor may still proceed with Request 24-1 under the timeline for a standard (meaning non-urgent) reconsideration request, and the BAMC will ensure, as always, that the matter will be handled expeditiously, to the extent feasible and practicable.

II. Grounds for Urgent Consideration of Reconsideration Requests

Article 4, Section 4.2(s) of the ICANN Bylaws allows requestors to submit urgent requests for reconsideration provided certain requirements are met:

If the Requestor believes that the Board action or inaction for which a Reconsideration Request is submitted is so urgent that the timing requirements of the process set forth in this Section 4.2 are too long, the Requestor may apply to the Board Accountability Mechanisms Committee for urgent consideration. Any request for urgent consideration must be made within two business days (as calculated by local time at the location of ICANN’s principal office) of the posting of the resolution at issue. A request for

⁵ ICANN Bylaws, Art. 4, § 4.2(s).

urgent consideration must include a discussion of why the matter is urgent for reconsideration and must demonstrate a likelihood of success with the Reconsideration Request.

The BAMC shall respond to the request for urgent consideration within two business days after receipt of the request.⁶ If the BAMC agrees to consider the matter with urgency, then the Request will be processed within the time frame set forth in Section 4.2(t).

III. Request 24-1 Does Not Meet the Bylaws' Requirements for Urgent Consideration

Under Article 4, Section 4.2(s) of the ICANN Bylaws, urgent consideration is available with respect to only certain eligible requests for reconsideration of “Board action or inaction,” not staff action or inaction.⁷ Further, Section 4.2(s) requires requests for urgent consideration to be made “within two business days . . . of the posting of the resolution at issue,” and only the Board—not staff—can issue resolutions.⁸

The Requestor does not claim to be seeking reconsideration of Board action, and instead seeks reconsideration of only alleged “Staff action/inaction.”⁹ Request 24-1 asserts that the challenged action of “facilitating the implementation of a new travel policy for ICANN 80” was an “action by ICANN Staff,” and the Request asks “that the Board reconsider” that alleged staff action.¹⁰ Because the Bylaws limit urgent consideration to matters concerning “Board action or inaction,” there is thus no basis for urgent consideration of Request 24-1, which purports to seek reconsideration of only alleged staff action.

Moreover, even if the challenged travel policy for ICANN 80 resulted from Board action (which it did not), the Requestor would have had to seek urgent reconsideration within two

⁶ *Id.* § 4.2(t).

⁷ *Id.* § 4.2(s).

⁸ *Id.*

⁹ Request 24-1, § 2.

¹⁰ *Id.* § 3. Whether or not the challenged action is ICANN staff action that is a proper basis for a reconsideration request will be addressed as part of the procedural evaluation of Request 24-1.

business days of the relevant Board resolution’s posting.¹¹ Because no Board resolution is at issue here, it is unclear how timeliness should be evaluated for this Request. However, the Request states that the action at issue was “communicated to the community prior to April 4, 2024,” yet the Requestor did not seek urgent reconsideration until 9 April 2024.¹² Thus, the Request for urgent reconsideration may also be considered untimely.

IV. Conclusion

For these reasons, Request 24-1 does not qualify for urgent consideration. Pursuant to Article 4, Section 4.2(t) of the Bylaws, the Requestor is free to file a new reconsideration request within “the regular time frame” set forth in the Bylaws. However, in the interest of time, rather than requiring the Requestor to re-file, ICANN org will proceed with Request 24-1 under the regular time frame of the reconsideration process. The BAMC will ensure that Request 24-1 will be handled expeditiously, to the extent feasible and practicable.

¹¹ ICANN Bylaws, Art. 4, § 4.2(s).

¹² Request 24-1, §§ 3, 5.