Brussels, 09 May 2014
DG CNECT/D1

The European Commission welcomes the opportunity to comment on ICANN’s proposed IANA transition process ("Draft Proposal, Based on Initial Community Feedback, of the Principles and Mechanisms and the Process to Develop a Proposal to Transition NTIA’s Stewardship of the IANA Functions"¹ and the "Scoping Document"²) and wishes to provide its views, stressing that decisions related to the transition and its format should be based on community consensus and guarantee the highest level of inclusiveness.

The European Commission understands that the role of ICANN (and of the ICANN Board) in this process is that of a mere convener of the multi-stakeholders consultation for the transition plan within the conditions set forth by the NTIA and that therefore it has no influence over the final proposal except for ensuring that those basic conditions are met. The final proposal should come from the "Internet Community" beyond ICANN’s realm, and be delivered to the NTIA in due course.

The following remarks are not meant to provide input in terms of substance of the IANA function but in terms of process (notably to address the approach outlined in the "scoping document" published on 8 April and related materials) and what is missing in that process. These comments will be further developed as the IANA consultation and the European Commission engagement activities with EU stakeholders evolve.

The European Commission welcomes the efforts made by ICANN and members of the community in establishing the aforementioned transition process and its scope, and wishes to note that some deficiencies of the current process would have to be addressed by ICANN before the multi-stakeholder consultation continues, and in particular before the Steering Committee is set up at ICANN 50th London, since the process seems to be excessively ICANN-centric. Shall those deficiencies persist in the future, the IANA transition may not gather the necessary legitimacy to be accepted by the global Internet community.

¹ http://www.icann.org/en/about/agreements/iana/transition/draft-proposal-08apr14-en.htm
² https://www.icann.org/en/about/agreements/iana/iana-transition-scoping-08apr14-en
1. General comments

After the IANA session held during the ICANN 49th Singapore meeting, and on the basis of feedback received by the community, a number of principles that should apply to the process have been outlined. Pending further amendment of the transition plan, it should be noted that the current process is NOT:

- "Inclusive", since members of the Steering Committee are only part of the AC/SO structure of ICANN and of the "affected parties", without going beyond the ICANN community. In addition, the Committee does not include representatives from Civil Society;

- "Global", for the same reasons stated above;

- "Accountable", since the definition of specific (external) accountability mechanisms for the IANA function are not foreseen within the scope of the consultation and are meant to be addressed by a second process running almost in parallel but without an explicit link with the IANA transition exercise;

- "Open", since the Steering Committee does not foresee the participation of all interested parties and gives preference to ICANN AC/SO and IANA affected parties instead of to the broader multi-stakeholder community (or "global Internet community"); and

- It might not be "consensus-based" in the event that ICANN has the ability to filter/edit/unilaterally review the final proposal to be handed in to the NTIA. In this regard, the consensus should come from the global Internet community represented in the Steering Committee, where ICANN and the ICANN Board only ensure that the process has adhered to the community principles and to the conditions set forth in the scoping document.

2. Conditions, Scope of the Consultation and Steering Committee

a. Conditions

Notwithstanding the conditions set forth by the USG NTIA for the IANA transition, the European Commission is of the view that artificial limitations to the process should not be imposed. Therefore the following observations are worth noting:

- The process of transitioning the IANA functions should maintain a clear focus on the global public interest, and not on purely commercial/private objectives. Any next step should not only bear in mind the protection of the global public interest, but also envisage clear checks and balances in the absence of USG's oversight, with appropriate accountability, transparency and redress mechanisms that satisfy requirements from both ICANN stakeholder and the global community.
Without the aim of creating a multi-lateral system, the **role of governments in Internet policy cannot be excluded** in arriving at a solution and in taking part of such solution. The Netmundial outcome builds positively on the Tunis Agenda and recognises that stakeholder groups do not always have fixed roles, therefore interpreting "**respective roles and responsibilities**" of stakeholders in a more flexible manner with reference to the issue under discussion. This means that governments' role and responsibility should be factored in, given the high public interest carried by the IANA functions.

The Internet community may propose **additional conditions** to be met by the final proposal (adding to the ones defined by the NTIA). The **principles** already defined by the community and which stem from the first round of consultations should be considered as **conditions**.

The final solution should not only meet the expectations of the IANA global customers and partners, but also those of the **global Internet community** (including Internet **users** and **civil society**).

b. **Scope**

With regard to the scoping document, the European Commission would like to make the following precisions:

- The role of **VeriSign** and its cooperative agreement with ICANN should also be part of the scope of the consultation. In fact, the NTIA and ICANN should consider, in parallel to the transition of the IANA functions, the **transition of such cooperative agreement**.

- The **role of ICANN as the operator of the IANA function** might not be the focus of the transition but it should certainly be addressed and part of the scope of the consultation. ICANN, subject to the renovation of its current contract with the USG, might not be the entity in charge of such role in the future as the selection depends on a competitive bid.

- The scope should include **specific accountability mechanisms** (of **external** nature) for the IANA function, without having to wait for a second semi-parallel process on ICANN accountability and transparency to deliver its final proposal. In this regards, the concept of IANA accountability should cover all **stakeholders**, and not only the IANA "affected parties" and "customers".

- The **role of governments** in the process should be part of the scope, without leaving the door open to multi-lateral arrangements and considering a proper mapping of roles and responsibilities of governments when it comes to public policy objectives in the DNS.
• The **roadmap** for consultation with the global community cannot be said to be inclusive, as it only considers the most relevant fora within the "ICANN-I*" environment, and does not make reference, for instance, to the **IGF** or to any other existing fora/event.

• ICANN should explain how it intends to involve Internet Stakeholders beyond the **ICANN community**, and in particular, provide details so as to other constituencies, organisations or associations that will be **targeted**.

• There seems to be a contradiction between the statement of the NTIA in which the transition of the stewardship of the IANA function is said to be "the last phase of the privatisation of the DNS" and the statement included in the transition documents which aim at the "transition of such stewardship to the multi-stakeholder community".

• A full privatisation of the IANA function will not be conducive to achieving the legitimacy that the process needs. A proposal that only benefits IANA’s “customers” and "affected parties" will fall short of legitimacy for the multi-stakeholder global community, for what we must **insist** on achieving the right level of **inclusiveness**.

• The document should make reference to the importance of establishing a clear **separation between policy-making, operational (technical) and oversight (accountability, redress mechanism) roles** in the new IANA arrangements.

c. **Steering Committee**

• The Steering Committee should be considered only as the **instrument to assist in the transition process** and should not become the **final instrument or body that will steward the IANA functions**. The latter should be further discussed with the Community in the multi-stakeholder consultation.

• For what concerns the **selection of GAC members** to the Steering Committee, the GAC as a whole should be able to decide/propose the names of the members that will join the Committee. As expressed by the ccNSO on its recent comments on the IANA transition plan, "because ICANN is an interested party on the outcome, participants to the Steering Committee should be selected by the community they represent").

• In addition, **eligibility requirements** must be put in place for the selection process to ensure that GAC representatives possess the necessary skills. This would avoid double standards according to which the "affected parties" can select their representatives within their respective communities, and GAC and other AC/SO are subject to a selection process run by the Chair of the ICANN Board and the Chair of the GAC. This rule should be born in mind for the creation of any additional structure such as the "**GAC IANA Transfer Committee**". As regards the role of governments in the IANA transition, the European Commission would like to endorse Spain's comments and references to ICANN by-laws.
• The process should include “control stations”: the USG should give feedback to the community so as to their satisfaction with the draft proposal, as it evolves. The Steering Committee and the global Internet community cannot wait until the end of the process to know if the USG will endorse the final output, nor should it allow that ICANN or the ICANN Board influence/filter the final proposal before it reaches the NTIA, thus ensuring that the decision-making process by the Internet community is not replaced by that of ICANN.