RIPE ncc

A New Structure for the RIPE NCC

De-Facto Organisational Rules

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Scope

This document proposes a structure for the RIPE NCC as of January 1st 1998. It is intended to focus the discussion on this matter and to check whether the progress made so far satisfies the stakeholders. The intended audience are the current RIPE NCC contributors, the members of TERENA and other interested parties. Distribution of this document is unlimited. Comments to the authors are encouraged.

In addition to this document it is planned to publish three other documents. The second document published will explain tax issues together with the worst case and expected case scenarios. These first two documents will be open to discussion on the RIPE NCC Contributors mailing list. Once the de-facto way of operating has been agreed upon then further detailed documents can be produced. The first will be the legal Articles of Association of the RIPE NCC-new. These articles of association will be the legal way of expressing the de-facto way of operating that has been decided upon. Therefore the third document should need little discussion. The fourth document to be published will be a financial plan explaining the financial consequences of the seperation from TERENA.

Introduction

The RIPE NCC performs activities for the benefit of the Internet service providers (ISPs) in Europe and the surrounding areas; primarily activities that the ISPs need to organise as a group, although they may be competing with each other in other areas. The RIPE NCC must therefore observe strict neutrality and impartiality with respect to individual service providers. See document ripe-144 for the detailed 1997 activity plan.

The RIPE NCC was proposed by RIPE in 1990 in document ripe-019. It started operations in April 1992 as a service of the TERENA association (formerly RARE). TERENA is currently providing the RIPE NCC service to the NCC contributors on the basis of a formal service agreement.

In the past five years the RIPE NCC, like the Internet, has grown considerably. The 1997 operating expenses are budgeted at 2 mECU and the number of permanent staff is expected to exceed 30 by the end of this year. The RIPE NCC is now significantly larger than all other TERENA activities together. In September 1996 it was thus agreed by the RIPE NCC contributors and TERENA that a split of the RIPE NCC from TERENA should be looked into. A target date for the start of operations for NCC-new was set at 01-01-98. A three person committee was set up to investigate this matter.

The committee consisted of Paul Ridley, Karel Vietsch, and Wim Vink.

This committee discussed and came up with a set of requirements that would have to be met by the new organisational structure if it was to be acceptable to all three stakeholders: the contributors, TERENA, and the RIPE NCC staff. After internally discussing possible legal structures for the RIPE NCC-new it was decided to call in external consultants to help. Coopers & Lybrand advised on various legal, financial, and tax related issues.

Aims of the New Structure

the structure and operating procedures of the RIPE NCC-new organisation have to be such that they facilitate the achieving of the organisation's aims. In acheiving those aims the RIPE NCC-new will have to satisfy the criteria of all stakeholders. The respective stakeholder criteria are the following:

Contributors

- Good service, including neutrality and impartiality
- A not for profit organisation
- An executive committee which represents the various interests of the contributors
- It should be non-exclusive, so that it is open to every potential ISP
- No contributor, group of contributors or third party should be able to come into a position from which it may gain control of RIPE NCC, nor should a hostile takeover be possible.
- It should be subject to as little taxation as possible.
- Any present NCC financial surplus held at TERENA should be available to the new entity.
- It should support the credible function of the RIPE NCC as a industry self-regulation organisation.

TERENA

- The setting up of RIPE NCC-new should not leave TERENA with financial liabilities.
- TERENA wishes to initialy have some say in the running of RIPE NCC-new

RIPE NCC employees

- Employees should maintain their contractual and tax rights.
- The built up NCC reserves for use if the NCC should cease operations should be available to the new entity.

Choice of Legal Structure

During discussions with Coopers & Lybrand many types of organisation were considered as to their applicability. For reasons outlined in Appendix A various options were rejected. The option that was found to be most suitable for the RIPE NCC-new organisation was an association (*vereniging*). Under Dutch law an association was considered the most applicable form due to a combination of tax suitability, its democratic character, and its ability to resist unwelcome takeovers. The exact structure and processes of a future RIPE NCC association, hereafter known as RNA, will be discussed below. Some of the reasoning behind the specific rules is summarised in Appendix B.

1. Bodies

RNA has two main bodies, the general assembly (GA) consisting of all members and an executive board (EB). The weight of power rests with the GA and it exercises the most important rights within the organisation. Two other auxilliary organs within the association are the Management Team (MT) and the Treasury Committee (*kascommissie*).

The RNA will be advised by the well established informal group of technical experts known as RIPE (Reseaux IP Europeens). RNA will establish advisory relationships with other relevant bodies as necessary.

2. Membership of RNA Bodies

2.1. RNA and the General Assembly

Membership of RNA is open to any legal or natural person satisfying the following criteria:

1) They have a current RIPE NCC service agreement.
2) They have paid any fees due to that agreement.
3) They do not act contrary to the interests of RNA.

All new members will be candidate members for an initial period of six months. Candidate members have all rights of membership besides voting rights in the GA.

Voting rights in the GA will be suspended as soon and for as long as a member is in arrears with the payment of fees.

The GA can decide to expel RNA members on proposal of the EB.

2.2. Executive Board

The executive board (EB) consists of 3-5 natural persons including a chairman and a treasurer. EB members serve on personal title. Any natural person is eligible for EB membership. The RIPE NCC Manager although non-voting participates in all EB meetings.

Members of the EB are elected by the GA for terms of three years. Re-election is possible. The terms are staggered such that in any given year the terms of no more than half of the EB members expire.

The GA may end the term of an EB member prematurely by an absolute majority decision. In this case a new EB member will be elected as soon as possible.

The EB may co-opt natural persons interested to serve on the EB in the future to fully participate in EB business without voting. A co-opted person will participate for a period of 6 months, which can be renewed twice up to a maximum of 18 months. The EB will inform the GA of any such co-options without delay.

2.3. Treasury Committee

The treasury committee (TC) is consists of 1-3 natural persons appointed by the GA on suggestion of the EB. TC members serve on personal title. Any natural person is eligible for TC membership.

3. Powers of the Bodies

The following are the respective powers for the RNA bodies:

3.1. General Assembly

The RNA general assembly (GA) is empowered to:

- amend the Articles of Association
- pass resolution to dissolve the association if the EB proposes to do so
- appoint and dismiss members of the EB
- adopt the annual accounts, upon advice of the EB and Treasury committee
- adopt the activity plan and budget, upon proposal from EB
- adopt the charging scheme, upon proposal from EB
- discuss and set policies regarding the RIPE NCC services
- select the Treasury committee

3.2. Executive Board

The RNA executive board (EB) is empowered to:

- sign contracts in the name of the association when two EB members act together.
- sell or buy property.
- appoint the NCC General Manager
- delegate powers to the MT.

The Executive Board is explicitly not empowered to:

- influence or change any operational decision made by the MT regarding individual ISPs.

3.3. Treasury Committee

The treasury committee is required to:

- audit the annual accounts and report to the EB and GA

4. Decision Making

The de-facto decision making processes are designed to minimise the influence of geographical location and the ability of to attend physical meetings. Therefore the Internet is used as much as possible in de-facto decision making.

It should be stressed that the de-jure (legal) processes will differ from the de-facto(operational) ones described below, because Dutch law does not provide for electronic decision making. However we are confident that with the benefit of good legal advice we can define de-jure processes to closely match the intention of the processes defined below.

4.1. General Assembly

The GA discusses by means of an Internet mailing list or other similar public forum on the network. The mailing list has closed active participation (only open to GA members), but the list archives will be puiblically available.

Motions for decisions by the GA can be originated by the EB or 5% of the GA members.

Decisions by the GA can only be taken after motions have been published for discussion for a period of 4 calendar weeks.

Whenever possible the GA works by consensus.

When consensus is not clearly achieved, the GA may take de-facto decisions using appropriate network based voting mechanisms like authenticated electronic mail. The GA itself has responsibility to monitor that the mechanisms used are indeed applied as intended in a correct manner. The MT supports the voting mechanisms of the GA and keeps appropriate records of votes which can be verified by the GA.

4.2. Executive Board

The EB discusses by means of a closed Internet mailing list or other similar public forum on the network. This mailing list will only be open to GA members.

In addition the EB has physical meetings, the minutes of which will be published. These meetings are convened by either the EB chair or at the request of at least 2 members of the EB at least 2 weeks in advance with a written agenda.

The EB takes de-facto decisions with simple majority either by votes at physical meetings or using appropriate network based voting mechanisms like authenticated electronic mail.

4.3. Treasury Committee

The TC deliberates informally.

5. Initial Setup

The creation of an association is always special because initial membership of all bodies need to be defined. This is not especially difficult in the case of RNA because a membership base exists and the only really new important organ is the executive board.

5.1. RNA

The initial RNA membership will consist of those members of the RIPE NCC Contributors Committee who have been using the RIPE NCC services in 1997 and before January 1st 1998 have signed the 1998 RIPE NCC service agreement and fulfill the membership criteria outlined above.

5.2. Executive Board

The initial EB members will be chosen by a consensus of the NCC Contributors Committee before November 1997. A number of initial terms will be shortened to achieve the staggering of terms specified above.

In recognition of the initial support given by TERENA and in the interest of continuity for the NCC, TERENA will be granted the right to name one member of the EB serving during the first two years of RNA operation.

In recognition of the financial liabilities still borne by TERENA during the first year of RNA operations, this EB member will have the right to veto any EB decisions. The intention of this power is to enable TERENA to prevent decisions with serious negative financial consequences to TERENA. This right is not intended to give TERENA a privileged position in determining the activities of the NCC or its future direction. The TERENA named EB member will notify both the EB and GA as soon as possible of his intention to exercise this right and justify doing so in terms of the above stated intention.

5.3. RIPE NCC Employees

The initial employees of the RNA will be those TERENA RIPE NCC employees employed on Jan 1st 1998.

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Appendix A

As mentioned in chapter 4 various legal structure for the RIPE NCC-new were rejected during the consultancy period with Coopers & Lybrand. In this Appendix we aim to list which ones were rejected and why.

Foundation (*stichting*)

In all fiscal respects a foundation, under Dutch law, has the same benefits and drawbacks as an association. The difference between the two forms arises in its principle legal structure. A foundation has only one principle body the executive board (EB) which exercises all power in the foundation. It may in addition have an advisory board but this has no decision making powers. It was felt that if the RIPE NCC-new was a foundation the contributors have little say in practice and even less legally in RIPE NCC operations. The NCC would in effect be controlled by a small group of people who are the EB which is contrary to the criteria laid down.

Limited Company (*besloten venootschap met beperkte aansprakelijkheid BV*)

For tax purposes a limited company is always taxable on any profit made. This is not necessarily the case with an association. Therefore if a limited company was chosen the RIPE NCC-new would never have the chance to avoid paying company tax. In order for contributors to have a legal say in the running of a limited company they have to be shareholders of that said company. This could be arranged by treating the annual charges as buying shares. However we have earlier been informed that certain contributors would not be able to own shares in a company, and thus these contributors would not be able to be involved to an equal degree as others. Shares would also leave the RIPE NCC vulnerable to a hostile takeover. Additionally a company, which can be used for profit making purposes may be less credible as an industry self-regulator. A combination of these reasons allow for situations to arise that are contrary to the laid down criteria and thus the form of a limited company has to be rejected.

Limited Partnership

The limited partnership is a complex construction that has as an advantage that it may reduce a gift tax issue. This gift tax issue will be discussed in detail in the tax document. A limited partnership would consist of TERENA as a silent partner (only providing money), and three new organisations, RIPE NCC association, RIPE NCC BV, and RIPE NCC CV. The association would work in the same way as that listed in chapter 4 and would be the 100% owner of RIPE NCC BV. The association in exchange for the profit made would provide its employees to the RIPE CV which would carry out the day to day work, and collect the charges. Qua decision making this would be no different than a normal association i.e. the contributors would have overall say, since the RIPE NCC association is the controlling partner of the four. The construction is however far more complex than a simple association and thus would bring extra administrative costs and provide a confusing picture for outside parties. Therefore for lower costs and simplicity an association is preferred unless tax issues demand that a limited partnership be looked at in more detail.

Offshore Companies

The possibility of setting up a company offshore to avoid paying company tax was discussed with Coopers & Lybrand. It is possible to do but in their opinion the costs, both initial and long term administrative would be high. This option is not however ruled out but it is thought sensible to first explore the possibilities of reaching an acceptable agreement with the Dutch tax authorities. If an agreement can be reached then there is no need to go offshore. If however no acceptable agreement can be reached then the offshore option will have to be explored in more detail.

Appendix B - Reasoning behind RNA Rules

This appendix tries to summarise some of the reasoning behind the rules for RNA which is not appropriate to be written up with the rules themselves. This will be amended and expanded as suggested by questions and discussion from the community.

Treasury Committee

The treasury committee is an institution due to Dutch law. The intention is to force the members of an association to ensure yearly review of the financial position of the association in a way independent from the EB.

Membership in RNA

De-facto membership of RNA will be a result of entering into the RIPE NCC service agreement. The intent is that everyone becomes a member and thus represented in the GA. We have had some rare cases where it was difficult for legal entities under some jurisdictions to become a member of a Dutch association. For them it will be possible to opt out of membership while still receiving RIPE NCC services.

Candidate membership is introduced to prevent a situation where a large number of persons/legal bodies signs the NCC service agreement with the sole purpose of influencing an impending RNA decision and no intention to operate a local IR or even to pay the service fees. Another beneficial effect is that new members have the opportunity to get familiar with the issues and the style of discourse before being able to vote.

Membership in EB

The size of the EB is a tradeoff between ensuring it is small enough to work effectively as a group and large enough to adequately represent the membership. We believe the numbers chosen are a good tradeoff considering that there may be co-opted members.

Likewise the length of terms is a tradeoff between continuity and renewal.

The concept of co-opted non-voting members is a tradeoff between introducing a somewhat self-perpetuating process and ensuring that the EB consists of serious and capable people with a stable commitment. Note that having served as a co-opted member is consciously not a requirement to be elected to the EB. Of course we expect that the GA would consider the commitment and capabilities demonstrated by co-opted EB members.

Decision Making in GA

The mechanisms for electronic voting have deliberately not been described in details as technology may change. Currently some form of authenticated mail is probably appropriate. Authentication mechanisms can be varied according to the GA member's wishes and can range from consistency checks of mail headers via agreed clear text passwords to public key cryptography. It is probably appropriate for the GA to select a group of people supervising electronic voting if it is used.