



SECRETARIAT D'ETAT CHARGE DU NUMERIQUE

LA SECRETAIRE D'ETAT

Paris, le 15 JUIL. 2015

Dear Thomas,

As we are entering the final stage of negotiations on the IANA transition, I would like to commend the cross-community working group for the huge amount of work that has been done so far in the process of enhancing ICANN accountability. I especially want to reiterate our appreciation of the personal dedication of all individual stakeholders, members and participants, and your own, in such a constrained timeframe. Please convey my warmest thanks to the group.

I also want to emphasise the quality of the work of the CCWG. You are now seeking an agreement on improvements which France has consistently called for: The implementation of effective and affordable appeal, review and redress mechanisms against ICANN Board's decisions, with adequate guarantees of independence; the establishment of a representative council of ICANN stakeholders, which would be empowered to reconsider or reject ICANN budget and strategy put forward by the Board, to approve changes to ICANN Bylaws, and to recall individual Board members or the entire Board.

In addition, France also asked for the strictest conflict of interest policy, as well as the principle of diversity, to be implemented and promoted at all levels within ICANN. This is why we suggested provisions for non-cumulative holding of offices, successively or simultaneously, and the establishment of an independent commission in charge of controlling the conflict of interest statements issued by the Board members. I know that our concerns have also been taken into account by the working group and I am looking forward to reading your proposals on these issues.

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ALLEMAGNE

I would, however, like to draw your attention on some of the proposals which were included in your initial draft report released at the beginning of May 2015. One of my main concerns is an apparent effort to limit in an irreversible way the role of the GAC, which would have serious consequences for the balance of the multi-stakeholder model embodied by ICANN, which is in line with the Tunis Agenda and the NETmundial Multi-Stakeholder Statement.

Inconsistent with the current framework of ICANN, the proposed enhanced accountability framework recommends that due deference given to GAC advice now be conditional.

As far as governments are concerned, ICANN's multi-stakeholder model is based on the advisory role of GAC. Yet your working group seems to believe that amendments to Bylaws (art. I.2 and XI.2.1.j) are necessary because any change in GAC decision-making procedures would be tantamount to an attempt of capture of ICANN by governments. This is forgetting that the advisory nature of the role of GAC is the ultimate protection against capture of ICANN by governments. And this is neglecting that any attempt to restrain the GAC capacity to formulate advice will provide a very strong argument to opponents of ICANN's multi-stakeholder model. I should finally add that decision-making within GAC is already based on strict consensus. By design, this gives each member of GAC, a chartering organisation of the CCWG-Accountability, a veto. The French government cannot support such amendments so that your working group should consider leaving Bylaws art. I.2 and XI.2.1.j unchanged, lest consensus cannot be reached on Core value 11 and stress test #18 among governments.

I should add that the discussion about GAC advices already occurred in the Accountability & Transparent Review processes (ATRT1 in 2010 and ATRT2 in 2014) and the CCWG-accountability ought to follow ATRT1 and ATRT2.

My other concern is the overhauling of the appeals mechanisms against ICANN Board's decisions, which could lead to establishing the IRP as fully-fledged arbitration court.

I need to underline the progress made on appeals mechanisms, in particular the two most important features added to the new IRP: binding decisions; and ability to judge on the substance of complaints vis-à-vis ICANN policies rather than just on the conformity of the procedures followed by the Board vis-à-vis ICANN Bylaws. I want to reaffirm our full support to the implementation of those two features.

We do not have the liberty, however, to support a solution for implementation that would establish the IRP as an international court of arbitration. The reasons for this are detailed by our response to the GAC questionnaire on accountability.

It is for me an absolute necessity that the new IRP remain an internal mechanism within ICANN. For France, establishing an arbitration court is a disproportionate and unacceptable interpretation of what is necessary to enhance ICANN accountability and we could not support the implementation of such proposal before the IANA transition.

As far as the independence of the IRP panellists is concerned, I finally take the opportunity to suggest that the panellists should be paid by the community – not by ICANN – through a Trust Fund, in which case the “donator” would be ICANN (part of the revenue of the public auctions could be allocated to this fund for instance) and the “beneficiary” would be anyone filling an IRP procedure.

I wish you all success in concluding the work of the CCWG on enhancing ICANN accountability. I must insist, however, that your final proposal should not go beyond enhancing ICANN accountability. France, among others, would object to any provision altering the current advisory role of GAC, or the technical nature of ICANN policies by means of recourse to international arbitration.



Axelle LEMAIRE