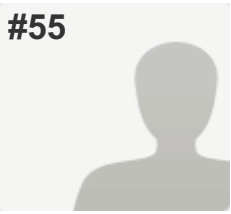


#55



**COMPLETE**

**Collector:** Web Link 1 (Web Link)

**Started:** Sunday, December 20, 2015 6:39:22 PM

**Last Modified:** Sunday, December 20, 2015 6:48:22 PM

**Time Spent:** 00:09:00

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PAGE 2: Personal Information

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Q1: Name	Ghislain de Salins
Q2: Affiliation	French government
Q3: Responding on behalf of	France

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PAGE 3: Recommendation 1

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Q4: Is establishing an Empowered Community for enforcing Community Powers a solution that is acceptable to you?(Please see Annex 1 - Recommendation #1: Establishing An Empowered Community For Enforcing Community Powers for more information)	Yes, I support this recommendation.
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PAGE 4: Recommendation 2

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Q5: Is empowering the community through consensus: engage, escalate, enforce a solution that is acceptable to you?(Please see Annex 02 - Recommendation #2: Empowering The Community Through Consensus: Engage, Escalate, Enforce for more information)	<i>Respondent skipped this question</i>
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PAGE 5: Recommendation 3

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Q6: Is redefining ICANN's Bylaws as 'Standard Bylaws' and 'Fundamental Bylaws' a solution that is acceptable to you?(Please see Annex 03 - Recommendation #3: Redefining ICANN's Bylaws As 'Standard Bylaws' And 'Fundamental Bylaws' for more information)	Yes, I support this recommendation.
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PAGE 6: Recommendation 4

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**Q7: Is ensuring community involvement in ICANN decision-making: seven new Community Powers a solution that is acceptable to you? (Please refer to Annex 04: Details on Recommendation 4: Ensuring Community Involvement In ICANN Decision-Making: Seven New Community Powers for more information)**

Yes, I support this recommendation.

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PAGE 7: Recommendation 5

**Q8: Is changing aspects of ICANN's Mission, Commitments and Core Values a solution that is acceptable to you?(Please refer to Annex 05 - Details on Recommendation #5: Changing Aspects Of ICANN's Mission, Commitments And Core Values for more information)**

*Respondent skipped this question*

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PAGE 8: Recommendation 6

**Q9: Is reaffirming ICANN's commitment to respect internationally recognized human rights as it carries out its Mission a solution that is acceptable to you?(Please refer to Annex 06 - Recommendation #6: Reaffirming ICANN's Commitment to Respect Internationally Recognized Human Rights as it Carries Out Its Mission for more information)**

Yes, I support this recommendation.

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PAGE 9: Recommendation 7

**Q10: Is strengthening ICANN's Independent Review Process a solution that is acceptable to you?(Please refer to Annex 07: Recommendation 7: Strengthening ICANN's Independent Review Process for more information)**

Yes, I support this recommendation.

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PAGE 10: Recommendation 8

**Q11: Is fortifying ICANN's request for reconsideration process a solution that is acceptable to you?(Please refer to Annex 08 - Recommendation #8: Improving ICANN's Request For Reconsideration Process for more information)**

Yes, I support this recommendation.

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PAGE 11: Recommendation 9

**Q12: Is incorporation of the Affirmation of Commitments a solution that is acceptable to you?(Please refer to Annex 09 - Recommendation #9: Incorporation of the Affirmation of Commitments for more information)**

Yes, I support this recommendation.

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PAGE 12: Recommendation 10

**Q13: Is enhancing the accountability of Supporting Organizations and Advisory Committees a solution that is acceptable to you?(Please refer to Annex 10 - Recommendation #10: Enhancing the Accountability of Supporting Organizations and Advisory Committees for more information)**

*Respondent skipped this question*

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PAGE 13: Recommendation 11

**Q14: Is Board obligations regarding GAC Advice (Stress Test 18) a solution that is acceptable to you?(Please refer to Annex 11 - Recommendation #11: Board obligations regarding GAC Advice)**

No, I do not support this recommendation.,

Comment

The French Government wishes to express its deepest disappointment with the CCWG having maintained the controversial "Stress Test 18" amendments to the Bylaws in the CCWG 3rd draft proposal, in spite of the serious concerns repeatedly displayed by many GAC members and other stakeholders in the past months, especially during the Dublin meeting in October. By doing so, the CCWG has clearly put at risk the multi-stakeholder approach of ICANN. During the Dublin meeting, a constructive dialogue and a willingness to move forward enabled GAC members to reach a consensus on the issue of Stress Test 18, reflected in the GAC communiqué. This compromise recognizes both the value some attribute to consensus and the necessity to preserve the autonomy and the role of GAC in ICANN. The Dublin communiqué, agreed upon by all the governments, is based on two elements: - The need that each and every Advisory Committee should preserve its own autonomy in its definition of consensus; - The need to set the threshold for the ICANN board to reject GAC advice to a 2/3 majority voting, consistent with the thresholds established for ccNSO and GNSO PDP recommendations. Though the second element is now included in the 3rd report, the CCWG chose to ignore the first element, which is the most important: the current drafting of Stress test 18 includes a very restrictive definition of consensus, which is the opposite of what GAC suggested in its Dublin communiqué. By doing that, the CCWG did not only deliberately refuse to duly take into account the concerns of an increasing number of governments, it also chose to annihilate all the efforts made by many stakeholders to find alternative solutions to Stress Test 18 during and since the Dublin meeting. The French Government therefore considers the current

drafting of Stress Test 18 as the worst signal the CCWG could send to the global internet community regarding the risk of capture of ICANN's multi-stakeholder model by a few individuals. More specifically, the French governments wishes to recall the following elements that it already stated in previous comments 1/ As stated above, specifying new terms of the GAC-Board relationship is in flagrant contradiction with what is specifically designated by the CCWG as a core value of ICANN. Core Value 7, in line with the 2013 NETmundial Statement and the 2005 Tunis Agenda, clearly establishes the sole responsibility of governments for internet-related public policies, regardless of their decision-making procedures. Therefore, since the GAC decision-making procedures are, consistently with ICANN Bylaws, based on agreements between its members States, anything that might allow the Board to amend or even influence those internal decision making rules would amount to inappropriate limitations on governments' competencies, without regard nor respect for the delicate balance of the multi-stakeholder model of internet governance which ICANN expects to embody. 2/ In addition, this is also neglecting, perhaps negating, along with their results, the accountability mechanisms that are already in place at ICANN. Indeed, the French Government cannot help but wonder how the CCWG could not acknowledge that back in 2010, ATRT1 did contemplate recommendations by some stakeholders that GAC advice be consensus in order to trigger Bylaws provisions obligating the Board to response. It nonetheless also reported many concerns that were raised by other stakeholders, before concluding that "this would be automatically taken care of as soon as GAC and the Board agree on what constitutes GAC advice". Which, in its turn, ATRT2 concluded was satisfactorily addressed and completed in 2013. Interestingly, there was agreement that a communiqué, a letter, an email, etc., constitutes GAC advice. In other words and for its part, the CCWG chose to ignore that it was naturally considered inappropriate to get involved into how GAC advice is negotiated. 3/ Lastly, the French Government still considers that linking Stress Test 18 to a risk of capture of ICANN by governments and NTIA's requirement that no "government-led or intergovernmental organization solution would be acceptable", makes no sense. We have to reassert that whatever the hypothetical evolution of GAC's internal decision-making rules, GAC, as its name says, will remain in an advisory role to the Board. Logically, the risk of capture of ICANN by governments in the future is as low as it is now and in any case, it cannot lead to a "government-led or intergovernmental organization solution". The French Government would like to underline that the previous criticisms did not address Stress Test 18 itself, but the amendment to Bylaws Article XI.2.1.j proposed by the CCWG as a solution for Stress Test 18. In fact, it is our view that much stronger responses have already been

found to Stress Test 18 by the CCWG: 1/ First, the CCWG expressly stated its rightful intent to narrow ICANN's mission in ICANN Bylaws. Thus, remote as the possibility raised by Stress Test 18 that "a majority of governments could approve GAC advice that restricted free expression" may have been, it is pushed even back further by making clear that ICANN will not deal with internet content issues, for instance. This is clearly one (of the multiple) valid solution(s) to Stress Test 18 that the CCWG nonetheless failed to mention. 2/ Secondly, the CCWG does not even seem to have realized that the community empowerment mechanism provides the ICANN community with an oversight on the GAC-Board relationships. Even if the Board was to follow GAC advice that would happen to be unsupported by the community, the community as a sole member could challenge the Board's action or inaction against such GAC advice through the proposed accountability mechanisms, which also appear as perfectly valid solutions to Stress Test 18. That no one should expect ICANN to ever need such recourse is, however, absolutely no excuse for the CCWG not to consider it. To our bewilderment, in the case of Stress Test 18, the CCWG 3rd proposal does not show any reflection at all on the effectiveness of the very mechanisms which the CCWG was commissioned to design in order to enhance ICANN accountability, and which actually apply to most other stress tests. It is incomprehensible to us that the CCWG could blindly maintain an unfortunate amendment to Bylaws Article XI.2.1.j as a solution for Stress Test 18 instead.

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PAGE 14: Recommendation 12

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**Q15: Is committing to further accountability work in Work Stream 2 a solution that is acceptable to you? (Please refer to Annex 12 - Recommendation #12: Committing to further accountability work in Work Stream 2)**

Yes, I support this recommendation.

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PAGE 15: Additional Information

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**Q16: Please submit comments you have in addition to the information provided above, including on NTIA criteria, CWG-Stewardship requirements and Stress Tests.**

The French government would like to thank the CCWG for their 3rd Draft Proposal and the amount of work leading to it. Again, we reiterate our support to the CCWG-accountability and particularly appreciate the dedication of all individual stakeholders, co-chairs, members and participants, to the group.

Regarding Stress Test 18

The French Government wishes to express its deepest disappointment with the CCWG having maintained the controversial "Stress Test 18" amendments to the Bylaws in the CCWG 3rd draft proposal, in spite of the serious concerns repeatedly displayed by many GAC members and other stakeholders in the past months, especially during the Dublin meeting in October. By doing so, the CCWG has clearly put at risk the multi-stakeholder approach of ICANN.

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During the Dublin meeting, a constructive dialogue and a willingness to move forward enabled GAC members to reach a consensus on the issue of Stress Test 18, reflected in the GAC communiqué. This compromise recognizes both the value some attribute to consensus and the necessity to preserve the autonomy and the role of GAC in ICANN. The Dublin communiqué, agreed upon by all the governments, is based on two elements:

- The need that each and every Advisory Committee should preserve its own autonomy in its definition of consensus;
- The need to set the threshold for the ICANN board to reject GAC advice to a 2/3 majority voting, consistent with the thresholds established for ccNSO and GNSO PDP recommendations.

Though the second element is now included in the 3rd report, the CCWG chose to ignore the first element, which is the most important: the current drafting of Stress test 18 includes a very restrictive definition of consensus, which is the opposite of what GAC suggested in its Dublin communiqué.

By doing that, the CCWG did not only deliberately refuse to duly take into account the concerns of an increasing number of governments, it also chose to annihilate all the efforts made by many stakeholders to find alternative solutions to Stress Test 18 during and since the Dublin meeting.

The French Government therefore considers the current drafting of Stress Test 18 as the worst signal the CCWG could send to the global internet community regarding the risk of capture of ICANN's multi-stakeholder model by a few individuals.

More specifically, the French governments wishes to recall the following elements that it already stated in previous comments

1/ As stated above, specifying new terms of the GAC-Board relationship is in flagrant contradiction with what is specifically designated by the CCWG as a core value of ICANN. Core Value 7, in line with the 2013 NETmundial Statement and the 2005 Tunis Agenda, clearly establishes the sole responsibility of governments for internet-related public policies, regardless of their decision-making procedures. Therefore, since the GAC decision-making procedures are, consistently with ICANN Bylaws, based on agreements between its members States, anything that might allow the Board to amend or even influence those internal decision making rules would amount to inappropriate limitations on governments' competencies, without regard nor respect for the delicate balance of the multi-stakeholder model of internet governance which ICANN expects to embody.

2/ In addition, this is also neglecting, perhaps negating, along with their results, the accountability mechanisms that are already in place at ICANN. Indeed, the French Government cannot help but wonder how the CCWG could not acknowledge that back in 2010, ATRT1 did contemplate recommendations by some stakeholders that GAC advice be consensus in order to trigger Bylaws provisions obligating the Board to response. It nonetheless also reported many concerns that were raised by other stakeholders, before concluding that "this would be automatically taken care of as soon as GAC and the Board agree on what constitutes GAC advice". Which, in its turn, ATRT2 concluded was satisfactorily addressed and completed in 2013. Interestingly, there was agreement that a communiqué, a letter, an email, etc., constitutes GAC advice. In other words and for its part, the CCWG chose to ignore that it was naturally considered inappropriate to get involved into how GAC advice is negotiated.

3/ Lastly, the French Government still considers that linking Stress Test 18 to a risk of capture of ICANN by governments and NTIA's requirement that no "government-led or intergovernmental organization solution would be acceptable", makes no sense. We have to reassert that whatever the hypothetical evolution of GAC's internal decision-making rules, GAC, as its name says, will remain in an advisory role to the Board. Logically, the risk of capture of ICANN by governments in the future is as low as it is now and in any case, it cannot lead to a "government-led or intergovernmental organization solution".

The French Government would like to underline that the previous criticisms does not address Stress Test 18 itself, but the amendment to Bylaws Article XI.2.1.j proposed by the CCWG as a solution for Stress Test 18. In fact, it is our view that much stronger responses have already been found to Stress Test 18 by the CCWG:

1/ First, the CCWG expressly stated its rightful intent to narrow ICANN's mission in ICANN Bylaws. Thus, remote as the possibility raised by Stress Test 18 that "a majority of governments could approve GAC advice that restricted free expression" may have been, it is pushed even back further by making clear that ICANN will not deal with internet content issues, for instance. This is clearly one (of the multiple) valid solution(s) to Stress Test 18 that the CCWG

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That no one should expect ICANN to ever need such recourse is, however, absolutely no excuse for the CCWG not to consider it. To our bewilderment, in the case of Stress Test 18, the CCWG 3rd proposal does not show any reflection at all on the effectiveness of the very mechanisms which the CCWG was commissioned to design in order to enhance ICANN accountability, and which actually apply to most other stress tests. It is incomprehensible to us that the CCWG could blindly maintain an unfortunate amendment to Bylaws Article XI.2.1.j as a solution for Stress Test 18 instead.

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