



## MINISTÈRE DES AFFAIRES ÉTRANGÈRES ET EUROPÉENNES

### Ministry of Foreign and European Affairs

#### **French Comments to the Draft Proposed Recommendations made by the Accountability and Transparency Review Team (ATRT).**

The French Ministry of Foreign and European Affairs, appreciates the opportunity to comment the Draft proposed recommendations made by the ATRT. France thanks the ATRT for their work and commitment to improve the governance of ICANN for the benefit of the global public interest.

France believes that the draft recommendations are a very useful contribution to achieve the evolution of ICANN as a full internationalized, multi-stakeholder, transparent and accountable regulator of the critical resources of the Internet. France calls the President and the Board of ICANN to take into account the report and to work with the stake-holders to implement the recommendations.

France particularly welcomes the following recommendations: establishment of a regular review cycle, establishment of a more formal relation between the GAC and the Board (more written and documented processes), explanations of the Board decisions.

If this draft exposes many useful recommendations for the future of ICANN, France would like to expose its comments on the following issues:

#### *1) Role of Governments in the ICANN governance*

The Internet's growing importance for society as a whole increasingly requires governments to be more actively involved in the key decision making that underlies the Internet's development. It is also important to recognise that public attitudes have changed towards the concept of self-regulation in the wake of the financial crisis. When critical resources are concerned, there is now a higher and understandable expectation that governments will be more proactive than they may have been in the past in defending the public interest. This does not mean that governments need to have any stronger role in managing or controlling the day-to-day operation of the Internet but they will guarantee that any current or future governance arrangements will reflect the public interest of society as a whole and will not be subject to capture by narrow commercial or regional interests.

Therefore, France welcomes the proposition on the possibility for a consensus "GAC advice" to be mandatory for the Board as a tool to improve the role of Governments in ICANN governance (page 37).

France would like to encourage the ATRT to explore other ways to improve the role of governments. The board of directors is ultimately responsible and has the final say on

decisions of ICANN. For instance, would it be possible for governments to be more represented at the Board? Shouldn't be given a voting right to the *GAC liaison*?

## *2) Legal accountability*

ICANN is de facto a global institution but is ruled under the laws and regulations of only one legal system (California, US)

Would it be possible to explore the possibilities to give ICANN an internationalized legal status with some privileges and immunities to guarantee its independence and to improve legal certainty of its decisions?

Related to that, France also calls for a more systematic use of the international legal framework (private international law) and international arbitration mechanisms (for example the International Chamber of Commerce) in any international contracts or agreement involving ICANN.

## *3) ICANN Staff*

France strongly believes that a global institution as ICANN should have a staff which represents various regions, languages and cultures and not only at the Board and ICANN constituencies. Therefore France appreciates the recommendation 30. France invites the President and the Board to take into account this recommendation and to engage as soon as possible the necessary implementations measures to achieve this objective.

On this note, France is looking forward to work with the ATRT, the community, the President and the Board to improve ICANN decision making for the benefit of all the internet users.