**Comments on the *Draft Uniform Framework for a Cross Community Working Group (CCWG) Life Cycle: Principles and Recommendations*.**

First, we would like to thank the ICANN staff and the members of the working group for this very useful draft framework for future cross-community working groups (CCWGs).

Given the recent closure of CCWG-accountability’s “Work Stream 1”, we consider the public comment period for this draft framework as an opportunity to both define high-level principles and learn lessons from specific cases. Our comments cover three domains in particular:

* The need for **reliable criteria, data and tools to assess and implement effective diversity in CCWGs** ;
* The need to **clarify the rules for reaching consensus in CCWGs** ;
* The need to **clarify the categories for Chartering Organizations’ decisions regarding CCWGs’ outputs**.
1. **Providing reliable criteria, data and tools to assess and implement effective diversity in CCWGs.**

While a whole section of CCWG-accountability’s website[[1]](#footnote-1) is dedicated to assessing and measuring diversity, this concept is hardly mentioned in the draft framework and the draft CCWG charter. Section IV of the draft charter (*Membership, Staffing and Organization*) contains recommendations regarding geographical and stakeholder diversity (p16-17)[[2]](#footnote-2), even though the word “diversity” itself is, surprisingly, not used.

**France considers that** **effective diversity should be the overarching principle of CCWGs** and is essential to provide legitimacy to both the process and the results of CCWGs. While CCWG is a relatively new mechanism for ICANN’s community, its accepted definition is based on at least one kind of diversity: stakeholder-diversity (at least 2 AC/SO are needed to create a CCWG).

Therefore, **a whole section on effective diversity should be added in both the draft framework** (e.g. article 2.6 + a paragraph in introduction 1.0) **and the draft charter** (e.g. section 6). These sections should mention at least the three following elements:

* **Definition** of diversity;
* Data and tools to **measure** **effective** diversity;
* Mechanisms to **implement** **effective** diversity.
	1. Definition of diversity.

The CCWG framework and charters shall take into account the **six following criteria** to define diversity:

* **Gender**: gender-balance should be sought for the composition of CCWGs.
* **Stakeholder groups and stakeholder categories**: stakeholder-balance should be sought for the composition of CCWGs.

One stakeholder group (SO/AC) should not be in a position to over-influence any particular working group or subgroup.

In addition to stakeholder groups (SO/AC), **stakeholder categories** (that shall be more “ICANN outsider”- friendly than SO/ACs)[[3]](#footnote-3) should be made available, for the purpose of information only. The categories used in the Netmundial outcome document[[4]](#footnote-4) are the following: governments, the private sector, civil society, the technical community, academia and users. Each CCWG member and participant should be matched with a stakeholder category.

* **Geography**: geographical balance should be sought for the composition of CCWGs.

Geographical balance should take into account not only regions, but **also countries**; one country should not be in a position to over-influence any particular working group or subgroup. In fact, using regional breakdowns only can suggest a balance of geographical distribution while masking the overwhelming influence of one or a few countries (Cf. Annex 1).

* **Main language**; balance should be sought regarding the main language (or mother tongue) of members and participants, in order to not favor some countries or regions in particular (the basis for assessment can be the 7 languages recognized at ICANN - the 6 official languages of the UN + Portuguese).
* “**ICANN openness**”: balance between ICANN “outsiders” and “insiders” should be sought for the composition of CCWGs. CCWGs should try to favor new-comers to the ICANN community and engage participants from outside the ICANN ecosystem.
* **Concentration of power**. One individual / group should not hold several leadership positions in the same time or keep on holding leadership positions over time, especially if a the work of a CCWG extends over time.
	1. Data and tools to measure effective diversity

We’d like to thank ICANN staff for recognizing that it is vital for CCWGs legitimacy and transparency to provide data and tools to measure diversity, as shown in the section on CCWG-accountability website regarding “statistics and diversity” [[5]](#footnote-5).

However, while the data provided on diversity for CCWG-accountability is interesting, it is not sufficient to provide a thorough assessment of **effective diversity** – for an analysis of the issues raised by the available data and tools to assess diversity in CCWG-accountability, see Annex 1.

**Effective** **diversity** refers to the actual involvement and influence of CCWGs’ participants and members, and not only their registration status. Diversity should be measured not only for registered participants or members, but also for effective participants and influencers.

Therefore, we suggest that **the draft framework and charter for CCWGs provide for the systematic availability of data and tools to measure and assess effective diversity** (e.g. a page on ICANN’s website) against the six above-mentioned criteria.

The following table could be used as a basis to thoroughly measure and assess diversity in CCWGs:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  **Participation / Diversity**  | **Members** | **Participants** | **Effective participants** | **Influencers** | **Breakdown per sub-group / Recommendation / issue** |
| **Gender** | % | % | % | % | % |
| **Stakeholder groups***For each Chartering Organization (SO/AC);**For each stakeholder category (private sector etc.).* | % | % | % | % | % |
| **Geographical***For each region ;**For the 5 most represented countries.* | % | % | % | % | % |
| **Main language** *For the 6 UN languages + Portugese.* | % | % | % | % | % |
| **ICANN Openness** | % | % | % | % | % |

To collect this data, information already available on SOI (Statements of Interest) might be enough or would need little improvement (e.g. adding main language and mandatory affiliation with stakeholder categories).

Regarding **geographical diversity**, data and tools should take into account both regions and countries. To assess participants’ region and country, **two criteria** should be taken into account: nationality (passport) + country of residence (if the two are different, then country of residence should prevail).

Regarding **effective participants and influencers**, the following criteria could be used:

* **Effective participants**: intervened during at least [options: between 15 and 33%] of the calls / meetings and/or sent at least [options: between 5 and 20] emails to the CCWG list.
* **Influencers**: intervened during more than [options: between 50% and 75%] of the calls / meetings and/or sent more than [options: between 10 and 30] emails to CCWG list.

Data regarding emails and participation to calls / meetings are available and can be processed to assess effective diversity.

Regarding **the per issue / recommendation column**, it would enable to assess diversity in decision-making processes for particular sub-groups or issues – e.g. one specific recommendation or Stress Test. Indeed, while a CCWG-membership can be diverse as a whole, one particular issue or subgroup could, in theory, be dealt with by a small minority of the membership, therefore increasing risks of imbalance for countries or stakeholders (Cf. Annex 1).

Regarding **ICANN openness**, the % should reflect the ratio of participants that are relatively new to / out of the ICANN ecosystem (criteria shall to be defined by the community[[6]](#footnote-6), and could include less than 5/10 years of involvement inside ICANN, absence of previous leadership position in ICANN, etc.).

Please note that the above-mentioned **criteria**, **data and tools for measuring and assessing effective diversity, which are purely informative, shall be incorporated in the draft framework and charter and be made mandatory and available for all CCWGs**.

An independent review panel could be used on a systematic basis to evaluate effective diversity of CCWGs after their closure, in order to possibly give all CCWGs a “diversity rating”, taking into account the above-mentioned criteria and tools.

* 1. Mechanisms to implement diversity.

In addition to defining (1.1) and measuring (1.2) diversity, specific rules, to be defined by the community, could be implemented to guarantee minimum levels of diversity.

*Ex ante* rules

Based on the above-mentioned criteria, the first way to implement diversity is to enable CCWGs to use ***ex ante* rules or ratios** to guarantee minimum levels of diversity.

Section IV of the draft CCWG charter (*Membership, Staffing and Organization*) contains recommendations regarding geographical and stakeholder diversity (p16-17)[[7]](#footnote-7). We suggest that this language be enhanced and that recommendations are replaced by **stricter rules and ratios**, to the extent possible:

* **Gender**: each CCWG should be gender-balanced, with rules to be defined by the community (50-50 or 60-40, etc.).
* **Stakeholder group (SO/AC):** each Chartering Organization should be equally represented in a CCWG, to the extent possible. No Chartering Organization should be represented by more than (1,3/X) members of a CCWG (with X being the number of Chartering Organizations[[8]](#footnote-8)).
* **Stakeholder category:** Depending on the context and nature of CCWGs, *ex ante* rules could be applied so that one specific category (e.g. private sector or governments) is not over-represented.
* **Geographical diversity**: Each Region should be represented in a CCWG, to the extent possible. In any case, no Region should be represented by more than 33% of the members[[9]](#footnote-9), and no country should be represented by more than [options: between 10% and 20%] of the members.
* **Main language**: At least 3 different main languages should be represented in a CCWG, to the extent possible. No single main language should be represented by more than [options: between 20% and 50%] of the members.
* **ICANN openness**: ICANN outsiders or new-comers should be represented in CCWGs, to the extent possible. Possible rule: at least 33% of a CCWG’s members and effective participants should be new-comers.
* **Concentration of power**: no single individual should hold several leadership positions at the same time, or hold leadership over time, to the extent possible.

While *ex ante* rules are necessary to implement diversity, they might be difficult to implement, for at least three reasons:

* *Ex ante* rules can contradict the autonomy of each SO/AC to appoint CCWG members based on their “own rules and procedures”[[10]](#footnote-10). However, this issue is already dealt with at the level of the ICANN board, regarding rules for regional diversity.
* Even if *ex ante* rules are used to select CCWG members, some members might not participate in the discussion, therefore generating an imbalance for decision-making[[11]](#footnote-11).
* While *ex ante* rules can be imposed for members, they might not be imposed for participants. However, participants can influence the discussion and therefore generate an imbalance for decision-making (Cf. Annex 1).

*Ex post* mechanisms

To tackle the issue of SO/AC autonomy v. diversity rules, several mechanisms can be explored:

* **First come, first served**: the diversity ratios (region, country, gender, main language) are to be filled in by those who are appointed first. Then all other appointments must respect the *ex ante* diversity rules. If conflicts arouse, mitigation mechanisms could be made available.
* **Redress mechanisms**: if the *ex ante* rules are not respected, a participant or a member can request the co-chairs to make redress mechanisms available (example: create a new sub-group that respects diversity ratios in order to re-examine a specific issue).
1. **Clarifying the rules for reaching consensus.**

*2.1) Definition of consensus*

The draft framework defines consensus at **3.3.5** (p10) as “a position where no minority disagrees; identified by an absence of objection“. This definition of consensus is not enough and should take into account other criteria.

Indeed, one can imagine a situation in which the majority of the CCWG members remains silent and does not express any position regarding a specific issue, therefore allowing a (potentially very small) minority to decide for the whole community.

To avoid such shortcomings in future CCWGs, consensus should be defined not only i) as the absence of objection but also as ii) “**broad support from the members representing the Chartering Organizations**”.The definition of consensus in the draft framework and the draft charter should be modified taking into account these two criteria.

*2.2) Rules to reach consensus*

To assess the level of support of the community, CCWG needs to clearly identify **who represents the community**. In the proposed framework (**3.6,** p8), three types of community representatives are described:

* **Members** (appointed by Chartering Organizations);
* **Participants** – can send emails and talk during meetings, but are not supposed to influence consensus calls;
* **Observers** – can listen during calls and read emails, but cannot participate.

According to the draft framework, only the views of Members should be taken into account to assess the level of support regarding specific issues. **Article 3.2.6 of the draft framework reads:** “However, should there be a need for a consensus call or decision, such consensus call or decision will be limited to CCWG members appointed by the Chartering Organizations”.

We note, however, that **these rules to determine consensus have not always been respected by CCWG-accountability**. Several “consensus calls” took into account the views expressed by participants. An example of a “grey area” can be found in an email sent to CCWG-accountability on 02/23/16 entitled “poll results”, in which are described the results of a poll held by CCWG-accountability. This “poll” – that was later described by some as a “vote” – enabled the modification of part of the proposal. Most surprisingly, the individuals taking part in this poll were not only CCWG members, but also CCWG participants, CCWG observers, and also individuals that were neither of those (including ICANN staff, CEO, board members).

This is worrying given that while the composition of CCWG-accountability membership is designed to include diversity criteria, this is not the case for CCWG-accountability participants[[12]](#footnote-12). Taking into accounts the views of participants to build consensus can massively favor one part of the community over others, and undermine *ex ante* diversity rules. *Ex post* mechanisms might then be needed to correct decisions or proposals that do not reflect correctly reflect the diverse views of the community (Cf. Part 1.3 on effective diversity).

In order to avoid these issues in the future, CCWGs should define and implement stricter rules for reaching consensus, as well as tools to measure the effective diversity for specific decisions made by CCWGs. These elements should be included in the draft framework and the draft charter.

1. **Clarifying the categories for Chartering Organizations’ decisions regarding CCWGs’ deliverables.**

The draft framework mentions (p1) four types of Chartering Organizations’ decisions regarding the CCWGs’ deliverables: **adoption, approval, support, non-objection**.

However, the draft CCWG charter suggests that Chartering Organizations’ decisions are limited to adoption only, or that the above-mentioned categories are actually sub-categories of adoption: Chartering Organizations should “review and discuss the output and decide whether to adopt the proposals and the recommendations contained with it” (p19).

**It remains unclear whether the four types of Chartering Organizations’ decisions are considered equivalent or not.**

As mentioned in the Charter (p19), Chartering Organizations should preserve their autonomy and their ability to use their “own rules and procedures” for decision-making. One can consider that different decisional categories might reflect the diversity of Chartering Organizations’ own rules and procedures (e.g. according to each SO/AC’s operating principles, it might be the rule for one SO to “approve” a proposal while the rule for another SO is to “adopt” it).

However, different decisional categories also indicate different levels of support. In fact, the four existing categories can be considered as different points on the “support spectrum”, from full approval (“adoption”) to very limited support (“non-objection”). Plus, for most SO/ACs, all of the decisional categories are available, and the choice of one of them therefore reflects a level of support rather than a cultural idiosyncrasy.

In the case of GAC’s decision regarding CCWG-accountability’s final output, for instance, GAC considered the four decisional categories, and decided to choose “non-objection”, thus indicating a limited support for the proposal (if there was full support for the proposal, then GAC would have chosen to adopt it).

However, during the Marrakech meeting, ICANN chose to not differentiate between the four decisional categories, leading to potential confusion for both CCWG participants and external observers. Indeed, the “approval check box” for CCWG-accountability’s proposal was conveniently modified after GAC reached a decision on Tuesday, March 8th from Figure 1 to Figure 2.

**Figure 1:**



**Figure 2 :**

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We consider the design and release of Figure 2 as particularly confusing for the following reasons:

* There is no clear conceptual distinction between non-objection and approval; it seems that approval and non-objection are equivalent - different words used to mean the same thing.
* There is no graphic distinction between non-objection and approval; observers might believe that all Chartering Organizations decided to not object, or that all of them decided to approve the proposal.

Furthermore, it seems that some observers, including the US Congress[[13]](#footnote-13), did not share ICANN’s analysis, but rather considered that GAC’s non-objection did not qualify as an approval and noted that not all Chartering Organizations approved the CCWG-Accountability Proposal.

In order to avoid future confusion, the draft framework and the draft CCWG charter should clearly indicate the differences between decisional categories, for instance using the following table:

|  |  |  |  |
| --- | --- | --- | --- |
| **Decisional category** | **Level of support** | **Impact on output** | *Option: score* |
| **Adoption** | Very high | Moves forward | 4 |
| **Approval** | High | Moves forward | 3 |
| **Support** | High / medium | Moves forward | 2 |
| **Non-objection** | Medium / low | Moves forward? | 1 |
| **No position** | Medium / low  | Moves forward? | 0 |
| **Objection** | Very low | Blocked? | -1 |

Future use of graphic designs (such as Figures 1 and 2) should also provide for different symbols to represent different categories, rather than considering them as equivalent. Decisional categories should also be used, either by the CCWG leadership or the board, to assess the level of support of the community.

It could also be proposed that an overall level of support needs to be reached for the proposal to go forward. For instance, each decisional category could be matched with a number from 4 (adoption) to 0 (no position) and -1 (objection), and the proposal would go forward only if a certain score is reached (e.g. 2x, x being the number of Chartering Organizations[[14]](#footnote-14)).

**ANNEX 1 – Issues raised by the currently available data and tools to measure diversity in CCWG-accountability**

As of March 31st, the “Members and participants” page of the CCWG website reads as follows:

There are currently 212 people in the CCWG-Accountability.

* 28 Members
* 184 Participants
* 122 Observers

Of the 212 CCWG-Accountability members and participants, the regional representation is as follows:

* 64 North America
* 59 Europe
* 54 Asia/Asia Pacific
* 17 Africa
* 18 Latin America

Of the 212 CCWG-Accountability members and participants, the stakeholder group representation is as follows:

* 74 (no affiliation)
* 63 GNSO
* 30 GAC
* 19 At-Large
* 16 ccNSO/ccTLD
* 6 ASO
* 2 SSAC

France would like to share the following considerations regarding these figures:

* The **regional breakdown**, while necessary, is not enough, and could mask significant unbalance between countries. **A more detailed breakdown of geographical diversity, including per-country and per-mother tongue, is necessary for CCWG members and participants.**
	+ Example: while the regional breakdown of CCWG-Membership seems somehow balanced (8 members from North America, 7 from Europe, 6 from Asia), a per-country analysis reveals a different picture, with the USA (8 members) and Australia (4 members) being over-represented compared to all other countries (either 0, 1 or 2 members).
* The **stakeholder breakdown**, while necessary, is not enough and should be translated into ICANN outsider-friendly language. **A clearer breakdown of stakeholder-diversity**, including the following categories (private sector, academia, NGOs (think-tanks, users), technical community and governments) **shall be provided**.
	+ Example: out of the 212 CCWG-accountability participants and members, 74 CCWG-accountability do not have any affiliation with any SO/AC. Making affiliation mandatory and providing more general stakeholder categories (using the above-mentioned categories) would enable to affiliate these participants.
* The draft CCWG framework and charters insist on letting Chartering Organizations appoint Members based on their own rules and procedures. While this is understandable, it can also lead to conflicts with diversity rules. **Diversity redress mechanisms** **should be implemented in order to resolve potential conflicts** for future CCWGs.
	+ Example: while each of the 5 GAC appointed members to CCWG-accountability represent a different region, 4 out of the 5 GNSO appointed members to CCWG-accountability come from only one region (North America) and one country (USA). With 4 other members appointed by other ACs, including GAC, the USA are therefore over-represented at CCWG-accountability with 8 members (twice as much as the second-most represented country, Australia).
* **While** ***ex ante* diversity rules apply for CCWG members, this is not the case for CCWG participants**. In fact, while stakeholder-diversity was respected for CCWG-accountability members (GNSO, CCNSO, ALAC and GAC each represent 21% of the members and ASO 17%), it was not the case for CCWG-accountability participants, with an overwhelming presence of gNSO representing half (46%) of affiliated participants, much more than GAC (22%), ALAC (13%), ccNSO (11%) and ASO (4%). To avoid such imbalance in future working groups, redress mechanisms should be made available
* **Registration is different from actual participation and influence**. The breakdown of registered participants and members does not accurately reflect their respective influence on the work of CCWG. **A new breakdown is necessary, taking into account the actual involvement and influence of participants and members,** e.g.: % of total emails sent by country and by stakeholder group; % of actual participation to meetings and calls per country and per stakeholder group; rankings of the 5 most influent countries / stakeholders (based on number of emails sent, participation to meetings/calls; breakdown of influence per issue / recommendation (e.g. if only two Chartering Organizations out of 7 participated to the drafting of a specific recommendation).
* **Sub-groups diversity and “silo-effect”**: while a CCWG can be considered diverse as a whole, it might not be the case for every subgroup or every decision-making process regarding specific issues or recommendations. Therefore, data and tools regarding diversity for specific issues / subgroups should be made available.
For instance, while CCWG-accountability is composed of 7 Chartering Organizations, most participants that influenced the decision-making process regarding Recommendation 11 came from only 2 SO/AC (GAC and GNSO).
*Hypothesis*: only members and participants from GAC (5 members, 30 participants) and GNSO (5 members, 68 participants) influenced the decision-making process regarding Recommendation 11.
*Consequence*: while gNSO accounts for 20% of CCWG members and 46% of CCWG affiliated participants in total, these numbers rise to 50% for members and 70% for participants involved in the decision-making process regarding Recommendation 11.
1. <https://community.icann.org/pages/viewpage.action?pageId=50823970> [↑](#footnote-ref-1)
2. “Each Chartering Organization shall appoint a minimum of 2 and a maximum of 5 members”; “reasonable efforts should be made each of ICANN’s five geographical regions is represented”. [↑](#footnote-ref-2)
3. While the acronyms of SO/AC are well understood inside ICANN, it might not always be the case for external observers. Plus, some CCWG participants might not be affiliated to any SO/AC (Cf. Annex 1). Therefore, in addition to SO/AC affiliation, stakeholder categories should be made available, breaking down participants under the following types: private sector ; academia ; NGO – think-tanks; technical community ; governments. [↑](#footnote-ref-3)
4. <http://netmundial.br/wp-content/uploads/2014/04/NETmundial-Multistakeholder-Document.pdf> [↑](#footnote-ref-4)
5. <https://community.icann.org/pages/viewpage.action?pageId=50823970> [↑](#footnote-ref-5)
6. A possible way forward would be to define an algorithm that would enable to give to each member or participant a score, reflecting its involvement in the ICANN ecosystem (former board member, has been involved in a SO/AC for more than 10 years, etc.). [↑](#footnote-ref-6)
7. “Each Chartering Organization shall appoint a minimum of 2 and a maximum of 5 members”; “reasonable efforts should be made each of ICANN’s five geographical regions is represented”. [↑](#footnote-ref-7)
8. One Chartering Organization would have a maximum of 65% (1,3/2) members for a CCWG made of two AC/SO, 43% (1,3/3) for a CCWG made of three SO/AC, 26% (1,3/5) for a CCWG made of 5 SO/AC, etc. [↑](#footnote-ref-8)
9. This is the current rule for ICANN Board members. [↑](#footnote-ref-9)
10. Example: a CCWG is made of two SO/AC, each represented by 5 members. The SO appoints 3 members coming from region A, while the AC’s rule is to appoint one member from each Region. If the AC appoints one member from region A, then region A would be represented by more than 33% of the members, therefore contradicting *ex ante* rules for regional diversity. [↑](#footnote-ref-10)
11. Example: a CCWG is made of two SO/AC, each represented by 5 members. However, only 2 out of the 5 AC-appointed CCWG members take part in the decision-making process. Therefore, the SO influence represents 70% (5/7) of the effective participants, and not 50% as it should be according to *ex ante* rules. [↑](#footnote-ref-11)
12. In fact, while stakeholder-diversity was respected for CCWG-accountability members (GNSO, CCNSO, ALAC and GAC each represent 21% of the members and ASO 17%), it was not the case for CCWG-accountability participants, with gNSO representing half (46%) of affiliated participants, much more than GAC (22%), ALAC (13%), ccNSO (11%) and ASO (4%). [↑](#footnote-ref-12)
13. <http://docs.house.gov/meetings/IF/IF16/20160317/104682/HHRG-114-IF16-20160317-SD002.pdf> [↑](#footnote-ref-13)
14. E.g. if a CCWG is composed of 3 Chartering Organizations, the overall score to be reached for the proposal to go forward to the board should be of 2x3=6. For instance, the proposal would go forward if 3 Chartering Organizations support (2) the proposal, or if one adopts it (4) while one supports it (2) and one has no position (0), etc. [↑](#footnote-ref-14)