



**WORKING GROUP ON THE REVIEW OF
WADA GOVERNANCE REFORMS**

**Second Interim Report to the
WADA Executive Committee**

September 2021

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Introduction

The Working Group on the Review of WADA Governance Reforms (Working Group) has been created in November 2020 by WADA Executive Committee. Its Terms of References define its mission as follows:

The tasks of the Working Group on the Review of WADA Governance Reforms will include:

- 1. Assess the status of the implementation of the 70 recommendations for reform made by the Working Group on WADA Governance Matters in November 2018.*
- 2. Develop the process for conducting an open consultation with stakeholders on the implementation of the reforms. [The objective of the consultation is not to repeat the same work conducted by the Governance Matters Working Group in 2017-2018, rather to reflect on whether they have been appropriately implemented and are fit for purpose].*
- 3. Consolidate the views and input of stakeholders and consider their appropriateness, taking into consideration the foundation and structure of the Agency.*
- 4. Suggest any new concepts or other general areas of improvements not otherwise presented by stakeholders, based on Working Group members' own expertise and/or experience.*
- 5. In consideration of the stakeholder and Working Group member contributions, compile a report of the recommendations. The timing of reporting will at least include a preliminary report in May 2021 and a final report as soon as possible thereafter.*
- 6. Give preliminary consideration to the impact on the Agency, financial and/or otherwise, and feasibility thereof, of any new governance recommendations.*
- 7. Consider and recommend whether the mandate of the Working Group should continue or not, beyond the delivery of their report in 2021.*

Following its first interim report presented to the WADA Executive Committee and Foundation Board on 20-21 May 2021, which focused on objectives 1 to 3 listed above, the Working Group presents its second interim report which now focuses on objectives 4 and 5.

The report includes three elements: a first batch of recommendations on WADA governance reforms (1), an updated position on the WADA Code of Ethics (2) and a list of the remaining open issues that the Working Group intends to discuss in the coming weeks (3).

The recommendations on WADA governance reforms include items where a feedback from the Executive Committee or from the WADA Athlete Committee is requested. Those items are signaled by red font throughout the document.

The full list of meetings held by the Working Group is also attached as an annex to this report.

1. Recommendations on WADA governance reforms

I. General comments

- (1) The recommendations will – where necessary – distinguish between short-term and long-term recommendations. Short-term recommendations aim to change the present situation while long-term recommendations aim at future reforms.
- (2) The present situation is characterized by an equal partnership of Sport Movement (SM) and Public Authorities (PAs). The term SM is, in principle, understood in a broad sense and covers the IOC, IPC, IFs within the Olympic and Paralympic movement, NOCs, NPCs as well as umbrella organisations of the above.
- (3) These recommendations preserve the principle of equal partnership between PAs and SM on which WADA was founded. It follows from this that PAs and SM must as a general principle have equal seats on the main organs of WADA and that their respective positions cannot be marginalized vis-à-vis other stakeholders.

II. Athletes' representation on the WADA Athlete Committee (WADA AC)

A. Composition

- (1) The status of the WADA AC should be changed. Currently the WADA AC is a Standing Committee. The purpose of a Standing Committee is, in principle, to provide expertise to the Executive Committee (EC). The purpose of the WADA AC goes beyond that role, because it must also act as a forum for the broader athlete community. The WADA AC should therefore:
 - o be a distinct body to which distinct rules apply;
 - o be larger in number compared to a Standing Committee (up to 20 members, see below) in order for it to be able to reflect diversity and fulfill its tasks.
- (2) The WADA AC shall be composed of Athlete Representatives (AR) that must all meet the following criteria:
 - o (i) International level athlete (within the meaning of the World Anti-Doping Code)
 - o (ii) Bound by the World Anti-Doping Code (Code)
 - o (iii) Must meet the (i) and (ii) criteria within the last 6 years before taking office for the first time. The AR can be reelected twice for a three-year term but cannot stand on the WADA AC more than 12 years after his/her (last) fulfillment of the first two criteria.
- (3) The AR shall be recruited from a broad community of athletes. The WG recommends in the short term drawing the ARs from three different constituencies:
 - o Group 1: consists of 5 ARs coming from elected members of the International Olympic Committee Athlete Committee (IOC AC) and International Paralympic Committee Athlete Committee (IPC AC).
 - o Group 2: consists of 8 ARs who are not from the IOC AC and IPC AC. They are elected by the ACs of IFs¹ that are Signatories to the Code.
 - Voting constituency: The voting constituency is made up of ACs of IFs that are Signatories to the Code. Every IF AC has one vote only, irrespective of whether it is composed by a single AR or by several ARs. Every IF shall have only one

¹ The term IF includes IOSD (International Organizations of Sports for the Disabled), if they are not included in the Code Signatories IFs.

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AC eligible to cast a vote. Where an IF has more than one AC, the IF must designate the appropriate AC.

- Eligibility: In order for the AR to be eligible to the WADA AC, they must – in addition to A.(2) – be a member of the IF AC at the time of the election. Members of the IOC AC and IPC AC cannot be eligible under Group 2.
- Group 3: consists of 7 ARs. They are appointed by a special nominations panel in order to fill skills and diversity gaps.
 - The special nominations panel is composed of 5 members: WADA AC Chair, 2 athletes from the WADA AC (to be selected by the WADA AC), 1 member of the Nominations Committee (appointed by the Nominations Committee) and the WADA President.
 - The special nominations panel should work on a consensus basis. If a vote is needed, decision is taken by majority.
- (4) The long-term recommendation is to reduce the overall size of the WADA AC depending on alternative systems to select ARs while preserving its composition balance and ensuring diversity.

B. Governance

- (5) The Chair and Vice Chair of the WADA AC are elected by the WADA AC members. Their eligibility criteria and terms limits are the same as all AC members.
- (6) The WADA AC selects, among its members, the athletes' representatives sitting on the WADA Standing Committees and Working Groups².

Questions set out to the Working Group on Athlete Representation/WADA AC:

- (i) Can IOC /IPC AC members be elected as Chair and Vice Chair of the WADA AC?
- (ii) Do IOC/IPC AC members sitting on the WADA AC (Group 1) automatically lose their seats if they are no longer sitting on the IOC/IPC AC or do they finish their term?
- (iii) Do ARs sitting on the WADA AC for Group 2 automatically lose their seats if they finish their IF AC term but still have time remaining on their WADA AC term or do they finish their term?
- (iv) If (iii) is answered in the negative, would they then be eligible to apply as WADA AC Chair or Vice Chair?
- (v) Should the constituency of AC eligible to vote in Group 2 be limited to those IF ACs which would accept the complete Athletes' Anti-Doping Rights Act (as a kind of quality control)?

III. Executive Committee (EC)

- (1) In order to implement any of the Significant Trends identified from the stakeholder consultation held by the Working Group, the current composition of the EC needs to be changed.
- (2) In the short term, the Working Group does not see a realistic possibility that the seats of the SM and PAs on the EC can be reduced while preserving their equal partnership and, in addition, preserving continental representation of the PAs. The latter is seen by the WG as an asset in light of the fact that formal structures to coordinate PAs on a worldwide level are only just emerging.
- (3) If adding additional seats to the EC is the only way to implement any of the Significant Trends, such additions must however be done with care. This follows – inter alia – from the

² The Working Group has not decided what happens, if the members of the WADA AC do not have the expertise or skill set required to fulfill a Standing Committee or Working Group role.

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benchmarks on good governance, which would normally support a reduction in the size of the EC. The WG is comfortable with adding one new member (that would bring the overall size of the EC to 15). It could not agree and **seeks feedback from the EC, on whether further new members should be added, up to a maximum of 17 members on the EC.**

- If only one new member is to be added to the EC, the WG recommends this seat should go to the WADA AC Chair.
 - Furthermore, the standing practice of the SM that one of its 5 seats on the EC be allocated to an athlete representative from the IOC AC should be fixed in the WADA Statutes to ensure that a minimum of 2 seats on the EC are reserved for ARs.
 - **If the EC supports more than one seat to be added to the EC, the WG seeks feedback on how these new seats should be allocated between WADA AC members or Independent Members or a combination of both.**
- (4) For the long term, the WG recommends finding mechanisms to reduce the overall size of the EC while preserving equal partnership between PAs and SM, independence and diversity. The SM and PAs are therefore invited to look into mechanisms to reduce the number of seats they hold on the EC, including through enhanced and robust coordination mechanisms.

IV. Foundation Board (FB)

A. General Remarks

- (1) The Significant Trends identified from the consultation held by the Working Group noted an overlap between the EC and the FB that should be reduced. The overlap referred to an overlap of people and of substantive issues on the agenda. The WG recommends:
- Reducing the personal overlap by establishing – in principle – that members of the EC should not be allowed to vote on the FB. Such principle would also strengthen the supervisory function of the FB vis-à-vis the EC.
- However, to what extent such principle should be enforced is undecided because there needs to be meaningful coordination between both organs. It is evident to the Working Group that the WADA President and Vice President (being also the Chair / Vice Chair of both the FB and the EC) must be part of the FB. Whether this should be extended to (some of the) other members of the EC remains undecided. In any event, even if EC members (other than the President and Vice President) would not have voting rights in the FB, they shall have the right to attend and speak at the FB meetings in order to respond to matters raised at the FB/EC. **The WG would welcome feedback of the EC on the above.**
- To reduce the overlap of agenda, the WG recommends better defining the tasks and mandates of the EC and the FB. The WG will further elaborate on this. In principle, the WG suggests reducing the tasks of the FB and strengthening the mandate of the EC. **The WG would welcome feedback of the EC on the above.**

B. Composition

- (2) The WG recommends that NADOs³ be represented on the FB. NADOs are important operational units for the execution of the World Anti-Doping Code in their respective countries, they fulfill an important function in the world of anti-doping, and they bring expertise and legitimacy to the table.

³ The representation of NADOs should be understood as covering also Regional Anti-Doping Organizations (RADOs).

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- (3) The WG recommends that 2 NADOs representatives be included in the FB.
 - o Appointment to the FB: The 2 members could be the Chair and Vice Chair of the WADA NADO Expert Advisory Group (EAG) or any other NADOs elected by the WADA NADO EAG.
 - o Election to the WADA NADO EAG: The WG recommends not elevating the NADO EAG to a Standing Committee. The NADO EAG shall be composed of 2 NADOs per continent. It is for the respective continents to elect the NADOs that shall represent the continent in the NADO EAG. Thereby regional representation and diversity would be ensured.
 - o The Working Group could not agree, and seeks feedback from the EC, on whether the 2 seats for NADOs on the FB should be added to the existing number of FB members or whether the NADO seats on the FB should be part of the seats of PA (in analogy to the four "athletes' seats" on the SM side). Furthermore, the WG is split on whether NADOs should have:
 - Full voting rights
 - No voting rights or
 - Only partial voting rights (e.g. on everything but budget)

- (4) The WG recommends that the WADA AC shall be represented on the FB with a minimum of 2 seats (in addition to the 4 "athletes' seats" within the SM). The Working Group could not agree, and seeks feedback from the EC, on whether:
 - o More seats (up to a total of 6) should be allocated to the WADA AC;
 - o The members of the WADA AC should have
 - Full voting rights
 - No voting rights or
 - Only partial voting rights (e.g. on everything but budget)

- (5) Irrespective of the above, the WG suggests to the Olympic Movement considering to give the IPC AC a seat among the minimum of 4 athletes sitting on the FB according to Article 6(1) of the WADA Statutes.

2. WADA Code of Ethics

- (1) The Working Group has studied the draft submitted by WADA's Legal Department and the Kellerhals & Carrard law firm outlining a compromise with respect to the competences of the Ethics Panel, the Ethics Board and the EC. The Working Group notes that the principles provided in the compromise foresee that:
 - o The final decision on whether or not a breach of the Ethics Code has been committed (and what consequences follow from this) rests with the Independent Ethics Board;
 - o The EC, nevertheless, is included in the process, because it has the possibility to formulate comments on the Deliberation Report of the Panel;
 - o Whether such comments lead to a reopening of the case is assessed solely by the Independent Ethics Board; and
 - o The opportunity to file comments cannot be used for dilatory purposes, since
 - Such comments need to be submitted within a short time frame (one month) and
 - The Independent Ethics Board is entitled to issue interim measures for the whole period of the reconsideration process.

- (2) The WG agrees with the above principles, but wishes the following points to be implemented into the Ethics Code:
 - o The defendant has a right to natural justice/right to be heard regarding the decision of the Ethics Board to reopen the case. To ensure this, the defendant should receive any comments made by the EC. The WG was not clear on whether the right to be heard extends also to the Deliberation Reports. This should be examined in more detail by WADA's Legal Department.
 - o Strict rules on independence and impartiality must apply also to the EC when making its comments. Nobody from the EC whose judgment might be impaired by lack of impartiality towards the defendant should participate in the comment-making process. The Legal Department should clarify how this can be ensured. In particular, it should clarify how this would be solved in cases where a member (or former member) of the EC is the defendant.
 - o The Legal Department should clarify that the Ethics Board can impose interim measures from the beginning of the reconsideration process, i.e. before the EC is given the opportunity to comment.

3. Open Issues

For reasons of timing, some issues could not yet be condensed into recommendations. The following is a non-exhaustive list of “open issues”:

- Executive Committee (EC): name, number and nature of meetings, functions, persons entitled to participate, remuneration and terms of office of members.
- Foundation Board (FB): name, membership (laboratories), clear division of roles between EC and FB, number and nature of meetings, avoidance of duplication with EC
- WADA Athlete Committee (WADA AC): administrative support, whether approval of WADA AC members by EC or FB is needed.
- Whether or not there is a role for Athlete Associations/Player Unions beyond the WADA AC and the EC.
- Nominations Committee.
- Standing Committees.
- Compliance Review Committee.
- Independence for all members across all WADA organs.
- Diversity.
- WADA governance review mechanisms.

Feedback from the EC at this early stage on any of the above is welcomed.

Annex 1 - List of meetings held by the Working Group

- Meeting #1 – 10 December 2020
- Meeting #2 - 14 January 2021
- Meeting #3 – 28 January 2021
- Meeting #3 bis – 3 February 2021
- Meeting #4 – 9 February 2021
Exchange with Jonathan Taylor and Bente Kristensen (Respectively former CRC Chair and Member)
- Meeting #5 – 24 February 2021
Exchanges with:
 - the Compliance Review Committee
 - the Nominations Committee
- Meeting #6 – 1 March 2021
- Meeting #7 – 29 March 2021
Exchange with the NADO Expert Advisory Group
- Meeting #8 – 8 April 2021
- Meeting #9 – 19 April 2021
- Meeting #10 – 5 May 2021
Exchange with the Olympic Movement
- Meeting #11 – 1 June 2021
- Meeting #12 – 21 June 2021
Exchange with WADA Legal Department and the Kellerhals & Carrard law firm on the WADA Code of Ethics
- Meeting #13 – 30 June 2021
Exchange with the WADA Athlete Committee
- Meeting #14 – 30 June 2021
Exchange with One Voice
- Meeting #15 – 16 July 2021
Exchange with the World Players Association and EU Athletes
- Meeting #16 – 11-13 August 2021
Hybrid in-person/virtual meeting in Frankfurt, Germany