



## **WADA WORKING GROUP ON GOVERNANCE MATTERS**

### **RECOMMENDATIONS** *for consideration by the* **WADA FOUNDATION BOARD**

#### **BACKGROUND**

At the WADA Think Tank in September 2016, there were discussions and a recommendation made that there was a need to review the current WADA governance structure, with the purpose of strengthening WADA and ensuring that it represented a model of independence and best practice in matters of good governance. At the November 2016 meetings, as part of the Way Forward discussions, this recommendation was endorsed and WADA was asked to form a Working Group (WG) that would consider possible improvements to the governance system.

WADA Foundation Board (FB) nominated the members of the WG, namely five representatives from the Olympic Movement and five from Public Authorities (one from each region), plus two representatives from National Anti-Doping Organizations and two Athletes. In addition, it was agreed that WADA would appoint an independent Chairperson, and recruit two experts to act as advisors to the group. The composition of the group, along with the Terms of Reference, were approved by the FB by circular vote in January 2017<sup>1</sup>. A copy of both are attached.

The first meeting of the WG was held on 11 March 2017 in Lausanne. The WG exchanged in a collaborative manner various viewpoints and ideas. A second meeting was held in Montreal in 20 July 2017 and a third on 15 October 2017 in Lausanne.

In 2018, the WG met via teleconference in April and July to discuss and confirm how the group would advance towards concluding its recommendations for consideration by the Foundation Board in November 2018. It was agreed that the experts would take the discussions from 2017, which looked at theoretical concepts for potential change, and turn these into drafts of proposed processes and protocols, illustrating what the changes being discussed would in fact look like. Consultation phases took place with WG members in order to maintain direction and momentum and the WG met again in person on 5-6 September 2018. Some concrete outcomes were defined and a final meeting was held on 22 October 2018 in order to ensure the WG were in agreement with the recommendations to be put forward.

It was determined at the 5-6 September 2018 meeting that instead of presenting detailed changes to current processes and protocols, the series of recommendations to be submitted for approval by the WADA FB would be made by way of presenting key principles for change and improvement. Should the FB agree to these principles, the work on detailing the changes would continue to ensure all processes are then documented clearly and in a transparent way.

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<sup>1</sup> In May 2018, three changes to the composition were approved by the WADA FB, namely Dr Ulrich Haas replaced Judge Gberdao Kam as Chair, Kirsty Coventry replaced Angela Ruggiero and Danko Bartekova replaced Tony Estanguet.

## OUTLINE OF WORK

The terms of reference for the WG were established in January 2017 as noted above. The areas that the WG focussed on included:

1. Criteria/Guidelines of Independence;
2. Process for the formation/evaluation of the various levels of WADA's governance structure, including their role and responsibilities, plus their composition, and the nomination/appointment/election of the members:
  - a) Working Groups, Expert Groups, Standing Committees;
  - b) Executive Committee;
  - c) Foundation Board; and
  - d) Chair and Vice Chair
3. Creation of an Ethics Board; and
4. Creation of a Nominations Committee.

*One objective which the WG did not address in the time available was "Suggesting improvements to WADA's process to establish strategic objectives".*

## PROCESS

In accomplishing its mandate and drafting the report, the WG was guided by the following principles/factors:

- to seek to obtain the support of all members for the entire report;
- to seek to achieve consensus on all individual items addressed by the WG in the report. In seeking consensus, the members were mindful to strike a balance between what is feasible in view of required majority on the FB and what is needed to strengthen the governance of WADA. *[Where there were opinions expressed to the contrary on individual recommendations, it was agreed that the report to the FB would provide a note to that effect and the relevant stakeholder(s) would be offered the opportunity to state its (their) alternative position(s) in an annex.];*
- the members also took into consideration the financial impact of the changes. To this end some preliminary cost estimations were provided on the financial impact of the proposed recommendations;
- the members thought it necessary to include in its discussions and deliberations an assessment of the role of Athletes in WADA's governance structure; and
- the members also briefly touched upon the function of WADA Management (i.e. the Director General) which requires further assessment.

## RECOMMENDATIONS

The recommendations that follow are grouped into the main areas of the WG's focus and by the various governance structures outlined above.

It should be noted at the outset that the overarching recommendations made by the WG are:

1. That an ongoing governance review process should be installed by WADA to assess the proposed changes hereunder (should they be agreed to by the FB), to reflect whether they have been appropriately implemented and are fit for purpose, and to consider any new concepts or ideas put forward to continually improve the governance program of WADA.
2. The review process should take place in cycles of three years.
3. That WADA should look into a comprehensive policy for all its organs regarding diversity and gender equality.

## **1. Criteria/Guidelines of Independence**

*The Governance WG agreed and/or recommends:*

4. That defining a process for identifying and maintaining independence is necessary.
5. That two different concepts for independence criteria be applied: 1) the application of a general definition<sup>2</sup>; and 2) a more pragmatic approach with levels, criteria or flags. The WG agreed to recommend to have a flexible approach, similar to that used by the International Bar Association for resolving conflicts of interests for arbitrators, i.e. a general definition and an implementation by a non-exhaustive list of examples (red flags) and that the number of the red flags could vary according to the position within the organisation.
6. That no "one size fits all approach" is possible. Depending on the position, there could be the application of the general definition only, and for others, there might be the general definition and the red flags approach.

## **2. WADA's Governing Structure**

### **2a. Working Groups and Expert Groups**

*The Governance WG agreed and/or recommends:*

7. That the details for the Expert Groups and Working Groups was not a matter for the Governance WG to be looking at, and that the WADA Executive Committee and WADA Management should have the discretion to recommend and decide what is needed to make best use of the Expert Groups and Working Groups.
8. That the Executive Committee should be tasked with reviewing the current number and terms of reference and deciding if the Committees and Groups were effective and efficient. When taking its decisions, the Executive Committee should be guided by the principles developed by the Working Group, and annexed to these Recommendations.

### **2b. Standing Committees**

General Principles

9. That all Standing Committees are important expertise pools to WADA and that their primary function is "field work" and there is the need to find the right expertise. Expertise should not be compromised. Expertise/quality is first and foremost.
10. That the Standing Committee Chairs could not also be WADA Executive Committee members.
11. That the term limits for Chairs and members would be a maximum of three x three-year terms (i.e. maximum nine years). There would be no possibility of stepping out for a term and returning.
12. That the process needed to be transparent and reflected in the Statutes or in bylaws as deemed relevant/required.

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<sup>2</sup> The general definition to be: "An individual is considered independent when he/she is independent in character and judgment and there are no relationships or circumstances which to an informed third party could affect, or could appear to affect, the individual's judgment".

13. That not all Standing Committees are to be treated as identical – there are three common ones (Education, Finance and Health, Medical, Research). The CRC and Athlete Committee are different.
14. That the status of the Athlete Committee is currently more that of an expert body than that of a representational one.

Principles applicable to all Committees, excluding the CRC

15. That there should be no red flags approach in terms of independence applied to the positions of Committee or Group Chairs; just the general definition of independence would apply to them, which means that they would not necessarily need to give up other positions. Ensuring they have the right expertise was paramount.
16. That the process for selecting Standing Committee Chairs (see Annex) should include the Nominations Committee vetting candidates and presenting to the Executive Committee, for approval, the candidates which have fulfilled the vetting criteria. The Nominations Committee would not actively search for candidates, but could put forward names should they become known. With respect to the Athlete Committee Chair, the candidate should be proposed by the Athlete Committee members, and then for the rest of the process, the first sentence (above) would apply.
17. That for the Chairs of the common Standing Committees, proposals may not just come from the Sports Movement and Public Authorities.
18. That as regards Standing Committee members, they should be selected first and foremost on the basis of their expertise. But due consideration should also be given to other diversity factors such as gender balance and regional representation. All memberships would need to be approved by the Executive Committee. The process needs to be transparent and reflected in the Statutes or in bylaws as deemed relevant/required.
19. That the common Standing Committees must include at least one representative of the NADOs and Athletes, so long as their nominees have the applicable expert skills.

Principles applicable to the CRC

20. That as concerns the CRC, and its particularities, the independent members (which include the Chair) would be subject to the most stringent independence criteria including the search, vetting, and recommendation processes by the Nominations Committee.

**2c. Executive Committee**

*The Governance WG agreed and/or recommends:*

Election of Chair and Vice Chair (including application of independence criteria)

21. That for the 2019 Chair and Vice Chair elections (so-called “first process”, seats commencing 1 January 2020), the rotation between nominations from the Sports Movement and the Public Authorities would remain in place and terms would be for two x three-years (total six years).
22. That in the event that the candidate elected as WADA’s Chair or Vice Chair in November 2019 is unable or unwilling to run for a second term (i.e. commencing in 2023), the 2022 election would be conducted under the rules applicable for the “second process”.
23. That for the nomination of the Chair, 1) the first process would cover the rules for the November 2019 election, whereby to that effect, a document detailing the process (including the recommendations made by this WG) would be tabled for approval by the

WADA Foundation Board at the November 2018 Board meeting; and 2) the second process would be used for elections thereafter.

24. Specifically concerning the first process in November 2019, that:
- a) the Nomination Committee would be required to vet the candidates and make sure that they met all relevant requirements;
  - b) the candidates would have to comply with the general definition of independence and also with the independence criteria (red flags)<sup>3</sup>; candidates would be required to have no current links with public authorities and/or with sport institutions; and
  - c) there would be "no cooling off" period required, but if the candidate elected to be WADA's next Chair has a link (i.e. position) with a public authority and/or with a sports institution within the meaning of the red flag criteria, he or she would have to leave that position or positions by 1 January 2020 (i.e. by the time they assume their new role).
25. That for the first process (2019), the Nominations Committee would not have the ability to recruit candidates for the position of Chair and Vice Chair. They would only be able to assess candidates put forward by the relevant stakeholder.
26. That as concerns future elections (second process), that the first two conditions mentioned above (a and b) would remain but the third condition would be modified to read as follows:
- c) *A moderate cooling off period of up to six months would be required.*
27. That for future elections, that is, in 2025 (for positions starting on 1 January 2026) and thereafter, the Nominations Committee would be responsible for recruiting, reviewing and verifying (including vetting) the candidates for Chair and Vice Chair subject in particular to the applicable independence criteria. This process however, would not prevent others from submitting suggestions to the Nominations Committee.
28. That for both processes (2019 election and subsequent ones), there would be the requirement for a letter of support from one WADA Foundation Board member to be submitted to qualify as a candidate.

#### Remuneration of Chair and Vice Chair

29. That the position of Chair of WADA is a position which requires skills and independence, demands a strong commitment and generates a significant volume of work. For these reasons, among others, there should be remuneration for the Chair and the amount requested for approval by the Swiss Supervisory Authorities should be up to 100,000 CHF per annum. The most appropriate reference term, whether it is referred to as remuneration or another term, is to be considered.

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<sup>3</sup> No current connections with governments and sport institutions

*The individual holds no duty or responsibility to, and no office or relationship with, a sports institution, or government or public corporation (includes corporations funded by the State but which operate autonomously from the State).*

#### *Government:*

- *Must not hold any senior position (Head of State/Cabinet Ministers/Ministers & Secretary of State/Deputy Minister/heads of departments/Executive officers of Public corporation).*
- *Must receive no personal benefits (salaries, honoraria etc..) from any governments or public corporations;*
- *Must not report to, be directed by, seek guidance of official or political party on matters related to WADA.*

#### *Sport institution:*

- *Must not serve on the Board of Directors or any elected/appointed position;*
- *Must hold no senior position or position of authority (paid or unpaid);*
- *Must not report to, be directed by, seek guidance of any sport organization.*

30. That the Vice Chair would not be compensated unless under special circumstances. If the Vice Chair were to assume the responsibilities of the Chair in the event of prolonged incapacity or death, then a mechanism to ensure that the same remuneration for the provision of Chairmanship services was transferred to the Vice Chair would be required. The WG does not recommend that the Vice Chair receive compensation when replacing the Chair for a short duration.
31. That no other remuneration (with the exception of the reimbursement of expenses) be provided to the Chair and Vice Chair.

Performance Evaluation of Chair and Vice Chair

32. That there was not a need for a formal annual metric success system (performance evaluation) to be put in place for the Chair and Vice Chair. Feedback to be provided to the Chair in the context of a review of the work of the Executive Committee every three years would be a suitable mechanism.

Removal from Office of Chair

33. That the Chair could be removed from office if at least two-thirds of the Members of the Foundation Board lost faith in his or her capacity to properly lead the organisation. The recommended process to remove the Chair from office would be as follows:
  - a) The submission of a motion to the Foundation Board requesting the removal of the Chair would have to be supported by a majority of the Foundation Board members, representing a minimum of 50% of the public authorities and 50% of the sport movement.
  - b) The motion would then have to be submitted to a vote and be approved by a two-third majority of the Foundation Board members to take effect.

Independent Members

34. That independence is the cornerstone of good governance. The WG acknowledged that the concept of an Independent Member and of members that fulfil certain independence criteria is different. Independent Members are persons with no ties to the sports movement and the government.
35. That WADA's Executive Committee would benefit from the inclusion of Independent Members with full voting rights. It would add to the reputation of the organisation, be in compliance with internationally recognized standards of good governance (for foundations, non-profit organizations, public-private partnerships and mission-based corporations at large), help to reduce gaps in the skills map of the Executive Committee, and can also be a tool for greater diversity and more gender equality in its membership.
36. That as a first step, the principle of Independent Members on the Executive Committee is accepted by the WG, and two Independent Members should be appointed. That the two Independent Members shall be respectively proposed by the Public Authorities and the Sports Movement.
37. That the following process would apply:
  - a) The current membership is maintained;
  - b) After the appointment of the representatives of the Public Authorities and the Sport Movement on the Executive Committee, the Nominations Committee will conduct a skills mapping exercise to identify the missing skills on the Executive Committee;
  - c) The Public Authorities and the Sports Movement will propose candidates as Independent Members that fill the gaps in the skills map and coordinate their proposals accordingly.

- d) All proposed candidates will have to meet the applicable independence criteria/guidelines (requiring the highest levels of independence) and undergo vetting by the Nominations Committee. Once the vetting has been successfully completed, the Nominations Committee will make its recommendations on the proposed candidates for appointment by the Foundation Board. The Public Authorities and Sports Movement may propose more than one candidate as Independent Members to the Nominations Committee but only one candidate per side would be submitted to the Foundation Board for approval.
  - e) NADOs and the WADA Athlete Committee can make suggestions to the Public Authorities and Sports Movement.
38. That the first step process for applying Independent Members to the Executive Committee be reviewed as part of the ongoing governance review to consider its effectiveness.
39. That the Chairs of the Standing Committees could not fill the role of an Independent Member on the Executive Committee, given the earlier recommendation that the Chairs be selected for their expertise and not their independence.

Standing Committee Chairs – Observers to the EC

40. That the Chairs of the Standing Committees should be invited to report to the Executive Committee on their relevant subject areas, and could be invited by the WADA Chair to contribute their views to other subject areas. It would be at the discretion of the WADA Chair as to what and when their contributions were suitable. It was also noted and agreed that the subject areas of different Standing Committees have varying degrees of scope, with some very broad and others more narrow.

Terms

41. That the term limits for Executive Committee members would be three x three-years (nine years total) with no possibility of stepping out for a term and returning.
42. That a staggered rotation system would be required and that a transition plan to effect the change would be needed.
43. That the same term limits would need to apply to individual Deputies/Alternates to members.

Meeting Quorum

44. That no specified quorum should be required for members present at meetings to make decisions. This means no change would be required to the current practice/Statute reference.

Public Statement of Independence - Chair and Vice-Chair

45. That the annual Statement of Independence for the Chair and Vice Chair should be published by WADA, in accordance with statutory provisions on privacy.

**2d. Foundation Board**

*The Governance WG agreed and/or recommends:*

Independence Criteria of Members

46. That the Foundation Board would not be selected/appointed on the basis of applying an independence process.

Composition: Other Representatives on Foundation Board

47. That at the current time, the composition of the Foundation Board remains unchanged. There was no consensus to change or expand the current composition/structure of the Foundation Board.

Terms

48. That a limit of three x three-year terms on the Foundation Board should be applied.
49. That an overall limit of total 12 years of service or presence in the institution, should be applied. This would apply only to terms on the Foundation Board and Executive Committee.

**3. Independent Ethics Board**

*The Governance WG agreed and/or recommends:*

50. That the principle of having an Independent Ethics Board is necessary as part of good governance.
51. That there is the need for a new set of rules of ethical conduct that set out the high standards of conduct required of WADA Officials.
52. That there is the need for an Independent Ethics Board to be established to ensure the compliance of WADA Officials with the new set of ethical rules.
53. That the Independent Ethics Board would be set up to operate independently of WADA.
54. That the members of the Independent Ethics Board would be appointed by the Foundation Board on the recommendation of the Nominations Committee for an initial term of five years with possible re-election for a further term.
55. That the Nominations Committee would be responsible for identifying and vetting candidates for the Independent Ethics Board. The Chair of the Independent Ethics Board should be a senior personality of impeccable reputation with experience in the chairing of boards.
56. That Panels of the Independent Ethics Board appointed to sit on cases would comprise one person (ordinarily the Chair) or three persons, depending on the nature and complexity of the case. The decisions on breaches of the new ethical rules should be published in the interests of transparency. That the decisions would be subject to appeal to CAS.
57. That no consensus was reached on whether or not to attribute decision making powers to the Independent Ethics Board (as proposed by the Experts) or that it should simply serve as a rapporteur to the Executive Committee.
58. That the Ethics Board would, subject to reasonable budgetary limitations imposed by the WADA Executive Committee, be allocated the necessary financial resources to fulfill its functions.

**4. Nominations Committee**

*The Governance WG agreed and/or recommends:*

59. That there is the need for a Nominations Committee to help ensure that the right people serve in senior governance roles within WADA (in terms of the requisite level of skills and independence).

60. That the key roles of a Nominations Committee would be in particular:
  - (i) to conduct a gap analysis of the skills on the Executive Committee and make recommendations to the Foundation Board to fill the gaps with Independent Members (up to the agreed limit);
  - (ii) to recommend to the Foundation Board persons to serve as members of the Independent Ethics Board;
  - (iii) to recommend to the Executive Committee persons to serve as Chairs of the Standing Committees;
  - (iv) to ensure that all those seeking election or appointment as WADA Officials (including the Chair and Vice-Chair) are vetted to a strict standard.
61. That the Nominations Committee would be composed of five members appointed by the WADA Executive Committee: One independent Chair, two members put forward by stakeholders (one x Sport and one x the Public Authorities) and two independent ordinary members. The Chair of the Nominations Committee should be a senior personality of impeccable reputation with experience in the work of nominations committees.
62. That decisions by the Nominations Committee must be taken unanimously.
63. That the members of the Nominations Committee would be appointed for an initial term of three years with possible re-election for a further term.
64. That the inaugural Nominations Committee would be appointed by the Executive Committee following the recommendation by an external agency with expertise in such appointments (such agency being appointed by the WADA Executive Committee).
65. That the inaugural Nominations Committee would be operational in time for the elections of the Chair and Vice-Chair in 2019.
66. That the Nominations Committee would, subject to reasonable budgetary limitations imposed by the WADA Executive Committee, be allocated the necessary financial resources to fulfill its functions.
67. That the applicants for the Nominations Committee put forward by Sport/Public Authorities be in fact and in appearance independent. The general principle of Independence must be met. No cooling off period would be required.

## **5. Matters for Ongoing Review Process**

The following matters are proposed by the WG to be included for consideration in a follow-up review:

### *Athletes:*

68. That there was no consensus on the proposal from the WADA Athlete Committee, dated 30 September 2018 (annexed). However consideration should be given to the subsequent points:
  - a) That Athletes are an important and separate constituency of stakeholders. This holds true irrespective of the fact that a definition of Athletes/Stakeholders is difficult to establish.
  - b) That the voice of the Athletes shall be strengthened beyond the existing means of representation, only if there is mechanism of sufficient representation.
  - c) That once the representational matter has been solved, an open discussion should be held to determine at which existing and/or new levels within WADA the Athletes voice could be strengthened.

*NADOs:*

69. That there was no consensus that NADOs be members of the WADA Foundation Board. However, it was noted that the NADO representatives' view is that NADO's should be represented at a decision making level as a key stakeholder (as per their submission on 12 October 2018, annexed), and they requested that this be kept on the agenda for the next governance review.

*WADA Management:*

70. That the item of WADA Management in the context of good governance be looked at and assessed by the follow up review process.

**ANNEXES**

1. Terms of Reference, Approved January 2017
2. WG Composition, As at October 2018 (*also includes reference to those who participated in meetings as deputies, or observers*)
3. Working Groups and Expert Groups – Composition and Process for Appointment
4. Standing Committees – Composition and Process for Appointment
5. WADA Athlete Committee Proposal, dated 30 September 2018; and WG Chair Response, dated 9 October 2018
6. NADO Proposal, dated 12 October 2018