



Decision Authority Issues /Powers of the Chair and Vice Chair

Part 1 Historical perspective

1 The Global Fund Bylaws and Board Operating Procedures (BOP) were set up and approved by the Board on January 29, 2002.

According to the above-mentioned documents, the Chair and the Vice Chair are to be selected from among the voting members and the positions are to alternate between the two voting groups. The representation of the Foundation vis-à-vis third parties was officially accorded to the Chair, the Vice Chair, the Executive Director and the Swiss Member with individual signature, and registered in the Registre du commerce of Geneva. The powers of the Chair and Vice Chair were not specified in detail, except in some provisions ¹

2 At its third meeting, the Board approved several procedural rules, including decision-making of the Chair/Vice Chair: *“Chair/ the Vice Chair are empowered to make decisions on matters within their discretion between Board meetings”*. Other references to the powers of the Chair and the Vice Chair were generally quoted as “the Chair/Vice Chair”. No specific terms of reference for the Chair and the Vice Chair were proposed, but precisions on some decisions that could be taken by the Chair/Vice Chair were added to the BOP²

3 The BOP were modified in consequence and subjected to Board approval at its fourth meeting. The Board adopted the BOP, excepting the proposed revisions of articles 22 and 23 BOP. At the same time, the Board requested the Governance and Partnership Committee and Secretariat to prepare revised Bylaws for discussion and adoption at the Fifth Board meeting.

- ¹ advocacy role of the Chair (Bylaws 12), convocation of Board meeting by the Chair or the Vice Chair (Bylaws 15), inviting guests to Board meeting by the Chair (BOP 5), conduct of meeting by Chair, Vice Chair (BOP 15 et 18), communication and activities of the Chair (BOP 18.3), appointment of the Rapporteur by the Chair (BOP 19). (note: all references to articles correspond to the version of the Bylaws of January 2002)

² input from the Board between Board meeting (3.3BOP), emergency Board meeting (9), agenda (15), conduct of the meetings (18.2) designation or replacement of committee chairs (22.3) (note: all references to articles correspond to the version of the BOP as revised at the 4th Board meeting)

The type of decisions that the Chair and the Vice Chair could make between meetings and the legal implications of the decision-making authority of the Chair and the Vice Chair (art.3.2 BOP) were two issues, among others, raised by delegates during discussion at the fourth meeting. In the absence of a legal opinion, express reserve was made by the Board member from the SEAR constituency on his commitment to the consensus approval of the revised BOP.

4 The independent legal opinion commissioned by the Secretariat (GF/B5/7 Annex 2.4 confirmed the consistency of the BOP with the Bylaws, but strongly recommended that authority of the Chair and Vice Chair be expressly defined in the Bylaws rather than in the BOP. It also recommended that the powers of the Chair and Vice Chair be defined more precisely than “*on matters within their discretion*”.

5 Based in particular on the comments raised by delegates at the fourth Board meeting and the conclusion of the above-mentioned legal opinion, the Governance and Partnership Committee proposed revised Bylaws and BOP to be discussed and approved at the Fifth Board meeting.

Part II Core principles of the Global Fund structure

6 These principles may be summarized as follows:

- governance structure resting on a negotiated consensus platform geared towards broad inclusion and equal participation in decision making of all voting Board members,
- structure anchored on the basis of two voting group and the regular rotation of the leadership between these two voting groups,
- leadership structure of a Chair and a Vice Chair, not of Co-chairs,
- role of the Board intended to deal with the policy framework and oversight and not intended to be operational or involved in day to day management.

Part III The solution provided in the proposed Bylaws and BOP

7 The decision-making power of the Chair and the Vice Chair are based on the following elements:

- a) the **principle of the decision-making power** is defined in the Bylaws and the rules of application are provided in the BOP,

b) the **decision authority** is provided:

Option 1: to the Chair in close consultation with the Vice Chair, the Chair taking the decision even in cases where there is no consensus with the Vice Chair

Option 2: to the Chair and the Vice Chair acting together, the Chair taking the decision in case no consensus is reached between them.

Whatever the option :

c) the **definition of the decision making-power** between the Board meetings is provided as:

“any decisions within the responsibility of the Foundation Board” (clearly defined in particular in the unchanged articles 13 and 14 of the Bylaws),and

considered as having to *“be taken urgently without recourse to other procedures provided in the Bylaws and BOP”* (by circulation : art 15 Bylaws, emergency meeting: BOP 9).

d) the **criteria of urgency** has been left to the appreciation of the person/s empowered to make the decision (Chair and/or Vice Chair). This solution seemed more efficient (and in line with what was decided during the elaboration of the BOP) than limiting the urgency criteria after a recourse to circulation or emergency Board meeting.

e) the **reporting of the decision** taken is made to the next Board meeting and must include the explanation on the urgency as well as, in case of no consensus, the issues on which the Chair and the Vice Chair have agreed and those unresolved.

f) **the distinction** is made between the power of representation and signature of the Foundation vis-à-vis third party (art 12.3, 16.2 and 20.1 Bylaws) and the internal decision making of the Chair, Vice Chair

g) the **catalogues of the decisions allowed** are not set forth exhaustively except as provided as above mentioned and in the provisions already approved and added into different articles of the Bylaws and BOP³. Reference is made on the right of the Chair to delegate functions to the Vice Chair (12, 2 Bylaws).

Part IV The decision authority issues

The issues of this topic cover two aspects:

³ see footnote 1 and 2

- A) who may decide and how
- B) on what subject matter the decision can be made

A) who may decide and how

The two options proposed as mentioned in section 7 b) above present both advantages and disadvantages and are based on two different perspectives of the role of the two elected leaders of the Global Fund and their relationship to the Board.

Option 1 Chair in consultation with the Vice Chair : the Chair must consult the Vice Chair but the Chair is solely responsible and fully accountable to the Board. He/she can decide what powers and responsibilities are delegated to the Vice Chair.

Pros:

- Clarity: the Chair is responsible and fully accountable to the Board.
- Efficiency: Consultation maybe easier than a shared management
- Rapidity : ability to act rapidly in case of urgency
- Precedent: this is how it worked in the precedent year

Cons:

- no consensual decision
- possible risks inherent in one person decisions
- not a reflection of the spirit of “Chair/Vice Chair” as proposed in the initial recommendations and adopted in the January Board meeting

Option 2 Chair acting together with the Vice Chair. Except for specific duties provided in the Bylaws and the BOP, both the Chair and the Vice Chair are responsible and fully accountable to the Board. The Chair may delegate powers and responsibilities to the Vice Chair.

Pros:

- consensus
- in line with the current practice

Cons:

- possible delays in the decision-making process
- lack of clearness on the roles of the Chair and Vice Chair

B on what subject matter the decisions are made

As described in Part III above, the matters subject to decisions are defined as a principle (7.c). A catalogue of decisions allowed was not set up, as

the definition of the terms of reference for the Chair and Vice Chair was not within the competence of the Governance and Partnership Committee.

Part V Conclusion

Practice has shown that a decision on the decision-making powers of the Chair and Vice Chair is desirable. The definition of the precise mandates and the terms of reference for Chair and Vice Chair was not within the competence of the Governance and Partnership Committee. However, in order to define the terms of reference, the Board must first approve the **principle** of the decision-making power, according to the measures described in Part III.

We therefore recommend that these measures be presented to the Board for a decision. Insofar as the Board may decide to define the terms of reference for the Chair and Vice Chair, a work group should be commissioned with this task. We need to point out that, while the decision-making principles must be defined in the Bylaws, the terms of reference for the Chair and Vice Chair may be incorporated in the BOP or in a separate document