

38th Board Meeting

Proposal to integrate Additional Public Donors in the Global Fund Governance Structure and to amend the Global Fund Bylaws

GF/B38/03 Revision 1

14-15 November 2017, Geneva, Switzerland

Board Decision

This paper describes a proposal, developed by the Donor Voting Group and endorsed by the Ethics and Governance Committee, to integrate additional public donors in the Global Fund Governance structure and to amend the Global Fund Bylaws. This paper presents one decision point to the Board for approval: Integration of Additional Public Donors into the Global Fund Governance Structure and Amendment of the Global Fund Bylaws.

Part 1 – Decision Point

1. Based on the recommendation of the Ethics and Governance Committee (“EGC”) and on the rationale outlined below, the following decision point, incorporating a friendly amendment introduced by the Donor Voting Group and endorsed by the EGC, is presented to the Board for approval. A summary of relevant past decisions can be found in Annex 1.

GF/B38/DPO3: Integration of Additional Public Donors into the Global Fund Governance Structure and Amendment of the Global Fund Bylaws

Based on the recommendation of the Ethics and Governance Committee, the Board:

- 1. Amends Article 7.1 of the Global Fund Bylaws by deleting the text which states “One Swiss citizen with his or her domicile in Switzerland authorized to act on behalf of the Global Fund to the extent required by Swiss law; and”, and replacing it with the following text: “One representative of the public donors which are not part of a voting donor constituency but have each pledged a contribution of at least \$10 million in the current replenishment cycle; and”;***
- 2. Requests that the Secretariat invite the public donors included in the group which are not part of a voting donor constituency but have each pledged a contribution of at least \$10 million in the current replenishment cycle to join this new non-voting Board constituency and develop a process for selecting its Board representation in accordance with the Bylaws and the Operating Procedures of the Board and Committees of the Global Fund; and***
- 3. Requests the Donor Voting Group report at the 39th meeting of the Global Fund Board on its revised process for public donor seat allocation, which will ensure that new public donors, who commit to the principles in the Framework Document of the Global Fund and contribute/pledge more than a defined threshold amount for two consecutive replenishment periods, will be integrated into a voting public donor constituency.***

Part 2 – Action Required by the Board

2. At the recommendation of the EGC, the Board is requested to endorse a proposal from the Donor Voting Group to abolish the Board's Swiss non-voting seat and replace it with a transitional non-voting public donor seat and to approve an amendment to the Global Fund Bylaws as set out in Part 1 of this paper and as further detailed below.

Part 3 – Executive Summary

3. There appears to be broad recognition that the Global Fund's governance structure needs to adjust to the evolving landscape in which the Global Fund operates. While building consensus on all of the changes required could take time, there already appears to be broad agreement on the urgency of integrating additional public donors in the Global Fund's governance structure ahead of the next replenishment cycle starting in 2020 with an aim to enhance contributions.
4. For several years, the Global Fund has struggled with the issue of how some countries contributing financially to the Global Fund can be more effectively engaged and represented within the existing structure of the Global Fund Board. The countries listed in Annex 2 are currently not represented in the Global Fund Board structure in a way that reflects their contribution or changing role in the Global Fund context. They represent a diverse group, including members and non-members of the OECD-DAC, former and current Global Fund implementers and a few Gulf States.¹ Their total financial contributions to the Global Fund amount to more than US\$500 million as of end 2016 and pledges for 2017-19 total US\$80 million. Several of them are already represented as donors in governance bodies of other global partnerships.
5. In the context of the discussion on the Action Plan for Ongoing Resource Mobilization at the 36th Board Meeting in November 2016, the Board recognized the need for representation of additional donors in the governance structure as a means to attract additional resources and to continuously broaden the Global Fund's donor base. At the 4th EGC Meeting in July 2017, the EGC noted that an interim solution to integrating additional donors may be needed in order to respond to the increasing demand and to inform the broader review of the governance structure.
6. An initial proposal from the Donor Voting Group, potential enhancements to it and an alternative option were discussed by the EGC at its 5th Meeting in October 2017.² During its in-person meeting, it was suggested to consider proceeding through a dual track approach based on the welcoming of certain new public donors to existing public donor constituencies and the integration of other public donors in a newly created transitional seat on the Board.
7. Following the EGC meeting, further discussions by the Donor Voting Group based, in part, on the discussions of the EGC, resulted in the refinement by the Donor Voting Group of its initial proposal. The discussions were held with an important consideration in mind; namely, that for any proposal to succeed it would need to have a broad support among the Donor Voting Group given that the new public donors would ultimately be invited to form part of the said group. The EGC held a conference call on 27 October 2017 in which it endorsed the proposal developed by the Donor Voting Group which requires an amendment to Article 7.1 of the Global Fund Bylaws (GF/EGC05/EDP02). A friendly amendment to the decision point outlined in part 1 of this paper was introduced by the Donor Group with the endorsement of the EGC prior to the submission of the decision point, incorporating the friendly amendment, to the Board for approval.

¹ See Annex 2, List of countries, cumulative contributions and 2017-19 pledges.

² GF/EGC05/11 Rev. 1. The initial Donor Voting Group proposal envisaged the creation of a new transitional non-voting seat for non-traditional donors (Option 1). The potential variants to this option presented to the EGC related to the creation of an additional voting seat that does not belong to the Donor or Implementer groups (option 1A) and the integration, through a Board decision, of the non-traditional donors into the existing eight public donor constituencies with the lowest shares (Option 1B).

8. In summary, the proposal consists of abolishing the Swiss non-voting seat and creating, instead, a new non-voting transitional seat to be used by public donors, not currently represented on the Board, each of which pledge \$10 million in the current replenishment (“Non-Voting Eligibility Threshold”), and further guarantees participation in a donor constituency for those donors providing a contribution and pledging more than a defined threshold amount, as determined by the Donor Voting Group, for two consecutive replenishment cycles (the “Voting Eligibility Threshold”). The proposal is envisaged as a mechanism whereby the donor contributions and representation at the Global Fund Board can be progressively broadened and increased over time. The proposal requires an amendment to Article 7.1 of the Global Fund Bylaws but would affect neither the Board’s size, structure, or voting rules nor the principle related to the determination by the Donor Voting Group of the distribution of the public donor seats and the size of the constituencies.

Part 4 – Background

9. There appears to be broad recognition that the Global Fund’s governance structure needs to adjust to the evolving landscape in which the Global Fund operates, including the changing face of the epidemics as well as recent trends in health financing, a diversification of how countries define their position in the global geopolitical architecture extending beyond the classical differentiation between donors and recipients, and the broader sustainable development framework. Building consensus on all of the changes required may take time, however there already appears to be broad agreement that the issue of integrating additional public donors in the Global Fund’s governance structure needs to be addressed urgently ahead of the next replenishment in 2020.
10. At the time of the Global Fund’s creation, the Board structure was considered innovative, inclusive and participatory given the equality of voting rights between donors and implementers as well as multi-stakeholder representation. Since that time, the world has evolved significantly in terms of socio-economic developments, requiring the review of country groupings (development continuum), and in the way countries position themselves in the global architecture. Many are starting to question the relevance of the clear binary differentiation into donors and implementers in light of recent changes in the development landscape.
11. Several former implementer countries have ceased to receive funding from the Global Fund. Some of them have become net donors while others focus predominantly on the provision of technical assistance and South-South cooperation. Others still are progressively increasing their contributions while remaining in the implementer group for the time being. These countries no longer fit neatly into existing Board categories, but may have a lot to offer to Board deliberations particularly because of their wealth of experience in dealing with the three diseases and health systems in their own countries and beyond. Many of them share the conviction that they have something unique to offer, which does not necessarily mean gradually assimilating with traditional donors but making a contribution to global development that is new and different. A voice for these countries, with their focus on cooperation and co-investments with the Global Fund, is currently missing at the Board.
12. The BRICS most notably, are particularly concerned with the three diseases. The BRICS countries are home to one third of the 36.7 million people living with HIV globally, and accounted for a third of the 2.1 million new HIV infections in 2015.³ They account for nearly half of tuberculosis cases and 40% of tuberculosis-related mortality.⁴ At the same time, their role is also rapidly changing from aid recipient to becoming increasingly active in supporting low-income countries, particularly in Africa. In 2015, funding flows from emerging providers of development finance and other

³ UNAIDS data.

⁴ Global TB Report, WHO, 2013.

countries that are not members of the DAC amounted to US\$24.6 billion, nearly 16 percent of total ODA flows.⁵

13. For several years, the Global Fund has struggled with the issue of how some countries contributing financially or through other means to the Global Fund can be more effectively engaged and represented within the existing structure of the Global Fund Board. The countries listed in Annex 2 are currently not represented in the Global Fund Board structure in a way that reflects their contributions or changing role in the Global Fund context. They represent a diverse group, including members and non-members of the OECD-DAC, former and current Global Fund implementers and a few Gulf States.⁶ Several of them are represented as donors in governance bodies of other global partnerships.

Part 5 – Discussion

14. **Purpose.** The purpose of the proposal is to create an explicit mechanism whereby contributions and the representation of public donors in the governance structure of the Global Fund can be progressively broadened and increased over time. The interim approach for the integration of additional donor countries into the Board structure aims to preserve as much as possible the existing governance framework until a broader review of Board's size, structure and voting Procedures takes place.
15. **Eligibility for admittance in the transitional non-voting seat.** A public donor not otherwise accommodated in a donor constituency and pledging a contribution of at least \$10 million in the current replenishment cycle (the Non-Voting Eligibility Threshold) (with the expectation to increase its pledge in the following replenishment cycle) would be eligible for admittance in a new transitional seat with a voice on the Global Fund Board, albeit in a non-voting capacity. The threshold to admit new donors to the transitional board seat is expected to be increased for the 7th replenishment and the Board will be invited to approve in due course an amendment of Article 7.1 of the Bylaws to confirm such increase. A public donor currently in a non-donor constituency would have to choose the constituency in which to participate and could not participate in two constituencies.
16. **Timeframe.** A public donor meeting the above-mentioned eligibility threshold may stay in the transitional seat for two replenishment cycles (i.e. until 2022), during which time the Donor Voting Group will take steps to find a constituency for the donor to join based on like-mindedness and alignment of interests.
17. **Eligibility for transition into a voting donor constituency.** Following its admittance to the transitional non-voting seat, a public donor providing a contribution above the Voting Eligibility Threshold in one replenishment cycle and making a pledge above the Voting Eligibility Threshold in the subsequent replenishment cycle would be guaranteed integration into one of the existing voting donor constituencies, first by the principles of like-mindedness and alignment of interests. If that does not occur, then it will be integrated starting with the public donor constituency that is contributing the least.
18. **Process for transition into a voting donor constituency.** The Donor Voting Group would accommodate all new public donors from the transition seat that meet the Voting Eligibility Threshold in two consecutive replenishment cycles, subject to the following factors:
 - a. Changes to the donor seat allocations will only take effect at the time of the triennial public sector donor constituency seat allocation process, carried out before the first Board meeting in

⁵ OECD-DAC, <http://www.oecd.org/development/stats/non-dac-reporting.htm>, retrieved on 6 September 2017.

⁶ See Annex 2. List of countries, cumulative contributions and 2017-19 pledges.

the year following a Global Fund Replenishment Conference. The first opportunity for inclusion into a voting donor constituency will therefore take place in 2020.

- b. Public donors that are currently members of a constituency in the Implementer Group would have to choose in which group constituency to participate and could not participate in two group constituencies.
 - c. The public donor constituencies will first make every attempt to accommodate additional donors meeting the Voting Eligibility Threshold in two consecutive replenishment cycles through like-mindedness and alignment of interests. However, if no decision is reached by public donors regarding how to accommodate such additional public donors, the smallest contributing constituency would accept the new donors until it is no longer the smallest contributing constituency.
19. Notwithstanding the above, donors currently included in a donor constituency and donors not meeting the Voting Eligibility Threshold can still be accommodated on a voluntary basis into a donor constituency on the basis of like-mindedness and alignment of interests.
20. **Thresholds for Donor Seats.** It is noted that the Donor Voting Group is working to set parameters and thresholds for single constituency donor seats in order to promote additional contributions from the largest donors and the equitable distribution of smaller donors among the public donor seats while avoiding excessive concentration of multiple donors in a few seats. The Donor Voting Group is expected to present to the EGC a proposal in that regard at its meeting in March 2018.
21. **Implications.** While the proposed approach requires an amendment by the Board of the Global Fund Bylaws, which will be submitted to the Swiss Federal Supervisory Authority of Foundations, it will not affect the Board size, structure, or voting rules. It may also be noted in that regard that the transitional public donor non-voting seat may be represented in the Audit and Finance Committee and in the Strategy Committee pursuant to the respective Charters of the said committees.⁷ In addition, the proposal respects the principle related to the determination by the Donor Voting Group of the distribution of the public donor seats and size of the constituencies.
22. In accordance with paragraph 3 of the decision point set out in part 1 of this paper, the Donor Voting Group will revise its process for donor seat allocation to merge the principles set out in this proposal into the said document. The Donor Voting Group will report to the Board on the revised process at the Board's 39th Meeting in May 2018.

Part 6 – Next Steps

23. The following steps are envisaged to take place following the adoption by the Board of the decision point set out in Part 1 of this paper:
- a. **38th Board Meeting, November 2017:** Discussion and endorsement of the Donor Voting Group's proposal and approval of the abolition of the Swiss non-voting seat and creation of a transitional non-voting seat to be used by additional public donors meeting the Non-Voting Eligibility Threshold;
 - b. **November 2017:** Submission of the amended Bylaws to the Swiss Federal Supervisory Authority for Foundations and analysis of any potential additional changes to the Governance Documents required as a result of the amendment to the Bylaws;

⁷ Article C.3 of the Charter of the Audit and Finance Committee provides that the committee shall be comprised, inter alia, of two representatives of the non-voting, ex-officio members of the Board, one of which shall be the World Bank, with each such individual acting in a nonvoting, ex-officio capacity. Article C.3 of the Charter of the Strategy Committee provides that the committee shall be comprised, inter alia, of two representatives of the non-voting, ex-officio members of the Board, each acting in a non-voting, ex-officio capacity.

- c. **Following November Board Meeting:** Invitation by the Secretariat to the additional public donors meeting the Non-Voting Eligibility Threshold;
- d. **39th Board Meeting:** The Donor Voting Group reports on its revised process for donor seat allocation, which incorporates the principles set out in GF/B38/03 Revision 1; and,
- e. **40th Board Meeting:** Approval by the Board to increase the eligibility threshold for admittance of additional public donors in the transitional non-voting Board seat for the 7th replenishment.

Annex 1 – Relevant Past Decisions

| Relevant past Decision Point | Summary and Impact |
|--|--|
| GF/EGCo5/EDPo2: Integration of Additional Public Donors into the Global Fund Governance Structure and Amendment of the Global Fund Bylaws | The EGC endorses the proposal of the Donor Voting Group to integrate additional public donors into the Global Fund governance structure and to amend the Global Fund Bylaws as set forth in GF/EGCo5/ER02 (Revision 1); and recommends to the Board a decision point to the same effect. |
| GF/B17/DP14: Guidance for Board Seat Allocation for Public Donors (April 2008)⁸ | The Board requests that Board Members representing donor constituencies, in consultation with other donors, determine a framework for donor seat allocation, within the existing eight public donor seats and guided by a threshold. |
| GF/B11/DP9: Additional Donor Seat (September 2005)⁹ | In line with GF/Bo8/DP4, the Board approved, with immediate effect, amendments to the Bylaws and Board Operating Procedures that add a constituency represented by a donor (or donors) as a voting member of the Board. |
| GF/Bo8/DP4: Voting Rights for Communities (June 2004)¹⁰ | Approval of the amendments to the Bylaws and Operating Procedures that add the Communities delegation as a full voting member of the Board and announcement of the Board's intention to add an additional balancing donor seat. |

⁸ <https://www.theglobalfund.org/board-decisions/b17-dp14/>

⁹ <https://www.theglobalfund.org/board-decisions/b11-dp09/>

¹⁰ <https://www.theglobalfund.org/board-decisions/bo8-dpo4/>

Annex 2 – List of public donors not currently represented at the Board

Historical pledges (until 2016), cumulative contributions (2001-16), 5th Replenishment pledges (2017-19)

| | | Historical pledges | | Cumulative contributions 2001-2016 (USD mil.) | 5 th replenishment pledge 2017-19 (USD mil.) |
|--------------------------|--------------------|--------------------|--------------------------------|---|---|
| | Pledge Currency | Amount Pledged | Period of Pledge (If Known) | | |
| China | USD | 45.00 | 2003-2016 | 45.00 | 18.00 |
| India | USD | 26.50 | 2006-10, 2013-2016 | 26.50 | 20.00 |
| Korea⁺ | USD | 33.10 | 2004-2016 | 32.64 | 11.75 |
| Kuwait | USD | 4.50 | 2003, 2008-09, 2011-15 | 4.50 | 5.50 |
| Qatar | USD | 0.00 | N/A | 0.00 | 10.00 |
| Russia* | USD | 377.00 | 2002-2016 | 317.00 | TBD |
| Saudi Arabia | USD | 78.00 | 2003-06, 2008-10, 2012-2016 | 78.00 | 15.00 |
| Total | USD | 564.10 | | 503.64 | 80.25 |

+ For Korea, the difference between historical pledge amount and cumulative contributions is due to exchange rate variations.

* For Russia, the difference between historical pledge amount and cumulative contributions is due to Russia's outstanding pledge for the 4th replenishment (2014-16) which amounts to US\$60 million.