



## **FIDE CONSTITUTIONAL COMMISSION**

### **REPORT TO THE GENERAL ASSEMBLY**

### **BATUMI, GEORGIA – 30<sup>TH</sup> SEPTEMBER 2018**

The Constitutional Commission (hereafter CC), with the following composition (chairman: Mr Roberto Rivello (ITA); members: Mr Casto Abundo (PHI), Mr Willy Iclicki (LIE), Mr David Jarrett (ENG) –present- and Mr Pedro Dominguez Brito (DOM) –absent for justified reasons-) held its meeting in Batumi, during the 89<sup>th</sup> FIDE Congress, on 30<sup>th</sup> of September 2018, in a public session from 9.00 to 13.00, with the presence of various observers, delegates and representatives of other Federations (G. Wastell (AUS), C. Meyer (USA), M. Sand (NOR), R. Haring (USA), A. Priest (USA), P. Spiller (NZL), N. Faulks (BER), A. Martynov (RUS), A. Rizatbay (NOR), H. Hamers (NED), S. Djuric (SRB), N. Avdiu (KOS), T. Hongwei (CHN), L. Mazouz (COM), K. Turdialiev (UZB), K. Vartanov (TJK), I. Dobronauteanu (ROU), I. Shilongo (NAM), M. Tabti (ALG), Y. Mohammed (ALG), S. Press (PNG), K. Msukwa (MAW), K. Bonham (AUS), C. Fegn (ENG), A. Mohibi (AFG), I. Wilkinson (JAM)) and immediately after in a session restricted only to the members.

The following points were inserted in the agenda:

- 1) Advisory opinions related to proposals of changes of FIDE Statutes and Electoral regulations inserted in 2018 General Assembly's Agenda.
- 2) Other proposals concerning possible changes of FIDE Statutes and Electoral regulations.
- 3) Answers to the issues raised by: - Mr. Nick Faulks, on the award to FIDE titles and changes of Title Regulations by the Presidential Board; - Mr. Casto Abundo, on the correct interpretation of paragraph 3.7 of FIDE Electoral Regulations.

- 4) FIDE Handbook and consolidated texts.
- 5) Any other business.

**1) ADVISORY OPINIONS RELATED TO PROPOSALS OF CHANGES OF FIDE STATUTES AND ELECTORAL REGULATIONS INSERTED IN 2018 GENERAL ASSEMBLY’S AGENDA.**

The CC, in accordance with Chapter 8 of the FIDE Statutes, has primarily the objectives and the institutional competence to review any statutes changes, to ensure that statutes changes occur in conformity with the procedural rules mentioned in the statutes and to ensure that the legality of FIDE statutes is fully respected.

In the agenda of the General Assembly many requests of changes have been inserted, the CC observes and recommends what follows:

**“6.1 Proposed change of Statutes. Annex 5 is Proposal of Messrs. Makropoulos and Borg to establish a FIDE Advisory Board”.**

The CC observes that the wording of the proposal does not seem clearly formulated: it is not specified which rules have to be inserted (for instance, the first paragraph, “Advisory Board Rationale”, likely just explains the reasons of the proposal) and also where exactly have to be inserted in FIDE Statutes (may be in Chapter 3 and Chapter 10, but it is necessary to specify).

The CC also observes that the possibility to appoint some experts or eminent people with a consultative/advisory role is already a prerogative of the Presidential Board, for example throughout the institution of a consultative body of the same Presidential Board, while to establish such an entity as a new permanent organ, from one side it will request the specific majority of two thirds of the votes delivered, without taking into account abstentions, from another side it will require, on permanent basis, additional costs.

**“6.2. Non-Elected Commissions”. “6.2.1. Proposed changes to Non-Elected Commission Regulations. Annex 6 is Proposal by Mr. G Borg, Chairman of Central Board of Commissions” (par. 1.1.1, 1.1.5).**

The CC observes that the possibility, for the President, to “replace”, “at any point in time”, “any Chairman or member” of any non-elected commission, could potentially been in contrast with some statutory limits of the competences of the President, for instance the President has no competence on changes to regulations of Rules and Tournaments Commission and of Qualification Commission, giving him the theoretical possibility to replace, at any moment and without justifications, the Chairmen of these commissions, it

means, in practice, indirectly enlarging President’s competences. It’s true that President’s decisions may be appealed to the General Assembly, Executive Board or Presidential Board and this can reduce that risk, however, it is suggested to specify -at least- “with a motivated written decision”.

**“6.2.2. Strategic Planning Commission. Deputy President, Mr. Georgios Makropoulos proposes that a Commission of Long-Term Strategic Planning should be established. The Commission shall consist of experts coming from all fields of chess and different disciplines, who will submit their proposals to the Presidential Board as to how chess can evolve and FIDE can advance within the next 10 years. The Commission shall additionally monitor the implementation of the strategic plan, as approved by the Presidential Board and the General Assembly, and propose changes if necessary”.**

**“6.2.3. Commission on FIDE’s relations with IOC. Annex 7 is Proposal by FIDE Deputy President, Mr. Georgios Makropoulos, to establish a Commission on FIDE's relations with IOC”.**

The CC definitely agrees on the importance of Long-term Strategic Planning and of FIDE’s relations with IOC, only reminds that there are risks -especially for the budget-linked to the multiplication of commissions and organs on permanent basis, and that till now similar objectives have been targeted throughout more flexible “tools” (appointing experts as Presidential Board consultants or as “FIDE ambassadors to IOC”, etc).

**“6.3. Proposals for Changes in Electoral Regulations. Annex 8 is Proposal by FIDE Deputy President, Mr. Georgios Makropoulos, and the President of the Ukrainian Chess Federation, Mr. Viktor Kapustin, to introduce in the FIDE Electoral Regulations changes concerning (a) consecutive term limits for the FIDE President and the members of the FIDE Presidential Board with a view to enhancing democracy within FIDE, and (b) integrity of presidential candidates and their obligation to refrain from any act of fraud or corruption or involvement in a pattern of outside influence (in particular political) in connection with the FIDE elections, with a view to securing electoral integrity and enhancing FIDE’s autonomy and political independence”.**

About the proposal of changes indicated sub A), the CC recommends adding this in FIDE Statutes, in Chapter 3, and not in Electoral regulations, both because it would be more logical and also given that, if not, there is the risk that it could be considered in contrast with the same Statutes.

About the proposal of changes indicated sub B), the CC strongly recommends inserting this not in the Electoral regulations but in the FIDE Code of Ethics, throughout a consolidation of the existing text, for systematic reasons and, more important, to avoid potential clashes and confusion with other already existing rules.

**Any other issue concerning the agenda.**

No other issues were raised by the participants in the meeting.

**2) OTHER PROPOSALS CONCERNING POSSIBLE CHANGES OF FIDE STATUTES AND ELECTORAL REGULATIONS, INCLUDING PROPOSALS AND SUGGESTIONS FORMULATED BY THE ELECTORAL COMMISSION IN JULY 2018 AND SEPTEMBER 2018 MEETINGS.**

FIDE Electoral Commission, in the report of the meeting held in Athens on 2/3 September 2018, at the unanimity suggested to the CC, on the basis of its experience, “to evaluate the possibility to review FIDE electoral regulations looking for possible improvements and additions to reduce disputes in the future”.

The CC definitely agrees that there are many issues in Electoral regulations that must be improved: starting from some relatively minor but important details -as the modalities for Federations of sending and subscribing, in a certified way, documents related to elections, and especially some crucial aspects, as the proceedings in front of the Electoral Commission, especially the possibility for all parties involved in a complaint or in another decision to be previously informed and to have the possibility, respecting a given deadline, to submit documents and their conclusions before the final decision by the Electoral Commission.

The CC recommends to revise Electoral Regulations.

**3) ANSWERS TO THE ISSUES RAISED BY:**

**Mr. Nick Faulks, on the award to FIDE titles and changes of Title Regulations by the Presidential Board, reminding that already in 2016 the same question was raised and the Constitutional Commission agreed that “in accordance with Chapter 4.1 of FIDE Statutes, the GA has an exclusive competence to take decisions on change to regulations of Qualification Commission, Rules and Tournaments Commission, Electoral Regulations and, of course, FIDE Statutes”.**

The CC definitely agrees with Mr. Faulks and strongly reminds, once more, that in that in accordance with Chapter 4.1 of FIDE Statutes, the GA has an exclusive competence to

take decisions on change to regulations of Qualification Commission, Rules and Tournaments Commission, Electoral Regulations and, of course, FIDE Statutes.

**Mr. Casto Abundo, member of the CC, on the correct interpretation of paragraph 3.7 of FIDE Electoral Regulations “Electoral process ...For all elections a majority of the votes cast, not counting abstentions, shall be required. If there is a tie, the voting is repeated until the tie is broken. If three or more persons are nominated for the same offices or office, the candidates that receive 50% plus one of the votes cast, are elected on the first ballot. Thereafter, the candidates receiving most votes on the second ballot are elected to the vacant number of offices. If there is a tie, the voting is repeated until the tie is broken”.**

The CC observes that Chapter 4.8 of the Statutes rules that “Decisions shall be made with the majority of the votes delivered, without taking into account abstentions. For the exceptions hereto see Art. 4.15 & Art. 15.1. For elections, special election regulations are operative. See Article A.04” and Art. 3.7 of Electoral regulations rules that “For all elections a majority of the votes cast, not counting abstentions, shall be required. If there is a tie, the voting is repeated until the tie is broken. If three or more persons are nominated for the same offices or office, the candidates that receive 50% plus one of the votes cast, are elected on the first ballot. Thereafter, the candidates receiving most votes on the second ballot are elected to the vacant number of offices. If there is a tie, the voting is repeated until the tie is broken”. It seems that there are no other rules about this issue. However, it was a common praxis, always followed in the past years, in all FIDE elections, including elections for organs of continental bodies, to apply, starting with the second ballot, the so called “roll off” principle, as follows: the candidate that received less votes was excluded and so on -when necessary- in the following ballots.

The CC requested the candidates to the Presidency of FIDE to express their opinions: Mr. Makropoulos and Mr. Dvorkovich believe that the so called “roll-off” principle must be applied, Mr. Short, on the contrary, that the text of Art. 3.7 of Electoral regulations is clear in the opposite direction.

The CC observes that praxis regarding the functioning of an organ, including elections, can be a source of law, more frequently when there is a loophole, a gap, an ambiguity in other sources of law. About the interpretation of art. 3.7, from one side the text seems clear -not mentioning the possibility of the so called “roll-of”-, however, from another side, the word “persons” has been used, that could be interpreted as referred to singular positions (as vice-presidents, members of commissions) and not to the “Presidential

ticket” and in this case there would be a loophole that could find a solution applying the existing praxis.

After underlying these opposite points, the CC has to take into consideration that, in electoral years, this issue could be the subject or of a consensus by the General Assembly or of a complaint by a candidate, and that in the case of a complaint the Electoral Commission and not of the Constitutional Commission will be competent. Given that the Chairman of both Commissions is the same persons, a more clear advisory opinion by the Constitutional Commission could seem an anticipation of the decision of a different organ, or a not opportune influence on that decision, and this has to avoided.

#### **4) FIDE HANDBOOK AND CONSOLIDATED TEXTS.**

As already done in many previous occasions, the CC underlines that updating the FIDE Handbook is a crucial task and it is always necessary to **specify when exactly and by which organ** a given rule was introduced, modified or deleted.

It is necessary to make available an official version on the FIDE website and/or a printed version of the FIDE Handbook, at least in FIDE offices, updated at least every two years, following the instructions of competent FIDE organs.

The current situation, with the publication of the Handbook only on FIDE website, without paying attention to the exact hierarchy of the different sources of rules, and simply deleting previous versions, has frequently created many difficulties.

If the Secretariat cannot do this, there are volunteers that offered, during the meeting, their availability to help, and the CC is also available to advise and help in the updating procedures.

#### **5) ANY OTHER BUSINESS.**

One participant in the public meeting raised a question regarding the possibility for the Treasurer to not publish the list of Federations that are deemed to be over six months in arrears. The CC underlines that chapter 6 of Financial regulations has to find application, but it is probably to Verification commission to be involved about that.

Many participants in the meeting stressed that it has to be assured the full independence, as well as the specific professional competences of the future members of the Elected Commissions: the CC can surely agree on these principles that already are at least implicit in the FIDE Statutes.

One question was raised about the possibility, in an election for a Zonal presidency, of a tie. The CC observes that, in accordance with chapter 3.7 of the Electoral Regulations “If there is a tie, the voting is repeated until the tie is broken”, however 3.8 rules that “The election procedure for the Zonal Presidents will follow the regulations of each zone”.

The Chairman of the Constitutional Commission  
Roberto Rivello

A handwritten signature in black ink, appearing to read 'Roberto Rivello', written over a horizontal line.