

Annex n. 59



FIDE CONSTITUTIONAL COMMISSION

REPORT TO THE FIDE EXECUTIVE BOARD

The Constitutional Commission (hereafter CC), elected in Tromsø 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 first meeting in Abu Dhabi, during the 86th FIDE Congress, on 5th of September 2015, in a public session from 9.00 to 11.00- (with the presence of various observers: H. Hamers (NED), Y. Garrett (ACP), F. Strydom (RSA), A. Schuering (NED), G. Wastell (AUS), L. Mazouz (FIDE), M. Khodarkovsky (USA), G. Urosevic (SRB), N. Freeman (FIDE), J. Bellin (ENG), and in a session restricted only to the members, without observers, the same day, 15.00 – 17.00.

Opening the meeting, the Commission mourned the passing of forty-five UAE soldiers killed in Yemen the day before.

The following points were inserted in the agenda:

- 1) Anti-cheating organs and rules
- 2) FIDE Handbook and consolidated texts
- 3) Reform of the Code of Ethics
- 4) Interpretative questions:
 - a) FIDE Statutes - Chapter 3 FIDE Officials and organs - paragraphs 1 and 10
 - b) the definition of “final decision of a FIDE organ”
 - c) relationships between FIDE and continental/regional associations
 - d) possible interpretative questions related to Executive Board’s agenda

5) Electoral proceedings: lessons learnt

6) Any other business.

All these points were discussed during the meeting, reaching the following conclusions.

I) ANTI-CHEATING ORGANS AND RULES – INTERPRETATION AND CONSOLIDATED TEXT

The Anti Cheating Committee (ACC), during the 2014 FIDE Congress in Tromso, submitted to the attention of the General Assembly an articulated document titled “Anti-Cheating Guidelines”. The document could not be approved in that occasion, missing the necessary *quorum*; however, it was then approved by the Presidential Board, during the meeting held in Sochi in November 2014, as a report of the ACC. In the same occasion, the Presidential Board also approved some changes of the FIDE Code of Ethics together with a report submitted in Tromso by the Ethics Commission (EC) concerning as well, directly or indirectly, anti-cheating rules.

Anti-Cheating Guidelines contain a plurality of suggestions, proposals and recommendations. It is necessary to clarify how has to be interpreted the intention of the Presidential Board, approving the document, and what are the concrete effects of this approval.

Anti-Cheating Guidelines are self-defined as “recommendations” and are composed by an Introduction (that does not contain applicable rules), 6 Sections and 4 Appendix.

Section 1 contains the recommendation to institute an Anti-Cheating Commission. If, from one side, the CC does not believe that it is possible to attribute a real ontological difference to the distinction between a “Commission” and a “Committee” (FIDE Statutes never mention “Committees”, while the regulations in Administrative Subjects, A.02/1.1.1, use the words “Commission or Committee” without distinctions) and for this reason advise all FIDE organs to avoid in the future the use of this distinction, from another side it seems clear the intention of the ACC to recommend the institution of a new FIDE organ, distinguished by the existing ACC. Therefore, given that the institution of new organs or positions, in accordance with Chapter 3 of the FIDE Statutes, is an exclusive competence of the General Assembly, approving this section the Presidential Board could just intend to approve the idea of drafting a proposal to institute this organ, a proposal to be submitted to the attention of the next FIDE General Assembly, in Baku. Consequently, Section 1 does not contain rules currently applicable.

Section II recommends possible changes of the Laws of Chess, of the Tournament Rules and of the same FIDE Statutes. These changes, of course, cannot be approved if not following the procedures specified by the FIDE Statutes. Therefore, approving these recommendations it seems clear that the Presidential Board just intended to ask competent FIDE Commissions to examine these proposals aimed to improve existing rules. On the contrary, Section II also contains recommendations addressed to the arbiters. Immediately after Arbiters' Commission accepted and inserted these points in their guidelines on the matter. The same happened for the content of Section VI – Recommendations for Arbiters. Finally, Section II contains two chapters concerning “On-Site Inspections” and “The FIDE Internet-Based Game Screening Tool”. On all these subjects, new rules can be approved by the Presidential Board, and given the urgency and the need to support and improve the fighting against cheating, the intention of the Presidential Board was surely to use these new instruments immediately. Therefore, these rules can be considered as immediately applicable (the same for Appendix A-B-C-D).

Section III (Complaints) and Section IV (Investigations) contain (implicitly or explicitly) the recommendation of some changes of the FIDE Statutes concerning the EC and its proceedings. Of course, FIDE Statutes can be modified only by the General Assembly and with two thirds of the votes delivered, without taking into account abstentions. In addition, already in Tromsø these points were discussed and a different proposal was made by the EC and inserted in its report (a report that, as already mentioned, was also approved by the Presidential Board), eventually founding the *consensus* of the same ACC, a *consensus* that now has been renewed in Abu Dhabi both by the EC in its new composition and by the ACC, all agreeing on the following points.

In accordance with FIDE Statutes, Chapter 8 – Ethics Commission – article 2.5, an independent Investigatory Chamber of the Ethics Commission can be instituted and charged to address motivated reports to the Ethics Commission on cheating cases.

This/these chamber/s may be nominated by the Presidential Board and charged to address motivated reports to the EC on specific cases or typologies of cases (as cheating): therefore it is also possible to nominate a “permanent” chamber whose three members can be appointed among a list of more than three people but on the basis of some automatic criteria for the attribution of cases (as it is usual, for instance, for different sections of prosecutors' offices or courts or other organs).

The CC, jointly with the ACC and the EC, therefore asks the Presidential Board to act in accordance with this interpretation, appointing immediately *ad hoc* investigating chambers of the EC for the pending cases concerning cheating and a permanent

investigating chamber for the future cases, establishing as well automatic criteria (as a simple rotation) for the appointment of the components, criteria that can be applied – without discretionary powers- by a member of the same Presidential Board (for instance, the Vice President that is currently also the chairman of the ACC).

Other parties of Sections III and IV, on the contrary, are addressed to identify best practices for the arbiters: these parties can be considered as applicable.

Section V concerns sanctions. In Sochi the Presidential Board, as already mentioned, approved completely new rules concerning sanctions for all violations of the FIDE Code of Ethics, including provisional measures applicable by the EC. Therefore, it is clear that this section cannot be applied and has been absorbed by the new general rules.

Finally, to avoid possible confusions, the CC recommends to publish in the on-line version of the FIDE Handbooks not the full text of the AC Guidelines, but only the parties that can currently have application, as above clarified, as a sort of consolidated text.

II) REFORM OF THE CODE OF ETHICS AND OF THE PROCEDURAL RULES OF THE EC

The CC underlines the importance of updating and reforming the Code of Ethics and the procedural rules of the EC. In full accordance with the EC, the CC is available to cooperate in the drafting of a proposal of reform to be submitted to the attention of the General Assembly in Baku.

III) FIDE STATUTES - CHAPTER 3 FIDE OFFICIALS AND ORGANS - PARAGRAPHS 1 AND 10

Many questions were raised about the interpretation of Chapter 03, paragraph 10 of the FIDE Statutes. The CC has concluded for the following interpretation:

- When any position of Vice President (elected or not) becomes vacant for any reason during the course of a term, the vacancy shall be filled at the next General Assembly. There are no contradictions in the text.
- When a position of a member of an elected Commission becomes vacant for any reason during the course of a term, in the FIDE Statutes there is a contradiction between Chapter 03, paragraph 10 and Chapter 04, paragraph 1 from one side, and Chapter 08 from the other hand. However, Chapter 04, paragraph 1 is very clear on the point, and the vacancy can be filled only by the General Assembly

and not by the Executive Board. There is currently a vacancy concerning the Verification Commission, the Executive Board can be advised to nominate an observer to support the work of the current two members of the Commission, however it does not seem possible to elect a new member.

IV) RELATIONSHIPS BETWEEN FIDE AND CONTINENTAL/REGIONAL/AFFILIATED ASSOCIATIONS

The point is particularly important and the CC has to go deeper in the matter.

As a preliminary step, CC suggests that, in accordance with the FIDE Statutes, FIDE Secretariat has to invite all affiliated associations to send as soon possible to the same Secretariat an updated version of their statutes –in their official languages-. These statutes have to be made available on the FIDE website. The same would be useful for the statutes of all members of FIDE.

V) NEW MEMBERSHIP OF KOSOVO

IOC has recently granted provisional recognition to the Kosovo Olympic Committee.

International organisations, as the Council of Europe and the European Union, any time mention Kosovo add an asterisk with the following note: “All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo”.

The CC, also bearing in mind the recent steps forward in the dialogue between Serbia and Kosovo, advises the Executive Board to call “provisional” the new membership and to add an asterisk with the above mentioned note.

VI) ELECTORAL PROCEEDINGS: LESSONS LEARNT

Following the discussion in the meeting, the CC collected all remarks and observations received. It will examine the issue in its next meeting with the intent to present some advisory opinions in the next General Assembly.

VII) DEFINITION OF “FINAL DECISION OF A FIDE ORGAN”

It has been suggested that, among the points that can be object of a clarification, the definition of a “final decision of a FIDE organ” has to be included. The CC will examine the point during its next meeting.

Abu Dhabi, 7 September 2015

The Chairman of the FIDE Constitutional Commission
Roberto Rivello