

Annex n.



CONSTITUTIONAL COMMISSION

REPORT TO THE FIDE COUNCIL - FEBRUARY 2023

The Constitutional Commission (hereafter CC) held a meeting in Belgrade (Serbia), on the 4th and 5th of February 2023.

All members of the CC attended the meeting: Roberto Rivello (chairman), Ivy Claire Amoko, Daniel Florea, Marouane Tabti and Ian Wilkinson.

The following points were inserted in the agenda, discussed and decided.

I) Internal Rules of the Constitutional Commission

After being involved in the reform of all major FIDE rules and regulations (FIDE Charter, approved in 2020; FIDE Electoral Rules, approved in 2021; structure of the FIDE Handbook, approved in 2022), the CC deems it necessary to draw up and approve the Constitutional Commission Internal Rules concerning its functioning.

A provisional index of the CC Internal Rules was approved, following an initial discussion on a part of the content of each point:

- Composition of the CC:
 - o Election of the CC Deputy Chairman (proposal by the Chairman, open voting)
 - o Designation of a Secretary and cooperation with FIDE Offices, competent to receive and send all communications from and to FIDE members
 - o Criteria of evaluation of the background and expertise of the candidates to be elected as CC members
- Organisation of the CC activities and meetings:
 - o CC official email address and web page
 - o Access, for the CC members, to communications and documents

- Meetings in presence
- On-line meetings
- *Quorum* and Voting
- Tasks of the CC members
- CC reports
- CC competence about updating of the FIDE Handbook (art. 7.14 of the FIDE Charter)
- Proceedings under Section II of the FIDE Charter (regarding membership and voting powers)
 - The right to apply (Member Federations, FIDE organs)
 - Evidence – Criteria of evaluation – Interpretation of national statutes and documents
 - Different competences and cooperation with other FIDE organs (Ethics and Disciplinary Commission, Electoral Commission)
 - Mandatory advisory opinions about the suspension of a Member Federation
 - Mandatory advisory opinions about measures related to minor violations of the obligations of Member Federations (“FIDE reverse delegate”, facts finding commission, “FIDE special envoy”, warning, monitoring, recommendations)
- Other proceedings

After this initial discussion, the CC will continue the drafting and approval of its Internal Rules, on occasion of some on-line meetings, to be scheduled in March 2023.

In accordance with art. 7 of the FIDE Charter, the Internal Rules of the Constitutional Commission do not require an approval by the Council. However, given that these Internal Rules are extremely important for all Member Federations, considering also the necessity to act in strict cooperation with the Council, the CC deems it advisable to submit them to a ratification by the Council. Therefore, the CC plans to approve a final draft before the end of March 2023, to be submitted to the attention of the Council in occasion of next Council meeting, scheduled in April 2023.

II) Advisory opinion about the request of the Russian Chess Federation (RCF) for transfer from the European Chess Union (ECU) to the Asian Chess Federation (ACF)

FIDE Council asked the CC to deliver an advisory opinion about the request of the Russian Chess Federation (RCF) for transfer from the European Chess Union (ECU) to the Asian Chess Federation (ACF).

The RCF and the ECU also directly addressed some statements to the CC, expressing their positions about this request.

To be able to give a comprehensive advisory opinion, the CC deems it necessary to deal with some different issues, concerning: CC competences; the definition of Continent and Europe; the interpretation of FIDE Continents' statutes; the definition and the composition of Zones; the competence of the Council about Zones; the order of the requests; the entry into force of the decisions; the rights of the Russian players; the exceptions to the transfer rules.

THE COMPETENCE OF THE CONSTITUTIONAL COMMISSION

First, it must be highlighted that the CC has full competence to deliver the requested advisory opinion, given that:

- in accordance with art. 27.3.f of the FIDE Charter, the CC is competent to deliver advisory opinions on any interpretative question submitted by a FIDE organ, regarding all FIDE rules and regulations;
- in accordance with art. 32 of the FIDE Charter, FIDE Continents are autonomous entities that can freely decide about their organs and functioning, but they must observe all rules, regulations and decisions of FIDE and ensure that their members and various bodies also comply with them, being mandatory for all FIDE Members and organs. FIDE Continents must also ensure that their statutes and rules fully comply with FIDE rules and regulations;
- therefore, the CC has competence to deliver advisory opinions also regarding the interpretation of FIDE Continents' statutes and rules, especially when related to other FIDE rules and regulations.

DEFINITIONS OF “CONTINENT” AND “EUROPE” IN FIDE RULES

The FIDE Charter defines “FIDE Continent” as “a body comprising all FIDE Member Federations of the countries included in its respective Continent and responsible for continental chess governance and development” and specifies that “there shall be four FIDE Continents, namely: the African Chess Confederation (for Africa), the Asian Chess Federation (for Asia and Oceania), the Confederation of Chess for

Americas (for North, Central and South America) and the European Chess Union (for Europe)”, but does not contain any definition of “continent”, even less of “Europe” or of “European Member Federation”.

Continents are generally identified by convention, rather than any strict criteria.

In FIDE, the “Asian” Chess Federation includes Oceania, that is a geographical region that is usually described as a different “continent” by itself.

The United Nations “geoscheme”, developed by the UN Statistics Division, includes Russia in Europe, Türkiye and Israel in Asia.

The “European Olympic Committee”, on the contrary, includes among its members the Olympic Committee of Russia, but also the Olympic Committees of Israel and Türkiye. It’s the same for many sports organisations: for political or opportunity reasons, or in connection with the origins of a part of the population, and not on the basis of specific geographical criteria.

FIDE rules make references to the UN legal order and to the IOC system of rules, however, also taking them into account, there are no binding regulations about the definitions of the “European continent”.

The RCF is currently a member of the ECU. Art. 5 of the RCF Statute also expressly mentions their ECU membership.

However, the RCF is asking a “transfer” to the ACF. The RCF has specified that this is not “a short-term solution based on the ECU sanctions against Russian chess players”, “it is a strategic decision made by the RCF Supervisory Board and approved by the recent RCF Congress”, whose “main reasons” are: “chess have been actively developing in Asia. For the past few years, chess players from China, India, Uzbekistan, Iran, Kazakhstan, Vietnam, and other Asian countries have been showing major achievements. The RCF believes that competing with the strongest chess countries, especially in youth chess, would be beneficial for the future generations of Russian chess players”; “for reasons beyond control of the Chess World, the European sector is basically closed for Russian chess players, especially for vulnerable groups such as children, seniors, and the disabled. The direct air travel between Russia and European countries is missing, and moreover it’s almost impossible for Russian citizens to obtain European visas. These factors make European tournaments inaccessible for Russian chess players. However, there are no such visa or logistic problems in Asia. The RCF considers its duty to find the ways for Russian chess players to participate in tournaments of all levels”; “the Asian Chess Federation tournaments calendar can be significantly modified and extended. The RCF hopes that its big experience in organization of high-level chess tournaments would be beneficial for the Asian Chess Federation and Asian chess players”.

From a geographical point of view, 77% of Russian territories are located in Asia, but the majority of the Russian population lives in the European portion of the country, has European origins and the role of Russia in the development of the European culture is recognised as extremely important.

Russia is a “transcontinental” country, covering both Europe and Northern Asia.

Therefore, all these aspects considered, it must be concluded that the RCF is a ECU member just by convention and there are not binding general FIDE rules that obligatory include the RCF in the FIDE “European Continent”.

INTERPRETATION OF ECU AND ACF STATUTES

Art. 32.1.a) of the Charter, ruling that “FIDE Continents must accept as their members all FIDE Member Federations of the countries included in their “respective” Continent, clarifies that no Member Federation can become member, at the same time, of more than one FIDE Continent.

The Memorandum of Association of the European Chess Union does not contain a definition of “Europe” or of “European Chess Federation”, also if the ECU “consists of those national member-federations listed in Annex 1”, RCF included. In any case, as the same ECU agreed on, there are no obstacles in the ECU statutes to the withdrawal of its membership by the RCF.

Art. 2.1 of the ACF Statutes, on the contrary, establishes that “any National Chess Federation on the Asian Continent as defined in FIDE statute Art. 2.1¹ or any other National Chess Federation belonging to an Asian Zone, are considered to be member of ACF”.

This rule must be interpreted in the sense that only National Federations that belong to “an Asian Zone” can be accepted as members of the ACF.

Art. 1 of the ACF Statutes clarifies that “the ACF is established under FIDE” and there are no doubt as well that FIDE -and not the Continents- has competence to establish FIDE “Zones”.

The RCF is currently listed by FIDE as Zone 1.6, among “European Zones” and not among “Asian Zones”.

Therefore, at this moment, the ACF cannot accept the RCF as their new member, except in case of a change of their Statutes, or in case of an inclusion, by FIDE; of the RCF among the “Asian zones”.

However, the CC sees no obstacles to a decision of the ACF that would express their availability to accept the RCF as their new member, under condition of a previous inclusion of the RCF among the “Asian Zones”.

¹ There is a reference to the former FIDE Statute and not to the current FIDE Charter; however, art. 2.1 of the former FIDE Statute does not contain any relevant difference about the definition of “Asian Continent”.

FIDE ZONES - COUNCIL'S COMPETENCES

The number and composition of FIDE Zones are established by the FIDE Council, in accordance with art. 20.2 of the FIDE Charter.

If requested, the Council can move the RCF from a European to an Asian Zone.

By the way, a full reform of the number and composition of FIDE zones would be important, if not necessary, for many other different reasons, as the CC has suggested since 2019.

Originally, the rationale of FIDE Zones was linked to the organisation of Zonal tournaments. Today, Zonal tournaments are organised in some Continents only and have less and less relevance in the rules concerning the qualification for the World Championship cycle.

With the approval of the new FIDE Charter, FIDE Zones are established “to develop chess activities in the regions and territories of their competence, strengthen ties between Member Federations and promote mutual goals and representation”.

It means that Zones, today, would have to be composed by more than one Member Federation, preferably by a odd number of Member Federations (to avoid difficulties in case of a deadlock on occasion of the election of a Zonal President, as recently happened for Zone 3.6).

Currently, there are 6 Zones (and among them Zone 1.6 – Russia), that are made up by just one Member Federation: this does not seem in accordance with the tasks that the FIDE Charter attributes to Zones. Of course, in case of a reform, it would be necessary not to affect balances in the attribution of places in the World Championship cycle, but this could be done, for instance, using “sub-zones”, as it is already the case in South America.

THE ORDER OF REQUESTS AND DECISIONS

Therefore, on the basis of the above indicated interpretation of FIDE rules, the CC opines that, also if the ACF could previously express its availability to accept an application by the RCF, under condition, the order of requests and decisions to be considered as correct, that could finalise a potential approval of the RCF request, would be the following one:

- withdrawal of the RCF from ECU;
- request of the RCF to the Council to be inserted in an Asian Zone;
- decision of the Council on this request;
- application of the RCF to the ACF, to be accepted as their new member;
- decision of the ACF on this request.

Of course, it would be possible, for the RCF, to submit its decisions and requests to ECU, Council and ACF at the same time, the same day.

THE ENTRY INTO FORCE OF THE DECISIONS ON THIS ISSUE

If the above indicated proceedings are followed and the RCF becomes a member of the ACF, it would be necessary to identify the exact date of the entry into force of this change.

Usually, FIDE new rules and regulations become applicable 15 days after their publication on the FIDE website, in accordance with art. 7.13 of the FIDE Charter.

However, in this case, the CC opines that the change could not affect rules concerning World Championships and Continental Championships already approved and applicable in the current year 2023. Otherwise, there would be a potential damage of the interests and rights of players and organisers.

THE RIGHTS OF THE RUSSIAN PLAYERS – EXCEPTIONS TO THE TRANSFER RULES

It does not seem possible to recognise a specific right to a *status* of “FIDE European player”, however, the change of Continent and Zone would have significant consequences not only about the organisation of the cycle of the World Championship, but also about the professional life of Russian players, also considering that many of them are currently playing under the FIDE flag: their rights must be safeguarded.

Exceptions to the current rules regarding transfer of players to other Member Federations, if included in the European Zones (and not in other Zones), have to be previewed, by the Council and the Qualification Commission.

The CC suggests that, for 12 months, after the entry into force of the changes, Russian players would have guaranteed the possibility to obtain the transfer to a Member Federation included in a European Zone without the payment of transfer or compensation fees.

There could also be the case of players who do not want or cannot move their residence out of Russia: the Council and the Qualification Commission would have to consider the specificity of their requests, granting exceptions to the current rules about residency.

III) Pending cases and advisory opinions concerning Section II of the FIDE Charter

For a better understanding of some of the following advisory opinions, concerning Section II of the FIDE Charter, the CC would like to emphasise that, as indicated since 2020, the art. 13 of the FIDE Charter can be interpreted in the sense that less severe measures than the suspension can be decided by the Council in case of minor violations of the obligations of a Member Federation. This was already the basis for the nomination, by the Council, on many different occasions, of a “FIDE reverse delegate”. For the same reason, the CC opines that the Council can assume, if opportune, measures even less severe than the nomination of a “FIDE reverse delegate”. These measures can

be identified as the following ones: nomination of a “facts finding commission”, nomination of a “FIDE special envoy”, warning, monitoring, recommendations.

III.1) ISSUES CONCERNING THE MEMBER CHESS FEDERATION OF MOROCCO - FÉDÉRATION ROYALE MAROCAINE DES ÉCHECS (RMCF)

Since 2016, the RMCF has experienced a period of difficulties and controversies, including some judiciary cases, with a conflict with a large number of clubs, organisers and players.

In 2021, following an advisory opinion of the CC, FIDE Council nominated Mr. Bachar Kouatly as FIDE reverse delegate for Morocco. After the end of his mandate, in September 2022, FIDE Council nominated Mr. Victor Bologan as new FIDE reverse delegate for Morocco, for the period October 2022 / January 2023.

FIDE reverse delegates performed a very good job, that was fully appreciated by all parties, especially by players and organisers, facilitating the registration of many tournaments, norms and more than two thousand new FIDE IDs, as well as the organisation of many chess events.

After having met, in Morocco, the Minister in charge of sport and all main stakeholders, who expressed different positions, at the conclusion of his mandate, Mr Bologan submitted his report to the attention of the Council and of the CC, writing, among other things, that: “the Federation shows a good will to fully respect the laws of Morocco and to facilitate the process of affiliation of new clubs, as well as the renovation of the membership of the old clubs, which according the new laws of Morocco have to renew their statutes in the GA of their associations. The President of RMCF expressly invited FIDE to be part of this process, in order to assure fairness and transparency”, suggesting that the FIDE’s role, to solve a still existing conflict among the Federation and many chess clubs, would have “to ensure that all chess clubs and associations who want to affiliate to RMCF, or to renew their membership, will be treated respectfully according to Moroccan laws” and “guarantee that all chess activities previously endorsed by the FIDE reversed delegates, will be continued”, not renewing the nomination of a FIDE Reverse delegate, under condition of establishing “a transition period of 1 year where clubs and associations will be encouraged to affiliate to RCMF, under the supervision of FIDE”.

In full accordance with the recommendations of Mr. Bologan, considering, from one side, the relevant improvement of chess activities in Morocco and the full cooperation and good intents expressed by the RCMF, from another side the importance to continue FIDE support to the RCMF, the CC advises the Council to act as follows:

- to not extend the mandate of the FIDE reverse delegate, this way all rights and duties, related to FIDE membership, will revert to a fully recognised RCMF;

- to recommend RCMF to act in accordance with the practises followed by the FIDE Reverse delegates, especially for what concerns the registration of tournaments, norms and players;
- to recommend RCMF to pay special attention to consent and encourage the affiliation of all chess clubs and associations active in Morocco, avoiding any discrimination;
- to nominate a “FIDE special envoy”, for one year, charged of monitoring the compliance of the RMCF with the recommendations listed above. The CC suggests that this task could be assigned to Mr Batikh Tahar (TUN), a former member of the FIDE Council, fluent in French, Arab and English, well known in the region.

III.2) ISSUES CONCERNING THE SOUTH AFRICAN CHESS FEDERATION (CSA)

For many years there has been a long-standing impasse, regarding who is the legitimate president, or which administration or Executive Board (EXBO) is the appropriate one to govern the affairs of CSA. The two chief persons involved were Mr. Hendrik du Toit and Mr. Mahlodi Johannes Mahomole (“Joe”) who claimed to be the victors in different presidential elections held over, approximately, the last five years.

Following a CC advisory opinion, in January 2022 FIDE Council appointed a FIDE Reverse delegate for South Africa, Mr. Ian G. Wilkinson.

The main tasks of the FIDE Reverse delegate, among other thing, were to oversee the reconciliation process among the relevant parties and the holding of free and fair elections so that CSA could return to normality and comply with the FIDE Charter and other rules.

On 16 February 2022, the High Court of South Africa (Gauteng Local Division, Johannesburg), a three-member panel Court of Appeal, ruled in favour of the Appellant Mr. du Toit and the EXBO over which he presided, which was elected at the proceedings held on 18 December 2018. Mr. du Toit has been leading the EXBO since.

New elections would have to be scheduled at the end of 2022 or at the beginning of 2023.

In accordance with the CSA Constitution each of the nine (9) provinces and the Players’ Commission allow for voting by two (2) delegates each. The chief issue is whether these bodies are in “good standing”, so that their delegates are eligible to vote when elections are held.

The FIDE Reverse delegate made a number of recommendations to resolve the matter. These were contained in a report sent by him to FIDE Council, dated 29 July 2022, and included the following:

- (a) each potential voter should be given an opportunity to be in “good standing”;

(b) any elections to be held should not be held until the first quarter of 2023. This will give some time to the officials for the provinces and the Players' Commission to sort themselves out and be in "good standing" so that they can vote;

(c) an impartial or independent special committee should be established to supervise matters leading up to the elections, including confirming the status of the various provinces and the Players' Commission;

(d) this special committee should be comprised of one representative from the various parties including Mr. du Toit's team, Mr. Mahomole's team, a representative from the ministry of sports and a FIDE representative. There should also be possibly one or two persons representing the provinces and one external "independent" person from a different continent who has some judicial experience;

(e) the stakeholders represented on this committee should agree in writing from the very beginning that they will be bound by the decisions of this special committee and will not pursue any appeal or further proceedings, including court proceedings if they are unhappy with any decision of this special committee;

(f) this special committee is to be constituted or established no later than the 31st of August 2022 with FIDE's direction and input;

(g) the special committee, in conjunction with any other relevant person or entity, will ensure that the arrangements for the elections to be held will facilitate free and fair elections; and

(h) the committee will be dissolved after the elections are held.

CSA had agreed to holding the Presidential elections no later than February 2023. CSA also agreed to a FIDE delegate being the Election Officer and this was approved by the FIDE Council.

Based on this report, the CC advised the Council to not extend the mandate of the FIDE Reverse delegate, and the Electoral Commission recognised CSA full rights of participation and voting in the FIDE Congress held at Chennai, in August 2022.

After August 2022 Mr. A. Lewaks seemed to have replaced Mr. Mahomole as the chief person for the "opposition".

CSA has still not held its elections.

The CC is concerned that the deep contentious issues that plagued CSA are still unresolved despite the work done.

Therefore, the CC asks CSA to give a written update to the FIDE Council and the CC, regarding the current state of affairs, on the 1st of March 2023 at the latest. Most importantly, CSA is to indicate the following:

- (a) what are the plans to hold the elections;
- (b) who is proposed as the elections officer;

(c) the good standing status of the nine (9) provinces and the Players' Commission.

The CC will discuss the matter further at its next meeting, scheduled to be held online in March 2023. At this meeting the CC will advise the FIDE Council how to proceed, depending on the information received from CSA.

III.3) ISSUES CONCERNING THE BULGARIAN CHESS FEDERATION

In 2019, the “Bulgarian Chess Federation 1928” was recognised by FIDE as a new Member Federation, after a previous expulsion of another Bulgarian Chess Federation.

The Management Board informed the CC that:

- following a complaint submitted by other chess associations, with a decision of the Bulgarian Supreme Court of Administrative Litigation, the license previously granted by the competent Ministry of Sport to the “Bulgarian Chess Federation 1928” was annulled and not renewed: a decision appealed by the “Bulgarian Chess Federation 1928”;
- the Bulgarian Ministry of Sport, in November 2022, granted a license to another chess association, called “Bulgarian Chess Federation 2022”, that organised a “national Bulgarian championship”, not recognised for FIDE rating, but with the participation of many strong Bulgarian chess players;
- there are some other chess associations, recently founded, that are also acting to be recognised as the legitimate Chess Federation, having right to represent the chess community in Bulgaria, refusing any agreement among them.

On these bases, the Management Board asked the CC an advisory opinion.

The CC opines that these facts could constitute a violation of the obligations of art. 13.5 of the FIDE Charter.

However, there is not yet sufficient evidence that all national remedies are exhausted, nor about the affiliation of the chess clubs to a given Chess Federation and not even about the concrete current chess activities in Bulgaria.

For these reasons, the CC advises the Council to nominate a “FIDE special envoy”, charged to contact and liaise with all relevant stakeholders, to assume information and deliver a report about the current legal and factual situation in Bulgaria. This task could be assigned to Mr. Daniel Florea, a member of this Commission.

III.4) NORTH CYPRUS APPLICATION

The Management Board asked the CC an advisory opinion on the request, submitted in November 2022 to FIDE Offices by the “North Cyprus Chess Federation”, to be admitted, ex art. 12 of the FIDE Charter, as a new Member Federation.

Northern Cyprus, officially known as the Turkish Republic of Cyprus, that comprises the north-eastern portion of the island of Cyprus, is an entity whose qualification as an independent state is currently recognised only by Türkiye. According to the United Nations, Northern Cyprus is considered a part of the Republic of Cyprus. The same conclusion was reached by the International Olympic Committee: Northern Cyprus is not represented as an independent team but under the Olympic Committee of the Republic of Cyprus, individuals who do not want to join this Olympic Committee may participate in competitions under the Turkish flag.

In accordance with art. 9 of the FIDE Charter, “only one Federation for each country can be affiliated to FIDE as a Member. This rule shall not apply to Federations that were accepted as FIDE Members before the date of this Charter entering into force”, “for new members, the country of the federation must be a country recognised by the United Nations or the International Olympic Committee (IOC)”.

The “North Cyprus Chess Federation” was not recognised by FIDE before the entrance into force of the FIDE Charter, nor is a country recognised by the United Nations or by the International Olympic Committee, therefore the CC advises the Council and the General Assembly to reject this request of admission.

III.5) ADVISORY OPINION ABOUT AFFILIATED ORGANISATIONS

Following an application submitted by the Chess Federation of New Caledonia and a request of clarification advanced by GM Nigel Short, the FIDE Management Board asked the CC to deliver an advisory opinion about the conditions of acceptance of new Affiliated Organisations, more specifically raising two different questions:

- can a chess association become an Affiliated Organisation of FIDE maintaining, at the same time, the *status* of affiliated to a national Member Federation?
- is the consent of the national Member Federation necessary to accept such an Affiliated member?

Art. 14 of the FIDE Charter rules that “can be admitted as Affiliated Organisations: a) organisations grouping Member Federations; b) associations or organisations which represent some regions or transnational territories; c) associations or other organisations representing people with a common ground or with same interests on some specific chess activities”.

Therefore, the CC opines that, for a chess association, to be affiliated to a national Member Federation does not constitute an obstacle to be admitted as a FIDE Affiliated Organisation. However, if this association totally insists on the territory of a national Member Federation, the consent of this national Member Federation is a necessary condition to be accepted as a FIDE Affiliated Organisation.

IV) ANY OTHER BUSINESS

FIDE Management Board anticipated the request to ask CC an advisory opinion about rules concerning cases of gender changes.

Libyan Chess Federation also asked the CC to decide, as anticipated in a previous meeting, about issues concerning their current situation.

These requests will be added in the agenda of the next meeting of the CC.

Belgrade, 6 February 2023

Roberto Rivello

A handwritten signature in black ink, appearing to read 'Roberto Rivello', written in a cursive style.