



Report of the fourth meeting of the Working Group of the Programme Coordinating Board (PCB) to respond to the recommendations of the Joint Inspection Unit (JIU) review of UNAIDS administration

DATE: 8 October 2020

VENUE: Virtual

BACKGROUND

1. The Working Group was established by the PCB to review the recommendations directed to the PCB in the 2019 Joint Inspection Unit (JIU) review of the administration and management of UNAIDS. The Working Group met for the fourth time, virtually, on Thursday, 8 October 2020.

WELCOME

2. Julia Martin, independent chair of the Working Group on behalf of PCB Chair Ambassador Deborah Birx of the United States of America, welcomed Working Group members to the fourth meeting. The Chair recalled that the fourth meeting was scheduled in order to continue discussions of JIU recommendations regarding which the Working Group had yet to reach consensus.

APPROVAL OF THE AGENDA

3. The Working Group adopted the agenda. (Annex 1)

REVIEW OF JIU FORMAL RECOMMENDATION 3

4. In Formal Recommendation 3, the JIU recommended that, 'By the beginning of 2021, the Programme Coordinating Board should revise its Modus Operandi to clarify its roles and responsibilities and imbed oversight and accountability mechanisms in the oversight of UNAIDS and its secretariat.' The Chair reminded the Working Group that legal counsel had advised that the PCB is legally unable to change the wording of paragraphs 4 and 5 of the Modus Operandi, as these were lifted directly from the ECOSOC resolutions authorizing the creation of the Joint Programme and changes to this language might suggest that the sense of these resolutions had been changed. Given that only ECOSOC is empowered to change the language of paragraphs 4 and 5, the Working Group had previously agreed to explore creation of an annex to the Modus Operandi as the means for clarifying the PCB's roles and responsibilities on oversight and accountability. Following a brief discussion, the Working Group reaffirmed this course of action.
5. The Chair turned the Working Group's attention to a draft annex prepared, at the Working Group's request, by the Working Group member representing Canada and its constituency. The Working Group welcomed the draft annex and discussed various elements of the draft. It was noted that it would be important for the annex to clarify which of the provisions pertain solely to the Secretariat and which pertain to Cosponsors.
6. With respect to the draft annex's provisions regarding reports from the Joint Programme, there was agreement that provision for intersessional reporting from the Executive Director to the PCB should be preserved, but that caution should be taken with respect to such reporting and that such reporting should ideally be linked to an agenda item for formal discussion and consideration at a PCB meeting. With respect to strategy development and implementation, it was agreed that the annex should note that the governing boards of Cosponsors, rather than the PCB, will be responsible for approving each Cosponsor's HIV strategy. With respect to financial management provisions of the draft annex, it was agreed that the annex should focus on audited financial reports submitted to the PCB by the Joint Programme. It was also agreed that the Chair would seek clarification on the differentiation between audited reports and certified reports to inform development of a final draft of the annex for submission to the PCB. It was also

agreed that the language of the draft annex on reporting and financial management would cover country envelopes.

7. The Working Group discussed ways to use the annex to strengthen linkages between the PCB and Cosponsors' governing boards. At the Working Group's request, the Chair agreed to seek legal advice regarding the ability of the PCB to regularly communicate with Cosponsors' governing boards regarding PCB decisions or, in the alternative, to communicate with CCO for onward communication with Cosponsors' governing boards. With respect to the draft's provision on ethics reporting to the PCB, it was agreed that the draft should be revised to clarify that reporting is from the Secretariat's Ethics Office. Similarly, it was agreed that the draft's provisions regarding evaluation reporting should specify that reporting is from the UNAIDS Evaluation Office, which covers the Joint Programme and works directly with evaluation offices of Cosponsors. With respect to the provisions in the draft annex regarding human resources, it was agreed that the annex should specify that annual reports on strategic human resources management and from the Staff Association pertain specifically to the Secretariat. The provisions of the draft annex on risk management were accepted by the Working Group.
8. Following an extensive discussion, it was agreed by the Working Group to recommend the addition of an annex to the Modus Operandi to clarify and strengthen the PCB's roles and responsibilities on oversight and accountability. It was agreed that the Chair would provide the Working Group with a revised version of the draft annex, taking into account the agreed changes to the draft. The Chair asked Working Group members to be prepared to provide comments and feedback on the revised draft annex within 24-48 hours of receipt. It was further agreed that legal counsel would be asked to review the draft annex and make comments thereon.
9. **The Chair referred Working Group members to Informal Recommendation 6**, which is related to Formal Recommendation 3. In Informal Recommendation 6, the JIU stated, "PCB may wish to revise paragraph 5 of the Modus Operandi, which covers the functions of PCB to establish [the practice of the reports of the auditors and data and information on ethics activities and investigations being more critically assessed by PCB." In light of legal advice regarding the inability of the PCB to change the language of paragraph 5 of the Modus Operandi, it was agreed that JIU Informal Recommendation 6 could not be implemented, as written. However, it was further noted that the draft annex to the Modus Operandi had implemented the spirit of the recommendation by clarifying the PCB's role with respect to ethics reports.

REVIEW OF JIU INFORMAL RECOMMENDATION 5

10. In Informal Recommendation 5, the JIU said: "This [i.e. bringing further definition to its responsibilities] also includes the PCB's roles and responsibilities in handling allegations against the Executive Director or any other officials handling oversight issues (e.g. ethics officers, investigators, auditors, other senior officials, etc.) that could pose a conflict of interest in handling such issues, which is a best practice that is not currently reflected in the policies or procedures of UNAIDS or its secretariat."
11. The Chair reminded the Working Group that it had previously reached consensus, based on legal counsel, that the responsibility for oversight of the performance of or allegations against the Executive Director rests with the United Nations Secretary-General and that responsibility for performance oversight of UNAIDS staff below the Executive Director rests with the Executive Director. In the event that a performance issue of or allegation against the Executive Director raises a governance issue, it had been agreed by the Working Group that the PCB's sole recourse was to raise the issue in the form of a report or request with ECOSOC.

12. With this consensus in place, the Working Group discussed the optimal way to memorialize the Working Group's consensus and proposed way forward. Working Group members noted that the process for addressing allegations against the Executive Director remains unclear. It was agreed that the revised annex would clarify the PCB's ability to approach ECOSOC in the case an allegation against the Executive Director affects the governance of the Joint Programme. It was further agreed that the Working Group's report would recommend that the PCB note the lack of clarity on procedures for addressing allegations against the Executive Director and seek further clarification on this matter from ECOSOC.

PCB BRIEFING

13. The Chair reminded the Working Group that the PCB would be briefed on the Working Group's progress during a virtual meeting on 8 October 2020. It was agreed that the Working Group's explanatory note provided with the annex to the Modus Operandi would need to be updated prior to the briefing to clarify the Secretary-General's exclusive role in providing oversight of the performance of the Executive Director. Cosponsor representatives of the Working Group reported that a revised draft of the Cosponsor guiding principles was being prepared for approval by Cosponsor Executive Heads in November. The Chair asked Cosponsors to provide a preferred revised draft of the guiding principles to be described and discussed during the PCB briefing. It was agreed that terms of reference need to be developed for the proposed new independent, external oversight body, but the Chair indicated that these might not be ready prior to the PCB briefing.
14. The Chair described the proposed flow of the PCB briefing. During the introduction, the Chair proposed to provide an overview of the Working Group's mandate, membership and meeting schedule; summarize the purpose of the briefing; and provide an overview of anticipated Working Group recommendations for each of the JIU recommendations. It was proposed that Working Group members would then provide brief presentations on five specific recommendations: Formal Recommendations 3 and 5 and Informal Recommendations 4, 5 and 7. The Working Group supported the proposed flow of the briefing described by the Chair. It was further agreed that the Chair would ask members of the Working Group to handle the presentations of the Working Group's work and conclusions regarding the five highlighted recommendations, taking into account the need for gender, regional, NGO, Cosponsor and member state representation.

ADJOURNMENT

15. With no other business, the meeting was adjourned.

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