



Global Health Responsibility Agency, Austria
Dr. S. Behrendt, Director

Subject: Open Letter concerning WHO's statement on Art. 55 para. 2 IHR in violation of the rule of law

To the
World Health Organization
H.E. Dr Tedros Adhanom Ghebreyesus
Office of the Director General
Avenue Appia 20
1211 Geneva
Switzerland

Salzburg, 1st of May 2024

Dear Dr. Tedros, Director-General of the World Health Organization,

We, the Global Health Responsibility Agency, together with other NGOs, parliamentarians and individuals, raise the following issue of highest concern to the international community:

Civil society appeal to your responsibility to respect the rule of law

Urgent appeals from civil society and parliamentarians to bring the violation of the procedural requirements for the amendment of the International Health Regulations (IHR) under Art. 55(2) IHR to an end have been addressed to WHO Secretariat and brought to your attention. In particular, we fully endorse the open letters by Bell & others, available at www.openletter-who.com, which has been signed by thousands of concerned persons from multiple countries, as well as our previous letter dated 6th of March 2024. Moreover, on 16th April 2024, a motion with majority support was passed by the Parliament of the Kingdom of the Netherlands which requested for postponement of the vote on the IHR and Pandemic Agreement at the 77th World Health Assembly.

In response to these appeals, in an online [Q&A section](#) on the IHR amendment process, you publicly presented a statement claiming that WHO has complied with Art. 55(2) IHR (2005):

'In fulfilling the Article 55(2) requirement, the WHO Secretariat circulated all proposals for amendments to the IHR on 16 November 2022, some 17 months before the Seventy-seventh

World Health Assembly, which begins on 27 May 2024, when they are proposed for consideration.'

In addition, the argument is presented that the Secretariat even exceeded the technical requirements under Art. 55(2) IHR by communicating 'all proposed changes to these [308] amendments developed by the WGIHR [Working Group on the Amendments of the International Health Regulations] drafting group, to all 196 States Parties, after each WGIHR meeting.'

These flawed claims must be rejected. Under Art. 55(2) IHR, the Director-General shall communicate the **final text** of any proposed amendments to the IHR that the World Health Assembly (WHA) is to consider and potentially adopt **four months prior** to the respective WHA. Any other interpretation goes against the object and purpose of Art. 55(2) IHR, as well as the WHO-Secretariat's own established interpretation of Art. 55(2) IHR that it adhered to until the publication of the Q&A. In addition, the **Rules of Procedure** of the WHA are **disregarded** in the current process.

Object and purpose (or 'the spirit') of Art. 55(2) IHR disregarded

As any multilateral treaty, the IHR has to be interpreted and applied in line with Article 31(1) of the [Vienna Convention on the Law of Treaties](#) (VCLT). This requires an interpretation in light of the object and purpose ('the spirit') of the provision. The object and purpose of Art. 55(2) IHR is to give all States Parties to the IHR an ample opportunity to thoroughly assess the domestic legal, institutional, political and financial implications of any proposed amendments as well as their compatibility with States' other obligations under international law, including international and regional human rights law. This includes an open political debate and assessment as to whether the respective State is willing to transfer further competences in the area of public health law and policy to the WHO, and in particular to the WHO Secretary-General and the Emergency Committees to be set up under the IHR during a Public Health Emergency of International Concern (PHEIC).

The currently discussed draft amendments to the IHR foresee such transfer, proposing e.g. extended competences to declare health emergencies under the [draft amendments](#) to Arts. 1 and 12 IHR; and explicitly empowering the Director-General and Emergency Committees to recommend the use of specific health products during PHEICs under draft amendments to Arts. 15 and 16 IHR. Executive authorities may wish to consult with their legislatures and other authorities; and in several States, the domestic constitutional order could prescribe a mandatory parliamentary approval process.

Given WHO's plan for the IHR draft amendments to be adopted together with the new draft [pandemic agreement](#) at the 77th WHA, an extra layer of complexity is added: States must thoroughly evaluate how proposed IHR amendments will interact with the agreement provisions to avoid overlapping and conflicting commitments under the respective international instruments, and to assess the potentially far-reaching legal, institutional and financial consequences at the domestic level.

To make such assessments, the 196 States Parties to the IHR must be provided with the *final text* of the proposed amendments at least four months in advance of the respective WHA. Assessing text that is not final through domestic processes is a waste of time and resources, undermining the object and purpose of Art. 55(2) IHR and thus absurd. This is the case in particular when such non-final text comprises of 308 incoherent and contradictory proposals the purpose of which was to launch a 15-month negotiation process of the IHR amendments within the WGIHR¹ and when this text is subject to constant change due to on-going negotiations within the WGIHR as is the case with all proposed amendments developed by the WGIHR drafting groups that were allegedly circulated to all States after each WGIHR meeting. Similarly, suggesting that the 308 originally proposed amendments or proposed amendments discussed by the WGIHR at various stages are the final text that should be voted on at the 77th WHA leads to irrational results.

¹ WHA75(9), 22 May 2022, paras. 2 (a) and (c).

Moreover, it has to be recalled that many States, like the EU Member States, are represented in the negotiations of the WGIHR by regional organisations or rely on regional or diplomatic group representations due to the significant resource constraints that delegations of many low- and middle-income countries are under. These known characteristics of the process make it all the more necessary that all States are given at least four months' time to evaluate the *final text* of the proposed amendments. Against this background, the WHO's [statement](#) that '[t]he spirit of the provision, which is to ensure that all States Parties have adequate time to consider and coordinate domestically and internationally on the proposed amendments in the run up to the Assembly, has been met', can only be seen as an encroachment on States' sovereign rights, and equally, on the democratic participation rights of the people these States represent.

Finally, the four-months lead period to evaluate the final text of proposed amendments is especially germane given the unique legal status of adopted IHR amendments that will enter into force automatically unless a State Party actively opts out within a very short timeframe of 10 months.

WHO-Secretariat's own reasonable interpretation of Art. 55(2) IHR suddenly and conveniently disregarded

Until recently, it has been the WHO's own interpretation of Art. 55(2) IHR that it is the *final text* of the proposed amendments to the IHR that must be circulated to all States Parties to the IHR four months before the respective WHA. The evidence also shows that back in October 2022, the Secretariat clearly intended to apply this interpretation to the 15-month amendment process of the IHR to be negotiated within the WGIHR and to its outcome.

First, this is clear from the WGIHR's [Terms of Reference](#) of 23rd of October 2022. They mandate the WGIHR in paragraph 6 to, by January 2024,

'submit[...] their *final package* of proposed amendments to the DG who will communicate them to all States Parties in accordance with Article 55.2, for the consideration of the Seventy-seventh World Health Assembly.'²

The Terms of Reference thus undoubtedly refer to the *final package* of the proposed amendments, that is, the proposed amendments to the IHR in their *final wording* in which they should be considered by the WHA.

Second, there is evidence that the WHO-Secretariat had no legal intention in November 2022 to circulate the 308 amendments proposed by State Parties under the remit of Art. 55(2) IHR. It recognized that these proposed amendments were meant as a starting point for the WGIHR's negotiations, circulated to all States Parties based on [Decision WHA75\(9\)](#) para.2(c), and thus did not constitute the final text of the proposed amendments. In its [address](#) to the States Parties accompanying the publication of the 308 proposed amendments, the WHO-Secretariat did *not* indicate to State Parties that the circulation constituted a formal communication of final text of amendments to be considered by the WHA under Art. 55(2) IHR. Such explicit notifications to States Parties have, however, been established administrative practice of the Secretariat before. This can be seen from the Secretariat's other formal communications under Art. 55(2) IHR, e.g. the Director-General's letter of 20th of January 2022 ([Ref.: C.L.2.2022](#)).

Has the Secretariat now moved away from this interpretation of Art. 55(2) IHR that is in line with the provision's object and purpose, requiring circulation of the *final text* of any amendments of the IHR *four months* in advance of the WHA? If so, why? Are the Member States, i.e. States Parties to the IHR, fully aware about this issue?

² Emphasis added.

Final text has not been made available 4 months before the start of the 77th WHA in violation of Art. 55(2) IHR

The final text of the proposed IHR amendments is not available to this day – less than 30 days from the start of the 77th WHA – and has therefore not been circulated to all State Parties to the IHR by the Secretariat. This violates the 4-months-period requirement under Art. 55(2) IHR.

Neither the 308 amendments originally circulated in November 2022, nor the circulation of all proposed changes developed by the WGIHR drafting groups after each WGIHR meeting, nor the draft amendments to the IHR ([A/WGIHR/8](#)) made available on 17th of April 2024 constitute the final text of the amendments. Rather, these documents form part of an on-going negotiation process within the WGIHR and are therefore subject to constant change. As set out in the above-mentioned Terms of Reference of the WGIHR, this process should have delivered the final text of the proposed amendments in January 2024 for circulation to all State Parties in advance of the 77th WHA. The WGIHR failed to do so.

Art. 55(2) IHR is clear in its wording on the 4-months requirement. According to the express intent of the drafters of Art. 55(2) IHR, this provision is a *lex specialis* provision in relation to the general rule of Art. 40(2) of the VCLT on the amendment of multilateral treaties.

Violations of the WHA Rules of Procedure

Neither the WGIHR nor the Intergovernmental Negotiation Body (INB) have finished the negotiations of their respective instruments, and final versions of neither the proposed amendments to the IHR nor the new pandemic agreement are available to Member States of the WHO. By not postponing the deadline for both the adoption of the IHR amendments and the new pandemic treaty, you also act contrary to the [WHA Rules of Procedure](#). As convener and *ex officio* Secretary of the WHA and responsible public officer of WHO, you shall guarantee that the [WHA Rules of Procedure](#) are respected.

As a general rule, all documents relating to the provisional agenda shall be made available online no less than 6 weeks before the commencement of a regular session of the WHA (Rule 14). Whilst some exceptions are permitted under Rules 13 and 15 upon agreement by the WHA or a decision to suspend these rules made by the President of the WHA with the consent of the General Committee, these flexibilities do not apply to international Conventions or Agreements or international Regulations that are proposed for adoption by the WHA. Rule 10 requires that the 'Director-General shall consult the United Nations and the specialized agencies, as well as Member States on [these ...] conventions or agreements or [...] regulations [...] in respect of any provision thereof which affects the[ir] activities'. The Director-General shall also bring the comments of the UN, its specialized agencies and governments that result from such consultations to the attention of the WHA.

Complying with Rule 10 first requires giving opportunities to the UN, its specialized agencies and governments to consult on the *definite text* of both the new pandemic agreement and the proposed amendments to the IHR; and second, to provide a reasonable time period for such effective international consultations and submission of comments in advance of the WHA. Less than 30 days before the start of the WHA, and given the absence of the final text of the pandemic treaty and the final wording of the proposed IHR amendments, there is no longer reasonable time to carry out such consultations as stipulated under the WHA Rules of Procedure.

Moreover, practical problems arise concerning the timely translation of these documents into the official languages of the WHO, permitting equal participation in the deliberations at the WHA by all delegations.

Appeal not to adopt the IHR amendments and the pandemic treaty at the 77th WHA

In light of the above, we call on the WHO-Secretariat and you, Dr. Tedros, to stop the non-compliance with Art. 55(2) IHR and the Rules of Procedures of the WHA. There is no longer a lawful way to adopt any proposed amendments to the IHR at the 77th WHA, nor can the new

pandemic treaty with a scope *ratione materiae* and an institutional framework significantly overlapping with that of the (amended) IHR be adopted. The adoption of both instruments must be postponed safeguarding the international rule of law and procedural and outcome equity by allowing fair input and deliberation.

Please arrange for postponement of the adoption of the IHR amendments and the new treaty that are not yet finalised 30 days before the start of the 77th WHA. It is your honourable duty to respect the sovereignty of States and follow legally prescribed procedures, a duty you owe to State Parties and to concerned voices from all over the world!

Respectfully yours,

Dr. Silvia Behrendt, Director of the Global Health Responsibility Agency

Copied to:

International Health Regulations Secretariat

Steven Solomon, Principal Legal Officer of the WHO

Executive Board Members of the World Health Organization:

Dr Hanan Mohamed Al Kuwari, Qatar, Chair

Dr Sabin Nsanzimana, Rwanda, Vice-Chair

Ms Kerstin Vesna Petrič (MD), Slovenia, Rapporteur, with the explicit request to forward the letter to all Members of the EB:

- Dr Malachie Manaouda, Cameroon
- Dr Said Anli Aboubacar, Comoros
- Dr Mekdes Daba Feyssa, Ethiopia
- Dr Nyane Letsie, Lesotho
- Dr Sabin Nsanzimana, Rwanda
- Docteur Marie Khémesse Ngom Ndiaye, Senegal
- Dr Yawa Djatugbé Apétsianyi, Togo
- Dr Jerome X. Walcott, Barbados
- Mr Tovar da Silva Nunes, Brazil
- Ms Christine Harmston, Canada
- Dra. Maria Teresa Barán Wasilchuk, Paraguay
- Dr. Eric Peña Sánchez, Peru
- appointed delegate of the USA
- Dr Jong Min Pak, Democratic People's Republic of Korea
- Dr Abdulla Khaleel, Maldives
- Dra. Élia A.A. dos Reis Amaral, Timor-Leste
- Dr Dmitry Leonidovich Pinevich, Belarus
- Dr Jonas Egebart, Denmark
- Dr Grégory Emery, France
- Dr Ala Nemerenco, Republic of Moldova
- Professor Jozef Šuvada, Slovakia
- Mme Nora Kronig Romero, Switzerland
- Dr Viktor Liashko, Ukraine
- Dr Wahid Majroohm Afghanistan
- Dr Abdelkrim Meziane Bellefquih, Morocco,
- Dr Hassan Mohammad Al Ghabbash, Syrian Arab Republic
- Dr Qasem Mohammed Buhaibah, Yemen
- Mr Blair Exell, Australia
- Mr Li Mingzhu, China

- Mr Marcus Samo, Micronesia
- Dr Yasuhiro Suzuki, Japan
- Dr Dzulkefly Ahmad, Malaysia

Working Group on Amendments to the International Health Regulations (2005):

Dr. Abdullah M. Asiri

Prof. Dr. Ashley Bloomfield

Intergovernmental Negotiating Body:

Co-Chairs Dr. Matsoso

Mr. Driece of the INB

European Commission