



**14<sup>th</sup> Executive Board**  
**5-6 July 2011**  
**Conference Centre Varembe**  
**Geneva, Switzerland**

**Resolution n°8**

**UNITAID Constitution**

The Executive Board adopts the revised UNITAID Constitution as attached in Annex A to this resolution.

A handwritten signature in blue ink, appearing to read "P. Douste-Blazy".

**Philippe Douste-Blazy**



# **UNITAID CONSTITUTION**

Adopted by the Executive Board  
on 6 July 2011

## **UNITAID CONSTITUTION**

The provisions of this constitution may be amended by the Executive Board by consensus, or, if consensus is not possible, by two-thirds majority vote of Executive Board members with voting privileges.

### **Section 1. : Mission, objectives and principle of UNITAID**

- 1.1. UNITAID's mission is to contribute to scale up access to treatment for HIV/AIDS, malaria and tuberculosis for the people in developing countries by leveraging price reductions of quality drugs and diagnostics, which currently are unaffordable for most developing countries, and to accelerate the pace at which they are made available.
- 1.2. To fulfill its mission, UNITAID will use sustainable, predictable and additional funding to help generate a steady demand for drugs and diagnostics, thereby significantly impacting market dynamics to reduce prices and increase availability and supply. UNITAID will base its price reduction strategy on market competition. Where intellectual property barriers hamper competition and price reductions, it will support the use by countries of compulsory licensing or other flexibilities under the framework of the Doha declaration on the Trade-Related Aspects on Intellectual Property Rights (TRIPS) Agreement and Public Health, when applicable.
- 1.3. On this basis, the principle of making available better quality drugs at the lowest possible prices will be reflected in the agreements between UNITAID and its recipients.
- 1.4. Any other innovative solution that may overcome limitations to market diversification in developing countries will also be pursued.
- 1.5. As a guiding principle, UNITAID aims at supporting national and international efforts and complementing the role of existing international institutions. It will not replace nor duplicate existing institutions or mechanisms.

- 1.6. UNITAID will be accountable and transparent to stakeholders and to the public and will establish a policy document with the intention of making the fullest disclosure of information possible. A commitment to transparency shall be a requirement in UNITAID's contracts with its partners.
- 1.7. UNITAID is a collaborative initiative. It is not a separate legal entity. UNITAID will act through its Secretariat pursuant to the hosting arrangement with WHO.

## **Section 2. : Financing**

- 2.1. UNITAID will offer long-term support through sustainable and predictable funding. UNITAID's reliable functioning and the bulk of its added value are assured by the regularity, predictability and additionality of funding contributions, which are being mobilized by innovative financing mechanisms such as a solidarity contribution on air tickets together with multi-year predictable budgetary contributions. UNITAID will apply this principle in its efforts to attract new donors and develop additional funding sources.

## **Section 3. : UNITAID Business Model**

- 3.1. In pursuing its mission, UNITAID will use strategic approaches (such as purchasing power and negotiation) in order to continuously reduce the prices of products to the lowest sustainable level in developing countries. UNITAID aims to increase the affordability of products, not only for UNITAID-recipient programmes, but also potentially for all other treatment programmes in developing countries. To meet its objectives, UNITAID will rely on contractual and collaborative partners. To date core technical partners include WHO, UNAIDS, UNICEF, the Global Fund and the Clinton HIV/AIDS Initiative. UNITAID will work in close cooperation with and eventually rely on organizations that have experience relevant to its operations, such as procurement, price negotiation, shipment and handling, and monitoring. UNITAID will rely on suitable programmatic partners to implement its

programmes. Strong dialogue with NGOs and civil society is essential to ensure that the initiative is viable and addresses the needs of patients and communities.

- 3.2. UNITAID will adopt an effective, result-oriented and pragmatic approach and will therefore be flexible enough to make adjustments when necessary. It will support evidence-based programmes, including free-of-charge services, and will base its decisions on sound and sufficient evidence.
- 3.3. UNITAID has defined its modus operandi in close collaboration with its partners. Being mainly focused on purchasing drugs and diagnostics, UNITAID will:
  - 3.3.1. Ensure through the work of its partners that its purchases meet country demand and its procedures align with those of national health systems. Thus, its contributions will be coordinated within the broader global public health architecture by its partners.
  - 3.3.2. Rely on and work closely with its partners to ensure a successful implementation..
- 3.4. The parties responsible for procurement and supply management may vary depending on the products and the needs and capabilities of recipient governments. In some cases, recipient governments may wish to use the services of UNITAID's procurement partners; in others, governments may procure products directly. In all cases, UNITAID will apply appropriate cost-effective and transparent procurement policies to ensure optimal quality at the best prices.
  - 3.4.1. With regard to potential approaches to strategic sourcing, UNITAID will develop an optimal supply strategy, selecting strategic sourcing partners who could be responsible for market analysis, specifying terms and conditions for orders and establishing criteria for supplier selection and negotiating prices using a variety of approaches, including, for

example, pricing agreements with vendors based on cost transparency and vendor audits.

- 3.5. With regard to options for purchasing and contracting, UNITAID contracting and purchasing will, through collaboration with its partners, seek to maximize and sustain price reductions while maintaining accepted international principles of competition and transparency.
- 3.6. With regard to options for quality assurance, UNITAID will work through existing organizations to ensure the safety, quality and efficacy of the drugs and tests that will be purchased, including inspection of production facilities and processes. UNITAID will ensure that quality assurance of targeted products is prioritized and expedited, and engage with partners in support of country level regulatory and quality control mechanisms.
- 3.7. UNITAID will contribute, where appropriate, to ensuring quality for drugs and diagnostics by providing funding to the WHO pre-qualification programme.
- 3.8. UNITAID will publish all prices of commodities provided by UNITAID, in agreement with its partners and, if necessary, with the respective manufacturer or supplier.
- 3.9. With regard to models that could be used for logistics and distribution, UNITAID will partner with existing organizations for logistics and distribution of drugs and diagnostics. These partners should have the capacity to organize lowest-cost warehousing of buffer inventories (which may be held by suppliers themselves), transportation and insurance, including assistance in low-cost delivery of drugs to countries, and port clearances.
- 3.10. With regard to options for program integration, UNITAID will look to a number of partner organizations to help ensure that the support for drugs and diagnostics is aligned with and integrated into national treatment schedules and standards to be as effective as possible. Implementing partners will work with local authorities in chosen countries to avoid duplication of efforts. They will

also help develop consumption-based forecasts; integrate the receipt of these products with existing national procurement and distribution systems; work with national drug regulatory authorities to ensure expedited registration of products financed by UNITAID; and ensure linkage with appropriate technical assistance to enable the effective use of these products.

- 3.11. With regard to potential approaches to monitoring and evaluation, wherever possible, UNITAID will use existing reporting mechanisms, aligned with international standards, to provide the data required to monitor and evaluate progress at regular intervals.
- 3.12. UNITAID will refrain from introducing a duplicative reporting burden on countries. UNITAID will ensure regular independent evaluation of its programmes and partners.

#### **Section 4: UNITAID Governance Model**

4.1. To fulfill its mission and reach its objectives, UNITAID has defined an outline of its organizational setup:

4.1.1. UNITAID will operate in a cost-efficient manner with a lean secretariat, keeping overhead down to dedicate its resources to the overall mission and achievement of its results.

4.2. To achieve these results, UNITAID will establish a governance structure. This governance structure, which is set forth more fully in the UNITAID bylaws is as follows:

##### **4.2.1. Executive Board**

4.2.1.1. The Executive Board (Board) is the decision-making body for UNITAID. It shall make all decisions relating to UNITAID

(except for those delegated to the Secretariat), including the following:

- 4.2.1.1.1. determine, modify, and approve UNITAID's objectives, strategy, scope and work plan;
  - 4.2.1.1.2. consider, approve, and monitor partnership arrangements with other organizations and institutions;
  - 4.2.1.1.3. nominate and participate in the performance review of the Executive Secretary;
  - 4.2.1.1.4. monitor UNITAID's progresses and approve its annual report;
  - 4.2.1.1.5. review the annual financial statement prepared by the Secretariat and approve the budget;
  - 4.2.1.1.6. establish criteria for participation and rules of procedure for the Consultative Forum;
  - 4.2.1.1.7. establish conditions for additional donors and other contributions, and review and approval thereof;
  - 4.2.1.1.8. approve financial commitments; and
  - 4.2.1.1.9. set priorities for funding.
- 4.2.1.2. The Board will consist of 12 members:
- 4.2.1.2.1. One representative nominated by each of the five founding countries (Brazil, Chile, France, Norway and the United Kingdom);
  - 4.2.1.2.2. One representative of African countries which the African Union will be invited to nominate;
  - 4.2.1.2.3. One representative of Asian countries;
  - 4.2.1.2.4. One representative of Spain;
  - 4.2.1.2.5. Two representatives of relevant civil society networks (NGOs and communities living with the diseases);
  - 4.2.1.2.6. One representative of the constituency of foundations;



4.2.1.2.7. One representative of WHO.

4.2.1.3. The Board will use best efforts to make all decisions by consensus. If all practical efforts by the Board and its chair have not led to consensus, any Member of the Board may call for a vote; provided that the representative designated by WHO shall not participate in any such vote, in accordance with the hosting agreement with WHO.

4.2.2. The Board will also create a Consultative Forum to serve as a platform for debate, advocacy, fund raising and inclusion of new partners, and to provide feedback and non binding recommendations and advice.

**4.2.3. A Secretariat will be established.**

4.2.3.1. The principal functions of the Secretariat will be to carry out and manage the day-to-day operations of UNITAID, including implementing the work plan of UNITAID approved by the Board, managing and coordinating relationships with Partners and coordinating and facilitating technical support and advice to the Board.

**4.2.5. Fiduciary structure:**

4.2.5.1. In accordance with the WHO hosting arrangement, WHO will serve as the trustee. This arrangement will permit: (1) receipt, management and disbursement of funds and return via treasury and cash management functions; (2) public confidence that funds are being managed responsibly; (3) providing the funds with the privileges and immunities enjoyed by WHO; and (4) keeping financial records of all transactions in a transparent and auditable manner.

**Section 5. : Eligibility criteria**

- 5.1. All developing countries should have access to favorable pricing terms as negotiated by UNITAID. (For purposes of this section, income indicators are based on World Bank definitions.)
- 5.2. UNITAID will rely on suitable programmatic partners to implement its programmes. This will mainly be the Global Fund and also other partner organizations. UNITAID will not expect to receive proposals directly from developing countries or NGOs, but rather through the programmatic partners.
- 5.3. At least 85% of UNITAID funds dedicated to purchase commodities should be spent on low income countries (LICs).
- 5.4. No more than 10% of UNITAID funds dedicated to purchase commodities should be spent on lower middle income countries (LMICs).
- 5.5. No more than 5% of UNITAID funds dedicated to purchase commodities should be spent on upper middle income countries (UMICs) with priority given to those with a high disease prevalence, subject to these countries providing co-financing for their projects as to 20% in year 1 rising to 40% in year 5 (the same arrangements as per the Global Fund).
- 5.5. In the case of both LMICS and UMICs, UNITAID contributions should be used to scale up existing programmes targeted principally at vulnerable groups (in accordance with the UNAIDS definition).

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