

Registered Mail

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

Zurich, 7th Mai 2024

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Open Letter from Rob Roos (MEP) | Follow up to Letter of 28 November 2023

Dear Dr. Tedros, Director General of the World Health Organisation

Attached pls. find the letter from Rob Roos, Member of the EU Parliament, in the referenced matter.

Pls. find also enclosed the **Power of Attorney**, by which my Client Rob Roos authorizes and entrusts me, the undersigned, to transmitting and receiving physical post mail correspondence between the WHO and him.

Sincerely,


Philipp Kruse

Encl.: Mentioned

FOLLOW-UP LETTER

World Health Organization
Tedros Adhanom Ghebreyesus
Director - General
Avenue Appia 20
1211 Geneva
Switzerland

Poortugaal (NL), 6 May 20204

OPEN LETTER

Request for personal meeting and for your responses re.:

- (1) vote on IHR-amendments 2022 (our letter of 28 November 2023):
- (2) WHO's intended Violation of Art. 55 para. 2 IHR for the 77th WHA

Dear Dr. Tedros

With letter of 28 November 2023, we have requested evidence for the correct vote count of a formal WHA decision of 28 May 2022. This WHA-decision referred to **Amendments to the International Health Regulations (2005)**, adopted by the WHO Health Assembly on 28 May 2022 under the reference WHA75.12 (Agenda item 16.2); internet reference: https://apps.who.int/gb/ebwha/pdf_files/WHA75/A75_R12-en.pdf.

In our letter we have provided clear factual evidence, why the public must assume that this vote was done in violation of WHO's own procedural rules. Our today's letter addresses this matter, because we have never received a response from your side, and we must therefore assume that WHO's own procedural rules have been indeed violated, thereby rendering the vote of 28 May 2022 regarding the changes on the IHR a wrongful act and therewith null and void.

In addition, I herewith notify you of another clear and very important violation of WHO's own procedural rules, of which you have been notified already from serious sources (**see below [2]**)

Both of these matters address apparent violations of WHO's own procedural rules. And both matters refer to important WHA-decisions, that have each the potential to significantly change the mutual duties, if not the balance of powers between Member States and the WHO as it was so far defined in the WHO Constitution and in the IHR (2005).

This letter is addressed to you, as your function as Director General of the World Health Organization (WHO) comes with far-reaching duties and obligations (Art. 31 et seq. WHO Constitution). These functions include the responsibility to safeguard all of the WHO's

procedural rules and to guarantee, that no violation of WHO's own procedural rules can take place.

(1) MISSING PROOF of simple majority re. vote WHA75.12; Agenda item 16.2 of 28 May 2022

Today again, I write to you in my capacity as member of the body of control over the EU Commission (Art. 14 of the CONSOLIDATED VERSION OF THE TREATY ON EUROPEAN UNION)¹. This very Commission is about to lead the process of negotiations regarding WHO's New Pandemic Treaty and re. the amendments for the International Health Regulations on behalf of 27 EU-Member States based on a decision of the EU Council^{2,3}.

Under these circumstances and conditions I, the undersigned member of the European Parliament, are entitled and obliged to pursue our request and to demand responses. For all factual and legal reasons, I kindly ask you to review our well substantiated letter of 28 November 2023.

For every decision of the World Health Assembly every vote must be counted, in accordance with WHO's own rules of procedure (Art. 7 WHO Constitution and ⁴), i.e. in particular in accordance with Art. 72 to Art. 75.

Our requests regarding topic 1:

As we have not received any response at all from your Secretariat, I herewith repeat our demands of 28 November 2023:

- (i.) to deliver **conclusive and unambiguous EVIDENCE**, that the vote of its 8th plenary meeting on 28 May 2022 (WHA75.12; Agenda item 16.2; dated 28 May 2022) on these changes was correctly executed by way of a majority of the Members present and voting as foreseen under Art. 21 in conjunction with Art. 60 lit. (b) WHO Constitution, i.e.:
[i.] EXACT NUMBER of Member States present at this vote: ____;
[II.] EXACT NUMBER of the Member States voting in favour of these IHR-amendments: ____
- (ii.) to deliver this EVIDENCE in the form of an uninterrupted video within 48 hours via e-mail to the following addresses [...]; [...], at latest by 30 November, 2023, 12:00 noon, CET.

(2) Vote on IHR-amendments at 77th WHA without prior receipt of the final text (Art. 55 para. 2 IHR)

Our second request refers to the ongoing project to significantly amend the International Health Regulations (IHR 2005). According to the official schedule as communicated by the Director General and by the Chairs of the Working Group on the IHR (WGIHR) the final draft

¹ Treaty of the EU: https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF

² Press release EU-Council of 20 May 2021: <https://www.consilium.europa.eu/en/press/press-releases/2021/05/20/eu-supports-start-of-who-process-for-establishment-of-pandemic-treaty-council-decision/>

³ Council Decision of 6 May 2022 COM(2022) 214 final 2022/0152(NLE) <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022PC0214>

⁴ https://apps.who.int/gb/bd/pdf_files/BD_49th-en.pdf#page=178

of the negotiated text shall be adopted by the 77th World Health Assembly in the last week of May 2024.

However, we note that until today there is no final text submitted to the Member States nor published, although the procedural rules for the amendment of the IHR (Art. 55 para. 5 IHR) clearly state, that the final text that shall be voted on by the WHA, must be submitted to the Member States four months prior to the Health Assembly to all Member States.

In order to present and substantiate our concern and our legal objections I refer in the following explicitly to the open letter, that was send to you by the Global Health Accountability with the date of 6th March 2024.

As I share without any reservation the legal concern and all legal explanations, that were addressed in this open letter with an excellent professional quality, I herewith quote from this letter, with the intention, to make this very claim also ours:

Quote from Global Health Responsibility Agency's letter of 6 March, 2024 to the WHO:

"The relevant Art. 55 para. 2 IHR reads as follows:

"The text of any proposed amendment shall be communicated to all States Parties by the Director-General at least four months before the Health Assembly at which it is proposed for consideration."

The wording "shall" of Art. 55 para. 2 IHR clearly indicates that it is your binding legal obligation under the IHR to communicate "any" IHR amendments to all States Parties four months in advance of the Assembly. This includes the final version of the amendments proposed by the WGIHR.

*The applicable general rules of treaty interpretation set out in Article 31 of the Vienna Convention on the Law of Treaties require that Art. 55 para. 2 IHR must be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of Art. 55 para. 2 IHR in their context and in the light of the IHR's object and purpose. This confirms that no exception is available for the current situation. Art. 55 para. 2 is the *lex specialis* to the general rule enshrined in Art. 40 para. 2 of the Vienna Convention on the Law of Treaties. According to the express will and intent of the drafters of Art. 55 para. 2 IHR, States Parties must be given at least 4 months to consider any amendment prior to the Assembly. This allows the State Parties to thoroughly reflect on the amendments, including their domestic legal and institutional implications, and prevents the State Parties from rushing out of negotiations into a hasty adoption of a resolution. This is all the more important given the unique status of the IHR. As a legal instrument, it automatically binds the WHO's administration by its status as a resolution. Adopted amendments will also automatically enter into force for all State Parties which do not no-opt out within the required time frame in accordance with Arts. 59, 61 and 62 IHR as well as Art. 22 of the WHO's Constitution.*

In this instance, the unique legal nature of the IHR has to be recalled. This binding legal instrument has been registered with the U.N. Secretariat in accordance with Art. 102 of the Charter of the United Nations under the category as a multilateral treaty in the U.N.T.S. Volume Number 2509 (p. 79) via the Certificate of Registration No. 56548. Consequently, there is no doubt of its nature as a treaty under public international law binding its States Parties.

Consequently, both the State Parties as well as the Secretariat of WHO, composed of the Director-General and the WGIHR, as a subdivision of the Health Assembly, are under a legal obligation to follow Art. 55 para. 2 IHR.

With regard to the 77th WHA, the deadline to lawfully circulate the proposed amendments to the IHR States Parties by the Director-General in accordance with Art. 55 para. 2 IHR has passed on the 27th January of 2024. This deadline elapsed without any communication from the Director-General to the State Parties of the package of amendments compiled by the WGIHR. As of yet, no final draft version of the amendments has been communicated to the States Parties by the Secretariat.

This leads to a situation that does not allow for a lawful presentation of a draft resolution on IHR amendments to the 77th WHA by the WGIHR.

Despite the unequivocal legal obligation of WHO to respect Art. 55 para. 2 IHR, the Secretariat and the WGIHR publicly proclaimed their intention to violate international legal obligations incumbent upon them by finalizing the package of the amendments for the possible adoption at the 77th WHA, as evidenced during the 7th meeting of the WGIHR on 5th - 9th of February 2024 and as well as through the schedule of the final 8th meeting on 22nd - 26th of April 2024.

If the WGIHR and the Secretariat do not abide by the legal rules of the IHR amendment procedure, WHO commits an internationally wrongful act under the U.N. Draft Articles on the Responsibility of International Organizations. Although these Articles have not yet been officially adopted by States, there is sufficient doctrinal consensus, including state practice, international jurisprudence and scholarly opinion, that would qualify this unlawful administration of the IHR amendment process as a wrongful act of WHO in accordance with the Draft Articles, which attracts institutional responsibility, including cessation, non-repetition (draft Art. 30) and reparation (draft Art. 31) of the WHO. This malfeasance can be held to account by any of the 196 State Parties. »

End of quote from Global Health Responsibility Agency's letter of 6th March, 2024 to the WHO.

Meanwhile, the Global Health Responsibility has issued a follow-up letter to you, dated 1st of May, 2024, again in the format of an open letter, by which Dr. Silvia Behrendt explicitly addresses and counters the wrong argument, that the publication of the Article-by-Article compilation version of the IHR-amendments, published End of November 2022, could be seen as a sufficient under the terms of Art. 55 para.2 IHR.

I herewith ask you to read this follow-up letter directly on the homepage of the GHR Agency: <https://www.ghr.agency/?p=6858>

Our requests regarding topic 2:

- (1) The undersigned MEP herewith demand, that you as the Director-General of the WHO and the Head of the WHO Secretariat do not present a draft resolution on the amendments of the IHR to the 77th WHA. Doing so would constitute an intentional violation of Art. 55, para. 2 IHR and can attract institutional and individual responsibility

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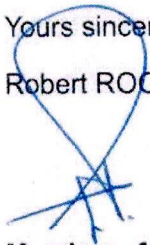
under the Draft Articles on the Responsibility of International Organizations and any other available mechanisms. Therefore, I urge you to immediately issue a clear command to the WGIHR and advise the public that the IHR amendments cannot be adopted at the 77th WHA.

- (2) I herewith demand a personal meeting with you or with a legal officer of the WHO-Secretariat taking place between 7 May and 22 May.

Given the importance of the matter for all 27 Member States of the EU, your cooperation is highly appreciated.

Yours sincerely,

Robert ROOS



Member of the European Parliament



POWER OF ATTORNEY

I, the undersigned PRINCIPAL

Rob Roos, Member of the European Parliament
Bât. SOPHIE SCHOLL 01U038
60, rue Wiertz
B-1047 Bruxelles
Belgium

herewith entrust and empower,
based on Swiss Code of Obligation (Art. 394 SCO)

the Attorney at Law
Philipp Kruse
MLaw, LL.M.
CH-8001 Zürich
www.kruse-law.ch

to represent my interests in the following matter:

Correspondence of physical post mail (i.e. all correspondence, that is not sent via electronic mail) to and safeguard the reception of all such correspondence from the World Health Organisation (WHO), and from any of its official representatives of offices.

The objective of this power of attorney is to facilitate and to safeguard all physically transmitted correspondence by ordinary post mail or by courier between me and the World Health Organisation (incl. with all its representatives and offices).

Whatever ordinary mail from WHO is delivered to Philipp Kruse's offices for me as the final recipient, I will consider it to have received it.

I herewith empower Philipp Kruse to take all necessary legal steps, to safeguard my interests for the present purpose until further notice.

28 November 2023
The PRINCIPAL:

Robert Roos

