

Transgender Policy Update

1. Background

- 1.1. It was agreed at the World Sailing 2022 Annual Conference that there was a need for the creation of a transgender policy, and the policy would be presented at the 2023 Annual Conference.
- 1.2. World Sailing is an inclusive sport, and we need a policy to continue to reflect this and our values and also to align with the IOC's Framework on fairness, inclusion and non-discrimination on the basis of gender identity and sex variations (attached).
- 1.3. The updated 2022 Framework overrides the IOC's previous guidance of 2015 and encourages international federations to move away from solely testosterone-based restrictions on athlete eligibility.
- 1.4. The 2022 Framework is focused on gender equality and inclusion, and recognises the need to ensure that everyone, irrespective of their gender identity or sex variations, can practise sport in a safe, harassment-free environment that recognises and respects their needs and identities. The Framework also recognises there is a need for everyone to participate in fair competitions, where no participant has an unfair or disproportionate advantage over the rest.
- 1.5. The IOC formulated a 10-principle approach to promote inclusion and non-discrimination, which World Sailing included in the survey (see attached).
- 1.6. World Sailing aims as an international governing body are to uphold the rules of sailing and promote open and fair competition for individuals and teams. Any policy introduced will need to be appropriate and fitting for the sport of sailing.
- 1.7. Alice Hug (Paralegal) and Gillian Sanders (Integrity Manager) (WS Legal) joined World Sailing earlier this year and have been managing the consultation process to date.

2. Process to Date

- 2.1. WS Legal attended the IOC's spring webinar series on fairness, inclusion and transgender policies in April. During this series, valuable insight was gained into the IOC's guidance, and how to structure a transgender policy consultation process.
- 2.2. On the basis of the IOC's guidance, WS Legal started the consultation process by drafting a survey to be sent out to all relevant World Sailing stakeholders.
- 2.3. WS Legal and the Medical Commission met in July to discuss the survey and the process in general. After the July meeting, both the legal team and the Medical Commission had input into the survey.
- 2.4. WS Legal also met with a UK based inclusivity expert to get their advice on the survey before it was sent out.
- 2.5. The Transgender Consultation Survey was sent out to the relevant stakeholders in September, to which 96 responses were received by the deadline.

- 2.6. After the survey was sent out, the CEO of World Sailing was contacted by several MNAs, indicating that they would like a closer involvement in the consultation process. WS Legal and CEO then had a meeting to discuss next steps and decided to establish a working group, comprising of MNAs, Classes, Medical Commission representative and athletes. It was also decided in this meeting that it was best not to rush drafting a transgender policy in time for the Annual Conference 2023, but rather to create a Working Group and use the Annual Conference as an opportunity to hold discussions with various stakeholders and Committees as part of the consultation process. The intention being to find the best possible policy solution for the whole sport.
- 2.7. WS Legal then met with several MNA in September, to discuss the consultation process to date, and work collaboratively on next steps.
- 2.8. In early October, WS Legal sent correspondence to MNAs, Classes and the Athlete's Commission asking them to share the invitation for the Working Group with any potential volunteers.
- 2.9. In mid-October, WS Legal sent correspondence to the Medical Commission, inviting Commission members to join the Working Group.
- 2.10. Several athletes have been identified who would like to be involved in the Working Group.
- 2.11. Several MNA have already expressed an interest in being part of the Working Group including the RYA, Sail Canada and Danish Sailing.
- 2.12. WS Legal are currently waiting for any further parties interested in joining the Working Group to reach out via their relevant MNA/Class/Commission. Once all Working Group volunteers have been collated and contacted directly by WS Legal, the working group shall be formed and commenced with a first meeting proposed early in 2024.

3. Updated Policy Development Timeline

- 3.1. June 2023: internal pre-consultation discussions.
- 3.2. July 2023: pre-consultation discussions with the Medical Commission.
- 3.3. August-September 2023: amendments to the survey and discussions with an inclusivity specialist.
- 3.4. September 2023: survey sent to World Sailing stakeholders with a 2-week deadline.
- 3.5. September 2023: survey closed and results collated.
- 3.6. September 2023: WS Legal meet with MNAs who have expressed interest in being more closely involved in the consultation process.
- 3.7. September-October 2023: formation of a Working Group.
- 3.8. November 2023: some of the Working Group to hold an initial meeting at the Annual Conference (to be confirmed).
- 3.9. November 2023: presentation of this Paper and Medical Commission meeting at the Annual Conference.
- 3.10. January 2024-February 2024: further discussions with the Working Group.

- 3.11. March 2024- April 2024: WS Legal commence drafting of the transgender policy and any further amendments are made in conjunction with the Working Group and the Medical Commission.
- 3.12. May 2024: transgender policy passed at Mid-Year Council Meeting.

4. Recommendation: Council is requested to:

- a) Note the report and the updated policy development timeline.

Attachments:

- a) Transgender Consultation Survey distributed
- b) IOC's Framework on Fairness, Inclusion and Non-Discrimination on the basis of Gender Identity and Sex Variations

WS Legal - October 2023

Alice Hug – Paralegal

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World Sailing Transgender Consultation Survey

Consultation Background

Consultation Process

June 2023 - internal pre-consultation discussions

July 2023 - pre-consultation discussions with the Medical Commission

September 2023 - consultation process

October 2023 - Medical Commission review of the transgender policy

October 2023 - presentation of the transgender policy to the Medical Commission for final review

November 2023 - presentation of the transgender policy to the WS Board

November 2023 - WS Board review and amendments to the transgender policy

November 2023 - approval of the transgender policy at the WS annual conference

IOC guidance & World Sailing's aims

The [IOC's framework on fairness, inclusion and non-discrimination on the basis of gender identity and sex variations](#), introduced in 2022, is an update to their previous guidance from 2015, encouraging international federations to move away from testosterone-based restrictions on athlete eligibility.

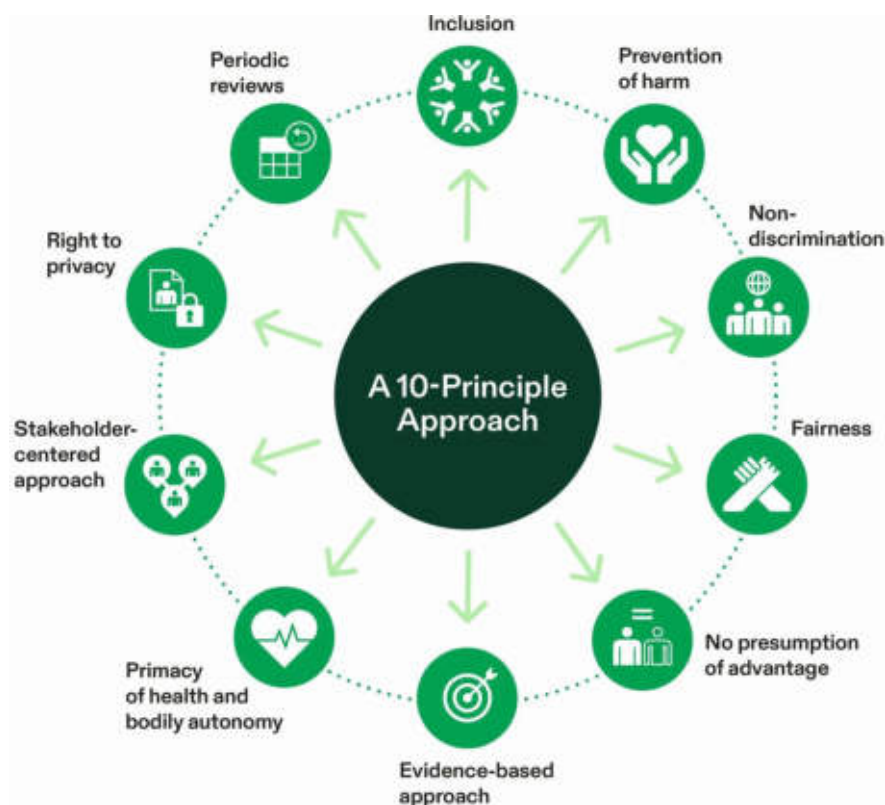
The IOC's framework is focused on gender equality and inclusion, and recognises the need to ensure that everyone, irrespective of their gender identity or sex variations, can practise sport in a safe, harassment-free environment that recognises and respects their needs and identities, and the interest of everyone to participate in fair

competitions where no participant has an unfair or disproportionate advantage over the rest.

At this current time, the number of transgender athletes in sailing is low, so World Sailing's intention (depending on the outcome of the consultation) is to implement the eligibility criteria on a case-by-case basis whereby cases will be determined by the Event Organiser, in accordance with the agreed World Sailing policy on the basis of the circumstances of the individual sailor, physical characteristics, medical information, role in the boat, type of competition etc.

The aim of World Sailing's consultation is to reflect the IOC's 10 principle approach illustrated below, and promote inclusion and non-discrimination at all levels of the sport of sailing.

Integrity is one of World Sailing's values. We define and uphold the rules of sailing so that individuals and teams can compete in an open and fair way with each other.



Privacy

The information gathered in this survey is anonymous and confidential.

1. What is your role in World Sailing?

- ☐ Athlete
- ☐ Athlete support personnel (coach, umpire etc.)
- ☐ Board Member
- ☐ MNA
- ☐ Commission Member
- ☐ Other (please specify)

2. If you are currently an athlete, what is the highest level of event you have competed in over the past 24 months?

- ☐ Club
- ☐ Regional
- ☐ National
- ☐ International (Olympic Classes and Para-Sailing)
- ☐ I am not an athlete

3. When considering international competitions, what do you think should be the most important basis for World Sailing's transgender policy?

- ☐ Inclusiveness is the most important
- ☐ A level playing field is the most important
- ☐ Both are equally important
- ☐ Other (please specify)

4. When considering recreational participation, what do you think should be the most important basis for a national transgender policy?

- ☐ Inclusiveness is the most important
- ☐ A level playing field is the most important
- ☐ Both are equally important
- ☐ Other (please specify)

5. Do you agree with World Sailing's approach of determining eligibility on a case-by-case basis?

- ☐ Yes
- ☐ No
- ☐ If no, please give your reasons why:

6. Which Class are you currently associated with and mostly sailing?

7. Do you feel that weight, height, and/or strength are fundamental factors that might affect performance in your Class?

☐ Yes

☐ No

Please explain your answer:

8. Should there be different restrictions for different classes? E.g., in some classes a sailor's performance may be largely independent of physical strength or size.

☐ Yes

☐ No

☐ Other (please specify)

9. Please leave any other comments you may have.

Done

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IOC FRAMEWORK ON FAIRNESS, INCLUSION AND NON-DISCRIMINATION ON THE BASIS OF GENDER IDENTITY AND SEX VARIATIONS

INTRODUCTION

Every person has the right to practise sport without discrimination and in a way that respects their health, safety, and dignity. At the same time, the credibility of competitive sport – and particularly high-level organised sporting competitions – relies on a level playing field, where no athlete has an unfair and disproportionate advantage over the rest.

Through this Framework on Fairness, Inclusion and Non-Discrimination on the Basis of Gender Identity and Sex Variations, the International Olympic Committee (IOC) seeks to promote a safe and welcoming environment for everyone, consistent with the principles enshrined in the Olympic Charter. The Framework also acknowledges the central role that eligibility criteria play in ensuring fairness, particularly in high-level organised sport in the women's category.

This Framework is issued as part of the IOC's commitment to respecting human rights (as expressed in Olympic Agenda 2020+5) and as part of the action taken to foster gender equality and inclusion.

In issuing this Framework, the IOC recognises that it must be in the remit of each sport and its governing body to determine how an athlete may be at a disproportionate advantage against their peers, taking into consideration the nature of each sport. The IOC is therefore not in a position to issue regulations that define eligibility criteria for every sport, discipline or event across the very different national jurisdictions and sport systems.

Therefore, the aim of this Framework is to offer sporting bodies – particularly those in charge of organising elite-level competition – a principled approach to develop their criteria that are applicable to their sport. Sports bodies will also need to consider particular ethical, social, cultural and legal aspects that may be relevant in their context.

This Framework was developed following an extensive consultation with athletes and stakeholders concerned. This included members of the athlete community, International Federations and other sports organisations, as well as human rights, legal and medical experts. It replaces and updates previous IOC statements on this matter, including the 2015 Consensus Statement.

This Framework recognises both the need to ensure that everyone, irrespective of their gender identity or sex variations, can practise sport in a safe, harassment-free environment that recognises and respects their needs and identities, and the interest of everyone – particularly athletes at elite level – to participate in fair competitions where no participant has an unfair and disproportionate advantage over the rest.

Lastly, the IOC also recognises that most high-level organised sports competitions are staged with men's and women's categories competing separately. In this context, the principles contained herein aim to ensure that competition in each of these categories is fair and safe and that athletes are not excluded solely on the basis of their transgender identity or sex variations.

Where eligibility criteria must be set in order to regulate the participation in the women's and men's categories, the establishment and implementation of such criteria should be carried out as part of a comprehensive approach grounded on the respect for internationally recognised human rights, robust evidence and athlete consultation. In so doing, precaution should be used to avoid causing harm to the health and well-being of athletes.

PRINCIPLES

This Framework should be considered as a coherent whole and should be taken into consideration by International Federations and other sports organisations when exercising their responsibility in establishing and implementing eligibility rules for high-level organised competition in their respective sports, disciplines and events and, more generally, in ensuring safe and fair competition in the context of inclusion and non-discrimination on the basis of gender identity and sex variations.

While these principles have been drafted with the specific needs of high-level organised sports competitions in mind, the general principles of inclusion and non-discrimination reflected below should be promoted and defended at all levels of sport.

1. INCLUSION

- 1.1. Everyone, regardless of their gender identity, expression and/or sex variations should be able to participate in sport safely and without prejudice.
- 1.2. Measures should be put in place with a view to making sporting environments and facilities welcoming to people of all gender identities.
- 1.3. Sports organisations should work together to advance inclusion and prevent discrimination based on gender identity and/or sex variations, through training, capacity-building and campaigns that are informed by affected stakeholders.
- 1.4. Mechanisms to prevent harassment and abuse in sport should be further developed by taking into account the particular needs and vulnerabilities of transgender people and people with sex variations.

- 1.5. Where sports organisations choose to establish eligibility criteria in order to determine the participation conditions for men's and women's categories for specific contests in high-level organised sports competitions, these criteria should be established and applied in a manner that respects the principles included in this Framework. Individuals or parties responsible for issuing such criteria should be appropriately trained in order to ensure that these issues are handled in a manner consistent with these principles.
- 1.6. The design, implementation and evaluation of these measures and mechanisms should be done in consultation with a cross-section of affected athletes.

2. PREVENTION OF HARM

- 2.1 The physical, psychological and mental well-being of athletes should be prioritised when establishing eligibility criteria.
- 2.2. Sports organisations should identify and prevent negative direct and indirect impacts on athletes' health and well-being that may come from the design, implementation and or interpretation of eligibility criteria.

3. NON-DISCRIMINATION

- 3.1 Eligibility criteria should be established and implemented fairly and in a manner that does not systematically exclude athletes from competition based upon their gender identity, physical appearance and/or sex variations.
- 3.2 Provided they meet eligibility criteria that are consistent with principle 4, athletes should be allowed to compete in the category that best aligns with their self-determined gender identity.
- 3.3 Criteria to determine disproportionate competitive advantage may, at times, require testing of an athlete's performance and physical capacity. However, no athlete should be subject to targeted testing because of, or aimed at determining, their sex, gender identity and/or sex variations.

4. FAIRNESS

- 4.1 Where sports organisations elect to issue eligibility criteria for men's and women's categories for a given competition, they should do so with a view to:
 - a) Providing confidence that no athlete within a category has an unfair and disproportionate competitive advantage (namely an advantage gained by altering one's

body or one that disproportionately exceeds other advantages that exist at elite-level competition);

- b) preventing a risk to the physical safety of other athletes; and
- c) preventing athletes from claiming a gender identity different from the one consistently and persistently used, with a view to entering a competition in a given category.

5. NO PRESUMPTION OF ADVANTAGE

5.1 No athlete should be precluded from competing or excluded from competition on the exclusive ground of an **unverified, alleged or perceived unfair competitive advantage** due to their sex variations, physical appearance and/or transgender status.

5.2 Until evidence (per principle 6) determines otherwise, athletes should not be deemed to have an **unfair or disproportionate competitive advantage** due to their sex variations, physical appearance and/or transgender status.

6. EVIDENCE-BASED APPROACH

6.1 Any restrictions arising from eligibility criteria should be based on robust and peer reviewed research that:

- a) **demonstrates a consistent, unfair, disproportionate competitive advantage** in performance and/or an **unpreventable risk to the physical safety** of other athletes;
- b) is largely based on data collected from a demographic group that is consistent in **gender and athletic engagement** with the group that the eligibility criteria aim to regulate; and
- c) **demonstrates that such disproportionate competitive advantage and/or unpreventable risk** exists for the specific sport, discipline and event that the eligibility criteria aim to regulate.

6.2 Should eligibility criteria prevent an athlete from entering a given competition, such athlete should:

- a) be allowed to participate in other disciplines and events for which they are eligible, in the same gender category; and

- b) be able to contest the ultimate decision of International Federations or other sports organisations through an appropriate internal mediation mechanism, such as ombudsperson, and/or procedures before the Court of Arbitration for Sport, to seek remedy.

7. PRIMACY OF HEALTH AND BODILY AUTONOMY

- 7.1 Athletes should never be pressured by an International Federation, sports organization, or any other party (either by way of the eligibility criteria or otherwise) to undergo medically unnecessary procedures or treatment to meet eligibility criteria.
- 7.2 Criteria to determine eligibility for a gender category should not include gynaecological examinations or similar forms of invasive physical examinations, aimed at determining an athlete's sex, sex variations or gender.
- 7.3 Sports organisations should seek to educate coaches, managers and other members of the entourage to prevent interpretations of their eligibility criteria that can lead to harm.

8. STAKEHOLDER-CENTRED APPROACH

- 8.1 When drafting, reviewing, evaluating and updating eligibility criteria, sports organisations should meaningfully consult with a cross-section of athletes who may be negatively affected in order to prevent harm.
- 8.2 Any decisions affecting an athlete's ability to compete should follow the basic standards of procedural fairness, including neutrality and impartiality.
- 8.3 Sports organisations should put in place internal mechanisms that offer athletes and other affected stakeholders accessible, legitimate, safe and predictable avenues to raise concerns and grievances connected to gender-based eligibility.

9. RIGHT TO PRIVACY

- 9.1 Sports organisations should ensure transparency in their decision-making processes on eligibility while working to preserve the privacy of individuals who may be affected by such restrictions. This includes all personally identifiable information processed in the context of eligibility decisions which should be handled in compliance with applicable laws and international standards.
- 9.2 Medical information about an athlete, including testosterone levels, that is collected in the context of anti-doping or otherwise, must be handled in compliance with applicable privacy laws and should be used only for the purposes disclosed to the athlete at the time such information is collected.

- 9.3 Informed consent should be acquired from athletes prior to the collection of data that is obtained for the purpose of determining eligibility to compete in the men's or women's category.
- 9.4 Sports organisations should avoid public disclosure of athletes' confidential health and other personal information in the absence of the athlete's consent. In addition, sports organisations should consult with the athletes concerned on the best ways to publicly communicate about their eligibility.

10. PERIODIC REVIEWS

- 10.1 Eligibility criteria should be subject to predictable periodic review to reflect any relevant ethical, human rights, legal, scientific, and medical developments in this area and should include the affected stakeholder's feedback on their application.
