



Proposal of a process to reform the articles of association

Today, the board of directors calls upon the general assembly to decide on a process to reform the articles of association. This structuring process is a response to the need to support the development of our association, both in the way it operates and in its identity.

It is about adapting our founding text to our practices and to legal developments, but also and in particular it is about using this instrument to support the implementation of the associative project that was widely voted for in 2015.

The Board is aware of the importance of this process and eager to see our entire activist community participate, and it has decided to ask you, members voting at the GA but also non-member actors, about this process and its terms. In this regard, the results of the electronic consultation of non-members will be presented at the same time as that of the vote of members at the general assembly.

In order to better involve everyone, we propose to share and clarify certain points with you in this document:

- the concept of articles of association: for full understanding of the "statutory mechanism", through the description of articles of association and instruments arising from them;
- definition of the different instruments that establish the powers within the association and clarification of its hierarchy;
- on the reason for which the reform of our articles of association is being considered today;
- on the identification of subjects that could be addressed in this reform of the articles of association;
- on the terms of the process proposed, which must allow the emergence of consensus to be specified in the drafting of a text.

What are articles of association?

The articles of an association should be considered the founding document providing structure, the common foundation defining the aim, object and global operating modes of the association thereby constituted.

The articles are an "internal contract", which has binding effect within the association and is imposed on every decision taken within it, as well as on all of its actors. This is the "law of members". The only valid and binding decisions within the organization are those that are made in accordance with the provisions of the articles of association. For example, the organization would not be able to pursue objectives contrary to its social objective or consider as valid a decision taken by an internal entity to which the articles had not given the authority to take such a decision.

Médecins du Monde is an approved public utility association (*association reconnue d'utilité publique*, or ARUP). As such, there are two legal texts providing the framework for the content of these articles:

- The Law of Associations of 1901, with provisions relating to content that are fairly minimalist.
- The model articles for ARUPs defined by the French Council of State in 2008. They impose more specific elements than the law of 1901.

Nevertheless, the articles remain a contractual instrument and their content, subject to the provisions outlined above, is quite free.

Finally and in terms of procedure, the quality of ARUP requires us to have any reform to our articles validated by an office of the Ministry of the Interior and by the Council of State.

On this subject, regular links will need to be forged with the Ministry of the Interior to evoke the content of article amendments that we will decide on together.

Overall, it is worth remembering that the articles of association are an instrument. The sole purpose of this instrument is to put into words a desire, values and a mode of organisation in a form that is legally restricted and that is imposed on people wishing to be a member or wishing to lead an action with them.

What are the essential and structuring elements that the articles of association must have?

The articles of association regulate a number of legal issues for the association as a legal person. A macro view of the articles of association allows us to identify two main themes which they must define:

- The articles of association must establish the social objective, which in turn defines the exclusive field in which the association is entitled to act.
- The articles of association must define the distribution of powers within the association, at least in terms of what we can call the native powers¹. We must therefore determine the scope of intervention of the General Assembly as well as the Board and the President. Other entities may of course be described in the articles of association or in related documents.

What are the related instruments and the hierarchy of internal regulations in terms of the organisation of powers?

The articles of association are the foundation of the association but are not the sole instrument by which its internal and decision-making organisation is formalised.

In addition, it is usual to see, alongside the articles of association, a set of rules and regulations which will describe certain elements of the articles of association and will propose a more detailed organisation of the association. As an ARUP, this instrument remains flexible, in the sense that it can be modified without the agreement of the Council of State, however the agreement of the Ministry of Interior is still required.

The bodies of the association may also perform - by delegation of power - internal functions or act as internal entities. For example, the association's director-general derives their power from a delegation of the association's president, and therefore has none of their own statutory powers (native powers). We could therefore speak of "derived powers". This delegation instrument is more flexible to use but is not fixed and will depend on the willingness of the holder of statutory power to delegate, or not, some of their rights.

These related instruments, such as the rules and regulations and delegations of powers, are not able to create powers outside of the statutory provisions.

Let us keep in mind that these different instruments fit within a notion of hierarchical regulations, where the higher regulation is imposed on the lower regulation:



¹ **Native and derived powers:** native powers are those structural powers defined by the articles of association (sources of power). Derived powers are those delegated and defined by related instruments (code of conduct, delegation of power).

Why reform the articles of association and related instruments?

There are several reasons why we need to amend our articles of association, most of which date back around thirty years:

- The associative project requires the reform of our articles of association in order for it to be implemented, particularly regarding the development of our associative model, its democratic life and the construction of a common foundation of activism for the association's different actors.
- It is necessary to bring certain elements of the articles into line with legislative changes, and the Ministry of the Interior has formally requested that we do so.
- It is important that the articles take into account the development of our practices within the association, both organisational and operational.
- Our articles must also be capable of taking into account MdM's international network and our links with its members.
- We must be aware that certain provisions of our articles currently mean we are running a certain number of legal risks that we must be able to overcome.
- This reform will also be an opportunity to clarify and describe certain internal decision-making processes that do, however, exist.

What are the main areas for reform?

Without prejudice to the results of the consultation task to be proposed to you, and the themes that will emerge from that, the reading of the associative project and the regulatory adjustments imposed by law enable us to now identify certain thematic areas that could give rise to article amendments.

This identification is a point of departure for analysis and will evolve throughout the consultation process.

Purpose (article 1 of the articles of association²)

- Consolidate our advocacy with the possibility of recourse to litigation.
- Role of adoption

Organisation of decision-making powers

- The current articles of association only partially define the roles of the General Assembly, of the Board and the Bureau of the Board, as well as those of their members
- Balance of powers between these different statutory bodies
- Balance of powers between the association's different actors and decision-making bodies (executive committee)
- Notion of incompatibility with certain functions, of combined internal mandates as well as the duration of some of the association's elective mandates
- Role of members in setting the GA's agenda

² Article 1: Médecins du Monde is an "international aid and support association founded in 1980. Its calling, based on a medical practice exercised in complete independence, is to provide care to the most vulnerable populations in situations of crisis and deprivation anywhere in the World and in France.

Médecins du Monde draws attention to the risks of crises and of threats to human health and dignity in order to help to prevent them. Bearing witness through its actions, Médecins du Monde denounces attacks against human rights, and, more specifically, denials of access to health care.

The purpose of the Association is also, as an organization authorized and empowered by the competent bodies and acting in accordance with the United Nations Convention on the Rights of the Child and in the spirit of The Hague convention concerning the protection of children and international cooperation in the field of adoption, to foster the adoption of children legally proposed for adoption by the Authorities of their country of origin when no other form of protection of children is possible.

Organisation of different bodies

- Number of members of the Bureau and of the Board
- GA Quorum
- Postal vote and electronic participation in some of the association's bodies

Associative model and role of different activist categories of our association

- Membership conditions
- Inclusion and terms of participation of stakeholders as defined in the associative project for statutory bodies

What is the process for this reform?

First of all, the desire of the Board in this project to reform the articles of association is to combine efficacy and consultation, by working within an agenda that allows time for discussion of the key topics and for building consensus.

We are working towards the 2018 General Assembly.

For the sake of pragmatism, we are considering the possibility of formally proceeding in two phases: a first reform to the articles of association is to be proposed to the 2017 GA, relating to legally essential amendments and controlled and consensual points; followed by a second reform brought to the 2018 GA and focused on the identity of our association and bringing to fruition the associative project.

For all that, this process is yet to be confirmed and should not be imposed on us. If the tasks undertaken lead us to favour a longer consultation, the entire project may be taken to the 2018 general assembly.

The 2016 Autumn seminar (*Universités d'automne*) will be the point of departure for the teamwork. Together we will define the subjects for reform by specifying for each of them the challenges and consequences in order to deduce from them the nature of the tasks to be carried out and the timeline for these.

This reform project relates to the articles of association and related instruments (rules and regulations, delegations of power). These will all be subject to collective work.

We are therefore considering leading the 2018 reform in a similar participatory format as the work that led up to the vote on the associative project.

The MdM Board