

March 2012

	منظمة الأغذية والزراعة للأمم المتحدة	联合国 粮食及 农业组织	Food and Agriculture Organization of the United Nations	Organisation des Nations Unies pour l'alimentation et l'agriculture	Продовольственная и сельскохозяйственная организация Объединенных Наций	Organización de las Naciones Unidas para la Alimentación y la Agricultura
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COUNCIL

Hundred and Forty-fourth Session

Rome, 11 - 15 June 2012

Report of the Ninety-fourth Session of the Committee on Constitutional and Legal Matters (Rome, 19 - 21 March 2012)

Executive Summary

The 94th Session of the Committee on Constitutional and Legal Matters (CCLM) reviewed the draft Conference Resolution entitled “*Amendments to Rules XXXVII and XL of the General Rules of the Organization*” set out in the Appendix of this Report and agreed to forward it to the Council for subsequent transmission to the Conference for approval.

The CCLM examined a report on the status of on-going consultations, undertaken in response to IPA action 2.69, with the membership of the statutory bodies established under Article XIV of the Constitution with a view to allowing them to exercise greater financial and administrative authority while remaining within the framework of FAO. The CCLM requested that, drawing on the questionnaire sent to Permanent Representatives, as well as the documentation already examined in 2009, the Secretariat should prepare a detailed list of outstanding issues that the CCLM would review and advise on at its session of Autumn 2012.

The CCLM reviewed the criteria and procedure for the selection of external members of the Ethics Committee and decided to refer to the Finance Committee a proposal on the selection procedure.

Suggested action by the Council

The Council is invited to:

- endorse the draft Conference Resolution set out in the Appendix containing proposed amendments to the General Rules of the Organization and agree to forward it to the Conference for approval;
- note that the CCLM examined a report on the status of the on-going consultations with the statutory bodies established under Article XIV of the FAO Constitution and would review the matter again at its session of Autumn 2012; and
- note that the CCLM referred to the Finance Committee a proposal concerning the procedure for the selection of external members of the Ethics Committee.

Queries on the substantive content of document may be addressed to:

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I. Introduction

1. The 94th Session of the Committee on Constitutional and Legal Matters (CCLM) was held from 19 to 21 March 2012.
2. The Session, open to silent observers, was chaired by His Excellency Hassan Janabi (Iraq). The following members were present:

Ms Mónica Martínez Mendiño (Ecuador)
Mr Jarlath O'Connor (Ireland)
Mr Khalid Mehboob (Pakistan)
Mr Lawrence Kuna Kalinoe (Papua New Guinea)
Mr Ammar Awad (Syrian Arab Republic)
Mr Gregory Groth (United States of America)
Ms Kampamba Pam Mwananshiku (Zambia)

II. Proposed Amendments to Rules XXXVII and XL of the General Rules of the Organization

3. The CCLM examined document CCLM 94/2 entitled "*Proposed amendments to Rules XXXVII and XL of the General Rules of the Organization*". The CCLM noted that some of the issues addressed had been the subject of extensive discussions and concerns in 2011.
4. As regards the issue of the proposed adjustments to the nominations period established in Rule XXXVII, paragraph 1(b) of the General Rules of the Organization (GRO) the CCLM concurred with the view that the duration of the period was too long and did not seem to be in the interest of the good administration of FAO. The CCLM concurred with the proposal that its duration be reduced from "not less than 12 months" to "three months" and that it should end at least 30 days prior to the session at which candidates were to address the Council.
5. The CCLM agreed with the rationale for the proposed amendment to Rule XL of the GRO (Provisions Relating to Staff). The CCLM endorsed the proposal that any appointments made by a Director-General during the last six months of his or her mandate to positions at grade D-2 and above should expire not later than five months after the end of that mandate. The CCLM noted that in view of the fact that in future the term of office will end on 31 July, any appointments to such positions would expire on 31 December of that year at the latest. The new Director-General would have the option of extending such appointments¹.
6. As to the proposed addition of a new paragraph 6 to Rule XXXVII of the GRO (Appointment of the Director-General) on the facilities to be extended to a Director-General Elect pending assumption of duties, the CCLM concurred with the proposal that the Director-General should take measures to ensure that as far as possible prior to taking office, a Director-General Elect be duly informed of the policies, programmes, staffing and activities of FAO. Similarly, the Director-General should be under an obligation to make arrangements to ensure that the Director-General Elect should have the benefit of technical and administrative support during that period. The CCLM recommended that possible financial implications of this proposal be examined by the Finance Committee.

¹ On the occasion of the adoption of the report, the representative of the United States of America indicated that his Government needed additional time to review this proposed amendment.

7. The CCLM reviewed the draft Conference Resolution entitled “*Amendments to Rules XXXVII and XL of the General Rules of the Organization*” set out in the *Appendix* and agreed to forward it to the Council for subsequent transmission to the Conference for approval.

III. Review of Statutory Bodies with a view to allowing them to exercise greater Financial and Administrative Authority while remaining within the Framework of FAO (Report on the Status of on-going Consultations)

8. The CCLM examined document CCLM 94/3 entitled “*Review of statutory bodies with a view to allowing them to exercise greater financial and administrative authority while remaining within the framework of FAO (report on the status of on-going consultations)*” which included a general update on the on-going consultation process on statutory bodies established under Article XIV of the FAO Constitution (hereinafter “Article XIV bodies”) undertaken in response to IPA action 2.69. The Secretariat reported on the consultation process with the constituencies of Article XIV bodies under way. In this respect, the CCLM was informed that a questionnaire had been sent to the Permanent Representatives to FAO and that responses were expected towards the end of April 2012. The CCLM took note of the on-going consultation process, with particular reference to the membership of Article XIV bodies. It requested the Secretariat to report on the outcome of the process at the next CCLM session.

9. The CCLM noted that Article XIV bodies were established by treaties negotiated by Members and approved by the Council or the Conference and dealt with a wide range of matters pertaining to food and agriculture. Article XIV bodies were administratively within the framework of, and acted through the Organization, but enjoyed a measure of autonomy depending on such factors as the content of their constituent instruments, their funding modalities and their operational needs. The CCLM noted the differentiated nature of these bodies which could make it difficult, at times, to reconcile administrative accountability to FAO and functional autonomy, as well as the fact that the FAO secretariat had, over the years, implemented *ad hoc* solutions to address various operational needs. In order to advise on the matter, the CCLM underlined the desirability of distinguishing administrative and technical matters.

10. As regards administrative and financial matters, the CCLM requested that, drawing on the questionnaire sent to Permanent Representatives, as well as the extensive documentation already examined in 2009, the Secretariat should prepare a detailed list of outstanding issues that the CCLM would review at its session of Autumn 2012. As a general guiding principle, the CCLM considered that it was possible to contemplate delegating administrative and financial authority to Article XIV bodies, as envisaged by IPA action 2.69, provided however that effective accountability and oversight mechanisms be established. The CCLM would advise on the matter in light of relevant legal considerations, including the variety of Article XIV bodies and their specific functional requirements.

11. As regards technical matters, these were important although largely outside the purview of the CCLM. The CCLM acknowledged that there was a need to ensure complementarity and coherence between the activities of the Organization and those of Article XIV bodies, as well as, in some cases, distribution of responsibilities between Article XIV bodies and other statutory bodies of the Organization.

IV. Criteria and Procedure for the Selection of External Members of the Ethics Committee

12. The CCLM examined document CCLM 94/4 entitled “*Criteria and Procedure for the Selection of External Members of the Ethics Committee*”, which was prepared in response to a request by the Finance Committee at its 140th Session that the matter be re-examined by both committees.

13. The Committee first considered that, during its 93rd Session in October 2011, it had considered useful to establish criteria in the light of which the nominations of external members to the Ethics Committee could be examined. The Committee considered that, pursuant to paragraph 4 of the Terms of Reference of the Ethics Committee, due regard should be paid, first and foremost, to the

“reputability” of the individuals, including their competence on ethical matters. Moreover, the CCLM confirmed that the Director-General should apply the following criteria when nominating candidates: (i) no former officials of FAO; (ii) desirability of avoiding candidates serving, or having served with other United Nations Rome-based organizations; (iii) knowledge of, and experience in ethics, in the United Nations System; (iv) gender balance; (v) regional balance (i.e. at least seven candidates, one candidate from each of the FAO geographic regions. In the case of candidates holding more than one nationality, only one nationality should be recognized in line with the practice followed for office holders in intergovernmental organizations); and (vi) usefulness of private sector experience, including academia.

14. As to the procedure for the selection of the external members, the CCLM considered that after the list of candidates is submitted by the Director-General to the CCLM and the Finance Committee, informal consultations should take place through the Chairpersons, with a view to identifying a possible basis for the two committees to make the same recommendation to the Council. The CCLM recommended that this proposal, which would obviate the need for a formal amendment of the Basic Texts, be referred to the Finance Committee.

15. The CCLM expressed its readiness to examine the matter further, if necessary, at its session of Autumn of 2012, in the light of the deliberations of the Finance Committee.

V. Other Matters

16. There were no other matters.

Appendix

Resolution ___/2013

Amendments to Rules XXXVII and XL of the General Rules of the Organization

THE CONFERENCE:

Recalling that the Conference at its 36th Session, 18-23 November 2009, approved amendments to Rule XXXVII of the General Rules of the Organization and that the implementation of this Rule in 2011 underlined the desirability of further amendments thereto in order better to reflect the spirit of the Immediate Plan of Action for FAO Renewal (2009-11);

Recalling that the Committee on Constitutional and Legal Matters (CCLM) at its 94th Session, from 19 to 21 March 2011, proposed amendments to Rules XXXVII and XL of the General Rules of the Organization;

Noting that the Council, at its 144th Session, from 11 to 15 June 2012, endorsed the proposed amendments to Rules XXXVII and XL of the General Rules of the Organization;

Decides to adopt the following amendments to Rule XXXVII (Appointment of the Director-General) of the General Rules of the Organization:²

Rule XXXVII – Appointment of the Director-General

1. In pursuance of paragraph 1 of Article VII of the Constitution, the Director-General of the Organization shall be appointed under the following conditions:

(...)

(b) In consideration of the expiry of the term of office of the Director-General, the Council shall set the dates for a period during which Member Nations may submit nominations for the office of Director-General. The nomination period shall have a duration of ~~not less than 12~~ three months and end at least ~~60~~ 30 days prior to the beginning of the session of the Council referred to in subparagraph (c) of this paragraph. The nomination period shall be communicated to all Member Nations and Associate Members by the Secretary-General of the Conference and Council. Nominations validly made in accordance with Rule XII, paragraph 5 of these Rules shall be communicated to the Secretary-General of the Conference and Council by the date set by the Council. The Secretary-General shall circulate these nominations to all Member Nations and Associate Members by the date likewise set by the Council, it being understood that in the case of an election taking place at a regular session of the Conference, such date set by the Council shall be not later than 30 days before the session of the Council provided for in subparagraph (c) of this paragraph.

(...)

6. The Director-General shall take such measures as required to ensure that, as far as possible prior to taking office, a Director-General Elect is duly informed of the policies, programmes, staffing and activities of the Organization. The Director-General shall make arrangements to ensure that the Director-General Elect shall have the benefit of technical and administrative support during that period.

Decides to adopt the following amendments to Rule XL (Provisions Relating to Staff) of the General Rules of the Organization:

² Deletions are indicated using ~~strike out text~~ and insertions are indicated using underlined italics

Rule XL – Provisions Relating to Staff

1. The staff of the Organization shall be appointed by the Director-General, having regard to paragraph 3 of Article VIII of the Constitution. Selection and remuneration shall be made without regard to race, nationality, creed or sex. The terms and conditions of appointment shall be fixed in contracts concluded between the Director-General and each member of the staff. Appointments to the posts of Deputy Directors-General shall be made by the Director-General, subject to confirmation by the Council.

2. Appointments made by the Director-General during the last six months of his or her term of office to positions at grade D-2 and above shall expire not later than five months after the end of that term of office. The new Director-General may extend any such appointments.

2. 3. The Director-General shall submit proposals to the Finance Committee on the scale of salaries and conditions of recruitment and service of the staff and shall report to the Finance Committee and the Council any decisions or recommendations of the International Civil Service Commission relating to such matters. He shall submit proposals to the Finance Committee on the general structure of the administrative and technical services of the Organization. He shall, insofar as may be feasible, arrange for public announcements of staff vacancies and shall fill vacancies in accordance with such competitive methods of selection as he may consider most suitable for various types of appointment.

(other sub-paragraphs renumbered)

(adopted on 2013)