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PROGRAMME COMMITTEE

Hundred and Twelfth Session

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Review of Article XIV Bodies

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Executive Summary

- At its 144th Session the Council noted that a detailed review of statutory bodies under Article XIV of the Constitution with a view to allowing them to exercise greater financial and administrative authority would be re-examined by the Committee on Constitutional and Legal Matters (CCLM), and the Finance and the Programme Committees at their Autumn 2012 sessions.
- The review (document CCLM 95/12¹) was submitted to the CCLM at its 95th session, and is being referred to the 112th session of the Programme Committee, and concomitantly to the 147th Session of the Finance Committee. The findings of the CCLM are reproduced in Appendix I.

Suggested action by the Programme Committee

- The Committee is invited to examine the review of statutory bodies under Article XIV of the Constitution in the light of the observations made in this document, taking into account its own views expressed at its 104th session of October 2011, as well as the outcome of the review of the matter by the CCLM. The Programme Committee may wish to note that Management will take action in line with the conclusions and recommendations of the CCLM, and any relevant recommendations of the Programme and Finance Committees.
- The Committee may wish to reaffirm the differentiated situation of statutory bodies under Article XIV of the Constitution on the basis of criteria such as their funding mechanisms, their functional needs and legal authority as defined in the constituent instruments, the conditions of appointment of their secretaries and their accountability to the bodies in question.

I. Background

1. The Immediate Plan of Action (IPA) for FAO Renewal (2009-11), approved by the Conference at its 35th (Special) session, contained the following recommendation (2.69) under the section entitled “*Statutory Bodies, Conventions, etc.*”: “2.69. Undertake a review with a view to making any necessary changes to enable those statutory bodies which wish to do so to exercise financial and administrative authority and mobilise additional funding from their members, while remaining within the framework of FAO and maintaining a reporting relationship with it.”

2. The Programme Committee at its 101st,² 103rd³ and 104th sessions, the Finance Committee at its 143rd session and the CCLM at its 88th, 94th and 95th sessions have followed the implementation of these actions.

3. At its 104th Session in October 2012,⁴ the Programme Committee noted that, as a result of the review of the matter by the CCLM and the Council, the Secretariat would initiate a process of consultation with the membership of bodies established under Article XIV of the Constitution (“Article XIV bodies”) on issues regarding their relationship to the Organization, including possible adjustments to existing procedures. The Committee noted further that this process, which had already been launched within some Article XIV bodies, would be carried out on the basis of the review of the CCLM supplemented, as appropriate, by a questionnaire highlighting issues referred to in document PC 104/9.⁵

¹ CCLM 95/12 <http://www.fao.org/docrep/meeting/026/me712e.pdf>

² CL 136/9 para. 35 <ftp://ftp.fao.org/docrep/fao/meeting/016/k4879e.pdf>

³ CL 139/4 para. 52 <http://www.fao.org/docrep/meeting/018/k7985e.pdf>

⁴ CL 140/8 para. 27 <http://www.fao.org/docrep/meeting/020/k9398e.pdf>

⁵ <http://www.fao.org/docrep/meeting/019/k9003e.pdf>

II. The consultation process

4. The outcome of the above first round of consultations, together with a preliminary identification of issues to be addressed, was reported to the Programme Committee at its 108th session in October 2011. The Committee observed that the issues were either of an administrative or financial nature, or of a substantive character. Taking into account the differentiated situation of Article XIV bodies, it invited the Secretariat to speed up the process of consultation on both administrative and substantive issues in a pragmatic manner.⁶ It expected to receive a report on the outcome of these consultations on administrative matters at its October 2012 session, including information on the consultation process and progress with membership of Article XIV bodies and other stakeholders, consistent with paragraph 44 b) of document PC 108/10.⁷

5. A one day informal consultation meeting on Article XIV bodies was organized on 30 January 2012. It was attended by secretaries of these bodies and senior representatives of relevant units of the Organization. The consultation showed that both the Organization and the secretariats of some Article XIV bodies had developed administrative procedures and practical arrangements to accommodate functional requirements expressed by some secretaries and members of statutory bodies. As part of the consultation process, the Organization also sought the views of the membership through a questionnaire that was considered at the meeting.⁸ A progress report was prepared for the 94th session of the CCLM in March 2012 and the Finance Committee was provided with an oral report on the situation of the review of Article XIV bodies at its 143rd session in May 2012.⁹ The review of statutory bodies provides information on the responses that were received to the questionnaire.

6. At its 104th session, the Programme Committee underlined the desirability of maintaining coherence between the activities of statutory bodies and those of the Organization and recommended that the Organization's rules and procedures applicable to observers be reconsidered. This matter was specifically examined in the review and in the recommendations of the CCLM.

III. Recent developments

7. At its 144th Session the Council noted that the detailed review of statutory bodies under Article XIV of the Constitution with a view to allowing them to exercise greater financial and administrative authority would be re-examined by the CCLM, and the Finance and the Programme Committees at their sessions in Autumn 2012. A detailed report was submitted to the CCLM at its 95th session in October 2012. The CCLM examined the report and acknowledged that the matter was complex, insofar as Article XIV bodies differed from each other depending on their constituent instruments. It *“agreed that it was essential to identify bodies established under Article XIV of the Constitution which would benefit from the facilities foreseen in the document.”*¹⁰ *Eventually, the CCLM noted ... that these bodies should be identified on the basis of criteria such as their funding mechanisms, their functional needs and legal authority as defined in the constituent instruments, the conditions of appointment of their secretaries and their accountability to the bodies in question.”* The

⁶ CL 143/7 paras. 19 to 24 <http://www.fao.org/docrep/meeting/023/mc358e.pdf>

⁷ Paragraph 44 b) of document PC 108/10 states : “The Committee may wish to : ...invite the Secretariat to continue the process of consultation with the membership of statutory bodies established under Article XIV on areas where they could exercise greater administrative and financial authority and, as appropriate, take action on matters within the Secretariat’ authority pertaining to the relationship between the Organization and these bodies.”

⁸ CCLM 95/12, paras. 6-8 <http://www.fao.org/docrep/meeting/026/me712e.pdf>

⁹ CL 144/12, para.45 <http://www.fao.org/docrep/meeting/025/md900e.pdf> . The Finance Committee noted : (i) that the consultation process was under way and, in that context, there was a need to differentiate among statutory bodies under Article XIV depending on their specific characteristics and operational needs; and (ii) noted that a detailed document reviewing administrative and financial areas where a relaxation of a number of operational procedures and practices could be considered, would be presented to the Autumn Sessions of the Finance Committee and of the CCLM.

¹⁰ Examples of these bodies are the Indian Ocean Tuna Commission, the General Fisheries Commission for the Mediterranean and the International Treaty on Plant Genetic Resources for Food and Agriculture. See CL 145/2 (Report of the 95th session of the CCLM), para. 16.

related findings of this session of the CCLM are reported in Appendix I of this document. Subject to the outcome of relevant deliberations of the Finance and the Programme Committees, Management will implement the guidance provided by the CCLM and the Programme and Finance Committees.

APPENDIX I

*Extract from the Report of the Ninety-fifth Session of the
Committee on Constitutional and Legal Matters (CL 145/2) (Rome, 8 - 11 October 2012)*

[...]

VI. Review of Article XIV Statutory Bodies with a view to allowing them to exercise greater financial and administrative authority while remaining within the framework of FAO

15. The CCLM examined document CCLM 95/12 "Review of Article XIV statutory bodies with a view to allowing them to exercise greater financial and administrative authority while remaining within the framework of FAO". The CCLM acknowledged that the matter was complex, insofar as bodies established by treaty under Article XIV of the Constitution were different depending on their constituent instruments. The CCLM noted that document CCLM 95/12 had been prepared in response to IPA Action 2.69 and was based on an earlier document reviewed by the CCLM in 2009 and by the Council in October 2009. The CCLM regretted that proposals made at the time were not implemented.

16. The CCLM agreed that it was essential to identify bodies established under Article XIV of the Constitution which would benefit from the facilities foreseen in the document. Eventually, the CCLM noted the views of the secretariat that it could be counterproductive to establish an exhaustive list of these bodies and that these should be identified on the basis of criteria such as their funding mechanisms, their functional needs and legal authority as defined in the constituent instruments, the conditions of appointment of their secretaries and their accountability to the bodies in question. Examples of these bodies are the Indian Ocean Tuna Commission, the General Fisheries Commission for the Mediterranean and the International Treaty on Plant Genetic Resources for Food and Agriculture.

17. As a general guiding principle, the CCLM held the view that increased delegation of authority to bodies under Article XIV of the Constitution could be considered provided that the secretariats of those bodies be adequately staffed and appropriate oversight mechanisms by the Organization be in place. The CCLM recommended that a review be undertaken by the secretariat to examine and determine, in consultation with the secretariat of bodies, whether the above conditions (adequacy of staffing and appropriate oversight mechanisms) are in place.

18. As regards external relations of bodies under Article XIV of the Constitution, the CCLM was of the view that secretaries of bodies referred to in paragraph 16 should travel on business in accordance with the statutory body work programme and allocated budget.

19. As regards conclusion of arrangements with other organizations, the CCLM noted that a procedure approved by the FAO Council in 2004 had been operating satisfactorily and seemed to respond to the needs of bodies under Article XIV of the Constitution, while allowing for coherence between the activities of those bodies and those of FAO.

20. On budgetary, financial and audit issues, the CCLM considered that these matters should be examined by the Finance Committee. The CCLM noted that the Finance Committee should comment on the issue of project servicing costs. As regards requests for "third party audits", the CCLM noted that these were not possible under the Basic Texts of the Organization. However, it was possible for the Finance Committee to request the External Auditor of FAO to perform certain specific examinations under Financial Regulation 12.6, provided that costs be covered by the body in question.

21. As regards human resources matters, the CCLM noted that these were mainly within the purview of the Finance Committee and could be addressed through Management action. The CCLM underlined that it was essential to make adjustments to Performance Evaluation Management System (PEMS), insofar as some secretaries were directly under the operational authority of Article XIV bodies and not of FAO. Hence, performance assessments of secretaries of such bodies should on technical and operational matters be done by the membership of their governing bodies.

22. As regards channels of communication with Governments and official correspondence, the CCLM noted an earlier proposal that the Correspondence Manual be adjusted to reflect the particular

situation of bodies under Article XIV of the Constitution, but this had not been done. The CCLM requested that this proposal be implemented.

23. As regards relations with donors, the CCLM noted the proposal that facilities regarding resource mobilization be given to secretaries of bodies under Article XIV of the Constitution, subject to a need for overall coherence in resource mobilization activities of FAO. The CCLM also stressed that in some cases the secretariats were under a legal obligation to implement funding strategies flowing directly from the constituent instruments or from decisions of the bodies and, therefore, had to maintain direct relations with donors.

24. As regards the organization of meetings, including the conclusion of Memoranda of Responsibilities regarding such meetings, insofar as these involved issues related to the universal status of FAO and privileges and immunities they should continue to be concluded by or on behalf the Director-General.

25. As regards the servicing of meetings, including possible outsourcing of some activities such as translation, the CCLM noted that the matter was mainly within the purview of the Finance or Programme Committee and that there was, in any case, a need for quality control by FAO. The CCLM did not agree with the recommendation that, in order to reduce costs, some meetings be held in a limited number of languages.

26. As regards the issue of participation by non-governmental organizations (NGOs) and other stakeholders in meetings of FAO, including meetings of statutory bodies, the CCLM recommended that the current flexible, pragmatic practice continue. The CCLM agreed that, for the time being, no general rules on NGO participation applicable to all meetings of the Organization should be established in view of the differentiated nature of NGOs and stakeholders, the currently evolving situation, the different needs and status of the meetings of the Organization, as well as potential lack of consensus on the matter among the membership. In this particular regard, the CCLM observed that it would be difficult to extend to other bodies of the Organization the regime currently applied to the Committee on World Food Security.

27. As regards the issue of the reporting relationship with the main bodies of FAO, the CCLM considered that in view of the specific legal status of each body under Article XIV of the Constitution, the scope and purpose of reporting should be primarily defined by each body taking into account as appropriate the views of the Organization. The CCLM considered that in some cases, reporting to the Conference is justified.

28. The CCLM noted that the review set out in document CCLM 95/12 would be referred to the forthcoming sessions of the Programme and Finance Committee and requested that its deliberations be made available to these Committees.

[...]