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# FINANCE COMMITTEE

**Hundred and Seventy-fifth Session**

**Rome, 18 - 22 March 2019**

**Measure to Improve Timely Payment of Assessed Contributions**

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FC 175

### EXECUTIVE SUMMARY

- This document is being referred to the Finance Committee and the Committee on Constitutional and Legal Matters (CCLM) pursuant to Rule XXVII, paragraph 7 and Rule XXXIV, paragraph 7 of the General Rules of the Organization (GRO). It has been prepared as a common document for consideration by both Committees.
- The Finance Committee, the CCLM and the Council have, under their respective terms of reference, considered measures to improve timely payment of assessed contributions. This is a long-standing topic which has been considered on many occasions. This document focuses more precisely on the legal framework established by the Basic Texts of the Organization regarding the measures that apply to Member Nations in arrears.
- As described in this document, recent experience of FAO suggests the desirability of reconsidering some provisions of the Basic Texts, with a view to strengthening the measures applicable to Member Nations in arrears, and with the overall objective of improving timely payment of assessed contributions.

### GUIDANCE SOUGHT FROM THE FINANCE COMMITTEE

- The Committees are invited to review this document, with particular reference to the proposed amendments to the Basic Texts, and make such observations thereon as considered appropriate. In particular, the Committees are invited:
  - to endorse the draft Conference Resolution set out in Appendix 1 containing proposed amendments to the GRO and to submit it to the Council for subsequent approval by the Conference at its Forty-first Session in June 2019; and
  - ii) to endorse the draft Conference Resolutions set out in Appendices 2 and 3 containing proposed amendments to the Constitution, GRO and Financial Regulations, and to submit them to Council for approval by the Conference at its Forty-second Session in June 2021.



# COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

## Hundred and Eighth Session

Rome, 11-12 March 2019

### Measures to Improve Timely Payment of Assessed Contributions

#### I. Introduction

1. This document is being referred to the Finance Committee and the Committee on Constitutional and Legal Matters (CCLM) pursuant to Rule XXVII, paragraph 7 and Rule XXXIV, paragraph 7 of the General Rules of the Organization (GRO). It has been prepared as a common document for consideration by both Committees.
2. The Finance Committee, the CCLM and the Council have, under their respective terms of reference, considered measures to improve timely payment of assessed contributions. This is a long-standing topic which has been considered on many occasions. This document focuses more precisely on the legal framework established by the Basic Texts of the Organization regarding the measures that apply to Member Nations in arrears.
3. As described in this document, recent experience of FAO suggests the desirability of reconsidering some provisions of the Basic Texts, with a view to strengthening the measures applicable to Member Nations in arrears, and with the overall objective of improving timely payment of assessed contributions.

#### II. Current Legal Framework

4. Pursuant to Article XVIII, paragraph 2 of the Constitution of FAO, each Member Nation is under a legal obligation to contribute annually to the Organization its share of the budget, as apportioned by the Conference (i.e. in accordance with a scale of contributions approved by the Conference). The Financial Regulations clarify that, at the beginning of each calendar year, the Director-General shall inform Member Nations of their obligations in respect of their annual contributions to the budget (see Financial Regulation 5.4). Contributions are due and payable in full within 30 days of receipt of the communication of the Director-General, or as of the first day of the calendar year to which they relate, whichever is the later. As of 1 January of the following calendar year, the unpaid balance of such contributions shall be considered to be one year in arrears (see Financial Regulation 5.5).

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5. The Basic Texts of FAO foresee three measures to be applied in respect of Members that are in arrears in the payment of their contributions.

5.1. Article III, paragraph 4 of the Constitution provides that *“each Member Nation shall have only one vote. A Member Nation which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the Conference if the amount of its arrears equals or exceeds the amount of the contributions due from it for the two preceding calendar years. The Conference may, nevertheless, permit such a Member Nation to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member Nation”*.

5.2. Rule XXII, paragraph 5 of the GRO provides that no Member Nation shall be eligible for election to the Council if it is in arrears in the payment of its financial contributions to the Organization in an amount equal to or exceeding the contributions due from it for the two preceding calendar years.

5.3. Rule XXII, paragraph 7 of the GRO provides that a Member Nation shall be considered to have resigned from the Council if it is in arrears in the payment of its financial contributions to the Organization in an amount equal to or exceeding the contributions due from it for the two preceding calendar years.

6. Financial Regulation 5.7 specifies that, for the purpose of the above-mentioned three measures, *“contributions due for the two preceding calendar years shall be expressed in United States dollars, with any euro arrears calculated at the budget rate of exchange in the year of assessment”*.

### III. FAO’s Practice and Recent Developments

7. As mentioned above, the issue of the timely payment by Member Nations of their contributions to the FAO budget and the treatment of arrears have been subject to the close scrutiny of the Governing Bodies of the Organization in the past. The Council and the Finance Committee have frequently examined the management of arrears as part of the regular review of the financial position of the Organization. This matter has also been the subject of various studies aimed at finding ways to improve the rate of receipt of contributions.

#### A. General overview

8. At its Twenty-sixth Session in 1991, the Conference introduced an incentive scheme to encourage the timely payment of contributions. This mechanism referred to the determination of a discount rate for Member Nations that paid their contributions prior to 31 March of the year of assessment<sup>1</sup>. The rules governing the scheme and, in particular, the determination of the applicable discount rate were discussed in subsequent Sessions of the Finance Committee<sup>2</sup>. Eventually this incentive – deemed to have limited impact upon the timing of payment of the contributions – was discontinued. Other proposals to improve the rate of receipt of contributions were considered by the Finance Committee<sup>3</sup> and included, inter alia:

<sup>1</sup> C 91/REP, para 338 & 339.

<sup>2</sup> FC 88<sup>th</sup> Session (September 1997), Conference 27<sup>th</sup> Session (1997) and FC 108/5 (2004).

<sup>3</sup> FC 108<sup>th</sup> Session (2004) (Analysis of Contributions Received and proposals for Improvement); FC 109<sup>th</sup> Session (2005) (Incentive Scheme to encourage Prompt Payment of Contributions-Analysis of Impact of Zero Discount Rate), FC 110<sup>th</sup> Session (2005) (Acceptance of Local Currency from Developing Countries in Payment of Assessed Contributions), FC 113<sup>th</sup> Session (2006), FC 115<sup>th</sup> Session (2006) and FC 118<sup>th</sup> Session (2007) (Measures to Improve the Organization’s Cash Shortage Situation).

- (i) a proposal to consider amounts due to the Working Capital Fund and Special Reserve Account as “contributions” in accordance with Article III, paragraph 4 of the Constitution and GRO XXII, paragraphs 5 and 7 (considered in 1994);
- (ii) a proposal to amend the definition of arrears under Article III, paragraph 4 of the Constitution and GRO XXII, paragraphs 5 and 7 so that only one year of arrears would result, for Member Nations with cumulative outstanding contributions of more than USD 1 million, in the loss of voting rights in the Conference and Council and ineligibility for election to the Council (considered in 1991);
- (iii) the extension of the restrictions under GRO XXII, paragraphs 5 and 7 on participation in the Council (ineligibility for election and loss of seat) to participation in the Finance and Programme Committees (considered in 1991);
- (iv) stricter application of Article III, paragraph 4 of the Constitution regarding the process for the restoration of voting rights, including by requesting Member Nations to submit instalment plans for the settlement of arrears as a condition for the restoration of their voting rights (considered by the Conference in 2005 and reviewed further below); and
- (v) the acceptance of contributions in non-freely convertible local currencies, under a number of conditions (considered in 1993, 2005 and 2006, also reviewed further below).

9. Generally, the interest of Member Nations in this matter, and their determination to take action, has fluctuated, being dependent upon the level of arrears of Member Nations which has, at times, related to exchange rate fluctuations. There has never been, however, any consensus amongst Member Nations regarding the reinforcement of specific measures to promote timely payment of contributions. This was mainly due to the concerns of some Members, particularly in light of the impact that these measures would have on developing countries in financial difficulty.

#### **B. FAO’s practice regarding the restoration of voting rights**

10. More recently, discussions have focused on the implementation of Article III, paragraph 4 of the Constitution, given the absence of explicit provisions on the procedure for the restoration of voting rights of Member Nations in arrears. A practice has developed whereby requests for restoration of voting rights are referred to the General Committee. The General Committee reviews the requests on the basis of criteria aimed at determining whether the arrears result from conditions which are beyond the control of the Member Nation concerned, as per Article III, paragraph 4 of the Constitution. These criteria have been developed over the years by the Finance Committee. The General Committee has, in general, recommended restoration of voting rights, based on the request and reasons provided by the concerned Member. In some cases, Member Nations have accepted or requested instalment plans to settle arrears. These plans are reviewed by the General Committee and approved by Conference Resolution.

11. The Conference, at its Thirty-third Session in November 2005, undertook a detailed examination of the matter of restoration of voting rights. At that time, the Conference recommended that the normal course of action should consist of actively encouraging Member Nations to submit instalment plans for the settlement of their arrears as a condition for the restoration of voting rights, without prejudice, however, to the authority of the Conference to permit such Nations to vote as contemplated in Article III, paragraph 4 of the Constitution. The Conference also recommended that, in future, requests for restoration of voting rights be referred to the Director-General for submission to the Session of the Finance Committee preceding the Conference, and that the Finance Committee submit its views to the Conference, through the Council, for consideration by the General Committee<sup>4</sup>.

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<sup>4</sup> C 2005/REP, paragraph 33.

Although they attracted considerable interest at the time, these recommendations were not implemented.

### C. Other proposals

12. However, building upon the momentum gained in 2005 with the above-mentioned recommendations, the Finance Committee considered additional means to address the cash shortage situation of the Organization in the course of the biennium 2006-2007<sup>5</sup>. The Council, on the basis of the Finance Committee's review, recommended two draft Resolutions to the Conference for consideration at its Thirty-fourth Session in November 2007. The proposed measures to encourage prompt payment of contributions included:

- (i) a derogation to Financial Regulation 5.6 to allow the Secretariat to accept contributions in non-freely convertible local currencies, provided that a number of conditions were met (these conditions included, inter alia, the need for FAO to have activities in the country in respect of which the currency could be applied; the possibility of spending the currency, at the UN operational exchange rate or without losses, within a short period of time);
- (ii) the submission of instalment plans by Member Nations that were in arrears for two calendar years to the Finance Committee for review, and subsequent approval by the Conference; and
- (iii) discontinuation of the practice of automatically restoring voting rights for all Member Nations on the first day of the Conference<sup>6</sup> as had been decided by the Session of the Conference of 2005.

13. The Conference, at its Thirty-fourth Session in 2007, was unable to approve these proposals.

14. The matter was again examined by the Finance Committee in the biennium 2008-2009, but no concrete measures were proposed. The Conference, at its Thirty-sixth Session in 2009, requested that the matter remain under review. However, the particular recommendations made by the Conference in 2005 regarding restoration of voting rights were not implemented, presumably in view of a reduction in the number of countries in arrears as compared to the situation in 2005, as well as the reform process that was then under way.

15. In October 2012, the CCLM considered document CCLM 95/14 concerning "*Legal aspects of the treatment of arrears (restoration by the Conference of the voting rights of Member Nations in arrears)*". The document described the practice for the implementation of Article III, paragraph 4 of the Constitution concerning restoration by the Conference of voting rights of Members in arrears. It indicated that the Conference's practice had been to rely on the advice of the General Committee.

16. The Finance Committee, at its Hundred and Forty-eighth Session in March 2013, requested the CCLM to examine whether the implementation of the recommendations of the Conference in November 2005 (set out at paragraph 11 above) would involve changes to the Basic Texts of the Organization. At its Ninety-seventh Session in October 2013, the CCLM advised that it considered that these recommendations could be implemented through an amendment of the GRO or the adoption of a Conference Resolution included in Volume II of the Basic Texts. However, no final decision was taken on the matter, as no agreement could be reached at the Council.

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<sup>5</sup> FC 115/8 (2006), FC 118/13 (2007); FC 119/8 (2007).

<sup>6</sup> C 2007/LIM/7.

#### **D. Current situation and the Organization's authority to borrow**

17. The Organization's cash shortage was a source of deep concern in 2018. The rate of receipt of assessed contributions was the lowest since 2012<sup>7</sup> and a high level of assessments remained unpaid from previous years, in particular from major contributors. This seriously affected the Organization's liquidity.

18. It is noted that, for many years, the Organization was able to manage cash flow problems by borrowing from commercial banks on the basis of Resolution 14/83 adopted by the Conference at its Twenty-second Session in November 1983. This Resolution confirmed Resolution 2/80 adopted at the Eightieth Session of Council in November 1981, which granted the Director-General the authority to borrow from external sources. This allowed the Organization to safeguard the integrity of its work plan and meet its commitments. This short-term solution was possible because commercial banks accepted as a guarantee the legal obligation of Member Nations to pay their assessed contributions. However, the situation has changed, as receivables from Members are no longer considered as constituting acceptable guarantees by commercial banks, particularly given the current unpredictability in the timing of payments by Members<sup>8</sup>. As a result, commercial banks are reluctant to lend to the Organization. These circumstances have placed the Organization in a precarious situation.

19. Moreover, the experience of the Organization is that the Conference's practice of restoring voting rights on the basis of requests from Member Nations without requiring instalment plans to address arrears has meant that these instalment plans are no longer requested by concerned Members. In any event, the formulation of a specific procedure for the restoration of voting rights is not considered to be, in the present situation, a suitable means to deal with late payment of assessed contributions by Member Nations.

20. In light of recent experience and past discussions on the issue of arrears in the payment of assessed contributions, it is considered that a review of the current legal framework is necessary, in particular, the measures to address late payment of contributions by Member Nations, with the objective of enhancing compliance with the obligation of Members to effect timely payment of their assessed contributions.

### **IV. Proposed Measures to Address Arrears in Payment of Assessed Contributions**

#### **A. Nature of the proposed measures**

21. It is recalled that the measures envisaged by the Basic Texts for the non-payment of contributions are threefold: (i) loss of voting rights in the Conference under Article III, paragraph 4 of the Constitution; (ii) ineligibility for election to the Council under Rule XXII, paragraph 5 of the GRO; and (iii) loss of seat in the Council under Rule XXII, paragraph 7 of the GRO.

22. As reflected in Section II above, the loss of voting rights is automatic and can only be restored by a positive decision of the Conference or the payment of the arrears due. The provisions for ineligibility for election to the Council or loss of a Council seat are strictly applied by the Organization with no exceptions either foreseen or made.

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<sup>7</sup> See FC 173/3 Rev.1, par. 1 "As at 30 September 2018, the percentage of 2018 assessed contributions paid to the Organization by Member Nations was 57.3 percent, the lowest rate of receipt since 2012 when it was 55.9 percent".

<sup>8</sup> See FC 173/3 Rev.1

23. In implementing these measures, it has been the practice of the Organization not to take into account the amounts due for the current financial year, since these are not formally defined as “arrears” pursuant to Financial Regulation 5.5. In addition, only contributions to the budget of the Organization, duly apportioned by the Conference, are taken into account when calculating the amount of arrears (i.e. amounts due to the Working Capital Fund and the Special Reserve Account are excluded)<sup>9</sup>. This application of the rules allows Member Nations to be in debt to the Organization for an amount equivalent to three full years of assessments without experiencing any consequence for those arrears. This leads to pressure on the Organization’s financial liquidity, as experienced in the course of 2018.

24. In view of the recent developments limiting the Organization’s ability to borrow from external sources, and in order to allow the Organization to effectively address cash shortages and promote timely payment, it is considered necessary to extend the measures applicable to Member Nations in arrears in the payment of their contributions. The following measures are proposed:

24.1. Extension of the measures in GRO XXII, paragraph 5 (ineligibility for election to the Council) and GRO XXII, paragraph 7 (loss of seat in the Council) to the Council Committees (Programme Committee, Finance Committee and CCLM);

24.2. Additional measure of ineligibility to make a notification for membership and to be invited to participate in the work of the Technical Committees (Committee on Commodity Problems under GRO XXIX, paragraphs 1 and 2, Committee on Fisheries under GRO XXX, paragraphs 1 and 2, Committee on Forestry under GRO XXXI, paragraphs 1 and 2, and Committee on Agriculture under GRO XXXII, paragraphs 1 and 2); and

24.3. Reduction of the period of non-payment activating the measures, from two years to one year of arrears, requiring modification of Article III, paragraph 4 of the Constitution (loss of voting rights), GRO XXII, paragraphs 5 and 7 (Council election and loss of seat) and Financial Regulation 5.7 (calculation of contributions due)<sup>10</sup>.

## **B. Procedural aspects**

25. Distinct procedural requirements apply to the various instruments, in particular the conditions for the approval of the above-mentioned amendments.

### **1. Amendments to the GRO**

26. The proposed amendments to GRO XXII, paragraphs 5 and 7 (*cf.* par. 24.1 above) and to GRO XXIX, paragraphs 1 and 2, XXX, paragraphs 1 and 2, XXXI, paragraphs 1 and 2, and XXXII, paragraphs 1 and 2 (*cf.* par. 24.2 above) would have to be adopted, in accordance with Rule XLIX of the GRO, by a two-thirds majority of the votes cast by the Conference. The amendments would have to be approved through a roll call or a nominal vote, as per Rule XII, paragraph 7(a) and paragraph 8 of the GRO. The total number of affirmative and negative votes must be more than half of the Member Nations of the Organization and, if these conditions are not fulfilled, the proposed amendments would be considered as rejected (GRO XII, paragraph 3(b)).

27. The above-mentioned amendments would involve limited changes to the GRO. It is proposed that they be placed under a new section entitled “Arrears”, with consequential renumbering of other

<sup>9</sup> This application of these measures was based on a legal concept that measures in the nature of sanctions are to be interpreted in a restrictive manner.

<sup>10</sup> The same interpretation whereby contributions to the Working Capital Fund and to the Special Reserve Account are not considered for the purpose of calculation of arrears would continue to be followed.



Sections and Rules of the GRO. The amendments to the GRO would be approved through a Conference Resolution, a draft of which is attached as Appendix 1 to this document.

28. It is considered that these amendments could be submitted for approval by the Conference at its forthcoming Forty-first Session in June 2019. It is, nevertheless, suggested that the proposed amendments apply from 1 January 2021. This is because of a general principle that Member Nations should be afforded time to adjust to a regime that is more restrictive. Another important consideration is that the proposed amendments would be approved by the Conference in June 2019. However, by that time, nominations for elections to the Programme Committee, the Finance Committee, the Committee on Constitutional and Legal Matters and the Council will already have been made. In order to avoid disrupting this ongoing elections process, it is proposed that the amendments apply with effect from 1 January 2021. Any later modifications required to the GROs (and the Financial Regulations) concerning the reduction of the period triggering the imposition of measures as proposed in paragraph 24.3 above, could be effected as addressed in Section 2 below.

## **2. *Amendments to the Constitution***

29. The proposed amendment to Article III, paragraph 4 of the Constitution regarding the reduction of the number of years of arrears (from two years to one year) which result in the loss of voting rights in the Conference (*cf.* par. 24.3 above) would require an amendment to the Constitution of FAO. This would have to be approved by the Conference by a two-thirds majority of the votes cast, provided that such a majority is more than one half of the Member Nations of the Organization (Article XX, paragraph 1 of the Constitution refers). The required majority is a special one, as compared to the above-mentioned majority required for the approval of amendments to the GRO, in the sense that the total number of affirmative votes must be more than one half of the number of Member Nations of FAO.

30. Furthermore, an important procedural requirement applies to a constitutional amendment. As provided in Article XX, paragraph 4 of the Constitution, notice of the proposed amendment must be dispatched by the Director-General to Members at least 120 days before the opening of the Conference Session at which it is to be considered. It would not, therefore, be feasible for the Director-General to dispatch the proposed amendment to the Constitution to Members before the Forty-first Session of the Conference scheduled to be convened in June 2019.

31. In practical terms, insofar as it does not seem possible to meet the above-mentioned procedural requirement, the proposed amendment may only be approved at the Conference Session of June 2021<sup>11</sup>. Consequently, amendments to the GRO and the Financial Regulations reducing the period of arrears that triggers the imposition of measures from two years to one year would also be submitted for adoption at that time. It is also noted that, according to Article XX, paragraph 3 of the Constitution, proposals should be made either by the Council or by a Member Nation in a communication addressed to the Director-General.

32. In light of the above, it is proposed that, at their current Sessions, the Committees recommend to the Council the approval of the proposed amendment. It is also proposed that the Council consider the proposed amendments at its next Session with, however, consideration by the Conference for adoption taking place at its Forty-second Session in June 2021.

33. The amendments to the Constitution, GRO and Financial Regulations reducing the number of years of arrears triggering the application of measures would be approved through Conference Resolutions. Two proposed Resolutions are attached as Appendices 2 and 3 to this document for consideration by the Committees.

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<sup>11</sup> This is on the assumption that an individual Member Nation does not submit to the Secretariat the proposed amendment to the Constitution, under Article XX, paragraph 4 of the Constitution, which would have to be done by 20 February 2019.

## **V. Suggested Action by the Committees**

34. The Committees are invited to review this document, with particular reference to the proposed amendments to the Basic Texts, and make such observations thereon as considered appropriate.

35. In particular, the Committees are invited:

35.1. to endorse the draft Conference Resolution set out in Appendix 1 containing proposed amendments to the GRO and to submit it to the Council for subsequent approval by the Conference at its Forty-first Session in June 2019; and

35.2. to endorse the draft Conference Resolutions set out in Appendices 2 and 3 containing proposed amendments to the Constitution, GRO and Financial Regulations, and to submit them to Council for approval by the Conference at its Forty-second Session in June 2021.

**Appendix 1**  
**RESOLUTION \_\_/2019**

THE CONFERENCE:

Noting the critical liquidity situation of the Regular Programme in 2018 as a result of delays in the payment of contributions and the continued high level of contributions that remained unpaid from prior years, in particular by major contributors;

Concerned by the increasingly widespread pattern of late payment of contributions by Member Nations and the impact of these delays on the Organization's liquidity and on its ability to implement the approved programme of work;

Concerned further that the current unpredictability in the timing of the receipt of payments from Member Nations jeopardizes the Organization's ability to borrow from external sources as authorized by Conference Resolution 14/83;

Acknowledging the necessity of maintaining sufficient cash flow to cover obligations and ensure implementation of the approved programme of work;

Recalling that the Committee on Constitutional and Legal Matters, at its Hundred and Eighth Session, and the Finance Committee, at its Hundred and Seventy-fifth Session, both convened in March 2019, examined and recommended to the Council, and the Council at its Hundred and Sixty-first Session endorsed, the proposal to amend the General Rules of the Organization in order to strengthen the measures imposed for the non-payment of contributions;

1. Decides to adopt the following amendments to the General Rules of the Organization<sup>12</sup>:

New **Rule XLVII** of the GRO under a new "Section E. ARREARS" (Section "Miscellaneous Provisions" and other Rules re-numbered accordingly)

"E - ARREARS

**RULE XLVII**

**Arrears**

1. *No Member Nation shall be eligible to nominate a representative for election as a Member of the Programme Committee, the Finance Committee and/or the Committee on Constitutional and Legal Matters if it is in arrears in payment of its financial contributions to the Organization in an amount equal to or exceeding the contributions due from it for the two preceding calendar years.*
2. *No Member Nation shall be eligible to make a notification for membership or be invited to participate in the work of the Committee on Commodity Problems, Committee on Fisheries, Committee on Forestry and Committee on Agriculture pursuant to Rule XXIX, paragraphs 1 and 2, Rule XXX, paragraphs 1 and 2, Rule XXXI, paragraphs 1 and 2, and Rule XXXII, paragraphs 1 and 2, if it is in arrears in payment of its financial contributions to the Organization in an amount equal to or exceeding the contributions due from it for the two preceding calendar years.*

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<sup>12</sup> Deletions are indicated using ~~struck-out text~~ and insertions are indicated using underlined italics.

3. Any Member of the Programme Committee, Finance Committee, Committee on Constitutional and Legal Matters and of the Technical Committees referred to in paragraph 2 above shall be considered to have resigned from its membership of these Committees if that Member is in arrears in payment of its financial contribution to the Organization in an amount equal to or exceeding the contributions due from it for the two preceding calendar years.
2. Decides that the above amendments shall enter into force on 1 January 2021.

## Appendix 2

### RESOLUTION \_\_/2021

#### Amendment of Article III, paragraph 4 of the Constitution

THE CONFERENCE:

Noting the critical liquidity situation of the Regular Programme in 2018 as a result of delays in the payment of contributions and the continued high level of contributions that remained unpaid from prior years, in particular by major contributors;

Concerned by the increasingly widespread pattern of late payment of contributions by Member Nations and the impact of these delays on the Organization's liquidity and on its ability to implement the approved programme of work;

Concerned further that the current unpredictability in the timing of the receipt of payments from Member Nations jeopardizes the Organization's ability to borrow from external sources as authorized by Conference Resolution 14/83;

Acknowledging the necessity of maintaining sufficient cash flow to cover obligations and ensure implementation of the approved programme of work;

Recalling that the Committee on Constitutional and Legal Matters, at its Hundred and Eighth Session, and the Finance Committee, at its Hundred and Seventy-fifth Session, both convened in March 2019, examined and recommended to the Council, and the Council at its Hundred and Sixty-first Session endorsed, the proposal to amend the Constitution in order to strengthen the measures imposed for the non-payment of contributions;

1. Decides to adopt the following amendments to the Constitution<sup>13</sup>:

“Article III

**The Conference**

(...)

4. Each Member Nation shall have only one vote. A Member Nation which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the Conference if the amount of its arrears equals or exceeds the amount of the contributions due from it for the ~~previous two preceding calendar years~~, and provided that the aforementioned amount is equal or exceeds USD One Million. The Conference may, nevertheless, permit such a Member Nation to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member Nation.”

2. Decides that the amendment to Article III, paragraph 4 of the Constitution shall come into force on 1 January 2021.

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<sup>13</sup> Deletions are indicated using ~~struck-out text~~ and insertions are indicated using underlined italics.

### Appendix 3

#### RESOLUTION \_\_/2021

#### **Amendments of Rule XXII, paragraphs 5 and 7, and Rule XLVII of the General Rules of the Organization, and Regulation V, paragraph 5.7 of the Financial Regulations**

THE CONFERENCE:

Noting that the Regular Programme liquidity situation of the Organization was critical in 2018 as a result of delays in the payment of contributions and the continued high level of contributions that remained unpaid from prior years, in particular by major contributors;

Concerned by the increasingly widespread pattern of late payment of contributions by Member Nations and the impact of these delays on the Organization's liquidity and on its ability to implement the approved programme of work;

Concerned further that the current unpredictability in the timing of the receipt of payments from Members jeopardizes FAO's ability to borrow from external sources as authorized by Conference Resolution 14/83;

Acknowledging the necessity of maintaining sufficient cash flow to cover obligations and ensure implementation of the approved programme of work;

Recalling that the Committee on Constitutional and Legal Matters, at its Hundred and Eighth Session, and the Finance Committee, at its Hundred and Seventy-fifth Session, both convened in March 2019, examined and recommended to the Council, and the Council at its Hundred and Sixty-first Session endorsed, the proposal to amend the General Rules of the Organization and the Financial Regulations in order to strengthen the measures imposed for the non-payment of contributions;

1. Decides to adopt the following amendments to Rule XXII of the General Rules of the Organization<sup>14</sup>:

“Rule XXII

#### **Election of the Council**

(...)

5. No Member Nation shall be eligible for election to the Council if it is in arrears in payment of its financial contributions to the Organization in an amount equal to or exceeding the contributions due from it for the ~~two~~ previous ~~preceding~~ calendar years.”

(...)

7. A Member of the Council shall be considered to have resigned if it is in arrears in payment of its financial contributions to the Organization in an amount equal to or exceeding the contributions due from it for the ~~two~~ previous ~~preceding~~ calendar years, or if it had not been represented at two consecutive sessions of the Council”.

2. Decides that Rule XLVII of the General Rules of the Organization is amended to read as follows:

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<sup>14</sup> Deletions are indicated using ~~struck-out text~~ and insertions are indicated using underlined italics.

“E - ARREARS

## **RULE XLVII**

### **Arrears**

1. No Member Nation shall be eligible to nominate a representative for election as a Member of the Programme Committee, the Finance Committee and/or the Committee on Constitutional and Legal Matters if that Member is in arrears in payment of its financial contributions to the Organization in an amount equal to or exceeding the contributions due from it for the ~~two preceding~~ *previous* calendar years.
  2. No Member Nation shall be eligible to make a notification for membership or be invited to participate in the work of the Committee on Commodity Problems, Committee on Fisheries, Committee on Forestry and Committee on Agriculture pursuant to Rule XXIX, paragraphs 1 and 2, Rule XXX, paragraphs 1 and 2, Rule XXXI, paragraphs 1 and 2, and Rule XXXII, paragraphs 1 and 2, if it is in arrears in payment of its financial contributions to the Organization in an amount equal to or exceeding the contributions due from it for the ~~two preceding~~ *previous* calendar years.
  3. Any Member of the Programme Committee, Finance Committee, Committee on Constitutional and Legal Matters and of the Technical Committees referred to in paragraph 2 above shall be considered to have resigned from its membership of these Committees if that Member is in arrears in payment of its financial contribution to the Organization in an amount equal to or exceeding the contributions due from it for the ~~two preceding~~ *previous* calendar years."
3. Decides to adopt the following amendments to the Financial Regulations of the Organization:
- “Regulation 5
- Provision of Funds**
- (...)
- 5.7 Obligations of Member Nations and Associate Members, including arrears of contribution, shall remain payable in the currencies of assessment of the year in which they were due. For the purpose of determining loss of voting rights in the Conference, ineligibility for election to or loss of seat in the Council as foreseen in the Basic Texts of the Organization, contributions due for the ~~two preceding~~ *previous* calendar years shall be expressed in United States dollars, with any euro arrears calculated at the budget rate of exchange in the year of assessment”.
4. Decides that the above amendments shall take effect on 1 January 2021.