

**Date of Implementation of the United Nations Resolution on the
Mandatory Age of Separation
Information Note 4 – 31 May 2018**

Opinion by the Legal Counsel of FAO

1. On 23 December 2015, the United Nations General Assembly adopted resolution 70/244 whereby “*the mandatory age of separation for staff recruited before 1 January 2014 should be raised by the organizations of the United Nations common system to 65 years, at the latest by 1 January 2018, taking into account the acquired rights of staff*”.

2. During the deliberations of the Finance Committee at its 170th Session in May 2018 and of the Joint Meeting of the 124th Session of the Programme Committee and the 170th Session of the Finance Committee, there was considerable discussion concerning the authority of the Council to adjust the date of implementation of the resolution in respect of FAO staff recruited before 1 January 2014 and possible legal risks arising therefrom.

3. The Legal Counsel of FAO provided his views on the matter, as follows.

4. Any conclusive legal views can only be ultimately issued by the United Nations Administrative Tribunal and the Administrative Tribunal of the International Labour Organization, in judgments which they may deliver in respect of individual complaints brought to them. Without prejudice to this, the Legal Counsel gave the following opinion in light of the following three questions: Is FAO under an obligation to implement General Assembly resolution 70/244? Could the Council adjust the date of implementation of the resolution with regard to FAO staff? If the Council were to do so, would FAO be exposed to additional legal and financial risks? An additional, fourth question was raised in the deliberations of the governing bodies of FAO and during subsequent bilateral discussions concerning the relevance of the position at IFAD to the consideration of the matter in FAO.

(A) **IS FAO UNDER AN OBLIGATION TO IMPLEMENT GENERAL ASSEMBLY RESOLUTION 70/244?**

5. **FAO is under an obligation to implement General Assembly resolution 70/244 of 23 December 2015.** Following a decision of the Conference of 1973, FAO accepted the Statute of the International Civil Service Commission (“ICSC” or “the Commission”) and the authority of the Commission for the regulation and coordination of the conditions of service of the UN Common System. In the exercise of its functions in accordance with its Statute, the Commission is guided by the principles set out in the agreements between the United Nations and other UN System organizations, aiming at the “*eventual development of a single unified international civil service*”¹.

(B) **COULD THE COUNCIL ADJUST THE DATE OF IMPLEMENTATION OF THE RESOLUTION WITH REGARD TO FAO STAFF?**

6. **The Council could adjust the date of implementation of the resolution with regard to FAO staff. This would have to be done within reasonable limits, and in light of the specific interests of the Organization and its programmes and strategic objectives,** without compromising the ultimate objective of development of a single unified international civil service. Three considerations are particularly relevant in this connection.

6.1. The first is that, as pointed out by CEB representatives to the ICSC, any implementation date agreed for the Common System of a mandatory age of separation for staff recruited before 1 January 2014 would be “*indicative as the final decision on the matter rested with the governing bodies of the*

¹ Article XI, paragraph 1 of the Relationship Agreement between the United Nations and FAO of 1946.



organizations” concerned.² This was especially so as it is considered that the Commission was exercising its coordination functions, rather than its regulatory competence to establish mandatory conditions, either on its own motion or through the General Assembly.

6.2. The second is that **the relevant governing bodies of a number of Specialized Agencies, which accepted the Statute of the ICSC and having the same Members as FAO, took the same view.** They exercised flexibility and adjusted the date of implementation of the resolution in light of their specific interests, objectives and programmes,³ on the basis of submissions similar to those presented by FAO Management. Legal advice was provided to these bodies and their Members along the same lines as in this note. **This was the case with the Council of ICAO, the General Assembly of WIPO and the Executive Board of WHO (the decision of WHO applies also to UNAIDS). The Executive Board of IFAD, a Specialized Agency of the United Nations, supported the adjustment of the implementation date** (see Section D below).

6.3. The third is that informal information on other organizations, where the governing bodies deferred the date of implementation of the resolution, reveals that the authority of the concerned governing body to adjust the date of entry into force of the new mandatory age of separation, taking into account the best interest of the organizations, was not questioned. It does not seem that any complaints filed so far have questioned the authority of the governing bodies, *per se*, to adjust the implementation date, in light of the best interest of the organizations.

(C) WOULD A DECISION BY THE FAO COUNCIL ADJUSTING THE DATE OF IMPLEMENTATION FOR FAO STAFF EXPOSE THE ORGANIZATION TO ADDITIONAL LEGAL AND FINANCIAL RISKS?

7. **It is considered that the proposed deferred implementation of resolution 70/244 would not result in additional risks exceeding the margin usually associated with such matters.** On the basis of the information available, and in light of past patterns of litigation, it does not seem that FAO would be exposed to legal and financial risks going beyond those to which it is generally exposed in the course of its day-to-day operations.

8. The legal position of the Organization is sound and reasonable, taking into account the observations put forward in paragraphs 6.1., 6.2. and 6.3. In particular, it is underlined that the relevant governing bodies of ICAO, WIPO and WHO, and their Members which are also Members of FAO, based their decisions on the same legal reasoning as set out in this note.

(D) IS IFAD’S RECENT DECISION TO DEFER THE IMPLEMENTATION DATE RELEVANT FOR THE CONSIDERATION OF THE MATTER AT FAO?

9. The position at IFAD has raised much discussion in the governing bodies of FAO. It is noted that the same Members who supported the adjustment of the implementation date at the Fund in April 2018, have expressed reservations as to the proposed adjustments to the implementation date at FAO.

10. **The decision at IFAD is of relevance for the review of the matter at FAO in light of the following considerations.**

10.1 **The ICSC lists IFAD among Common System Members,** without establishing any distinction between those Members (cf. <https://icsc.un.org/about/members.asp>). The ICSC Compendium indicates that while IFAD did not accept formally the ICSC Statute, it “*agreed to co-*

² The position of CEB representatives was as follows: “Recalling article 16 of the statute of the [ICSC], the Network pointed out that any implementation date agreed for the United Nations common system [of a mandatory age of separation at 65] **would be indicative at best, as the final decision on the matter rested with the governing bodies of the organizations**” (emphasis added), Report of the International Civil Service Commission for the year 2015, document A/70/30, paragraph 21.

³ See in particular, **for WIPO**, document WO/CC/74/6, 23 August 2017, *inter alia*, paragraphs 5, page 2 and 9, page 3; **for WHO**, document EB 141/11, 15 May 2017, especially paragraphs 19 and 20; **for ICAO**: Working Paper C-WP/14463, 15 April 2016, see, *inter alia*, paragraph 4.5.

operate with ICSC”⁴. Under Article IX, Paragraph 1 of the Relationship Agreement between the United Nations and IFAD of 1978, *“the Fund agrees to co-operate with the International Civil Service Commission on matters concerning the regulation and co-ordination of the conditions of service of staff”*.

10.2 As mentioned above, it is understood that the Executive Board of IFAD, a specialized agency of the United Nations, and its Members, **supported** the adjustment of the implementation date. The minutes of the relevant meeting of the 123rd session of the Executive Board of IFAD read as follows: *“Members support IFAD’s decision to implement MAS 65 on January 1, 2020 (...) Members also welcome Management’s proposal, in line with the principles of the UN resolution and subject to budgetary availability, to use the President’s existing authority to bring forward this implementation as appropriate”*.

⁴ cf. ICSC Compendium Section 1, Procedural and organizational matters, Paragraph 1.10 Constitutional background, paragraph 10.