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# COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

**Hundred and Ninth Session**

**Rome, 21-23 October 2019**

**Voting procedures under Rule XII, paragraph 10 of the General Rules of  
the Organization**

## I. Introduction

This item has been placed on the Provisional Agenda of the Committee on Constitutional and Legal Matters (hereinafter “CCLM” or “the Committee”) under Rule XXXIV, paragraph 7 (a) of the General Rules of the Organization (GRO), whereby the Committee shall consider specific items referred to it which may arise out of: *“the application or interpretation of the Constitution, these Rules and the Financial Regulations or amendments thereto”*.

## II. Background

1. Rule XII, paragraph 10 (a) of the GRO establishes, in relevant part, that “[t]he appointment of the Director-General (...) shall be decided by secret ballot”.

2. Rule XII, paragraph 10 (e) provides that “[f]or a vote by secret ballot, one or more voting booths shall be set up, supervised in such a manner as to ensure complete secrecy of the ballot”. Rule XII, paragraph 10 (h) further provides that “[m]embers of delegations and of the secretariat of the Conference or Council who are responsible for the supervision of any vote by secret ballot shall not disclose to any unauthorized person any information which might tend, or be presumed to tend, towards destroying the secrecy of the ballot”.

3. In December 2017, the Council endorsed the CCLM’s recommendation that the Secretariat be mandated to take such steps as required to ensure that the results of ballots remain undisclosed until

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the formal announcement, such as not authorizing electronic devices in the room where the count of votes is taking place<sup>1</sup>.

4. Prior to the Forty-first Session of the Conference in June 2019, the following guidance was issued:

*“In order to protect the secrecy of the ballot, the Elections Officer may require any member of delegations or the secretariat participating in the supervision of any vote by secret ballot to dispose of any kind of electronic devices prior to entering the room where the count is to take place. This requirement may be enforced by any means deemed relevant by the Elections Officer”.*<sup>2</sup>

5. Subsequently, immediately prior to the elections for the office of Director-General, the General Committee noted that, *“further to consultation with the Independent Chairperson of the Council, the Director-General had decided that electronic recording devices, defined as any device which could be used to record images, including but not limited to cameras, mobile phones or smartwatches, shall not be allowed within the polling area. Electors shall leave any such devices in a basket at the entrance to the polling area before entering. Electors should show the tellers that they do not have electronic devices. The Director-General would also request the Secretary-General of the Conference to remind all delegates of the importance of complete secrecy of the ballot and of the requirement that all those responsible for the supervision of any vote by secret ballot shall not disclose to any unauthorized person any information which might tend, or be presumed to tend, towards destroying the secrecy of the ballot, in accordance with the Rules. This would be without prejudice to any further arrangements that the General Committee might wish to recommend to the Conference, in line with the communication on this matter of the Assistant Director-General/Directeur de Cabinet of 19 June 2019”.*<sup>3</sup>

6. In its final report, *“[t]he Conference noted that during the election for the position of Director-General of FAO on Sunday, 23 June, one delegate ostensibly showed their ballot paper to the plenary, thereby violating the secrecy of the vote and Article XII.10 of the basic texts of FAO. It was recognized that this occurrence does not question the validity of the ballot”.*<sup>4</sup>

7. In its consideration of matters arising out of the Conference Session, the Council, at its Hundred and Sixty-second Session, noted certain matters requiring further attention which would be reviewed by appropriate Governing Bodies, and/or would be considered at the forthcoming Informal Meeting of the Independent Chairperson of the Council with the Chairpersons and Vice-Chairpersons of the Regional Groups<sup>5</sup>. These matters included *“processes relating to governing bodies, such as voting procedures”*. During the Council, some delegates invited consideration of the voting procedures, with a view to assessing the practice of other United Nations System organizations and whether there was any need to amend the GRO.

### **III. Practice of other Organizations**

8. While most United Nations System organizations provide for the conduct of secret ballots in particular instances, including for the election of the heads of agencies, very few have developed specific rules addressing electronic recording devices. The limited publicly available guidance that FAO is aware of is set out below.

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<sup>1</sup> CL 158/2, paragraph 12 and CL 158/REP, paragraph 14 (e).

<sup>2</sup> C 2019/INF/3, Guide on conduct of Plenary Meetings, page 16.

<sup>3</sup> C 2019/LIM/17, paragraph 16.

<sup>4</sup> C 2019/REP, Forty-first Session Rome, 22-29 June 2019, paragraph 28.

<sup>5</sup> CL 162/REP Hundred and Sixty-second Session, Rome, 1 July 2019, paragraph 7.

9. In 2013, the Sixty-sixth World Health Assembly adopted a Code of Conduct for the Election of the Director-General of the World Health Organization (“WHO”) which indicates, at Section III, paragraph 3:

*“Member States should respect the confidentiality of the proceedings and the secrecy of the votes. In particular, they should refrain from communicating or broadcasting the proceedings during the private meetings through electronic devices”.*<sup>6</sup>

10. Following elections in 2017, the WHO initiated an evaluation of its procedures and proposals were submitted by the WHO Secretariat to the Executive Board in December 2018 for adjustments to the Code of Conduct<sup>7</sup>. This included an item on the “[e]nforceability of limiting communications during the vote”, and recommended that *“the current practice of requesting delegates to switch off all their electronic devices should be maintained”*. It is understood that this matter remains under consideration at the WHO<sup>8</sup>.

11. In a resolution adopted in 2018, the United Nations General Assembly:

*“Note[d] the practice implemented during the secret vote-counting procedure, whereby no use of mobile phones or other electronic communication devices is permitted in the room where counting is being conducted, thus ensuring the confidentiality of elections and the integrity of secret ballots, and request[ed] the continuation of this practice”.*<sup>9</sup>

#### **IV. Proposals for guidance on the voting procedures under Rule XII, paragraph 10 of the GRO**

12. In light of the processes followed by the FAO Conference in June 2019, as well as the practice of other organizations, it is considered that it may be unnecessary to amend the GRO. Queries arising in June 2019 appear to essentially relate to the procedures for implementation of Rule XII, paragraph 10, rather than to an absence of rules.

13. The procedures applied in June 2019 ensured consistency with the requirements of Rule XII, paragraph 10. They are aligned to the practice of other United Nations System organizations, none of which have amended their Rules of Procedure to address such operational matters.

14. If the Members consider that the existing practices should be placed on a more formal basis, Members may wish to consider endorsing guidance reflecting those practices. It is recommended that any guidance should retain a mandate for the Secretariat to take additional measures as may be necessary, in light of rapidly developing communications technology.

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<sup>6</sup> Resolution WHA66.18, Follow-up of the report of the Working Group on the Election of the Director-General of the World Health Organization, Annex 1. As reflected in the Code, it is *“a political understanding reached by the Member States of the World Health Organization”* and it *“is not legally binding but Member States and candidates are expected to honour its contents”*.

<sup>7</sup> EB144/35, Evaluation of the election of the Director-General of the World Health Organization, 21 December 2018.

<sup>8</sup> See summary record of the Session of the Executive Board held in April 2019, EB144/PSR/14, Provisional Summary Record of the Fourteenth Meeting, page 7.

<sup>9</sup> Resolution 72/313, Revitalization of the work of the General Assembly, adopted on 17 September 2018, paragraph 53. This is in line with the conclusions of the review of the matter by the CCLM and by the Council of FAO in 2017.

## V. Suggested action by the Committee

15. The CCLM is invited to review this document and make such comments and observations thereon as it considers appropriate. The CCLM could consider recommending to the Council that it endorse the following guidance with respect to the application of Rule XII, paragraph 10 of the GRO:

- a) Electronic recording devices, defined as any device which could be used to record images, including but not limited to cameras, mobile phones or smartwatches, shall not be allowed within the polling area. Electors shall leave any such devices in a basket at the entrance to the polling area before entering. Electors should show the tellers that they do not have electronic devices.
- b) The Director-General shall request the Secretary-General of the Conference to remind all delegates of the importance of complete secrecy of the ballot, and request them to refrain from any action which may tend to undermine the secrecy of the ballot, including the display of filled ballot papers during the conduct of the vote. The Secretary-General shall also be requested to remind all those responsible for the supervision of any vote by secret ballot of the requirement not to disclose to any unauthorized person any information which might tend, or be presumed to tend, towards destroying the secrecy of the ballot.
- c) The Elections Officer may require any delegates or Secretariat personnel participating in the supervision of the ballot to dispose of any electronic recording devices prior to entering the room where the count is to take place. This requirement may be enforced by any means deemed appropriate by the Elections Officer.
- d) This guidance is without prejudice to any further arrangements that the Conference may wish to take, including with respect to actions taken by delegations or Secretariat personnel that may tend to undermine the secrecy of the ballot. This guidance is also without prejudice to any steps that the Secretariat may consider necessary to ensure that the results of ballots remain undisclosed until the formal announcement.