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# COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

## Hundred and Fifteenth Session

Rome, 21-23 March 2022

### Participation of private sector as observers at the FAO Governing Bodies sessions

#### I. Introduction

1. This item is presented to the Committee on Constitutional and Legal Matters (CCLM) under Rule XXXIV, paragraph 7 (m) of the General Rules of the Organization (GRO), whereby the Committee considers specific items referred to it that may arise out of “*policy aspects of relations with international governmental or non-governmental organizations, national institutions or private persons*”.

#### II. Background

2. At its 97th Session (21-23 October 2013), the CCLM noted that the practice governing civil society organizations (CSOs) and private sector participation in FAO meetings was deviating from the legal framework set out in the Basic Texts. The CCLM considered that there was a need for a more simplified and coherent mechanism for their participation and “*requested that a process of redefinition of applicable procedures be initiated by the secretariat, involving such units as deemed appropriate, and in informal consultation with CCLM Members*”.<sup>1</sup> The Council, at its 148th Session, endorsed the Report of the 97th Session of the CCLM and “*stressed the need to initiate a process for the reformulation of rules and procedures for [their] participation in meetings of FAO, with due regard being paid to the (...) FAO Strategies for Partnerships with Civil Society Organizations and the Private Sector, and emphasized that the intergovernmental nature of FAO’s decision making process would be maintained*”.<sup>2</sup>

3. At its 98th Session (17-19 March 2014), the CCLM examined “*Proposed Guidelines for Participation of Civil Society Organizations and Private Sector representatives in FAO meetings*”<sup>3</sup> and “*expressed its readiness to re-examine*” the rules and procedures in light of such guidance as

<sup>1</sup> CL 148/2 Rev.1.

<sup>2</sup> CL 148/REP.

<sup>3</sup> CL 149/2 Rev.1.

could be provided by the Council. During its 149th Session (16-20 June 2014), the Council noted that a number of provisions needed “*additional clarification and reconsideration*”.<sup>4</sup>

4. At its 99th Session (20-23 October 2014), the CCLM examined draft “*Rules and Procedures for Participation of Civil Society Organizations and Private Sector Representatives in FAO Meetings*”,<sup>5</sup> and “*recommended to the Council that the Independent Chairperson of the Council be mandated to hold consultations with the regional groups, with involvement of all Members, with a view to reaching policy agreement on the proposed rules*”. The Council, at its 150th Session (1-5 December 2014), endorsed the recommendation of the CCLM.<sup>6</sup>

5. Extensive informal consultations were held by the Independent Chairperson of the Council (ICC) with the Regional Groups, and with the Chairpersons and Vice-Chairpersons. However, at the 154th Session of the Council (30 May-3 June 2016), the ICC reported that consensus had not “*emerged*”. The ICC proposed “*that current practices be continued until such time as Members may decide to revisit this issue*”.<sup>7</sup>

6. The Council, at its 165th Session (30 November-4 December 2020), approved the Strategy for Private Sector Engagement 2021-2025 (“the Strategy”).<sup>8</sup> The Strategy specifies that:

*Enhanced collaboration with the private sector under this Strategy is based on the understanding that: i) given the intrinsic nature of its membership and governance and FAO’s status as an Intergovernmental Organization of the United Nations System, the main interlocutors of FAO are the Members; and ii) the Basic Texts, rules, procedures or composition of FAO’s governing bodies are not changed or affected by this Strategy.*<sup>9</sup>

7. Tools and processes are being put in place to support implementation of the Strategy, ensuring that engagement with the private sector is in line with UN system practices and does not compromise FAO’s integrity, independence, neutrality, credibility or reputation.

8. Enhanced engagement with the private sector has led to increasing requests for participation of private sector representatives at sessions of the FAO Governing Bodies. It would, therefore, appear to be timely for Members to resume consideration of possible rules and procedures for private sector participation in the FAO Governing Bodies sessions.

### **III. Rules and present practice on the participation of private sector representatives in the FAO Governing Bodies sessions**

9. While participation of International Non-Governmental Organizations (INGOs) in the Governing Bodies sessions is addressed in the Basic Texts,<sup>10</sup> there is no provision addressing participation of the private sector.<sup>11</sup>

<sup>4</sup> [CL 149/REP.](#)

<sup>5</sup> [CL 150/2.](#)

<sup>6</sup> [CL 150/REP.](#)

<sup>7</sup> [CL 154/INF/8.](#)

<sup>8</sup> [CL 165/REP.](#)

<sup>9</sup> [FAO Strategy for Private Sector Engagement 2021-2025](#), page 3.

<sup>10</sup> Part M on “*FAO Policy concerning relations with International Non-Governmental Organizations*” and Part N on “*Granting of Observer Status (in respect of International Governmental and Non-Governmental Organizations)*”, 2017 edition.

<sup>11</sup> The only exception to this is the Committee on World Food Security (CFS). In 2009, the CFS underwent a process of reform setting up a sui generis regime. The private sector can participate in sessions of the Committee either as participants or observers. Whereas participants can take the floor in debates without having to wait until Members have intervened, observers can intervene in the plenary only upon invitation by the Chairperson. Only CFS Members have decision-making authority. In addition, the CFS legal framework recognized the possibility for the “private sector” to autonomously establish a Private Sector Mechanism (PSM), a facility for consultation and participation in the CFS. As of now, the PSM includes over 600 registered private sector representatives.

10. Currently, participation of observers from the private sector in the FAO Governing Bodies meetings, in particular the Technical Committees, is under *ad hoc* arrangements. For example, trade representative bodies (often registered as non-profit entities under national laws) have participated as INGOs and, on occasion, delegations of Member Nations have included individuals from the private sector.

#### IV. Rules and practice in other organizations of the United Nations System

11. The United Nations General Assembly (UNGA) does not make general provision for the participation of the private sector in its sessions. It has, on occasion, adopted a modalities resolution, on an *ad hoc* basis, allowing private sector entities to participate in specific high-level meetings or conferences as observers. For example, in its resolutions 75/326<sup>12</sup> and 75/320<sup>13</sup>, the UNGA decided to invite observers from the private sector which, prior to their participation, were included in a list drawn up by the President and approved by the UNGA.

12. Non-State actors (NSAs) in “*official relations*”<sup>14</sup> with the World Health Organization (WHO) can attend sessions of the World Health Assembly, the Executive Board and the six regional committees as observers. Three groups of NSAs are eligible for official relations: NGOs, international business associations and philanthropic foundations. To be eligible for “*official relations*”, an entity must: demonstrate a sustained and systematic engagement with WHO for at least two years; have aims and activities that are in conformity with the spirit, purposes and principles of WHO’s Constitution; contribute significantly to the advancement of public health; be international in membership and/or scope; have a constitution or similar basic document; have an established headquarters, governing body and administrative structure; and have a regularly updated entry in the WHO Register of NSA. The WHO Executive Board decides on the admission of NSAs into official relations with WHO and reviews this status every three years, or earlier if proposed by the WHO Director-General.

13. Pursuant to Article 7 (1) of the Statutes of the United Nations World Tourism Organization (UNWTO) “[a]ffiliate membership of the Organization shall be open to international bodies, both intergovernmental and non-governmental, concerned with specialized interests in tourism and to commercial bodies and associations whose activities are related to the aims of the Organization or fall within its competence”.<sup>15</sup> Private sector entities can participate in the UNWTO’s General Assembly, Executive Council and their subsidiary organs as Affiliate Members, as provided in the relevant rules of procedure. For example, Rule 24 of the Rules of Procedure of the General Assembly establishes that “[t]he Committee of Affiliate Members may appoint not more than three observers and each Affiliate Member may appoint one observer to participate in the meetings of the Assembly and its subsidiary organs”.<sup>16</sup> Applications for Affiliate Membership are submitted to the Executive Council for approval and then to the General Assembly for ratification. The Rules of Procedure of the Committee of the Affiliate Members set out the rights and obligations of Affiliate Members, criteria and processes for admission, as well as the organization of the structures for Affiliate Members, including a Plenary of Affiliate Members and a Board. Any Affiliate Member found to conduct or persist in policies and practices contrary to the obligations listed in those Rules of Procedure may be suspended.

<sup>12</sup> Modalities for the international meeting entitled ‘Stockholm+50: a healthy planet for the prosperity of all – our responsibility, our opportunity’. See UNGA resolution 75/326, paragraph 24 and Annex II.

<sup>13</sup> Scope, modalities, format and organization of the high-level meeting of the General Assembly to commemorate the twentieth anniversary of the adoption of the Durban Declaration and Programme of Action. See UNGA resolution 75/320, paragraphs 7.c) and 10.

<sup>14</sup> “‘Official relations’ is a privilege that the Executive Board may grant to nongovernmental organizations, international business associations and philanthropic foundations that have had and continue to have a sustained and systematic engagement in the interest of the Organization” (Framework of Engagement with non-State actors, adopted in resolution WHA69.10).

<sup>15</sup> [UNWTO Basic Documents](#).

<sup>16</sup> [UNWTO Basic Documents](#).

14. Pursuant to its Constitution, the International Telecommunications Union (ITU) “*is an intergovernmental organization in which Member States and Sector Members,<sup>17</sup> having well-defined rights and obligations, cooperate for the fulfilment of the purposes of the Union*”.<sup>18</sup> While Sector Members are entitled to participate fully in the activities of the Sector of which they are members and may attend, as observers, meetings of the ITU Council, its committees and its working groups, they do not participate in the Plenipotentiary Conference which is restricted to Member States. Requests from entities to become Sector Members may require approval by the Council or the Member State concerned, depending on the type of entity.

## **V. Proposed guidelines for participation of private sector in the FAO Governing Bodies sessions**

15. The Organization is committed to facilitating the participation of the private sector in FAO activities and has recognized the relevance and value of its contribution to the achievement of the Sustainable Development Goals (SDGs) and the FAO Strategic Framework. Nevertheless, it may be appropriate to set down appropriate criteria and procedures should be in place to uphold:

- a) the intergovernmental nature of FAO’s decision-making process;
- b) FAO’s neutrality, impartiality and transparency;
- c) accountability, and awareness of represented interests, to ensure the appropriateness and relevance of the participation on an observer basis.

16. Proposed criteria and procedures are set out in **Annex I**. These propose, *inter alia*, that:

- a) Permanent observer status should be granted only to entities that have entered into a formal partnership arrangement with FAO according to FAO’s rules and procedures, including a due diligence review and review by the Engagements and Partnerships Committee. The status would subsist only for the duration that the formal partnership remains valid.
- b) *Ad hoc* observer status would be granted only on the basis of invitations, which would be based upon the specific agenda items to be addressed at a specific Governing Body session. Provisional invitations would be issued by the Director-General following consultations with the relevant Chairperson. The *ad hoc* observer participation would be subject to approval by the Governing Body concerned at the opening of its session. Invitees would be subject to a due diligence review.

## **VI. Suggested action by the Committee**

17. The Committee is invited to review and advise on the proposed Guidelines for participation of private sector in the FAO Governing Bodies sessions. In so doing, the Committee may wish to bear in mind the following considerations, which are reflected in the Strategy for Private Sector Engagement:

- a) the intergovernmental nature of FAO’s decision-making process should be maintained, i.e. Members have the exclusive power to take decisions; and
- b) global norms, standards or policies should continue to be developed without influence from any vested interest.

<sup>17</sup> Pursuant to art. 19 of the Convention of the International Telecommunication Union, “*the Secretary-General and the Directors of the Bureaux shall encourage the enhanced participation in the activities of the Union of the following entities and organizations: a) recognized operating agencies, scientific or industrial organizations and financial or development institutions which are approved by the Member State concerned; b) other entities dealing with telecommunication matters which are approved by the Member State concerned; c) regional and other international telecommunication, standardization, financial or development organizations*”.

<sup>18</sup> [ITU Constitution](#), art. 2

## ANNEX I

## **Proposed Guidelines for participation of the private sector in sessions of the FAO Governing Bodies**

### **I. Principles and purposes**

1. The participation of private sector entities in sessions of the FAO Governing Bodies is intended to enable FAO and its Members to secure expert information and advice, and to provide private sector entities with the opportunity to express their views in their fields of professional and technical competence on matters within FAO's mandate.
2. FAO's engagement with the private sector is guided by clear principles. They establish that engagements should:
  - a) demonstrate a clear contribution to the attainment of the Sustainable Development Goals (SDGs) and the FAO Strategic Framework;
  - b) respect the values of FAO and the United Nations;
  - c) not compromise FAO's neutrality, impartiality, integrity, independence, credibility or reputation;
  - d) be effectively managed and avoid any conflicts of interest or other risks to FAO;
  - e) demonstrate a contribution to FAO's mandate, goals and mission and to the national development goals of its Members;
  - f) respect the intergovernmental nature of FAO and the decision-making authority of its Members, as set out in FAO's Constitution;
  - g) support and enhance, without compromise, the neutral and independent scientific and evidence-based approach that underpins FAO's work;
  - h) protect FAO from any undue influence, especially on processes for setting and applying policies, norms and standards;
  - i) based on transparency, openness, inclusivity, accountability, integrity and mutual respect;
  - j) maximize local development impact and number of beneficiaries, particularly smallholder farmers and associations, youth and women;
  - k) embrace the principles to "leave no one behind" and "do no harm".
3. Private sector participation in the sessions of the FAO Governing Bodies will be guided by the above-mentioned principles.

### **II. Definition of the private sector**

4. For the purpose of these Guidelines, the guidance found in the FAO Strategy for Private Sector Engagement applies. Thus, the private sector encompasses a broad array of entities, ranging from farmers, fishers, foresters, livestock herders, and Micro, Small & Medium Enterprises (MSMEs) (including cooperatives, farmers/fishers/foresters/livestock producers' organizations and social enterprises) to large firms, both domestic and multinational companies, and philanthropic foundations. The Strategy also takes account of industry and trade associations and consortia that represent private sector interests. Any consortium, organization or foundation largely funded or governed by private entities will be considered private sector, as well as state-owned enterprises (SOEs). Academia and research institutions are not covered by the Strategy.

### **III. Forms of observer status**

5. Subject to the criteria and procedures set out herein, private sector entities may be permitted to participate in the sessions of the FAO Governing Bodies on the basis of either permanent observer status or *ad hoc* observer status.

#### IV. Criteria and procedures for grant of observer status

6. Before any form of observer status is granted, the private sector entity must supply the information which will be necessary for the Organization to undertake a due diligence review, and to ensure conformity with the eligibility criteria set out in these Guidelines.

7. Before being granted observer status, private sector entities may be requested to develop collaborative relations with the Organization through institutional arrangements and tools for collaboration set out in the policies and decisions of the FAO Governing Bodies regarding engagement with the private sector.

##### A. Permanent observer status

###### *Eligibility*

8. To be eligible for permanent observer status, a private sector entity must:

- a) be international in its structure and scope of activity, and be sufficiently representative of the field of interest in which it operates, and of a recognized standing that renders its views on policy a matter of great interest to governments and to FAO;
- b) be concerned with matters covering a portion of FAO's field of activity;
- c) be in a formal partnership arrangement with FAO, entered into in accordance with the applicable FAO rules and procedures;
- d) have aims and purposes in conformity with the general principles embodied in the Constitution of FAO;
- e) be established under national, regional or international law, and have a permanent directing body, authorized representatives and systematic procedures.

9. An entity whose primary objectives are more closely related to those of another specialized agency of the United Nations may only be admitted to permanent observer status after consultation with that other agency.

10. Permanent observer status will not normally be granted to individual private sector entities that are part of a larger organization (such as, for example, a trade or sector association) authorized to represent them and which has been granted permanent observer status and, when such an organization is formed, its individual members will automatically cease to enjoy individual permanent observer status.

###### *Procedure*

11. The Council will examine and take a decision on the proposals for permanent observer status submitted by the Director-General, which will take into account the outcome of the due diligence review referred to in paragraph 6 above, the criteria for eligibility, and whether the commitments required pursuant to paragraph 14 of these Guidelines have been provided.

12. Permanent observer status becomes effective upon approval by the Council and upon acceptance by the private sector entity of the conditions laid down hereunder. Subject to paragraph 24 below, permanent observer status will normally be enjoyed for the duration that the formal partnership arrangement between the entity and FAO remains valid. Should the formal partnership be terminated before its expiry, the permanent observer status will automatically discontinue.

###### *Rights and obligations arising from permanent observer status*

13. A private sector entity granted permanent observer status:

- a) will be entitled to:
  - i. send a representative to the sessions of the FAO Governing Bodies, who may be accompanied by advisers;

- ii. submit to the Director-General, under the authority of its Governing Body, its views in writing (in an official language of FAO) on agenda items in respect of which it has specialist knowledge, expertise or competence; these views will be circulated as submitted in advance of the sessions;
  - b) will not have the right to participate in discussions during the sessions unless accorded the right to speak by the Chairperson;
  - c) may be invited by the Director-General to participate in experts' meetings, technical conferences or seminars on subjects which fall within its fields of interest and, if it does not so participate, it may submit its views in writing to any such meeting or technical conference;
14. As a condition for the grant of permanent observer status, a private sector entity must:
- a) undertake to cooperate fully with FAO for the furtherance of the objectives of the Organization within its specialized field and to pursue SDG alignment in its activities;
  - b) undertake to disclose the nature of the interests which it represents as may be required by the Secretariat;
  - c) undertake to respect FAO's constitutional principles and values;
  - d) warrant that nothing in its governance or operational activities, or those of its affiliates, is incompatible with FAO's constitutional mandate, principles and policies, or with internationally recognized principles and relevant international legal instruments concerning human rights, labour, environment and anti-corruption, as reflected in the United Nations Global Compact Principles;
  - e) warrant that it has zero tolerance for all forms of sexual wrongdoing, and to acknowledge that sexual exploitation and abuse and sexual harassment violate human rights and are incompatible with the core values of the United Nations System;
  - f) send FAO its reports and publications on a regular basis, and keep FAO informed of its work in areas relevant to FAO's mandate, and of any changes in its structure, membership and secretariat;
  - g) undertake not to use FAO's name and logo in any press release, memo, report, or other published disclosure related to its participation in FAO sessions or meetings without prior written consent of the Organization.

#### B. Ad hoc observer status

##### *Eligibility*

15. To be eligible for *ad hoc* observer status for specific sessions of the FAO Governing Bodies, a private sector entity must:
- a) be international in its structure and scope of activity, and representative of the field of interest in which it operates;
  - b) be concerned with matters of relevance to FAO's mandate;
  - c) be established under national, regional or international law, and have a permanent directing body and authorized representatives.

16. *Ad hoc* observer status will not normally be granted to individual private sector entities that are part of a larger organization authorized to represent them (such as, for example, a trade or sector association) where that larger organization has been granted permanent observer status or *ad hoc* observer status for the session in question.

##### *Procedure*

17. *Ad hoc* observer status is granted by invitation only, such invitations being issued taking into account the specific matters to be addressed at a particular FAO Governing Body session.

18. The Director-General may provisionally invite private sector entities concerned with a particular area of FAO's field of activities to participate in specific sessions, where it is considered



that those entities may contribute significantly to the Members' consideration of specific agenda items.

19. In determining whether to extend a provisional invitation, the Director-General will take into account the outcome of the due diligence review referred to in paragraph 6 above, the criteria for eligibility, whether the entity has provided the commitments required pursuant to paragraph 22 of these Guidelines. Prior to issuing the provisional invitation, the Director-General will consult the Chairperson of the relevant Governing Body on the proposed invitee(s).

20. At the opening of the session, the Chairperson will seek the approval of the Members to the participation of the entities that have received a provisional invitation.

*Rights and obligations arising from ad hoc observer status*

21. A private sector entity granted *ad hoc* observer status for specific sessions will:

- a) be entitled to send a representative to the specific session of the Governing Body to which it has been invited, who may be accompanied by advisers;
- b) be entitled to submit to the Director-General its views in writing (in an official language of FAO) on the agenda items in respect of which it has specialist knowledge, expertise or competence; these views will be circulated as submitted in advance of the session;
- c) not have the right to participate in discussions during the session unless accorded the right to speak by the Chairperson.

22. As a condition for participation on an *ad hoc* observer basis for a specific Governing Body session, a private sector entity must:

- a) undertake to cooperate fully with FAO for the furtherance of the objectives of the Organization within its specialized field and to pursue SDG alignment in its activities;
- b) disclose the nature of the interests which it represents as may be required by FAO;
- c) respect FAO's constitutional principles and values;
- d) warrant that nothing in its governance or operational activities, or those of its affiliates, is incompatible with FAO's constitutional mandate, principles and policies, or with internationally recognized principles and relevant international legal instruments concerning human rights, labour, environment and anti-corruption as reflected in the United Nations Global Compact Principles;
- e) warrant that it has zero tolerance for all forms of sexual wrongdoing, and to acknowledge that sexual exploitation and abuse and sexual harassment violate human rights and are incompatible with the core values of the United Nations System;
- f) undertake not to use FAO's name and logo in any press release, memo, report, or other published disclosure related to its participation in FAO sessions or meetings without prior written consent of the Organization.

## **V. Reporting and review**

23. The Director-General's report to the Conference will include information on the relations between FAO and private sector entities with permanent and *ad hoc* observer status granted in accordance with the present Guidelines.

24. Every two years, the Council will review:

- a) A list of private sector entities approved for permanent observer status. The Council may terminate permanent observer status of those entities which are no longer considered appropriate or necessary. A private sector entity with permanent observer status which has not attended any meetings during a period of two years will be deemed not to have sufficient interest to warrant the continuance of that status and the permanent observer status will automatically discontinue.



- b) A list of the private sector entities granted *ad hoc* observer status for all Governing Bodies sessions convened during the previous two years.

25. The Council will review these Guidelines at least every four years and will decide, as necessary, on any amendments which it may deem desirable.