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COUNCIL

Hundred and Seventieth Session

13-17 June 2022

Report of the 115th Session of the Committee on Constitutional and Legal Matters (21-23 March 2022)

Executive summary

The Committee on Constitutional and Legal Matters (CCLM) brings to the attention of the Council its findings and recommendations on:

- a) Concept note in relation to the types of FAO products and the means for their development.
- b) Participation of private sector as observers at the FAO Governing Body sessions.
- c) Update on the FAO policies on Protection of Data and Intellectual Property Rights.
- d) Governance of FAO's statistical and other data activities and their alignment with the cross-cutting FAO policies on Protection of Data and Intellectual Property Rights.
- e) Code of Conduct for Voting
- f) Restoration by the Conference of the voting rights of Member Nations in arrears in the payment of their financial contributions to the Organization.
- g) Regional Conference for Europe – Proposed change of name.
- h) Proposal to amend Staff Regulation 301.13.6.

Suggested action by the Council

The Council is requested to endorse the findings and recommendations of the CCLM.

Queries on the substantive content of this document may be addressed to:

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I. Introduction

1. The Hundred and Fifteenth Session of the Committee on Constitutional and Legal Matters (CCLM) was held from 21 to 23 March 2022.
2. The Session, open to silent observers, was chaired by Ms Alison Storsve, who welcomed all the participants.
3. The following Members joined the Session:
 - H.E. Mr Khaled Ahmad Zekriya (Afghanistan)
 - Ms Lamia Ben Redouane (Algeria)
 - Ms Julie Émond (Canada)
 - Mr Shanil Dayal (Fiji)
 - H.E. Mónica Robelo Raffone (Nicaragua)
 - Ms Nina P. Cainglet (Philippines)
 - Ms Zora Weberová (Slovakia)
4. The CCLM was informed that, for this Session, Mr Esala Nayasi (Fiji) had been replaced by Mr Shanil Dayal.
5. The Session was convened in hybrid modality, with some Members participating in person at FAO headquarters (Algeria, Canada, Nicaragua, Philippines, and Slovakia) and others participating virtually (Afghanistan and Fiji) on an exceptional basis due to the COVID-19 pandemic in Italy and worldwide.
6. The CCLM followed the modalities applied to the CCLM 110th Session, as reflected in the Note from the Chair (Annex 1 to CL 164/2) and agreed to suspend the rules that may be incompatible with the hybrid session, in accordance with Rule VII of the Rules of Procedure.

II. Item 1: Adoption of the agenda and arrangements for the Session (CCLM 115/1)

7. The CCLM Members took note of the exceptional arrangements for the Session. The Committee agreed to consider a proposal to amend Staff Regulation 301.13.6 under item 9 “Any other matters”, and approved its Agenda.
8. To ensure time for adequate preparation, the CCLM Members underlined that documents should be circulated to all CCLM Members, as early as possible in advance of sessions, in all official languages in conformity with the Basic Texts.

III. Item 2: Concept note in relation to the types of FAO products and the means for their development (CL 170/INF/6)

9. The CCLM welcomed document CL 170/INF/6 “*Concept note in relation to the types of FAO products and the means for their development*”, providing Members with illustrative, non-exhaustive guidance on the practice of the Organization in relation to the types of FAO products and the means for their development.
10. The CCLM underscored the primacy of the legal basis and criteria contained in the Basic Texts *vis-à-vis* the development and promulgation of the wide range of FAO products. It considered that the Concept Note and its Annex were useful orientation tools to guide Members on the expected procedures for developing and promulgating these products. Recognizing that the Note was non-exhaustive and that the relevant process would be guided by the substantive content of a product, the Committee encouraged inclusive, transparent and open consultations with Members where the means of development for a FAO product was unclear or ambiguous.

11. The CCLM invited the Council to note this document as a practical orientation tool to guide Members, recalling its earlier recommendation against the elaboration of a formal standardized procedure.

IV. Item 3: Participation of private sector as observers at the FAO Governing Body sessions (CCLM 115/2)

12. The CCLM considered document CCLM 115/2 “*Participation of private sector as observers at the FAO Governing Body sessions*”.

13. The Committee highlighted the importance of maintaining the intergovernmental nature of the FAO Governing Bodies when considering participation of private sector entities as observers in those Bodies’ sessions, recalling that decision-making remains the prerogative of FAO Members.

14. The Committee preliminarily considered the scope of guidelines in document CCLM 115/2 for participation of private sector observers in sessions of the FAO Governing Bodies in light of the approval by the Council, at its 165th Session, of the Strategy for Private Sector Engagement 2021-2025 (hereinafter referred to as the “Strategy”).

15. The Committee also recommended that the Independent Chairperson of the Council (ICC) convene informal consultations on this issue; in particular, to elicit from the Membership its interest in developing a permanent observer status for private sector entities.

16. The Committee welcomed the clarifications provided by the Secretariat with respect to the criteria for the issuance of invitations for *ad hoc* observer status, in line with principles and criteria contained in the Strategy and related processes.

17. The Committee recommended that, pending the approval of guidelines, the current *ad hoc* arrangements continue to be applied.

18. The Committee finally expressed its readiness to continue consideration of this matter at its 116th Session, observing that approved guidelines should be included in the Basic Texts.

V. Item 4: Update on the FAO policies on Protection of Data and Intellectual Property Rights (CCLM 115/3)

19. The Committee welcomed document CCLM 115/3 “*Update on the FAO policies on Protection of Data and Intellectual Property Rights*”.

20. The Committee appreciated that the document set out in Annex I of document CCLM 115/3 (the “Data Protection Policy”) had been subject to Members’ consultation and that the recommendations of the 113th Session of the CCLM and of the 168th Session of the FAO Council had been taken into account. It looked forward to considering, at its 116th Session, FAO’s intellectual property rights (IPR) policy.

21. Having carefully considered the document, the Committee recommended to the Council that the Policy be revised to address the following:

- a) That the language expressing the requirement of affirmative consent be strengthened, with the cases where implicit consent could exceptionally be relied upon clarified, including setting limits to the duration for which implicit consent could form a basis for data processing;
- b) That the linkages between the internal bodies addressing data protection and data in general be clarified, for example through the definitions set out in Annex I to the Policy;
- c) That the FAO Oversight Advisory Committee could discharge an independent oversight function with regards to data protection.

- d) That the Data Protection Policy reflects the rights of data owners who are not data providers.

22. The Committee considered that the changing technology landscape and operational needs of the Organization may require the Data Protection Policy to be reviewed and adjusted, from time to time, upon consultations with the Members, to ensure that it remains fit-for-purpose.

23. The Committee recommended that informal consultations be held with Members concerning redress mechanisms, observing that this could take place after the promulgation of the Policy.

24. The Committee expressed its view that the Data Protection Policy is consistent with the Basic Texts.

25. Contingent on its comments outlined in paragraph 21 above, and with the understanding that these will be incorporated into the Policy, the Committee recommended the promulgation of the Policy with a view to its early implementation.

26. The Committee looked forward to receiving information at its 116th Session on how the items set out under paragraphs 21 and 23 have been addressed. The Committee also looked forward to receiving information at its 116th Session on linkages between the promulgated Data Protection Policy and the IPR policy, as well as on the alignment of other instruments with the Data Protection Policy.

VI. Item 5: Governance of FAO's statistical and other data activities and their alignment with the cross-cutting FAO policies on Protection of Data and Intellectual Property Rights (CL 170/18)

27. The CCLM considered document CL 170/18 "*Governance of FAO's statistical and other data activities and their alignment with the cross-cutting FAO policies on Protection of Data and Intellectual Property Rights – Proposal for an improved internal coordination and its alignment with corporate policies on Data Protection and Intellectual Property Rights*".

28. The Committee welcomed the emphasis on improved internal coordination on statistical matters, including between country and regional level and FAO headquarters.

29. The Committee recalled its mandate to address legal and constitutional matters and, specifically, to assess the alignment of this document with the Data Protection Policy, as addressed in Section III of the document. It welcomed the confirmation provided that statistical activities would be reviewed once the Data Protection Policy was promulgated with a view to ensuring alignment.

30. The Committee concluded its consideration of this matter. It looked forward to receiving an update within the context of reporting on the Data Protection Policy (see item 4 above) on alignment of this work, as well as other instruments, with the Data Protection Policy.

VII. Item 6: Code of Conduct for Voting

31. The ICC provided a detailed update on his consultations with the Membership on a draft Code of Conduct for Voting.

32. The Committee noted the ICC's efforts to refresh the deliberations during his consultations with Members, in particular, the development of an ICC proposed text. The Committee commended the ICC for his continuing efforts through open, transparent, inclusive consultations with the full Membership with a view to finalizing a draft Code of Conduct for Voting for consideration by the 43rd Session of the Conference, following review by the relevant Governing Bodies.

33. The Committee confirmed its readiness to consider the draft Code of Conduct for Voting, when available.

VIII. Item 7: Restoration by the Conference of the voting rights of Member Nations in arrears in the payment of their financial contributions to the Organization

34. The ICC provided an oral update on his consultations on the restoration of voting rights of Member Nations in arrears in the payment of their financial contributions to the Organization.

35. The Committee appreciated the ICC's update, noting the impact of arrears on the Organization's financial situation.

36. The Committee welcomed the ongoing work being undertaken with a view to addressing recommendations of the 168th Session of the Council on a procedure for timely submission of applications, types of information, means of payment and payment plans.

37. The Committee expressed its readiness to consider, within the context of its mandate, any criteria developed by this process or draft resolution for consideration by the Council and the Conference.

IX. Item 8: Regional Conference for Europe – Proposed change of name (CCLM 115/4)

38. The Committee considered document CCLM 115/4 “*Regional Conference for Europe – Proposed change of name*”.

39. The Committee welcomed the paper prepared by the Secretariat and its presentation at the meeting. The Committee, noting the procedural steps that were followed for the change of the names of the “FAO Regional Conference for Asia and the Far East” to “FAO Regional Conference for Asia and the Pacific”, and of the “FAO Regional Conference for Latin America” to “FAO Regional Conference for Latin America and the Caribbean”, acknowledged that a process exists for changing the name of a Regional Conference, as described in document CCLM 115/4. This process requires consultations regarding the matter within the Regional Group concerned and a clear recommendation by the Regional Conference concerned, and subsequent consideration by the Committee and the Council prior to submission to the Conference for decision.

40. The Committee observed that the proposal for change of name of the FAO Regional Conference for Europe has not met all the procedural steps as described. The Committee expressed its readiness to consider this matter when the initial steps in this process have been completed.

X. Item 9: Any other matters

A. Proposal to amend Staff Regulation 301.13.6

41. The CCLM reviewed the proposal to change the name of Associate Professional Officers (APO) Programme to Junior Professional Officers (JPO) Programme and endorsed the amendment proposed to Staff Regulation 301.13.6 as follows:

“The Director-General shall determine the salary rates and the terms and conditions of employment applicable to personnel specially engaged for conference and other short-term service or for service with a mission, to ~~associate~~ junior professional officers, to part-time personnel, to consultants, to field project personnel, to national professional officers and to personnel locally recruited for service in established offices away from Headquarters”.