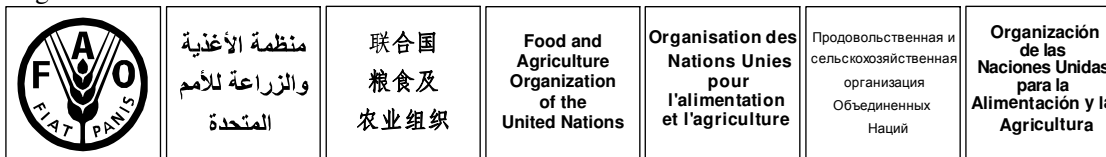


August 2012



COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

Ninety-fifth Session

Rome, 8 - 11 October 2012

Proposed Amendments to Rules XXXVII and XL of the General Rules of the Organization

I. Background

1. At its Ninety-fourth Session, held in March 2012, the Committee on Constitutional and Legal Matters (CCLM) recommended amendments to Rule XXXVII and Rule XL of the General Rules of the Organization (GRO). The proposed amendments are set out in the draft Conference Resolution contained in Appendix 2 to this document. The CCLM endorsed, *inter alia*, two proposed amendments to the GRO. One of the proposed amendments sets limitations on the authority of the Director-General to make appointments to positions as D-2 and above during the last six months of a term of office. The other deals with the period during which there will be an outgoing Director-General and a Director-General Elect and a number of facilities are to be given to the Director-General Elect¹.

2. At its Ninety-fourth Session, the CCLM recommended that the financial implications of the proposal be examined by the Finance Committee. Insofar as the financial implications of the proposals regarding the above facilities were deemed to be of a limited nature, the secretariat proposed that costs arising from their implementation be reported *post facto* to the session of the Finance Committee taking place immediately after the assumption of duties by a new Director-General. At its Hundred and Forty-third Session, in May 2012, the Finance Committee expressed a preference for a solution where a specific budget would be approved to cover the costs arising from the implementation of the proposals. The Finance Committee requested that comprehensive financial

¹ A proposal to adjust the nominations period established in Rule XXXVII, paragraph 1 (b) of the GRO is also made, as explained document CCLM 94/2, paragraphs 2 to 7, and as reflected in the report of the Ninety-fourth Session of the CCLM, [document CL 144/2, paragraph 4]. It is proposed that the duration of the nominations period be reduced from "not less than 12 months" to "three months" and that it should end at least 30 days prior to the session at which candidates are to address the Council.

information on the proposals be presented and noted that the proposals would be reconsidered by the Finance Committee at its session in Autumn 2012².

3. At its Hundred and Forty-fourth Session held in June 2012 the Council considered the matter on the basis of the report of the CCLM, which it endorsed. The Council acknowledged that there was broad support to the draft Conference Resolution “*Amendment to Rules XXXVII and XL of the General Rules of the Organization*” and “*noted that the proposed amendments would still be re-examined by the CCLM and the Finance Committee at their Autumn 2012 sessions, in light of additional information, including on their financial implications*”. The Council also noted that it would examine the matter again at its session of December 2012³.

4. The review of the matter by the above Governing Bodies, within their respective areas of competence, including the Council, revealed wide support to the proposal. As general background information, it is important to underline that the Director-General Elect when addressing the Hundred and Forty-third Session of the Council, on 1 December 2011, prior to taking office, indicated that he wished “*to suggest that Members define a clear set of procedures to assure a formal and smoother transition in the future, that would not rely only on the good-will and the friendly relationship between the incumbent and the newly elected Director-General*”⁴. Thus, the Director-General submitted a set of proposed amendments to the CCLM. The proposed amendments were made in the interest of the Organization and not in the interest of the Director-General as such, especially as these involved self-limitation of his own authority. The proposals would primarily benefit FAO and future Directors-General (and not the current Director-General or “*an incumbent*” Director-General) and reflect the above commitment of the Director-General Elect undertaken prior to taking office. Whether or not they should be ultimately approved is a matter for the Governing Bodies and ultimately for the Conference. The proposals made, as well as their rationale, were described in detail in document CCLM 94/2 and are partly reflected in Appendix 1 to this document containing an extract of document FC 143/21a).

5. Under the terms of proposed new paragraph 6 of Rule XXXVII, the Director-General is requested to take such measures as required to ensure that, as far as possible prior to taking office, a Director-General Elect is duly informed of the policies, programmes, staffing and activities of the Organization. The Director-General is required to make arrangements to ensure that the Director-General Elect has the benefit of technical and administrative support during that period. In view of the new pattern of sessions of the Conference, in future, the period of time between the election of a new Director-General - which will take place normally during the third week of the month of June of an election year - and the assumption of duties, on 1 August, will have a duration of some 5/6 weeks (i.e. less than in the situation which prevailed prior to the change in the cycle of the sessions of the Conference in 2011) and, therefore, the exceptional situation that occurred in 2011 will not arise again. It was initially considered that technical and administrative support during the period of some 5/6 weeks from the date of an election until the assumption of duties could be accommodated under existing allotments and, as necessary, temporary assignment of staff, and would not involve any additional obligations for Members. Any financial implications could be reported *post facto* to the Finance Committee. Such facilities would be seen primarily as a possibility of acceding to appropriate channels of information.

6. However, in its deliberations the Finance Committee expressed a clear preference for a solution where a specific, protected budget, within the net appropriation, would be approved by the Conference for a biennium in which there would be an election of the Director-General. Following review of the matter, the secretariat proposes the following allocation:

² CL 144/12, paragraph 40.

³ CL 144/REP, paragraphs 51 and 52.

⁴ Statement of the Director-General Elect José Graziano da Silva to the FAO Council, Hundred and Forty-third Session, Rome, 28 November-2 December 2011.

**ALLOCATION COVERING FACILITIES
TO BE PROVIDED TO THE DIRECTOR-GENERAL ELECT
[i.e. from the date of the election until the 1 August, date of assumption of duties
(six weeks)]**

Description	Assumptions and calculation	Estimated Cost USD
Two Liaison Officers ⁵	P5 (USD 28,705) and P4 (USD 25,027) level, unexpired rates, six weeks	53,732
Consultants ⁶	Inclusive honorarium (USD 22,500), travel (USD 5,000), DSA Rome (USD 15,414) for one consultant, six weeks	42,914
Two General Service staff members	G6 (USD 15,804) and G4 level, unexpired rates (USD 12,808), six weeks	28,612
Offices in accordance with FAO's space standards, including a small meeting room	No incremental cost for offices on FAO premises	0
Communication facilities	Computers, printers, cost of phone calls	5,000
Travel budget for the Director-General and the above officers	Two weeks DSA and plane tickets ⁷	30,208
Vehicle with a driver while in Rome	Cost of hire while the Director-General Elect is in Rome (four weeks) ⁸	8,832
Contingencies 10%		16,930
TOTAL		186,228

II. Suggested Action by the Committee

7. The CCLM is invited to take note of the financial information provided in this document regarding the implementation of proposed new Rule XXXVII, paragraph 6 of the GRO which will be examined by the Finance Committee. Subject to approval by the relevant Governing Bodies a specific allocation regarding the implementation of new Rule XXXVII, paragraph 6 of the GRO would be incorporated, within the net appropriation, in the Programme of Work and Budget for a biennium where there would be an election of a Director-General.

8. Noting the support to the proposed amendments already expressed at the Hundred and Forty-fourth Session, the CCLM is invited to recommend to the Council the endorsement of the draft Conference Resolution containing the proposed amendments to Rules XL and XXXVII of the GRO

⁵ These liaison officers could either be serving staff members temporarily assigned to these functions or recruited as short term staff.

⁶ An allocation would allow for the recruitment of consultants.

⁷ 4 trips at US\$ 6,000 each; 14 days at US\$ 400/DSA; 16 terminal payments at US\$ 38 each (4 trips).

⁸ Hiring of a vehicle with a driver for a period of four weeks, as follows: 10 hours during 20 days (US\$ 27 per hour), from 08:00 to 18:00; 2 hours during 20 days (US\$30 per hour), from 18:00 to 20:00; 9 hours during 8 days (US\$31 per hour) during week ends (US\$ 5,400+US\$ 1,200+ US\$ 2,232)..

set out in the Appendix 2 to this document, for subsequent on-forwarding to the Conference for approval.

Appendix I

Information on the Proposed Amendments to Rules XL and XXXVII of the General Rules of the Organization

[Extract from document FC 143/21a]

II. PROPOSED NEW RULE XL, PARAGRAPH 2 OF THE GRO

3. Under this new Rule, “*appointments made by the Director-General during the last six months of his or her term of office to positions at grade D-2 and above shall expire not later than five months after the end of that term of office. The new Director-General may extend any such appointments*”.

4. In practical terms, this proposal, without eliminating entirely the authority of the Director-General to make appointments to senior positions, would considerably restrict that authority. In the event that any appointments were to be exceptionally made, the new Director-General would have the option to confirm them. Subject to such views as the Finance Committee may hold on this matter, the proposal would not seem to have financial implications in the sense that its practical implication is, in fact, to dissuade the head of agency from making appointments during a period of six months prior to the expiry of the term of office.

III. PROPOSED NEW RULE XXXVII, PARAGRAPH 6 OF THE GRO

5. The CCLM endorsed, *inter alia*, an addition to Rule XXXVII whereby the Director-General shall take such measures as required to ensure that, as far as possible prior to taking office, a Director-General Elect is duly informed of the policies, programmes, staffing and activities of the Organization. The Director-General is required to make arrangements to ensure that the Director-General Elect shall have the benefit of technical and administrative support during that period.

6. The CCLM noted that, in view of the new pattern of sessions of the Conference, in future the period of time between the election of a new Director-General - which will take place normally during the third week of the month of June of an election year - and his or her assumption of duties, on 1 August, would have a duration of some 5 weeks (i.e. even less than in the situation which prevailed prior to the change in the cycle of the sessions of the Conference in 2011) and, therefore, the exceptional situation that occurred in 2011 would not arise again. The CCLM recommended that any financial implications of this amendment be examined by the Finance Committee.

7. The above amendment is of a general nature, consistent with the nature of the provisions of the GRO, and is intended to provide a basis for a new Director-General to be effectively informed of the policies, programmes, staffing and activities of the Organization. In addition, the outgoing Director-General should be under an obligation to make arrangements to ensure that the Director-General should have the benefit of technical and administrative support during that period. In this connection, it may be of interest to mention that this is generally in line with the report of the Joint Inspection Unit on “*Selection and Conditions of Service of Executive Heads in the United Nations System Organizations*” which called for a number of measures intended to facilitate a smooth transition and the assumption of duties by the new executive head⁹.

8. As a general principle, technical and administrative support during that limited period of some five weeks from the date of an election until the assumption of duties would be accommodated under existing allotments and, as necessary, temporary assignment of staff and would not involve any additional obligations for Members. Such facilities would be seen primarily as a possibility of

⁹ CL 141/INF/12 and JIU/REP/2009/8.

acceding to appropriate channels of information. Depending on the circumstances, the Director-General Elect should be able to benefit from the services of one or two liaison officers, secretarial assistance and office facilities. An allocation for the recruitment of consultants could be foreseen. Insofar as it would be neither feasible, nor appropriate to define such facilities now, it is proposed they be reported to the first session of the Finance Committee following immediately the election and the assumption of duties by a new Director-General. This would be the Autumn session of the Finance Committee in an election year.

Appendix II

Resolution ___/2013

Amendments to Rules XXXVII and XL of the General Rules of the Organization

THE CONFERENCE:

Recalling that the Conference at its Thirty-sixth Session, 18-23 November 2009, approved amendments to Rule XXXVII of the General Rules of the Organization and that the implementation of this Rule in 2011 underlined the desirability of further amendments thereto in order better to reflect the spirit of the Immediate Plan of Action for FAO Renewal (2009-11);

Recalling that the Committee on Constitutional and Legal Matters (CCLM) at its Ninety-fourth Session, from 19 to 21 March 2012, and at its Ninety-fifth Session, from 8 to 11 October 2012, proposed amendments to Rules XXXVII and XL of the General Rules of the Organization;

Noting that the Finance Committee at its Hundred and Forty-third Session, from 7 to 11 May 2012, and at its Hundred and Forty-sixth Session, from 5 to 9 November 2012, reviewed the financial implications of proposed new paragraph 6 of Rule XXXVII of the General Rules of the Organization;

Noting that the Council, at its Hundred and Forty-fourth Session, from 11 to 15 June 2012, and at its Hundred and Forty-fifth Session, from 3 to 7 December 2012, endorsed the Conference Resolution containing amendments to Rules XXXVII and XL of the General Rules of the Organization;

Decides to adopt the following amendments to Rule XXXVII (Appointment of the Director-General) of the General Rules of the Organization:¹⁰

Rule XXXVII - Appointment of the Director General

1. In pursuance of paragraph 1 of Article VII of the Constitution, the Director-General of the Organization shall be appointed under the following conditions:

(...)

- (b) In consideration of the expiry of the term of office of the Director-General, the Council shall set the dates for a period during which Member Nations may submit nominations for the office of Director-General. The nomination period shall have a duration of ~~not less than 12~~ 3 months and end at least ~~60~~ 30 days prior to the beginning of the session of the Council referred to in subparagraph (c) of this paragraph. The nomination period shall be communicated to all Member Nations and Associate Members by the Secretary-General of the Conference and Council. Nominations validly made in accordance with Rule XII, paragraph 5 of these Rules shall be communicated to the Secretary-General of the Conference and Council by the date set by the Council. The Secretary-General shall circulate these nominations to all Member Nations and Associate Members by the date likewise set by the Council, it being understood that in the case of an election taking place at a regular session of the Conference, such date set by the Council shall be not later than 30 days before the session of the Council provided for in subparagraph (c) of this paragraph.

¹⁰ Deletions are indicated using ~~strike-out text~~ and insertions are indicated using underlined italics

(...)

6. The Director-General shall take such measures as required to ensure that, as far as possible prior to taking office, a Director-General Elect is duly informed of the policies, programmes, staffing and activities of the Organization. The Director-General shall make arrangements to ensure that the Director-General Elect shall have the benefit of technical and administrative support during that period".

Decides to adopt the following amendments to Rule XL (Provisions Relating to Staff) of the General Rules of the Organization:

Rule XL – Provisions Relating to Staff

1. The staff of the Organization shall be appointed by the Director-General, having regard to paragraph 3 of Article VIII of the Constitution. Selection and remuneration shall be made without regard to race, nationality, creed or sex. The terms and conditions of appointment shall be fixed in contracts concluded between the Director-General and each member of the staff. Appointments to the posts of Deputy Directors-General shall be made by the Director-General, subject to confirmation by the Council.

2. Appointments made by the Director-General during the last six months of his or her term of office to positions at grade D-2 and above shall expire not later than five months after the end of that term of office. The new Director-General may extend any such appointments.

2.3. The Director-General shall submit proposals to the Finance Committee on the scale of salaries and conditions of recruitment and service of the staff and shall report to the Finance Committee and the Council any decisions or recommendations of the International Civil Service Commission relating to such matters. He shall submit proposals to the Finance Committee on the general structure of the administrative and technical services of the Organization. He shall, insofar as may be feasible, arrange for public announcements of staff vacancies and shall fill vacancies in accordance with such competitive methods of selection as he may consider most suitable for various types of appointment.

(other sub-paragraphs renumbered)

(Adopted on June 2013)