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COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

Hundred and Nineteenth Session

Rome, 9-11 October 2023

Dissemination of Memoranda of Understanding signed by FAO

I. Introduction

1. This matter is referred to the Committee on Constitutional and Legal Matters (“CCLM” or the “Committee”) under Rule XXXIV, paragraph 7(m), of the General Rules of the Organization (GRO), which provides that the Committee may consider any items referred to it by the Council or the Director-General which may arise out of “*policy aspects of relations with international governmental or non-governmental organizations, national institutions or private persons*”.

2. At its 171st Session in December 2022, under agenda item 20 “*Developments in fora of importance for the mandate of FAO*”, the Council received information on “*The VII Meeting of the Ministers of Agriculture of the Member States of the Shanghai Cooperation Organisation (SCO)*”.¹ Following its deliberations on this item, the Council requested additional information on the Memorandum of Understanding (“MoU”) concluded between FAO and the Secretariat of the Shanghai Cooperation Organisation (SCO)², an intergovernmental organization.³ In this context, the Council also raised the broader question of whether MoUs concluded with other intergovernmental organizations could be shared with Members, as is already the case for agreements with the private sector. In concluding its consideration of the item, the Council “*looked forward to discussing the*

¹ CL 171/INF/4 and CL 171/INF/4 WA1 (Web Annex 1).

² The MoU between FAO and the SCO Secretariat was signed in November 2019 in Tashkent, Uzbekistan, on the sidelines of the 18th meeting of the SCO Council of Heads of Government. It was concluded in accordance with paragraph 3 of UN General Assembly resolution 71/14 entitled “*Cooperation between the United Nations and the Shanghai Cooperation Organization*”, which “[p]roposes that the specialized agencies, organizations, programmes and funds of the United Nations system cooperate with the Shanghai Cooperation Organization with a view to jointly implementing programmes to achieve their goals”. Cooperation under this MoU includes areas of common interest such as climate change mitigation, sustainable management of natural resources, digitalization in agriculture, food markets, improved phytosanitary and veterinary frameworks, support to healthy diets in urban areas, and other important fields of mutual interest.

³ The Membership of the SCO comprises: the People's Republic of China, the Republic of India, the Republic of Kazakhstan, the Kyrgyz Republic, the Islamic Republic of Pakistan, the Russian Federation, the Republic of Tajikistan, the Republic of Uzbekistan, the Islamic Republic of Iran.

Documents can be consulted at www.fao.org

*dissemination of MoUs signed by FAO, at its 174th Session, following review by the relevant Governing Bodies.*⁴

II. Background

3. As of 26 June 2023, 328 MoUs and other general cooperation and partnership agreements had been signed between FAO and other intergovernmental organizations. MoUs with intergovernmental organizations are usually concluded with the Secretariat of the organization concerned, as the administrative body responsible for overseeing and coordinating the implementation of agreements.

4. Within FAO, the term “Memorandum of Understanding” is typically used to refer to a formal, binding instrument entered into by the Organization to establish a general framework for collaboration.⁵ An MoU typically lays the foundation for a partnership or collaborative relationship with another entity, covering key aspects of the relationship such as the broad objectives, scope and areas of cooperation.⁶ MoUs outline the essential legal terms governing the collaboration, addressing issues such as liability, intellectual property rights, confidentiality obligations, or use of the logo. They also include clauses reflecting FAO’s special status as an organization of the United Nations system.⁷

5. More detailed operational arrangements are subsequently concluded to address specific activities or projects falling under the umbrella of the MoU.

6. While the Organization’s MoU templates are the starting point for negotiations, modifications may be negotiated to meet the specific needs of the collaboration or the requirements of the other party, provided that such modifications are acceptable to FAO and are consistent with its legal status.

III. Relevant practice in FAO

A. Dissemination of Memoranda of Understanding concluded with private sector entities

7. Within the context of the implementation of the FAO Strategy for Private Sector Engagement, 2021-2025,⁸ and in response to the request of the FAO Council to increase transparency on FAO’s partnerships with the private sector,⁹ all MoUs and other agreements establishing a general framework for cooperation with the private sector are available to the Members on the Connect Portal,¹⁰ a password-protected platform available to the representatives of FAO’s Members.

B. Dissemination of Memoranda of Understanding concluded with intergovernmental organizations

8. The Organization publicizes the conclusion of MoUs with other intergovernmental organizations through various means. For example, news about physical or virtual signing ceremonies or key milestones related to MoUs and other agreements signed by the Organization are regularly

⁴ CL 171/REP, paragraph 56.

⁵ This term excludes other forms of agreements concluded by FAO, such as procurement instruments, financing and contribution agreements or legal arrangements concluded in the context of projects.

⁶ Areas of cooperation may typically include, but are not limited to, capacity building, knowledge exchange, provision of resources and development of funding initiatives in fields of common interest to the parties.

⁷ These essentially refer to the clauses on Dispute Settlement, Privileges and Immunities and Applicable Law.

⁸ Available at: <https://www.fao.org/documents/card/en/c/CB3352EN>.

⁹ At its 165th Session (30 November-4 December 2020), the Council approved the FAO Strategy for Private Sector Engagement, 2021-2025 and “*underscored the importance of increasing transparency and looked forward to reviewing the partnership agreements more thoroughly once the Connect Portal is launched*” (see CL165/REP, paragraph 11.f).

¹⁰ Accessible through: <https://www.fao.org/connect-private-sector/en/>.

shared on the FAO website¹¹ and other public platforms, including FAO social media accounts.¹² Additionally, public statements may be made at signing ceremonies or at launch events, and these are published on the website. Published information often includes a summary of the main objectives of the cooperation and a brief description of the parties involved, with the aim of keeping Members, partners and the general public informed of FAO's partnership efforts and ensuring transparency and accountability.

9. However, at present, there is no practice of making available to Members all the MoUs concluded with intergovernmental organizations through a dedicated password-protected portal similar to that for MoUs concluded with the private sector.

IV. Possible next steps

10. Should the Members so decide, steps can be taken to disseminate all MoUs concluded with other intergovernmental organizations through a dedicated password-protected portal. To implement this, in addition to putting in place the necessary technical arrangements, a number of steps are needed in order to address legal considerations.

11. Most of the MoUs concluded in the past do not contain general clauses permitting their dissemination without the express consent of the other party. In accordance with well-established legal principles, FAO must obtain the express consent of the other parties prior to dissemination or publication.

12. In light of the renewed emphasis by FAO Management on transparency, since July 2021, the standard FAO template for MoUs with intergovernmental organizations contains a dissemination clause allowing the parties to publish the agreement or information about the agreement on their respective websites, as follows:

This MoU or information about this MoU may be published on FAO's website after it has entered into force consistent with its policies on transparency, as amended or updated from time to time. [Other Party] may also publish the MoU or information about this MoU on its website after it has entered into force.

13. Most parties that have signed MoUs with FAO after July 2021 have agreed to publication.

14. However, for those MoUs signed before July 2021 that do not expressly provide for publication, and for those MoUs signed after that date where the dissemination clause was rejected by the partner, the Organization must actively seek the consent of each partner concerned. It is recalled that, consistent with the general legal principle set out above, FAO reached out to each private sector partner with which it had concluded an MoU to seek consent to publication on the Connect Portal.

15. A similar procedure to that used for the publication of private sector MoUs could be followed for intergovernmental ones. This would involve a review of all 328 MoUs to confirm whether or not they include a dissemination clause. This would be followed by individual requests to each partner where such a clause is not present. The timeframe for obtaining such consent may vary depending upon the internal legal rules of the intergovernmental organization in question, e.g., in some instances, this may require consent of the Members of that organization, in addition to acquiescence by its Executive Head.

16. It is noted that human and financial resources will be required to undertake the necessary steps to review the MoUs as set out above, and to develop and populate an appropriate password-protected

¹¹ <https://www.fao.org/home/en>.

¹² Photos of signing ceremonies are posted on FAO's flickr account, available at: <https://www.flickr.com/photos/faonews/>.

digital platform enabling Members to access the MoUs concluded with other intergovernmental organizations.

V. Suggested action by the Committee

17. The Committee is invited to provide any observations or guidance on the question of dissemination of MoUs concluded with other intergovernmental organizations within the context of its mandate, prior to its consideration by the Council at its 174th Session in December 2023.