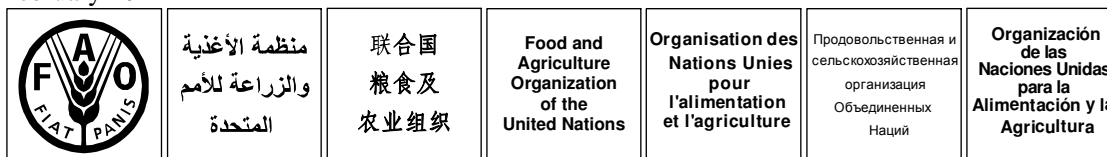


February 2012



# COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

**Ninety-fourth Session**

**Rome, 19 - 21 March 2012**

**Proposed amendments to Rules XXXVII and XL of the General Rules of  
the Organization**

## **I. Background**

1. This document contains proposed amendments to Rules XXXVII and XL of the General Rules of the Organization (GRO). The purpose of the amendments is twofold. First, to propose adjustments to the nominations period set forth in Rule XXXVII, paragraph 1 of the GRO. Second, to propose a number of transitional arrangements which would apply in connection with the election of a new Director-General. These would involve limited changes to Rules XXXVII and XL of the GRO in order to establish restrictions on the authority of a Director-General to make appointments to senior positions during the final months of the mandate and to provide a basis for the implementation of working arrangements in the course of a limited period of time, when there will be an outgoing Director-General and a Director-General Elect.

## **II. Proposed adjustments to the nominations period**

2. Rule XXXVII of the GRO entitled “*Appointment of the Director-General*” is reproduced in Appendix A of this document. For a correct understanding of this Rule and all its implications, it is also useful to keep in mind the new cycle of meetings of the Governing Bodies which is also reproduced in this appendix. Paragraph 1 of this Rule was amended by the Conference of FAO in 2009 in order to implement the action matrix of the Immediate Plan of Action for FAO Renewal (2009-11) on the election of the Director-General. More specifically, Rule XXXVII, paragraph 1 (b) of the GRO reads, *inter alia*, as follows:

*“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 months and end at least 60 days prior to the*

*beginning of the session of the Council referred to in sub-paragraph (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”.*

3. Rule XXXVII, paragraph 1 (c) of the GRO provides that the candidates address the session of the Council that is held not less than sixty days before the session of the Conference where the Director-General is elected. Therefore, in an election year, the candidates address a session of the Council which is held mid April (as was the case last year in 2011) before the election takes place in June.

4. The above framework, as applied to the election held at the session of the Conference in 2011 was implemented in the following manner. At the Hundred and Thirty-eight Session of the Council, held on 25 November 2009, the Council set 1 February 2010 to 31 January 2011 as the period during which nominations for the post of Director-General were receivable. The nominations validly received were circulated on 1 February 2011. The candidates addressed the Hundred and Forty-first Session of the Council which was held from 11 to 15 April 2011 and answered questions asked by Members. The candidates addressed the Thirty-seventh Session of the Conference on 25 June and the election took place on 26 June 2011.

5. Under current Rules, the Council is required to set dates for a nominations period. Because of the length of the nominations period, this is to be done some 20 months before the beginning of a new term and the nominations period is due to start one year and a half before the end of the term. This is an unprecedented situation in a Specialized Agency of the United Nations. A nomination period of 12 months, in the context of a four year term of office<sup>1</sup>, is an unnecessarily long period, also in the light of the fact that, as evidenced by the last electoral process, the candidatures of four out of six candidates were submitted during the last two weeks of the nominations period. Furthermore, such a long nominations period in the context of an electoral process involving only the Member Nations of the Organization, which, in addition, are the only parties which can propose candidates, does not seem to respond to any objective publicity needs (as the Governments of these Members Nations are generally well aware of the processes of designation of heads of agency). Finally, other considerations would seem to stress the desirability of a reduced electoral period, notably in a situation where a Director-General would be a candidate for a second term. From this perspective, it is also in the interest of the good administration of the Organization that the “electoral period” be reduced.

6. It is therefore proposed to reduce the overall duration of the process which currently does not seem to be in the interests of good administration. It is proposed that the Council, due to take place in the course of the fourth quarter of the first year of the biennium (usually around the end of November), would set the dates for the nominations period. This nomination period would have a duration of at least three months rather than twelve months and would end at least 30 days, rather than 60 days before the session at which candidates would address the Council. To take a specific example, while the dates for this session have

---

<sup>1</sup> The current Director-General is serving a reduced term of office of three years and seven months due to the implementation of transitional measures.

not yet been set, one could assume that the session of the Council during the last quarter of 2014 would be held towards the end of November/beginning of December. The dates for the nomination period could be for instance, from 10 December 2014 to 9 March 2015. A session of the Council will be held during the second half of April 2015 and the session of the Conference in June 2015. A possible option for the amendment of Rule XXXVII of the General Rules of the Organization could reflect the above time-frame<sup>2</sup>.

7. Appendix B to this document contains a draft Conference Resolution reflecting this option.

### **III. Proposals on transitional arrangements**

8. On 26 June 2011, the Conference of FAO elected a new Director-General who took office only on 1 January 2012. This was obviously a one-time situation due to a change in the timing of the sessions of the Conference. However, experience gained during this period of time suggested that there would be merit in seeking to improve current procedures in two respects.

8.1. First, the outgoing Director-General made a number of appointments to senior positions throughout 2011 and until the end of that year, even in situations where there was no urgent or otherwise objective need to fill such positions. This was at variance with the practice generally followed in organizations of the United Nations System in similar circumstances, and at variance with the practice of 1993 on the occasion of the previous change in Directors-General. This resulted in a situation where a new Director-General was appointed with a Senior Management Team which he did not select contrary to practices and courtesies generally followed in large organizations, including organizations of the United Nations System. It is proposed that a new paragraph 2 be added to Rule XL of the GRO establishing some restrictions to the authority of a Director-General to make appointments towards the end of the term of office.

8.2. Second, as mentioned above, the situation that arose in 2011 was a particular one in the sense that, due to a change in the cycle of sessions of the Governing Bodies, with particular reference to the Conference, a Director-General was elected on 26 June but took office only on 1 January 2012. In future, elections should normally take place in the third week of June and assumption of office will be on 1 August. Despite this reduction in the duration of the period where there will be an outgoing Director-General and a Director-General Elect, the experience of 2011 suggests that there is a need to make provision in the Basic Texts for an out-going Director-General to take such measures as required to ensure that the Director-General Elect, prior to taking office, is fully informed of the policies, programmes and activities of the Organization and that arrangements be made for the Director-General Elect to have the benefit of technical and administrative support. It is therefore proposed that a further

---

<sup>2</sup> Should it be proposed to have a longer nomination period, because of the current schedule of sessions it would be necessary that the dates be set in the course of the session of the Council that usually takes place at the end of the second quarter of the first year of the biennium. Thus the session of the Council meeting towards the end of June 2014 would set those dates. However this might be too early, in the sense that the Council which takes place in June during the first year of the biennium (2014) would be making initial arrangements for an election one year before the election. This would not seem to be a desirable course of action.

amendment be made to Rule XXXVII of the General Rules of the Organization, reflecting this proposal.

9. Under the first of the proposed amendments to the Rules (paragraph 2 of Rule XL of the GRO), any appointments made during the last six months of a term of office of a Director-General to positions at grade D-2 and above would expire not later than five months after the end of the mandate of the Director-General. This restriction would not apply to positions financed from voluntary contributions. This provision would still confer upon the Director-General residual authority to make appointments towards the end of the term (including in situations of urgency), except that the expiry date of any such appointments would be not later than five months after the end of the mandate of the Director-General. Insofar as, in the future, the term of office of the Director-General will expire on 31 July of an election year, the expiry date of the contracts will not be after 31 December of that year. In cases of appointments involving an element of urgency, this solution would allow for some continuity in administrative activity and for the new Director-General to have some time decide on whether he wished to extend the appointment of a particular staff member or to let the appointment expire. This provision also takes into account the practice whereby fixed-term contracts expire at the end of a biennium. It is proposed that this provision should not apply to positions financed by voluntary contributions, in order to allow for continuity in field programme activities. The proposed text could be:

*“Appointments made during the last six months of a term of office of a Director-General to positions at grade D-2 and above shall expire not later than five months after the end of the mandate of the Director-General. This provision shall not apply to positions financed from voluntary contributions”.*

10. Through a second amendment, intended to facilitate the assumption of duties by the Director-General Elect, the Organization would be asked to take such measures as required to ensure that the Director-General Elect, prior to taking office, is fully informed of the policies, programmes, staffing and activities of the Organization. In addition, the Director-General would be required to make arrangements to ensure that the Director-General Elect shall have the benefit of technical and administrative support during that period. A generic provision along these lines would involve recognition that the Organization, including the outgoing Director-General, is under an obligation to take positive steps to ensure that a new Director-General is duly informed of the situation of the Organization and that, to that effect, he should be able to rely on the existing structures and channels of the Organization and benefit from technical and administrative support. This is in line with the recommendations of a recent report of the Joint Inspection Unit<sup>3</sup>.

*“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”.*

---

<sup>3</sup> CL 141/INF/12 – Selection and Conditions of Service of Executive Heads in the United Nations system organizations (JIU/REP/2009/8).

11. It is considered that the above two proposed amendments, **seen together**, would go some way towards addressing the concerns that have arisen out of the situation that occurred in 2011.

**IV. Suggested action by the Committee**

12. The CCLM is invited to review this document and make such observations thereon as appropriate.

13. The CCLM is, in particular, invited to review and endorse the draft Conference resolution set out in Appendix B to this document and forward it to the Council for subsequent transmission to the Conference.

---

**APPENDIX A**

---

**GENERAL RULES OF THE ORGANIZATION****C. THE DIRECTOR-GENERAL AND STAFF****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:

- (a) When the term of office of the Director-General is due to expire, the appointment of a new Director-General shall be placed on the agenda of the regular session of the Conference immediately preceding the expiry of the term of office; whenever, for other reasons, the office of the Director-General is vacant, or notice is received of a pending vacancy, the appointment of a new Director-General shall be placed on the agenda of the next session of the Conference which opens not less than 120 days from the occurrence or notice of the pending vacancy.
- (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 months and end at least 60 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.
- (c) Subject to such arrangements as the Council may make consistent with these Rules aimed at ensuring equality among candidates, candidates shall address the session of the Council which will be scheduled not less than 60 days before the session of the Conference and respond to such questions as may be put to them by Member Nations and Associate Members of the Organization. There shall be no debate and the Council shall not draw any conclusion or recommendation from any of the statements or interventions made.

- (d) As soon as possible after the opening of the Conference session, the General Committee shall determine and announce the date of the election, it being understood that the appointment of the Director-General at a regular session shall begin and be effected within three working days following the opening date of such session. Candidates shall address the Conference and respond to questions that Member Nations and Associate Members may put to them, subject to such arrangements as the Conference may make consistent with these Rules aimed at ensuring equality among candidates.
  - (e) Travel expenses of each candidate, properly incurred in travelling, by the most direct route from his/her duty station to the site of the Council and Conference sessions referred to in subparagraphs (c) and (d) of this paragraph and return to his/her duty station, as well as subsistence allowance for up to five days per session, shall be borne by the Organization in accordance with its travel regulations.
2. The Director-General shall be elected by a majority of votes cast. Until a candidate obtains the required majority, the following procedure shall apply:
- (a) two ballots shall be held among all candidates;
  - (b) the candidate having received the smallest number of votes in the second ballot shall be eliminated;
  - (c) thereafter, successive ballots shall be held, and the candidate having received the smallest number of votes in any one of these ballots shall be eliminated, until only three candidates remain;
  - (d) two ballots shall be held among the three remaining candidates;
  - (e) the candidate having received the smallest number of votes during the second ballot referred to in subparagraph (d) above shall be eliminated;
  - (f) a subsequent ballot, or successive ballots if necessary, shall be held among the two remaining candidates until one candidate obtains the required majority;
  - (g) in the event of a tie between two or more candidates having received the smallest number of votes in one of the ballots referred to in subparagraphs (b) or (c) above, a separate ballot or, if necessary, separate ballots shall be held among such candidates, and the candidate having received the smallest number of votes in such ballot or ballots shall be eliminated;
  - (h) in the event of a tie between two candidates having received the smallest number of votes in the second of the two ballots referred to in subparagraph (d) above, or if all three candidates have received the same number of votes in that ballot, successive ballots shall be held among all three candidates until one candidate has received the smallest number of votes, after which the procedure provided in subparagraph (f) above shall apply.

3. Should the office of Director-General become vacant prior to the expiry of the term of office, the Council shall promptly make the necessary arrangements for the election of a new Director-General, subject to the provisions of subparagraph 1(a) of this Rule.
4. Subject to the provisions of Article VII, paragraphs 1 to 3 of the Constitution, the terms and conditions of appointment of the Director-General, including the salary and other emoluments attached to the office, shall be determined by the Conference, having regard to any recommendations submitted by the General Committee, and shall be embodied in a contract signed by him and by the Chairperson of the Conference on behalf of the Organization.
5. The Deputy Director-General with greater seniority in the position shall act as Director-General in any case where the Director-General is unable to act or in the case of a vacancy in the office of the Director-General. In case the Deputy Directors-General were appointed at the same time, the functions shall be exercised by the Deputy Director-General with greater seniority with the Organization, or if both have the same seniority, by the Deputy Director-General who is older.



**Schedule for Governing Body Input and Oversight Under  
The Reformed Programming, Budgeting and Results Based Monitoring Systems**

Process	YEAR 1				YEAR 2			
	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
PLANNING	RC	PC/FC CL	TC	PC/FC CL	EB PC/FC CL	CONF		PC/FC CL
	Review Implementation Performance Strategic Framework (Alternate biennia) MTP-PWB (Next biennium)	Input on Priorities Input on Priorities			Review/Approval Review/Approval		Review/Approval Adjustment	
IMPLEMENTATION MONITORING	Implementation Review and Adjustment (Current Biennium) Results (Previous Biennium)							
	Impact							

Legend: RC: Regional Conference	TC: Technical Committees of Council	FC: Finance Committee	CL: Council	CONF: Conference
	MTP Medium-Term Plan	PWB Programme of Work and Budget	EB: Extra-Budgetary	

---

**APPENDIX B**

---

**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 2011, proposed amendments to 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, endorsed the proposed amendments to Rule XXXVII, of the General Rules of the Organization;

1. Decides to adopt the following amendments to Rule XXXVII (Appointment of the Director-General) of the General Rules of the Organization:<sup>4</sup>

**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

---

<sup>4</sup> Deletions are indicated using ~~strike-out text~~ and insertions are indicated using underlined italics

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.

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".

## **Rule XL – Provisions Relating to Staff**

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

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 during the last six months of a term of office of a Director-General to positions at grade D-2 and above shall expire not later than five months after the the end of the mandate of the Director-General. This provision shall not apply to positions financed from voluntary contributions.

~~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.

~~3.4.~~ The Director-General, with the approval of the Council, shall promulgate such general staff regulations as may be necessary, including the requirement of a declaration of loyalty to the Organization. The Director-General shall have authority to promulgate Staff Regulations to give effect to decisions of the International Civil Service Commission, as well as to give effect to recommendations of the International Civil Service Commission which have been approved by the General Assembly of the United Nations with regard to the salaries and allowances of the

staff in the professional and higher categories. He shall report the promulgation of such Staff Regulations to the Finance Committee and the Council.

~~4.5.~~ Except as provided in paragraph 1 of this Rule, the Director-General shall act in his unfettered judgment in appointing, assigning and promoting staff personnel, and shall not be bound to accept advice or request from any other source.

~~5.6.~~ The Director-General shall have disciplinary control over the members of the staff, including the power of dismissal, except that in the case of the Deputy Directors-General the approval of the Council must be obtained for dismissal.

~~6.7.~~ The Director-General shall arrange for consultation between the Organization and the United Nations with regard to the establishment of common machinery for the settlement of matters of dispute between the employees and the Organization which have not been settled by internal conciliation.