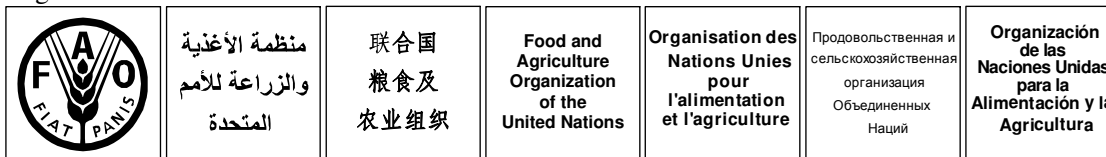


August 2012



# COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

## Ninety-fifth Session

Rome, 8 - 11 October 2012

### Membership of the General Committee of the Conference in a year of Election of the Director-General

## I. Background

1. This item has been placed in the provisional agenda of the Committee on Constitutional and Legal Matters (CCLM) under Rule III, paragraph 2 of the Rules of Procedure whereby “*any representative of a Member of the Committee may, up to 14 days before the start of a session, request the Director-General to insert an item in the provisional agenda*”. The representative of Ireland in the CCLM has requested that the issue of the membership of the General Committee of the Conference be placed on the provisional agenda of the 95<sup>th</sup> Session of the CCLM (8-11 October 2012), in light of the considerations described below.

2. Under the proposal made, at a session at which the Conference is due to elect a Director-General, a Member Nation having nominated a candidate to the office of Director-General should not be allowed to have members in the General Committee, in view of a possible situation of real or perceived conflict interest. In order to understand this proposal it is important to recall that Article III, paragraph 4 of the Constitution provides that each Member Nation exercises one vote at the Conference. A Member Nation which is in arrears in the payment of its financial contribution to the Organization has no vote if the amount of its arrears equals or exceeds the amount of the contribution due from it for the two preceding calendar years. However, the Conference may permit such a Member Nation to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member Nation. The Conference has thus authority, under this Article of the Constitution, to determine whether the voting rights of a Member Nation should be restored and whether that Member should be allowed to vote.

3. In line with the above provision and very long standing practice, the Conference makes a determination on the restoration of the voting rights of Member Nations in arrears and this is done on the basis of a recommendation of the General Committee. Authority of the General Committee to

make a recommendation on this matter is not specifically foreseen in the General Rules of the Organization (GRO), but is, again, rooted in long-standing practice. Another document submitted to the current session of the CCLM<sup>1</sup> describes in detail this practice, including its evolution over the years. For the purpose of this particular document, suffice to mention that at a session where the Conference elects a Director-General, the General Committee may be required to formulate a recommendation to the Conference on the restoration of voting rights of Members in arrears; i.e. to make a recommendation to the Conference regarding the restoration of voting rights of Members, which will then be allowed to vote at the election of the Director-General<sup>2</sup>.

4. This document reviews the proposal in the light of Rule X of the GRO on the composition of the General Committee and of a number of other pertinent considerations and seeks guidance on the matter from the CCLM and the Council. Depending on the decision that the Council will take on the matter, the CCLM will review specific amendments to the GRO on the issue at hand at its 96<sup>th</sup> Session in March 2013. This would allow for any amendments to Rule X of the GRO to be considered on time, before the next session of the Conference for adoption, as may be appropriate.

## II. Modus Operandi and Composition of the General Committee

5. Rule X, paragraph 1 of the GRO defines the *modus operandi* and composition of the General Committee. Rule X is reproduced in full in the appendix to this document.

6. The General Committee of the Conference consists of the Chairperson and the three Vice-Chairpersons of the Conference and seven Member Nations elected by the Conference under Rule VIII. The Chairperson of the Conference is the Chairperson of the Committee. The Chairperson has in relation to meetings of the Committee the same powers and duties as he has in relation to meetings of the Conference. In the absence of the Chairperson during a meeting of the General Committee, or any part of the meeting, one of the Vice-Chairpersons presides the meeting. A majority of the members of the Committee constitutes a quorum. Decisions in the Committee are taken by a majority of the votes cast, although in practice the normal decision making method is through consensus. Rule X, paragraph 1 of the GRO, provides that the “*meetings of the Committee shall be held in private unless otherwise determined by the Conference*”.

7. The General Committee consists therefore of eleven members. These are first the Chairperson of the Conference and the three Vice-Chairpersons of the Conference. These are *ad personam* offices. In addition, the General Committee includes “*seven Member Nations*”. Traditionally, each of these Member Nations are from one of the geographic regions for purposes of elections to the Council, i.e. Africa, Asia and the Pacific, Europe, Latin America and the Caribbean, Near East, North America and Southwest Pacific.

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<sup>1</sup> CCLM 95/14 - Legal aspects of the treatment of arrears (restoration by the Conference of the voting rights of Member Nations in arrears).

<sup>2</sup> The Director-General is elected at the beginning of a Conference session. The practice regarding the determination by the Conference, under Article III, paragraph 4 of the Constitution, as to whether Members should be allowed to vote has changed over time. At the election of 1987, the Conference made that determination at the beginning of the session prior to the election. In 1993, 1999 and 2005, the Conference allowed all Members to vote at the election of the Director-General. In 2011, the Conference made again that determination at the beginning of the session prior to the election.

### III. Membership of the General Committee in Light of the Concerns Raised

8. It is proposed to review and clarify the situation of each category of members of the Committee in light of the concerns expressed.

#### a) Chairperson and three Vice-Chairpersons of the Conference

9. As regards the Chairperson and the three Vice-Chairpersons of the Conference, under Rule VII of the GRO these officers are nominated by the Council and are elected by the Conference. Under the new pattern of sessions of the Governing Bodies of FAO, the nomination of these candidates is made by the Council at the session held in April of a Conference year, approximately 60 days before the beginning of the session of the Conference. By the time the Council at its session of April in an election year nominates the candidates to the offices of Chairperson and Vice-Chairpersons of the Conference, the list of nominated candidates to the office of Director-General is already known. Therefore, procedurally, it would be possible for the Council to nominate candidates from Member Nations, other than those having nominated candidates for the office of Director-General.

10. Leaving aside considerations of a procedural nature, it is important to address an important issue of principle which is that the Chairperson and the three Vice-Chairpersons are inherently supposed to act not as representatives of Members, but to act *supra partes*, as representatives of the overriding interests of the body of which they are officers. Restrictions on the appointment to the offices of Chairpersons and Vice-Chairpersons on the grounds that those officers have the nationality of candidates nominated for the position of Director-General, in anticipation of a possible perception of bias or of a situation of conflict of interest, could be seen as hardly compatible with basic principles related to the operation of main bodies and governing bodies of organizations of the United Nations System. This would seem to be an issue of principle of some importance, which the CCLM should examine and the role of chairpersons in those bodies. In this connection, it does not seem that similar restrictions are in force in any other organizations of the United Nations System, where it is assumed that Chairpersons and Vice-Chairpersons act *supra partes*.

#### b) Seven Member Nations of the Organization

11. As regards the seven Member Nations that are members of the General Committee, they are also nominated by the Council under Rule VII of the GRO. Given the current pattern of sessions of the Governing Bodies the Council also nominates these Members at the session of April in a Conference year. By that time, the Council will be informed of the nominated candidates for the office of Director-General and of their nationality. According to the proposal, in an election year, the Council could not nominate for membership in the General Committee of the Conference a Member Nation having nominated a candidate for the office of Director-General.

#### c) Situation of Member Nations which are Member States of a Member Organization

12. A related issue arises in connection with the above and this is the question of whether the above restrictions should also apply to a Member Nation that is a Member State of a Member Organization (regional economic integration organization) of which another Member State may have nominated a candidate to the office of Director-General. Could a Member Nation belonging to a Member Organization, of which one of its Member States has nominated a candidate, be a Member of the General Committee?

13. Under the Constitution of FAO, as amended in 1991, the Conference may decide to admit as a Member of FAO a regional economic integration organization meeting the criteria set out in the Constitution. To be eligible to apply for membership of the Organization a regional economic integration organization must be one constituted by sovereign States, a majority of which are Member Nations of the Organization, and to which its Member States have transferred competence over a range of matters within the purview of FAO, including the authority to make decisions binding on its Member States in respect of those matters. A Member Organization exercises membership rights on an alternative basis with its Member States in the areas of their respective competences. Whenever a Member Organization exercises its right to vote, its Member States shall not exercise theirs and conversely. The European Union is currently the only Member Organization of FAO.

14. Under the principles and procedures governing membership of a Member Organization in FAO, the rights and obligations of a Member Organization and of its Member States that are Member Nations of FAO in the meetings of the Organization are to be seen together, jointly. The membership concept defined in the Basic Texts would seem to place limitations both upon the status of the Member Organization and of its Member Nations, and the requirement of alternative exercise of rights and obligations applies to both categories of Members. In addition, it would appear that the Member States of the regional economic integration organization that is a Member of FAO, the European Union, and the European Union itself, are under a strict obligation to carry out joint action within FAO, in accordance with a requirement of solidarity<sup>3</sup>. Under the circumstances, following the rationale and the concerns which would lead to exclusion from the General Committee of a Member Nation having nominated a candidate to the office of Director-General, it would seem appropriate that a Member Nation of a Member Organization (regional economic integration organization) of which another Member may have nominated a candidate to the office of Director-General, should not be a Member of the General Committee.

15. In examining this matter, the CCLM is invited to take account of the fact that a related issue is under consideration by the CCLM<sup>4</sup> and by the Finance Committee in their respective areas of competence.

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<sup>3</sup> The Treaty of Lisbon calls for joint action on the part of the European Union in the international scene in accordance with the provisions of the Treaty and a number of other rules and procedures that show Article 24 of the Treaty on the European Union provides, *inter alia*, “2. Within the framework of the principles and objectives of its external action, the Union shall conduct, define and implement a common foreign and security policy, based on the development of mutual political solidarity among Member States, the identification of questions of general interest and the achievement of an ever-increasing degree of convergence of Member States’ actions”. “3. The Member States shall support the Union’s external and security actively and unreservedly in a spirit of loyalty and mutual solidarity and shall comply with the Union’s action in this area. The Member States shall work together to enhance and develop their mutual political solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations”. Article 34 provides, *inter alia*, that “Member States shall coordinate their action in international organizations and at international conferences. They shall uphold the Union’s positions in such forums. The High Representative of the Union for Foreign Affairs and Security Policy shall organize this coordination. In international organizations and at international conferences where not all the Member States participate, those which do take part shall uphold the Union’s positions. In accordance with Article 24(3), Member States represented in international organizations or international conferences where not all the Member States participate shall keep the other Member States and the High Representative informed of any matter of common interest”. Article 35 of the Treaty of Lisbon provides that “the diplomatic and consular missions of the Member States and the Union delegations in third countries and international conferences, and their representations to international organizations, shall cooperate in ensuring that the decisions defining Union positions and actions adopted pursuant to this Chapter are complied with and implemented”. It would appear from these provisions that the European Union and its Member States are under a strict obligation of joint common action.

<sup>4</sup> CCLM 95/14 - Legal aspects of the treatment of arrears (restoration by the Conference of the voting rights of Member Nations in arrears).

#### **IV. Suggested Action by the CCLM**

16. The CCLM is invited to review this document taking into account all relevant considerations including those set out in Section III above, and submit its views to the Council on the appropriateness of amending Rule X of the GRO, as well as on the content of a possible amendment to that Rule. Depending on the guidance provided by the Council, the CCLM would review at its 96<sup>th</sup> Session a draft Conference resolution amending Rule X of the GRO.

## Appendix

### Rule X of the General Rules of the Organization

#### Rule X

#### General Committee

1. There shall be a General Committee of the Conference consisting of the Chairperson and Vice-Chairpersons of the Conference and seven Member Nations elected by the Conference under Rule VIII. The Chairperson of the Conference shall be the Chairperson of the Committee. He shall have, in relation to meetings of the Committee, the same powers and duties as he has in relation to meetings of the Conference. In the absence of the Chairperson during a meeting of the General Committee, or any part thereof, one of the Vice-Chairpersons shall preside. A Vice-Chairperson acting as Chairperson shall have the same powers and duties as the Chairperson. A majority of the members of the Committee shall constitute a quorum. Decisions in the Committee shall be taken by a majority of the votes cast. No member shall have more than one vote. Meetings of the Committee shall be held in private unless otherwise determined by the Conference.
2. In addition to exercising such duties as are specified elsewhere in these Rules, the General Committee shall, in consultation with the Director-General and subject to any decision of the Conference:
  - a) arrange the time and place of all plenary meetings and of all meetings of commissions and committees established at plenary meetings during the session;
  - b) determine the order of business at each plenary meeting of the session;
  - c) propose the allocation to the different commissions and committees of the Conference of the various items of the agenda and propose the vice-chairpersons of the commissions;
  - d) meet periodically throughout each session to review the progress of the Conference, to coordinate the work of all commissions and committees and to make recommendations for furthering such progress; and meet at such other times as the Chairperson deems necessary or upon the request of any other of its members;
  - e) report on any additions to the agenda proposed during the session under Rule II, paragraph 6;
  - f) fix the date of adjournment of the session;
  - g) report to the Conference on any request by a participating international nongovernmental organization to speak before a plenary meeting of the session (Rule XVII, paragraph 3);
  - h) report to the Conference on applications for admission to membership and associate membership in the Organization (Rule XIX);
  - i) make recommendations to the Conference on the election of members of the Council, formally draw the attention of the Conference to the provisions of paragraphs 3 and 4 of

Rule XXII, and generally carry out its responsibilities with respect to the election of members of the Council as provided for in that Rule;

- j) determine and announce the date of election of the Chairperson of the Council, and of the Director-General, as soon as possible after the opening of the Conference session, and submit to the Conference recommendations with respect to the conditions of their appointment (Rules XXIII, paragraph 1 and XXXVII, paragraph 4);
- k) otherwise facilitate the orderly dispatch of the business of the session.

3. The reports of all commissions and committees established to consider items of the agenda of any session of the Conference and the report of the session shall, before being submitted at a plenary meeting for final decision thereon at that session, be referred to the General Committee for coordination and editing and for such procedural recommendation as the General Committee may wish to make. Such reports, including draft resolutions and any recommendations of the General Committee, shall thereafter be circulated, insofar as is practicable, at least 24 hours in advance of the plenary meeting at which they are to be considered.

4. A Member Nation which is not represented on the General Committee or an Associate Member, either of which has requested the inclusion of an item on the agenda of the Conference in accordance with the provisions of Rule II, may attend any meeting of the General Committee at which its request is discussed, and may participate, without vote, in the discussion of the item.