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COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

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Transition process between outgoing and incoming administrations - transitional arrangements

I. Introduction

1. At its 106th Session, in March 2018, the Committee on Constitutional and Legal Matters (CCLM) took note of the Secretariat's observations on the need for a smooth transition between the outgoing and incoming administrations and requested the Secretariat to prepare a document on this matter for consideration at its next Session¹.

2. The Council at its 159th Session in June 2018 approved the report of the CCLM. As regards this particular item, the Council "noted the Secretariat's observations on transition between ongoing and incoming administrations and asked that a document on this issue be produced well in time to allow sufficient consultation"². This document is primarily of an information nature.

II. Background

3. The issue of the transition between an outgoing and an incoming administration has raised considerable discussion in FAO in past years. As a result of the Independent External Evaluation and the Immediate Plan of Action for FAO Renewal approved by the 35th (Special) Session of the Conference in November 2008 and subsequent amendments to the Basic Texts approved by the 36th Session of the Conference in November 2009, the normal biennial session of the Conference of FAO, which used to be held in November, was brought forward to June. The first session of the Conference held according to this new cycle in June 2011, was required to elect a new Director-General. The election took place in June 2011. There was, therefore, concurrently, an incumbent Director-General and a Director-General Elect from June 2011 until 31 December 2011.

¹ CL 159/2, paragraph 9.

² CL 159/REP, paragraph 16, (d).

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4. The conditions under which the transition took place were generally considered to be disruptive to the operation of the Organization. A situation where, for a period of more than six months, there was both a Director-General Elect and an incumbent Director-General was, in itself, unsatisfactory. Moreover, in a unique situation not previously faced by FAO nor addressed in its rules, there were a number of highly undesirable developments which raised controversy among Members. The complexities of a transition period were, of course, compounded by the circumstance that the transition period lasted for more than six months, as compared to a normal period of some 5 or 6 weeks.

5. Thus, the outgoing Director-General made a substantial number of appointments to senior positions throughout 2011 and until the end of that year, including where there was no apparent 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 with the specific practice of FAO in 1993 when the Conference had elected a Director-General. This resulted in a situation where a new Director-General had a Senior Management Team which he had not selected, contrary to practices and courtesies generally followed in large organizations of the United Nations System. This undermined trust within the Secretariat and compromised its efficient operation for an extended period of time in 2012.

6. Furthermore, during the 2011 transition period, the Director-General Elect did not have access to, and could not benefit from information on the policies, programmes, staffing and activities of the Organization. Nor could he benefit from technical and administrative support during that period and efforts had to be made to secure external funding to provide for some limited support.

7. The difficulties of the transition period became a cause of concern for the Membership in the course of the second semester of 2011. The matter was reviewed by the CCLM, the Finance Committee and the Council in 2012. As a result of this process of review, the Conference, at its session of June 2013, approved two amendments to the General Rules of the Organization (GRO).

8. First, through an amendment to the GRO, the Conference established restrictions upon the authority of an outgoing Director-General to make appointments to senior positions during the last months of his/her tenure. Rule XL, paragraph 2 of the General Rules of the Organization accordingly reads as follows:

“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”.

9. There was strong consensus on the fundamental need for this provision; indeed, a prohibition of appointments to senior positions was initially envisaged. On further review, the proposed amendment was eventually couched in a “positive” manner, to allow an outgoing Director-General to make appointments to senior positions as he or she would deem fit, preserving the appointment authority of the Director-General. However, such appointments would, in any case, expire within a limited time-frame. Given the timing of the election by the Conference session, as well as the end of the mandate of the Director-General (31 July), this provision means in practice that any appointments to positions D-2 and above made on or after 1 February of the election year will expire at the latest on 31 December of that year. It is questionable whether a candidate for a senior position would accept an appointment for such a limited period of time, of less than 12 months. Nevertheless, should that be the case, it is clear that this appointment will expire at the end of that year, at the latest, unless the new Director-General decides to extend the appointment.

10. Second, the Conference adopted new Rule XXXVII, paragraph 6 of the GRO on facilities to be extended to a Director-General Elect, as follows:

“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”.

11. This provision obliges the Director-General, and through him or her the Organization, to take positive steps to ensure that the Director-General Elect is duly informed of the situation of the Organization and is able to rely on the existing structures and processes of the Organization, and benefit from technical and administrative support.

12. At that time, and drawing on the recent experience, the issue arose as to whether the Organization should make budgetary resources available to the Director-General Elect. This particular matter was considered by the Finance Committee in some detail in May and in November 2012. At this latter session, the Committee was generally of the view that there was no need to make arrangements for a specific budget for a Director-General Elect and that, should there be such a need, the matter could be addressed in the context of the preparations of the Programme of Work and Budget. The Finance Committee also emphasized that, in future, the period between an election of a new Director-General until the assumption of duties would not exceed six weeks³.

13. Overall, it was considered that the above amendments, taken together, went a substantial way towards averting and addressing the concerns voiced by the Membership in 2011 and 2012. The Governing Bodies of FAO had also noted that a JIU Report on “*Selection and conditions of service of executive heads in the United Nations System Organizations*” had been under review in 2010 and 2011. In one of its recommendations, this report highlighted the desirability of a smooth transition between an outgoing and incoming head of agency.

III. The Upcoming Transition Period

14. As a general guiding principle, and taking into account the foregoing considerations, it is expected that the above framework should create conditions for a smooth transition between the current administration and the incoming administration. In this connection, it should also be noted that the Council at its 159th Session, 4-8 June 2018, endorsed a set of proposals from the CCLM that should also facilitate a smooth electoral process and transition⁴.

15. In the course of the past few months, a few specific issues have arisen. Two of them call for some attention: (a) a proposal to hold a handover ceremony between the outgoing Director-General and the Director-General Elect and (b) the question of specific facilities to be provided to the Director-General Elect prior to the assumption of duties.

³ CL 144/12, paragraphs 39 and 40 and CL 145/7, paragraphs 53 and 54. Unless the CCLM has different views, it is considered that any resources that would be required for an incoming team could be accommodated under existing budgetary allocations.

⁴ The Council agreed (a) that any internal candidate for the Office of Director-General be placed on special leave without pay from the date of communication of nominations under Rule XXXVII, paragraph 1(b) of the GRO; (b) that an advance letter of resignation be submitted with the nomination of any internal candidate to the Secretary-General of the Conference and the Council for subsequent transmission to the Director-General Elect who will decide, within ten days after assuming office, whether to accept the resignation. If no decision is taken by that date, the letter of resignation will be null and void; (c) that, in anticipation for the process of election of the next Director-General, staff be reminded of their obligations of neutrality and impartiality as set out in the Standards of Conduct for the International Civil Service in line with established practice in FAO and other UN System Organizations. CL 159/REP, paragraph 16.

(a) Handover ceremony between the outgoing Director-General and the Director-General Elect

16. The first relates to a proposal to hold a handover ceremony between the outgoing Director-General and Director-General Elect. Ceremonies of this nature take place in other organizations and it is considered that it would be appropriate for there to be a ceremony marking the end of one mandate and the beginning of another. While this initiative is one of a practical or protocol nature, rather than a legal one, the CCLM may wish to offer its views on the proposal.

(b) Specific facilities to be provided to the Director-General Elect prior to the assumption of duties

17. As mentioned above in this document, the issue arose as to whether the Organization should make budgetary resources available to the Director-General Elect. This particular matter was considered by the Finance Committee, in some detail, in May and in November 2012. At this latter session, the Committee was generally of the view that there was no need to make arrangements for a specific budget for a Director-General Elect and that, should there be such a need, the matter could be addressed in the context of the preparations of the Programme of Work and Budget. The Finance Committee also emphasized that, in future, the period between an election of a new Director-General until the assumption of duties would not exceed six weeks.

18. Without foreseeing a specific budgetary allocation, in line with the guidance of the Finance Committee, the current Management believes that it would be useful to establish, as a first step towards a form of recognition and codification of the status of Director-General Elect, a number of facilities. It is proposed that the Director-General Elect should be able to benefit from the following minimum facilities:

- i) suitable office space with the necessary equipment and communication facilities for the Director-General Elect and his/her staff below;
- ii) a secretary;
- iii) an official vehicle and a driver; and
- iv) the possibility of hiring two consultants during the period prior to the assumption of functions.

19. Further arrangements could be established in agreement with the outgoing Director-General. Moreover, consistent with Rule XXXVII, paragraph 6 of the GRO, 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. To that effect that the Director-General Elect shall have the possibility of calling upon the technical and administrative units of the Organization.

IV. Suggested Action by the Committee

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

21. The CCLM is in particular invited to:

- a) take due note of the above background information, including the provisions of the GRO, and related considerations regarding the need for a smooth transition between the current and the forthcoming administration;
- b) endorse the proposal that a handover ceremony be organized; and
- c) endorse the above minimum facilities to be provided to the Director-General Elect on the understanding that further arrangements may be established in agreement with the Director-General.