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COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

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PRELIMINARY REVIEW OF AMENDMENTS TO THE BASIC TEXTS FOR THE IMPLEMENTATION OF THE IMMEDIATE PLAN OF ACTION FOR THE FOLLOW-UP TO THE INDEPENDENT EXTERNAL EVALUATION OF FAO

BACKGROUND

1. At its meeting of 30 July 2008, the Conference Committee for the Follow-up to the Independent External Evaluation of FAO, hereinafter referred to as CoC-IEE or the Conference Committee, referred to paragraph 12 of Conference resolution 5/2007 “*Follow-up to the Independent External Evaluation of FAO*” whereby, in conducting its work, the Conference Committee “*will decide when necessary to call on the Committees of the Council to give their advice on aspects of the reform process within their mandates*”. The CoC-IEE requested the Committee on Constitutional and Legal Matters (CCLM) to make a preliminary assessment of the amendments to the Basic Texts which would be required for the implementation of the proposed actions of the Immediate Plan of Action. In making this request the CoC-IEE noted that the Immediate Plan of Action would be submitted to the Special Session of the Conference in November 2008 and that it was only after its consideration by the Conference that it would be possible to know in a precise manner the actions agreed for implementation.

2. This document is prepared in response to that request and is intended to allow the CCLM to make a preliminary review of the amendments to the Basic Texts which might be required as a condition for, or as a consequence of the implementation of the proposed actions of the Immediate Plan of Action. This document does not prejudge the outcome of the deliberations of the Conference at its forthcoming Special Session and is to be seen in conjunction with the Immediate Plan of Action as will be available at the time of the review of the matter by the CCLM. The document lists topics and thematic areas that are covered by proposed actions of the Immediate Plan of Action which, if agreed upon, would involve amendments to the Basic Texts. The areas listed, as well as the provisions of the Basic Texts identified in this document, are presented in a generic manner.

3. Prior to setting out before the CCLM a preliminary list of possible amendments to the Basic Texts, it would be useful to make a few observations on the structure of the Basic Texts and the procedural conditions for their amendment.

STRUCTURE AND PROCEDURE OF AMENDMENT OF THE BASIC TEXTS

4. What is commonly referred to as “*Basic Texts*” is in fact a set of legal instruments of different nature contained in two volumes.

4.1. Volume I comprises the Constitution of FAO, the General Rules of the Organization, the Financial Regulations, and the Rules of Procedure of a number of bodies (the Council, the Programme Committee, the Finance Committee, the Committee on Commodity Problems, the Committee on Fisheries, the Committee on Forestry, the Committee on Agriculture, and the Committee on World Food Security).

4.2. Volume II includes a number of resolutions and other decisions of the Conference on important topics.

5. The implementation of the proposed actions of the Immediate Plan of Action may result eventually in a need to amend a large number of instruments in both Volumes of the Basic Texts, including in the context of a process of progressive adjustment of all relevant instruments. However, there will be a need to distinguish between, on the one hand, matters that have to be addressed immediately after the Special Session of the Conference either because of their importance, or of particular decisions of the Conference that certain amendments should be adopted as a matter of priority, or because the Basic Texts as they stand would constitute impediments to the implementation of the agreed actions of the Immediate Plan of Action and, on the other hand, matters that could be addressed subsequently.

6. In considering the matter, it is important to keep in mind that there is a hierarchy between the instruments that form part of the Basic Texts. The Constitution is obviously the most important text and the General Rules of the Organization and the Financial Regulations, which implement the basic provisions of the Constitution, must be consistent with constitutional provisions. The Rules of Procedure of the Council and of the Committees must be consistent with the Constitution and the General Rules of the Organization. This hierarchy may imply, in some cases, a particular sequence in the process of amendment of the Basic Texts.

7. It is also important to be aware that the amendment of the instruments that form part of the Basic Texts is subject to different procedural requirements. These distinct requirements may have an impact upon the timing and the sequence of some amendments and, more generally, upon the calendar of implementation of the amendments.

8. **The procedural conditions of amendment of the Constitution** are set out in Article XX and have been clarified by practice. The Constitution may be amended by the Conference by a two-thirds majority of the votes cast, provided that such majority is more than one half of the Member Nations of the Organization. An amendment not involving new obligations for Member Nations takes effect forthwith, unless the resolution by which it is adopted provides otherwise.

Amendments involving new obligations take effect for each Member Nation accepting the amendment on acceptance by two-thirds of the Member Nations of the Organization and thereafter for each Member Nation on acceptance by it. In practice, all amendments adopted by the Conference since the establishment of the Organization did not involve new obligations and entered into force immediately, or on the date defined by the relevant resolution.

9. Proposals for the amendment of the Constitution may be made either by the Council or by a Member Nation in a communication addressed to the Director-General. The Director-General is required to inform immediately all Member Nations of all proposals for amendments. In practice, insofar as amendments involve at times some complexity, or have implications that need to be examined, amendments to the Constitution have always been reviewed by the CCLM and at times the Finance Committee, and have subsequently been reviewed and endorsed by the Council and referred to the Conference for approval.

10. Under Article XX, paragraph 4 of the Constitution, no proposal for amendment of the Constitution may be included in the agenda of any session of the Conference unless notice thereof has been dispatched by the Director-General to Member Nations at least 120 days before the opening of the session.

11. **The procedural conditions of amendment of the General Rules of the Organization** are set out in General Rule XLVIII. Rule XLVIII, paragraph 2, provides, *inter alia*, that “*amendments of, or additions to, these Rules may be adopted by a two-thirds majority of the votes cast at a plenary meeting of the Conference, provided that the intention to propose the amendment or addition has been communication to the delegates not less than 24 hours before the meeting at which the proposal is to be considered*”. Rule XLVIII, paragraph 3 provides that the Council may propose amendments and additions to these Rules and any such proposals may be considered at the next session of the Conference. In practice, as has been the case with the Constitution, insofar as amendments to the General Rules of the Organization may involve some complexity, and at times legal options which must be made, or have implications that need to be examined, amendments to the General Rules of the Organizations have also always been reviewed by the CCLM, occasionally also by the Finance Committee and less frequently the Programme Committee, and have been endorsed by the Council and referred to the Conference for approval.

12. The same rules and practice apply to the **amendment of the Financial Regulations**. Financial Regulation 15.2 provides that the “*Regulations may be amended by the Conference in the same manner as provided for amendments to the General Rules of the Organization (see Rule XLVIII)*”.

13. The Rules of Procedure of the Council and the Committees are amended by these bodies subject to a general requirement that such amendments must be consistent with the Constitution and the General Rules of the Organization. Except for the Finance and Programme Committees, such amendments are adopted at a two-thirds majority of the votes cast. In the case of the Technical Committees of the Council, no proposal for the amendment of the Rules of Procedure may be included in the agenda of any session of the Committees unless notice thereof has been dispatched by the Director-General to Members of the Committee at least 30 days before the opening of the session.

14. The resolutions, decisions and statements of principles that form part of Volume II of the Basic Texts may be amended by decision of the Conference.

PRELIMINARY LIST OF AMENDMENTS

15. The following areas covered by proposed actions of the Immediate Plan of Action would imply or require amendments to the Basic Texts¹.

(a) **Silent observers at sessions of the committees of restricted membership (CCLM, Programme and Finance Committee)**

CCLM - need to amend GRO² XXXIV, paragraph 7.

Programme Committee - need for the Committee itself to amend Rule II, paragraph 4, of its Rules of Procedure.

Finance Committee - need for the Committee itself to amend Rule II, paragraph 3, of its Rules of Procedure.

(b) **Reporting lines of the Technical Committees (on programme and budget matters to the Council and on policy matters to the Conference)**

Need to amend Article V, paragraph 6 of the Constitution.

Consequential amendments to GRO XXIX (Committee on Commodity Problems, CCP), GRO XXX (Committee on Fisheries, COFI), GRO XXXI (Committee on Forestry, COFO), GRO XXXII (Committee on Agriculture, COAG), GRO XXXIII (Committee on World Food Security) would be required.

Consequential amendments to Rules of Procedure of the Committees might be required.

(c) **Status and role of the regional conferences**

Need to review Part S of the Basic Texts (Resolution N. 14/69 – *Authority, terms of reference and constitutional status of regional conferences*).

Alternatively an amendment of the Constitution (Article IV, V or VI) or the GRO could be considered.

(d) **Term of office and election procedures for the Director-General**

Need to amend Article VII of the Constitution and GRO XXXVI³.

¹ This list is of a preliminary nature. The fact that some specific provisions are listed does not mean that other provisions of the Basic Texts do not need to be amended.

² GRO: General Rules of the Organization.

³ In view of the proposed changes to the date of the Conference a question arises as to whether there would need to be a change in the date of entry on duty of the Director-General.

(e) **Change in the budget process and structure, including related matters such as change in the date of the regular session of the Conference**

Amendments would be required *inter alia* to: GRO I (Sessions of the Conference); possibly GRO II, paragraphs 2 and 9 (Agenda); possibly GRO XX (Budget and Finance); possibly GRO XXIV, paragraph 2 (Functions of the Council); GRO XXV (Sessions of the Council); GRO XXVI (Programme Committee); GRO XXVII (Finance Committee); GRO XXVIII (Concurrent sessions and joint meetings of the Programme and Finance Committees); GRO XXIX (CCP), GRO XXX (COFI), GRO XXXI (COFO), GRO XXXII (COAG), GRO XXXIII (CFS). Possible need to amend the Financial Regulations, mainly Financial Regulation III (on the budget).

(f) **Composition of the Council and the Programme and Finance Committees**

Council - need to amend Article V of the Constitution and GRO XXII (Election of the Council), as well as reconsideration of earlier decisions of Conference regarding the composition of Council.

Programme Committee – possible need to amend GRO XXVI.

Finance Committee – possible need to amend GRO XXVII.

(g) **Sessions of the Council and the Programme and Finance Committees**

The provisions of the GRO on the sessions of Council (GRO XXV) and the Programme and Finance Committees (GRO XXVI, GRO XXVII, GRO XXVIII) allow already for considerable flexibility in the convening of sessions of these bodies. In the context of the reform of the budget cycle and process and the redefinition of the respective functions of the Conference and the Council, those provisions may need to be adjusted.

(h) **Respective functions of the Conference and the Council, role of the Independent Chairperson of Council, and functions of the Programme and Finance Committees**

Possible need to amend GRO II (Agenda of the Conference), GRO XXIV (Functions of the Council) and GRO XXIII (Chairperson of the Council). There might also be a need to amend GRO XXVI and GRO XXVII regarding the Programme and Finance Committees.

ADDITIONAL CONSIDERATIONS REGARDING THE AMENDMENT OF THE BASIC TEXTS

16. In reviewing this document, in addition to taking due note of the preliminary and tentative nature of the above list which should not prejudice the outcome of the deliberations of the Conference, the CCLM is invited to consider a number of observations and issues on which the Committee may wish to offer guidance.

17. The CCLM is invited to note that, as is often the case when amending legal texts, direct amendments to some provisions may involve consequential amendments to other provisions. Thus, insofar as the Conference cycle conditions the institutional life and the formulation and

implementation of the programmes of the Organization, a change in the date of the Conference will require consequential changes to a number of provisions of the Basic Texts. In the same vein, changes in reporting lines of the current Technical Committees of the Council, which require an amendment to the Constitution, may involve changes to the General Rules of the Organization and the Rules of Procedure of the Committees. The precise determination of the consequential amendments to the Basic Texts is a major exercise requiring close review by the CCLM.

18. The attention of the Committee is also drawn to the timetable for the implementation of the proposed actions involving amendments to the Basic Texts contained in the Immediate Plan of Action. As a general rule, almost all of the amendments listed above should be approved in 2009. However, some of them, such as the amendments to the Rules of Procedure of the Technical Committees, to be adopted by the Committees themselves, regarding reporting lines or their own *modus operandi*, could be adopted after the approval by the Conference in 2009 of the main amendments to the Constitution and the General Rules of the Organization. Similarly, some amendments to the Basic Texts reflecting the respective roles of the Conference and Council and the Committees of the Council may need to be handled after the adoption by the Conference in 2009 of the main amendments to the Basic Texts. The implementation of some proposed actions, regarding for instance the functioning of statutory bodies established under Article VI of the Constitution or by Agreement under Article XIV of the Constitution and their reporting lines to the main Governing Bodies of the Organization, can be implemented subsequently in conditions to be defined, in most cases with full and direct involvement of the statutory bodies concerned⁴.

19. Sessions of the CCLM would have to be convened in the course of the first semester of 2009, as necessary, to consider the sets of draft amendments and related documents which would be prepared throughout the first part of 2009. At present the CCLM is due to hold a two day session on 1 and 2 April 2009. However, there will be obviously a need for substantial more time⁵. One option could be for the CCLM to hold one extended Spring Session; another option could consist in holding separate sessions. This latter option might be preferable as it would provide more flexibility and effectiveness to consider matters that may involve some complexity and require consultation and more than one review. In addition, some of the above mentioned amendments may also have to be reviewed by other Committees, in particular the Programme and Finance Committees. These Committees are at present scheduled to hold their regular sessions from 25 to 29 May 2009. The matter will need to be handled with some flexibility.

20. The CCLM may also be called upon to consider practical issues related to the adoption of some of the amendments to the Basic Texts. Thus, in some cases there could be various options for the introduction of amendments, which could be set out in different legal texts. For instance, to address the future role of Regional Conferences, two options could be envisaged: one would involve amendments to the Constitution; the other simple amendments to Conference Resolution N° 14/69 – *Authority, terms of reference and constitutional status of regional conferences*. The CCLM may also have to advise on whether some amendments would require transitional measures.

⁴ The amendment of some of the resolutions, decisions and statements of principles contained in Volume II of the Basic Texts could be a process requiring some time, which might not be possible to conclude in 2009.

⁵ A number of legal issues being currently considered by statutory bodies of the Organization and other issues of a legal nature will have to be referred to the CCLM in 2009. These will be in addition to matters related to or arising from the implementation of the Immediate Plan of Action.

SUGGESTED ACTION BY THE COMMITTEE

21. The CCLM is invited to review this document, take note of the information provided therein and offer such views thereon it deems appropriate.

22. Without prejudging the outcome of the deliberations of the Special Session of the Conference, the CCLM is, in particular, invited to indicate whether it considers that the above indicative list of possible amendments to the Basic Texts could provide a first basis for the drafting of sets of amendments to the Basic Texts. The CCLM may also wish to offer its views on the time frame for the adoption of the amendments, as well as on any other relevant issues.