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Proposal for the amendment to the Agreement Establishing IFAD

Note to Executive Board representatives

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Executive Board — 122nd Session
Rome, 11-12 December 2017

For: Approval

Recommendation for approval and transmittal to the Governing Council

This report concerns an amendment to the Agreement Establishing IFAD relating to the grant element of concessional partner loans. The Executive Board is invited to:

- (a) Consider and approve this report, which includes, as an annex, a Governing Council draft resolution providing for such amendment; and
- (b) Approve the transmittal of this report to the Governing Council, including the recommendation that the Governing Council adopt the draft resolution at its forty-first session in accordance with article 12 of the Agreement Establishing IFAD.

Proposal for the amendment to the Agreement Establishing IFAD

I. Background

1. This report concerns an amendment to the Agreement Establishing IFAD relating to the grant element of concessional partner loans (CPLs). Upon its consideration and approval by the Executive Board in December 2017, this proposal is to be transmitted as a report of the Executive Board to the Governing Council, with a recommendation that the Governing Council adopt the draft resolution attached as an annex, at its forty-first session in February 2018.
2. During the sessions of the Consultation on the Eleventh Replenishment of IFAD's Resources (IFAD11), Member States welcomed and expressed support for the proposed financial strategies to be explored by IFAD, in the pursuit of its mandate, to leverage a more diversified set of resources. Such strategies include the use of CPLs, the implementation of which is envisaged during the IFAD11 period. The Proposal for a Concessional Partner Loan Framework (EB 2017/S10/R.2/Rev.1) was approved by the Executive Board at its tenth special session on 30 October 2017.
3. As noted in the Concessional Partner Loan Framework, an amendment to article 4 of the Agreement Establishing IFAD (the "Agreement") is required.
4. The Agreement has been amended on six prior occasions during the 40 years of IFAD's existence, resulting in the revision of seven of the 13 articles of the Agreement. The Agreement was last revised at the Governing Council's twenty-ninth session on 16 February 2006.

II. Proposed amendment to the Agreement

5. Under the Concessional Partner Loan Framework, Member States providing CPLs will be allocated contribution votes on the basis of the "grant element" embedded in such loans due to their concessional terms. Consequently, the grant element portion of a CPL is to be treated as an "additional contribution" under article 4, section 3 of the Agreement, which confers contribution votes in accordance with article 6, section 3(a)(i)(B) of the Agreement.
6. In its present version, article 4, section 5(c) of the Agreement requires that contributions be made in the form of cash, promissory notes or obligations payable on demand. As the grant element of a CPL represents the present value of the financial benefit to IFAD of obtaining a CPL, there is uncertainty as to whether it complies with any of the requirements of article 4, section 5(c).

7. The proposed amendment consists of the addition of a new subparagraph (d) to article 4, section 5 to allow the grant element of CPLs to qualify as "additional contributions" for all intents and purposes under the Agreement, thereby ensuring that the lending Member State is entitled to contribution votes in relation to such grant element. It is proposed that article 4, section 5 be amended to read as follows (the text to be added is underlined):

"Section 5 – Conditions Governing Contributions

- (a) Contributions shall be made without restriction as to use and shall be refunded to contributing Members only in accordance with Section 4 of Article 9.
- (b) Contributions shall be made in freely convertible currencies.
- (c) Contributions to the Fund shall be made in cash or, to the extent that any part of such contributions is not needed immediately by the Fund in its operations, such part may be paid in the form of non-negotiable, irrevocable, non-interest bearing promissory notes or obligations payable on demand. In order to finance its operations, the Fund shall draw down all contributions (regardless of the form in which they are made) as follows:
 - (i) contributions shall be drawn down on a pro rata basis over reasonable periods of time as determined by the Executive Board;
 - (ii) where a contribution is paid partly in cash, the part so paid shall be drawn down, in accordance with paragraph (i), before the rest of the contribution. Except to the extent that the part paid in cash is thus drawn down, it may be deposited or invested by the Fund to produce income to help defray its administrative and other expenditures;
 - (iii) all initial contributions, as well as any increases in them, shall be drawn down before any additional contributions are drawn down. The same rule shall apply to further additional contributions.
- (d) Notwithstanding subsection (c) above, contributions to the Fund may also be made in the form of the grant element of a concessional partner loan; for this purpose, a "concessional partner loan" shall mean a loan provided by a Member or one of its state-supported institutions, which includes a grant element for the benefit of the Fund and is otherwise consistent with the Concessional Partner Loan Framework approved by the Executive Board; and "state-supported institution" shall mean any state-owned or state-controlled enterprise and development finance institution of a Member, with the exception of multilateral institutions.

8. It is recommended that the proposed amendment be adopted by the Governing Council in accordance with article 12 of the Agreement.

III. Procedures for Amendment

9. Article 12 of the Agreement vests the Governing Council with the competence and authority to adopt any amendment to the Agreement. An amendment may originate either from a Member State of the Fund or may be proposed by the Executive Board. In the event that it proposes an amendment, the Executive Board is required to submit its recommendation to that effect to the Governing Council and also communicate it to the President of IFAD, who then notifies all Member States of the Fund. The adoption by the Governing Council of a proposed amendment requires a majority of four-fifths of the total number of votes. With the exception of four stated cases, the amendment process does not require acceptance by Member States and takes effect when provided for by the resolution.

10. Article 12 of the Agreement reads:
- "(a) Except in respect of Schedule II:
- (i) Any proposal to amend this Agreement made by a Member or by the Executive Board shall be communicated to the President who shall notify all Members. The President shall refer proposals to amend this Agreement made by a Member to the Executive Board, which shall submit its recommendations thereon to the Governing Council.
 - (ii) Amendments shall be adopted by the Governing Council by a four-fifths majority of the total number of votes. Amendments shall enter into force three months after their adoption unless otherwise specified by the Governing Council, except that any amendment modifying:
 - (A) the right to withdraw from the Fund;
 - (B) the voting majority requirements provided for in this Agreement;
 - (C) the limitation on liability provided for in Section 3 of Article 3;
 - (D) the procedure for amending this Agreement;
 shall not come into force until written acceptance of such amendment by all Members is received by the President.
- (b) In respect of the several parts of Schedule II, amendments shall be proposed and adopted as provided in such parts.
- (c) The President shall immediately notify all Members and the Depositary of any amendments that are adopted and of the date of entry into force of any such amendments."
11. Rule 34.3 of the Rules of Procedure of the Governing Council further specifies that:
- "The adoption of amendments to the Agreement shall require at least four-fifths of the total number of votes in the Governing Council, except that in respect of the several parts of Schedule II to the Agreement amendments shall be adopted as provided in the respective paragraphs thereof."
12. The amendment contained in the draft resolution, for adoption in accordance with the procedures set forth in article 12 of the Agreement, does not fall within the exceptions specified in article 12(a)(ii)(A), (B), (C) and (D) of the Agreement and thus does not require acceptance by Member States.
13. Pursuant to article 12(a)(ii), amendments enter into force three months after the Governing Council adopts the draft resolution, unless the Governing Council specifies another date. In the case of the proposed amendment, the last paragraph of the draft resolution specifies that the amendment will enter into force on the date of its adoption by the Governing Council.

Draft resolution ____/XLI

Amendment to the Agreement Establishing IFAD

The Governing Council of IFAD,

Having considered the Report on the Eleventh Replenishment of IFAD's Resources, which sets forth the recommendations of the Consultation on the Eleventh Replenishment of IFAD's Resources, including as regards concessional partner loans and borrowing and market activities of the Fund;

Having further considered the Concessional Partner Loan Framework, as approved by the Executive Board during its tenth special session held in October 2017;

Having noted the proposal, made pursuant to article 12 of the Agreement Establishing IFAD, for amendment of the Agreement Establishing IFAD;

Noting the Executive Board's report (EB 2017/122/R.35) and recommendation to the Governing Council submitted in accordance with article 12 of the Agreement Establishing IFAD; and

Acting in accordance with article 12 of the Agreement Establishing IFAD;

Hereby decides:

1. Article 4, section 5 of the Agreement Establishing IFAD is hereby amended to read as follows (the text to be added is underlined):

Section 5 – Conditions Governing Contributions

- (a) Contributions shall be made without restriction as to use and shall be refunded to contributing Members only in accordance with section 4 of article 9.
- (b) Contributions shall be made in freely convertible currencies.
- (c) Contributions to the Fund shall be made in cash or, to the extent that any part of such contributions is not needed immediately by the Fund in its operations, such part may be paid in the form of non-negotiable, irrevocable, non-interest-bearing promissory notes or obligations payable on demand. In order to finance its operations, the Fund shall draw down all contributions (regardless of the form in which they are made) as follows:
 - (i) contributions shall be drawn down on a pro rata basis over reasonable periods of time as determined by the Executive Board;
 - (ii) where a contribution is paid partly in cash, the part so paid shall be drawn down, in accordance with paragraph (i), before the rest of the contribution. Except to the extent that the part paid in cash is thus drawn down, it may be deposited or invested by the Fund to produce income to help defray its administrative and other expenditures;
 - (iii) all initial contributions, as well as any increases in them, shall be drawn down before any additional contributions are drawn down. The same rule shall apply to further additional contributions.
- (d) Notwithstanding subsection (c) above, contributions to the Fund may also be made in the form of the grant element of a concessional partner loan; for this purpose, a "concessional partner loan" shall mean a loan provided by a

Member or one of its state-supported institutions, which includes a grant element for the benefit of the Fund and is otherwise consistent with the Concessional Partner Loan Framework approved by the Executive Board; and "state-supported institution" shall mean any state-owned or state-controlled enterprise and development finance institution of a Member, with the exception of multilateral institutions.

This resolution and the amendment contained therein shall enter into force and effect on the date of its adoption by the Governing Council.