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## Proposed Amendments to the Basic Legal Texts of IFAD

### Corrigendum

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For: **Approval**

## Proposed Amendments to the Basic Legal Texts of IFAD

### Corrigendum

The attention of the Executive Board is drawn to the following corrigendum to the Proposed Amendments to the Basic Legal Texts of IFAD.

#### II. Proposed amendments to the Agreement Establishing IFAD

##### A. Lending to subnationals

The suggestion is to replace the wording “the Fund may require suitable governmental or other guarantees” with “the Fund shall normally require a suitable governmental or other guarantees, unless the Executive Board decides otherwise on the basis of a thorough assessment concerning related risks and safeguards.” This modification will provide more clarity that the general rule shall be that a sovereign guarantee is required, while also allowing IFAD in the future to extend such future loans, without sovereign guarantees, should the Executive Board so decide. Thus, any potential exceptions to this general rule would need to be carefully reviewed by the Executive Board.

Article 7, Section 1(b) is amended to read as follows (the new text is shown in bold underlined and deleted text is shown in bold strikethrough).

Financing by the Fund shall be provided only for the benefit of developing States that are Members of the Fund. Such financing may be provided directly to developing Member States or political subdivisions thereof, or through intergovernmental organizations in which such Members participate or to, or through, national development banks, private sector organizations and enterprises, or other entities as assessed from time to time by the Executive Board. In the case of a loan provided to an entity other than a Member State, the Fund **shall normally require** ~~may require~~ suitable governmental or other guarantees, **unless the Executive Board decides otherwise on the basis of a thorough assessment concerning related risks and safeguards**.

##### B. Borrowing activities

Article 10, Section 2(d) – Privileges and Immunities, is amended to correct a typographical error ensuring that the restrictive provisos (A) and (B) in Article 10, Section 2(d) apply to any limited waiver of immunity (the new text is underlined and deleted text is shown in strikethrough). For the avoidance of doubt, there is no change in the wording itself – the change is simply to move the wording “provided, however, that” to the next line (the change is shown in bold underlined).

Article 10, Section 2(d)

(d) Notwithstanding Section 2(a) above, the Fund shall enjoy immunity from every form of legal process except in cases arising out of its borrowing powers when it may be sued only in a court of competent jurisdiction in the territories of a Member where:

- (i) it has appointed an agent for the purpose of accepting service or notice of process; or
- (ii) the Fund has issued securities, ~~provided, however, that:~~  
**provided, however, that:**

(A) no action shall be brought by Member States or persons acting for or deriving claims from Members; and

(B) the property and assets of the Fund shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgement against the Fund.

#### C. Voting rights for early encashment

Paragraphs 16, 17, 18, 19 of the document and Article 4, Section 5(e) and Article 6, Section 3(c) are amended to clarify that the Early Encashment could generate a discount but also a credit (the new text is bold underlined).

16. During the second session of the IFAD12 Consultation, Management was requested to explore the possibility of a potential accelerated encashment of contributions for IFAD12 and beyond. An analysis was conducted, including a review of IFAD's existing policies pertaining to the encashment of replenishment contributions, the Fund's experience to date, and comparable practice at other IFIs (the International Development Association and the African Development Fund). This paper recognizes that, subject to the approval of IFAD's governing bodies, an amendment to the Agreement is required in order to allow for the accrual of voting rights on the discount **or the credit** that may be generated from an early encashment.

17. At the third session of the Consultation in October 2020, Management presented a mechanism on early encashment to allow Member States to receive a discount **or a credit** on their contribution if they pay in one lump sum. Following the model of peer institutions, the mechanism was further revised to include the possibility for Member States to receive voting rights on any discount **or credit** that they would be entitled to receive and the deadline by which an encashment would be considered an early encashment.

18. In order to be counted as part of the mechanism provided for in article 6, section 3(a)(i)(B) and (ii)(B) of the Agreement to accrue contribution votes, the discount **or the credit** generated by the early encashment would need to be included in the definition of "additional contribution" under article 4, section 3 of the Agreement, which in its current form requires that contributions be made in the form of cash, promissory notes or obligations payable on demand, in addition to the grant element of concessional partner loans.

19. In this respect and for the purposes of clarity, the concept of "paid contributions" referred to in article 6, section 3(a)(i)(B) and (ii)(B) should include the grant element of a concessional partner loan and the discount **or the credit** generated from the early encashment of contributions.

#### Article 4, Section 5(e)

(e) Notwithstanding subsection (c) above, contributions to the Fund may also be made in the form of the discount **or the credit** generated from the early encashment of contributions in accordance with the mechanism approved by the Governing Council.

#### Article 6, Section 3(b)

For the purposes of Section 3 (a)(i)(B) and (ii)(B) above, the grant element of a concessional partner loan and the discount **or the credit** generated from the early encashment of contributions shall be considered as "paid contributions" and contributions votes shall be distributed accordingly.

### III. Proposed amendments to the Policies and Criteria for IFAD Financing

The PCIF are amended to clarify that the repayment mechanism, reflected in the revised paragraph 15 A. (a) (iii) (6) of the PCIF is governed by the Accelerated Repayment and Voluntary Prepayment Framework approved by the Executive Board in September 2020, rather than "an accelerated repayment framework" which wording was considered too vague; and to align the wording of the new subparagraph (c) of paragraph 15 A. with that of article 7, section 1 (b) of the AEI (the new text is shown in bold underlined and deleted text is shown in bold strikethrough).

#### Preamble

The Lending Policies and Criteria were amended by the Governing Council several times between 1994 and 1998, (...). In 2021, the Policies and Criteria for IFAD Financing were amended to reflect changes required to give effect to the framework on accelerated repayment **and voluntary prepayment** and codify the engagement precedent with subnational entities.

#### Paragraph 15 A. (a) (iii) (6)

(6) The Executive Board may vary the grace period and the amount of each instalment for the repayments of loans received on super highly concessional terms, highly concessional terms, blend terms and ordinary terms. In so doing, the Executive Board, on information provided by the President of IFAD, shall decide on the modalities of the repayment in accordance with the accelerated repayment **and voluntary prepayment** framework established by the Executive Board.~~take into account a country's creditworthiness. In submitting a proposal for the lending terms to apply to a country for a loan to the Executive Board, the President of IFAD shall ensure that: (i) the grace period for the loan, which shall be established in relation to the date on which a loan becomes effective and the date upon which disbursement of the loan is to cease, shall not exceed six years; and (ii) the net present value in SDR or the denomination currency of the financing agreement (as applicable) of the blend terms and ordinary terms specified in (2) and (3) above is maintained;~~

(...)

#### (c) Loans to subnationals and other entities

The Fund may provide loans to political subdivisions of Members, to intergovernmental organizations in which Members participate or to national development banks or to other entities as assessed from time to time by the Executive Board. In the case of a loan provided to an entity other than a Member State, the Fund **shall normally require may require a** suitable governmental or other guarantees, **unless the Executive Board decides otherwise on the basis of a thorough assessment concerning related risks and safeguards.** The Executive Board shall decide on the financing conditions related to each loan taking into account an assessment, by the President of IFAD, of the creditworthiness of each subnational lending operation based on a comprehensive due diligence and credit assessment. The Executive Board shall report annually to the Governing Council on the approval of this category of loans.

### V. Proposed amendments to the General Conditions

The General Conditions are amended to clarify that the repayment mechanism, reflected in Section 5.02.(c) of the General Conditions, is governed by the Accelerated Repayment

and Voluntary Prepayment Framework approved by the Executive Board in September 2020, rather than "an accelerated repayment framework" which wording was considered too vague. Section 5.02.(d) of the General Conditions is further amended to clarify that the accelerated repayment and voluntary prepayment concern not only the principal of the loan but also the interests.

Section 5.02.(c) and (d) are amended as follows (the new text is shown in bold underlined and deleted text is shown in bold strikethrough).

- (c) The Fund may modify the repayment terms applicable to the principal amount of the Loan disbursed and outstanding in accordance with the applicable accelerated repayment and voluntary prepayment framework of the Fund.
- (d) **Pursuant to paragraph (c) above, Upon notification by the Fund to the Borrower, the Borrower shall repay twice the original amount of the remaining loan each instalments of the withdrawn loan outstanding, along with any interest due until the Loan has been fully repaid and be required to commence such repayment as of the first semi-annual Principal Payment Date notified by the Fund.**

**Draft resolution \_\_\_\_/XLIV****Amendment to the Agreement Establishing IFAD****The Governing Council of IFAD,**

**Having considered** the Executive Board report EB 2020/131/[R.X], Proposed Amendments to the Basic Legal Texts of IFAD, and recommendation to the Governing Council;

**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 report and recommendation to the Governing Council submitted in accordance with Article 12 of the Agreement Establishing IFAD;

**Acting** in accordance with Article 12 of the Agreement Establishing IFAD;

**Hereby decides:**

Article 4, Section 1, Article 4, Section 5, Article 6, Section 3, Article 7, Section 1(b) and Article 10, Section 2 of the Agreement are to be amended and a new Section 7 is to be inserted in Article 4 to read as follows:

1. Article 4, Section 1 of the Agreement is hereby amended to read as follows (added text is bold underlined):

**Article 4, Section 1 – Resources of the Fund**

The resources of the Fund shall consist of:

- (a) initial contributions;
- (b) additional contributions;
- (c) special contributions from non-member States and from other sources;
- (d) funds derived or to be derived from operations or otherwise accruing to the Fund, including by borrowing from Members and other sources.

2. A new Section 7 is inserted in Article 4 of the Agreement to read as follows:

Section 7 – Borrowing Activities

The Fund shall be authorized to borrow funds from Member States or from other sources, buy and sell securities that the Fund has issued or guaranteed, and exercise such powers incidental to its borrowing activities as shall be necessary or desirable in furtherance of its purposes.

3. Article 4, Section 5 of the Agreement is hereby amended to read as follows (the new text is underlined):

- (a) (...)
- (b) (...)
- (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) (...)

(e) Notwithstanding subsection (c) above, contributions to the Fund may also be made in the form of the discount **or the credit** generated from the early encashment of contributions in accordance with the mechanism approved by the Governing Council.

4. Article 6, Section 3 of the Agreement is hereby amended to read as follows (added text is bold underlined):

**Article 6, Section 3 – Voting in the Governing Council**

- a. The total number of votes in the Governing Council shall be comprised of Original Votes and Replenishment Votes. All Members shall have equal access to those votes on the following basis:
  - (i) (...)
    - (A) (...)
    - (B) **contribution votes** shall be distributed among all Members in the proportion that each Member's cumulative paid contributions to the resources of the Fund, authorized by the Governing Council prior to January 1995 and made by Members in accordance with Sections 2, 3 and 4 of Article 4 of this Agreement, bear to the aggregate of the total of the said contributions paid by all Members;
  - (ii) (...) Except as the Governing Council shall by a two-thirds majority of the total number of votes otherwise decide, the votes for each replenishment shall be established in the ratio of one hundred (100) votes for the equivalent of each one hundred and fifty eight million United States dollars (USD 158 000 000) contributed to the total amount of that replenishment, or a fraction thereof:
    - (A) (...)
    - (B) **contribution votes** shall be distributed among all Members in the proportion that each Member's paid contribution to the resources contributed to the Fund by Members for each replenishment bears to the aggregate of the total contributions paid by all Members to the said replenishment; and

(iii) (...)

(b) For the purposes of Section 3 (a)(i)(B) and (ii)(B) above, the grant element of a concessional partner loan and the discount **or the credit** generated from the early encashment of contributions shall be considered as "paid contributions" and contributions votes shall be distributed accordingly; and

(c) Except as otherwise specified in this Agreement, decisions of the Governing Council shall be taken by a simple majority of the total number of votes.

5. Article 7, Section 1(b) of the Agreement is hereby amended to read as follows (added text is bold underlined and deleted text is shown in bold strikethrough):

Financing by the Fund shall be provided only for the benefit of developing States that are Members of the Fund. Such financing may be provided directly to developing Member States or political subdivisions thereof, or through intergovernmental organizations in which such Members participate or to, or through, national development banks, private sector organizations and enterprises, or other entities as assessed from time to time by the Executive Board. In the case of a loan provided to an entity other than a Member State, the Fund ~~shall normally require~~ may require a suitable governmental or other guarantees, **unless the Executive Board decides otherwise on the basis of a thorough assessment concerning related risks and safeguards.**

6. Article 10, Section 2 of the Agreement is hereby amended to read as follows (added text is underlined and deleted text is shown in strikethrough):

**Article 10, Section 2 – Privileges and Immunities**

(a) The Fund shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the exercise of its functions and for the fulfilment of its objective. Representatives of Members, the President and the staff of the Fund shall enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Fund.

(b) (...)

(i) (...)

(ii) (...)

(iii) (...)

(c) (...)

(d) Notwithstanding Section 2(a) above, the Fund shall enjoy immunity from every form of legal process except in cases arising out of its borrowing powers when it may be sued only in a court of competent jurisdiction in the territories of a Member where:

(i) it has appointed an agent for the purpose of accepting service or notice of process, or

(ii) the Fund has issued securities, ~~provided, however, that:~~

**provided, however, that:**



- (A) no action shall be brought by Member States or persons acting for or deriving claims from Members; and
- (B) the property and assets of the Fund shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgement against the Fund.

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

**Draft resolution .../XLIV****Amendments to the Policies and Criteria for IFAD Financing****The Governing Council of IFAD,**

**Recalling** resolution 178/XXXVI, in which it decided upon the proposal of the Executive Board to approve the Policies and Criteria for IFAD Financing;

**Having considered** the Executive Board report EB 2020/131/[R.X], Proposed Amendments to the Basic Legal Texts of IFAD, and recommendation to the Governing Council;

**Acting** under Article 7, Section 1(e) of the Agreement Establishing IFAD;

**Hereby decides:**

The following paragraphs of the Policies and Criteria for IFAD Financing are hereby amended to read as follows (added text is underlined and deleted text is shown in strikethrough):

3. The Lending Policies and Criteria were amended by the Governing Council several times between 1994 and 1998, (...). In 2020, the Policies and Criteria for IFAD Financing were amended to reflect changes required to give effect to the new Debt Sustainability Framework measures. In 2021, the Policies and Criteria for IFAD Financing were amended to reflect changes required to give effect to the framework on accelerated repayment **and voluntary prepayment**, and codify the engagement precedent with subnational entities.

(...)

15. (...)

**A. Loans****(a) Loans to the public sector**

(...)

- (ii) (...) The criteria for determining the terms to apply to a specific country shall be as specified in this paragraph, in accordance with the following sequence:

(...)

- (4) The total amount of the financing loans provided each year on DSE grant, super highly concessional, highly concessional and blend terms shall amount, at least, to approximately two thirds of the total amount lent provided annually during every replenishment period by IFAD.

(...)

- (iii) The conditions for super highly concessional, highly concessional, blend and ordinary lending terms shall be as follows:

(...)

(6) The Executive Board may vary the grace period and the amount of each instalment for the repayments of loans received on super highly concessional terms, highly concessional terms, blend terms and ordinary terms. In so doing, the Executive Board, on information provided by the President of IFAD, shall decide on the modalities of the repayment in accordance with the accelerated repayment **and voluntary prepayment** framework established by the Executive Board, ~~take into account a country's creditworthiness. In submitting a proposal for the lending terms to apply to a country for a loan to the Executive Board, the President of IFAD shall ensure that: (i) the grace period for the loan, which shall be established in relation to the date on which a loan becomes effective and the date upon which disbursement of the loan is to cease, shall not exceed six years; and (ii) the net present value in SDR or the denomination currency of the financing agreement (as applicable) of the blend terms and ordinary terms specified in (2) and (3) above is maintained;~~

(...)

(c) Loans to subnationals and other entities

The Fund may provide loans to political subdivisions of Members, to intergovernmental organizations in which Members participate or to national development banks or to other entities as assessed from time to time by the Executive Board. In the case of a loan provided to an entity other than a Member State, the Fund **shall normally require** ~~may require~~ suitable governmental or other guarantees, **unless the Executive Board decides otherwise on the basis of a thorough assessment concerning related risks and safeguards**. The Executive Board shall decide on the financing conditions related to each loan taking into account an assessment, by the President of IFAD, of the creditworthiness of each subnational lending operation based on a comprehensive due diligence and credit assessment. The Executive Board shall report annually to the Governing Council on the approval of this category of loans.

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