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## **Amendments to the General Conditions for Agricultural Development Financing**

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**FOR: APPROVAL**

**Action:** The Executive Board is invited to approve the proposed amendments to the General Conditions for Agricultural Development Financing. The amendments seek to align the General Conditions with policies approved by the Executive Board over the past two years.

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**Technical questions:**

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## **I. Introduction**

1. Over the past two years IFAD has implemented various policies and procedures approved by the Executive Board, including:
  - The Anti-Money Laundering and Countering the Financing of Terrorism Policy, approved by the Executive Board in December 2019 (EB 2019/128/R.41/Rev.1); and
  - The Social, Environmental and Climate Assessment Procedures (SECAP) 2021 Edition, approved by the Executive Board in December 2020 (EB 2020/131/R.4).
2. In addition, IFAD's Personal Data Privacy Guidelines were issued by the President in November 2021, and the Project Procurement Guidelines were approved in December 2019.
3. These policies and procedures govern aspects of IFAD's interactions with Member States and ensure transparency in the handling of projects. To ensure consistency and fairness, Management proposes to amend the General Conditions for Agricultural Development Financing (General Conditions) to reflect these policy and procedural considerations, as well as to clarify the general reading and interpretation of some provisions of the General Conditions.

## II. Amendments to the General Conditions

1. The following amendments are proposed in order to clarify the general reading and interpretation of the General Conditions.

Added text is underlined and deleted text is shown in strikethrough:

### Article II Definitions

"Annual Workplan and Budget" or "AWPB" means the annual workplan and budget for carrying out a Project during a particular Project Year, ~~which includes the Procurement Plan.~~

[...]

"Currency" of a Member State or a territory means the currency that is legal tender for the payment of public and private debts in such Member State or territory.

[...]

"Financing Agreement" means a financing agreement ~~Project Financing Agreement or Programme Financing Agreement~~, pursuant to which the Fund agrees to extend Financing to the Borrower/Recipient in relation to a Project or Programme.

[...]

"IFAD Procurement Guidelines" means the Procurement Guidelines approved by the Fund's Executive Board in December 2004 (for Financing approved by the Fund's Executive Board prior to September 2010) or the Project Procurement Guidelines approved by the Fund's Executive Board in September 2010 (for Financing approved by the Fund's Executive Board after September 2010) or the Project Procurement Guidelines approved by the Fund's Executive Board in December 2019 (for Financing approved by the Fund's Executive Board after December 2019) as such guidelines may be amended, from time to time, by the Fund.

[...]

"Member State" means any ~~Member State~~ member state of the Fund.

[...]

"Project Procurement Arrangements" or "PPA" means the operational document set out unilaterally by the Fund which contains instructions on the execution of project procurement operations with respect to the acquisition of goods, works and services under a Financing Agreement. It may be unilaterally amended by the Fund from time to time based on the current overall Project Procurement Risk Matrix (PRM).

**Section 4.07. Eligible Expenditures**

- (a) [...]
- (i) The expenditure shall meet the reasonable cost of goods, works and services required for the Project and covered by the relevant AWPB and Procurement Plan and procured in conformity with the Fund's Procurement Guidelines, and the provisions of the Project Procurement Arrangements as further defined in article II, section 2.01.
- (ii) [...]

**Section 5.01. Lending Terms**

- (a) [...]
- (b) Interest and service charge shall accrue on the outstanding principal amount of the Loan and shall be, generally, computed on the basis of a 360-day year of twelve (12) 30-day months. In respect of variable loans denominated in EUR, SDR and USD, interest and service charges shall accrue on an actual/360 day-count convention, unless otherwise expressly communicated by the Fund. The Fund shall provide the Borrower with a statement of interest and/or service charge due generated on the billing due dates specified in the Financing Agreement and the Borrower shall effect payment within thirty (30) days of such date.
- (c) [...]
- (d) [...]

**Section 5.04. Value Dates of Loan Service Payments**

Loan Service Payments shall be deemed made as of the day on which the designated account of the Fund ~~designated therefor~~ is properly credited with such amount. If the amount is credited within the period indicated in Section 5.01(b), the value date of payment shall be the billing due date. If the amount is credited after the period indicated in Section 5.01(b), the value date of payment shall be the day the amount is credited.

2. The following amendments are proposed to Article VII:
  - a. Amend sections 7.01 and 7.02 to clarify the general reading and interpretation of the sections themselves;
  - b. Amend section 7.05. Procurement to align it with the provisions of the Project Procurement Guidelines approved in December 2019;
  - c. Introduce a new section 7.06. Social, Environmental and Climate Assessment Procedures to align the General Conditions with the Social, Environmental and Climate Assessment Procedures (SECAP) 2021 Edition (EB 2020/131/R.4);
  - d. Introduce a new section 7.07. Anti-Money Laundering, Countering the Financing of Terrorism and Sanctions Measures to align the General Conditions with the Anti-Money Laundering and Countering the Financing of Terrorism Policy approved by the Executive Board in December 2019 (EB 2019/128/R.41/Rev.1);
  - e. Renumber (previous) sections 7.06 and 7.07 dealing with Fraud and Corruption, and Sexual Harassment, Sexual Exploitation and Abuse, as sections 7.08 and 7.09. respectively;

- f. Introduce a new section 7.10. Protection of Personal Data to align the General Conditions with IFAD's Personal Data Privacy Guidelines issued by the President in November 2021 (PB/2021/15); and
- g. Renumber (previous) sections 7.08 and 7.09 dealing with Use of Goods and Services and Maintenance as sections 7.11 and 7.12, respectively, and renumber the following (previous) sections 7.10 through 7.18 as 7.13 through 7.21 accordingly.

Added text is underlined and deleted text is shown in strikethrough:

### **Section 7.01. Project Implementation**

- (a) The Borrower and each of the Project Parties shall carry out the Project:
  - (i) [...]
  - (ii) in conformity with appropriate administrative, engineering, financial, economic, operational, environmental, social and agricultural development practices (including rural development practices) and good governance;

[...]
- (b) Projects shall be implemented on the basis of an ~~Annual Work plan and Budget (AWPB)~~ AWPB and relevant Procurement Plan. The Lead Project Agency shall prepare a draft Project AWPB for each Project based, to the extent appropriate, on the draft AWPBs prepared by the various Project Parties. Each draft Project AWPB shall include, among other things, a detailed description of planned Project activities during the coming Project Year, a Procurement Plan, and the sources and uses of funds.

### **Section 7.05. Project Procurement**

- (a) Procurement of goods, works and services financed by the Financing shall be carried out in accordance with the provisions of:
  - (i) the Borrower/Recipient's procurement regulations, to the extent such are consistent with the IFAD Procurement Guidelines; ~~and~~
  - (ii) the Project-specific PPA.
- (b) Each Procurement Plan shall identify procedures which must be implemented by the Borrower/Recipient in order to ensure consistency with the IFAD Procurement Guidelines and shall list all procurement activities to be implemented within the relevant period, including salaries of key Project personnel but excluding operational costs. The Procurement Plan must be kept updated and upgraded by the Borrower/Recipient.
- (c) Procurement of goods, works and services financed by the IFAD Financing shall be carried out under the Lead Project Agency. In the event that Project procurement activities are carried out by Project Parties, these shall be identified in Schedule 1 of the Financing Agreement. Any changes to the Project Parties in charge of Project procurement activities shall be subject to IFAD's prior agreement and processed via an amendment to the Financing Agreement.
- (d) By notice to the Borrower/Recipient, the Fund ~~may~~ shall require that all ~~bidding~~ Project procurement documents and contracts for procurement of goods, works and services financed by the Financing include provisions requiring bidders, suppliers, contractors, sub-contractors and consultants to:

- (i) respect the Updated Social, Environmental Climate Assessment Procedures of IFAD, as amended from time to time (Updated SECAP);
  - (ii) abide by the IFAD Policy on Preventing Fraud and Corruption in its Activities and Operations, and the IFAD Policy on Preventing and Responding to Sexual Harassment, Sexual Exploitation and Abuse and IFAD's Anti-Money Laundering and Countering the Financing of Terrorism Policy, as amended from time to time;
  - (iii) allow full inspection by the Fund of all bid documentation, contracts, bidder complaints and related records;
  - (iv) maintain all documents and records (including electronic records) related to a bid or contract for at least three (3) years after completion of the procurement processor contract execution; and
  - (v) fully cooperate with agents or representatives of the Fund carrying out an audit or investigation.
- (e) The Borrower/Recipient shall ensure that all Project procurement documents, contracts, memorandums of understanding, purchase orders and related payments are registered in the procurement and contract monitoring systems currently adopted by IFAD in relation to the procurement of goods, works, services, consultancy, non-consulting services, community contracts, grants and financing contracts. The Borrower/Recipient shall ensure that the procurement and contract data is kept up to date on a continuous basis.

#### **Section 7.06. Social, Environmental and Climate Assessment Procedures**

- (a) The Borrower/Recipient shall carry out the preparation, design, construction, implementation and operation of the Project/Programme in accordance with the nine standards and other measures and requirements set forth in the Updated SECAP, as well as with all applicable laws and regulations to the Borrower/Recipient and/or the sub-national entities relating to social, environmental and climate change issues in a manner and substance satisfactory to IFAD. The Borrower/Recipient shall not amend, vary or waive any provision of the Updated SECAP unless agreed in writing by the Fund in the Financing Agreement and/or in the management plan(s), if any.
- (b) The Borrower/Recipient shall cause the Lead Project Agency to comply at all times while carrying out the Project/Programme with the standards, measures and requirements set forth in the Updated SECAP and the management plan(s), if any.
- (c) The Borrower/Recipient will ensure that a Project/Programme-level grievance mechanism is established that is easily accessible, culturally appropriate, available in local languages, and scaled to the nature of the Project/Programme activity and potential impacts in order to promptly receive and resolve concerns and complaints (e.g. in respect of compensation, relocation or livelihood restoration) related to the environmental and social performance of the Project/Programme for people who may be unduly and adversely affected or potentially harmed if the Project/Programme fails to meet the SECAP standards and related policies. The Project/Programme-level grievance mechanism shall take into account Indigenous Peoples, customary laws and dispute resolution processes. Traditional or informal dispute mechanisms of affected Indigenous Peoples shall be used to the greatest extent possible.

- (d) The Borrower/Recipient shall fully cooperate with the Fund concerning such supervision missions, midterm reviews, field visits, audits and follow-up visits to be undertaken in accordance with the requirements of the Updated SECAP and the management plan(s), if any, as the Fund may consider appropriate depending on the scale, nature and risks of the Project/Programme.

**Section 7.07. Money Laundering, Terrorism Financing and Sanctions**

The Borrower/Recipient and the Project Parties shall ensure their commitment to combating and preventing money laundering, terrorism financing and related risks, and dealing with sanctioned entities in line with IFAD's Anti-Money Laundering and Countering the Financing of Terrorism Policy (AML-CFT Policy) and Section 4.07(c) of these General Conditions respectively. These measures shall be aligned with the principles of the AML-CFT Policy and Section 4.07(c) of these General Conditions, as may be amended from time to time. The Fund may take appropriate measures to support compliance with the above.

**Section 7.08. Fraud and Corruption**

The Borrower/Recipient and the Project Parties shall ensure that the Project is carried out in accordance with the provisions of the IFAD Policy on Preventing Fraud and Corruption in its Activities and Operations, as may be amended from time to time. The Fund may take appropriate measures in line with such Policy.

**Section 7.09. Sexual Harassment, Sexual Exploitation and Abuse**

[...]

**Section 7.10. Protection of Personal Data**

The Borrower/Recipient and the Project Parties shall ensure that the Project is carried out in accordance with the principles and provisions of IFAD's Personal Data Privacy Guidelines in its Activities and Operations, as may be amended from time to time. The Fund may take appropriate measures in line with such Guidelines.

**Section 7.11. Use of Goods and Services**

[...]

**Section 7.12. Maintenance**

[...]

**Section 7.13. Insurance**

[...]

**Section 7.14. Subsidiary Agreements**

[...]

- (e) Any changes to the Project Parties in charge of Project procurement activities shall be subject to IFAD's prior agreement and shall be processed via an amendment to the Financing Agreement.

**Section 7.15. Performance of the Agreements**

[...]

**Section 7.16. Key Project Personnel**

The Borrower/Recipient or the Lead Project Agency shall appoint the Project Director and all other key Project personnel in the manner specified in the Agreement or otherwise approved by the Fund. The Borrower/Recipient or the Lead Project Agency shall employ, as required, key staff whose qualifications, experience and terms of reference are satisfactory to and have been approved by IFAD. Key Project personnel may be seconded to the Project in the case of government officials or recruited under a fixed-term contract following the individual consultant selection method in the IFAD Procurement Handbook, or by any equivalent selection method in the applicable national procurement system that is acceptable to IFAD. The recruitment and dismissal of key Project personnel is subject to IFAD's prior review and approval. All key Project personnel shall have qualifications and experience specified in the Agreement or otherwise approved by the Fund. The Borrower/Recipient shall exercise best efforts to ensure continuity in key Project personnel throughout the Project Implementation Period. The Borrower/Recipient or the Lead Project Agency shall insure key Project personnel against health and accident risks to the extent consistent with sound commercial practice or its customary practice in respect of its national civil service, whichever is appropriate. It is expected that any contract signed between the Borrower/Recipient and key Project personnel shall be compliant with the national labour regulations or the International Labour Standards of the International Labour Organization (whichever is more stringent) in order to satisfy the conditions of the Updated SECAP. Repeated short-term contracts must be avoided, unless appropriately justified under the Project/Programme's circumstances.

**Section 7.17. Project Parties**

Each Project Party shall, as required to carry out the Project in accordance with Sections 7.01 and 7.05:

- (a) [...]
- (b) employ competent and experienced management and personnel, and ensure that their conduct is motivated by the highest ethical standards;
- (c) [...]
- (d) [...]

**Section 7.18. Allocation of Project Resources**

[...]

**Section 7.19. Environmental Factors**

[...]

**Section 7.20. Relending Rates**

[...]

**Section 7.21. Project Completion**

[...]



3. It is proposed that Article XIV be amended to reflect IFAD's privileges and immunities as captured in the Agreement Establishing IFAD, for ease of reference by Member States. Section 14.05. Applicable Law is renumbered to section 14.06, and a new section 14.05. Privileges and Immunities is introduced.

Added text is underlined and deleted text is shown in strikethrough:

**Section 14.04. Settlement of Disputes**

[...]

**Section 14.05. Privileges and Immunities**

Nothing contained in these General Conditions, in the Agreement or in any document relating thereto shall be construed: (i) as a waiver, express or implied, of any of the privileges and immunities granted to IFAD under local and/or customary and conventional international law, nor as conferring any such privileges or immunities of IFAD to any third party; (ii) as the acceptance by IFAD of the applicability of the laws of any country to IFAD; or (iii) as the acceptance by IFAD of the jurisdiction of the courts of any country or of any international or arbitral courts whose jurisdiction IFAD has not recognized.

**Section 14.06. Applicable Law**

Any ~~agreements~~ Agreement subject to these General Conditions shall be governed by, and construed in accordance with, public international law, to the exclusion of any single national system of law.