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Proposed Amendments to the Basic Legal Texts of IFAD

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Governing Council — Forty-fourth Session
Rome, 17-18 February 2021

For: **Approval**

Recommendation for approval

In accordance with the recommendation of the Executive Board at its 131st session in December 2020, the Governing Council is invited to adopt the draft resolutions contained in document EB 2020/131(R)/R.27/Rev.1 as attached in annex I, II, III and IV.

Recommendation for approval and transmittal to the Governing Council

This report introduces amendments to the Agreement Establishing IFAD, the Policies and Criteria for IFAD Financing, the Financial Regulations of IFAD and the General Conditions for Agricultural Development Financing in order to: implement the financial architecture and other policy approaches approved or to be approved by IFAD's governing bodies; codify in IFAD's legal and policy framework the long-standing practices of lending to subnationals and borrowing; and give effect to proposed early encashment provisions in respect of the Consultation on the Twelfth Replenishment of IFAD's Resources (IFAD12) and beyond, if approved by the Governing Council.

The Executive Board is invited to:

- Review and endorse the draft resolutions contained in annexes I, II, III and IV, and submit said draft resolutions, together with this report and its recommendation, to the forty-fourth session of the Governing Council in February 2021 for its consideration and adoption.

Proposed Amendments to the Basic Legal Texts of IFAD

I. Introduction

1. This report introduces amendments to the Agreement Establishing IFAD (the "Agreement"), the Policies and Criteria for IFAD Financing (the "Policies"), the Financial Regulations of IFAD (the "Financial Regulations") and the General Conditions for Agricultural Development Financing in order to:
 - **Codify** existing long-standing practices such as lending to subnationals and similar entities (since 1978), and borrowing (since 2014);
 - **Implement** the financial architecture policies and frameworks that have already been approved by the Executive Board, including the Debt Sustainability Framework Reform¹ and the Accelerated Repayment and Voluntary Prepayment Framework;² and
 - **Recognize** the strategic updates necessary for successful delivery of IFAD12, if approved by IFAD's governing bodies, by incorporating voting rights for early encashment as well as enabling IFAD to access a wider pool of eligible lenders through the proposed Integrated Borrowing Framework.
2. Consistent with IFAD's updated risk management practices and the establishment of the Office of Enterprise Risk Management, the proposed amendments will, if approved and, in line with the relevant policy framework, be implemented with appropriate safeguards designed to mitigate any potential increased risks to IFAD.
3. As to the proposed amendments in sections II, III and IV hereof, upon review and endorsement by the Executive Board in December 2020, this document is to be transmitted as an Executive Board report to the Governing Council with the recommendation that the Governing Council adopt the four draft resolutions (attached hereto as annexes I, II, III and IV) at its forty-fourth session in February 2021.

¹ EB 2019/128/R.44.

² EB 2020/130/R.34.

II. Proposed amendments to the Agreement Establishing IFAD

4. This paper proposes three categories of amendments to the Agreement: (a) lending to subnationals; (b) borrowing activities; and (c) voting rights for early encashment. Article 12 of the Agreement vests the Governing Council with the authority to adopt amendments 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 the Governing Council and communicate it to the President of IFAD, who then notifies all Member States. 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 cases specified in Article 12(a)(ii)(A),(B),(C) and (D) of the Agreement, the amendment process takes effect when provided for by the resolution.
5. Article 12(a) 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.”
6. The amendments to the Agreement contained in the draft resolution attached as annex I hereto do not fall within the exceptions specified in Article 12(a)(ii)(A), (B),(C) and (D) of the Agreement, and thus are presented for adoption by the Governing Council in accordance with the procedures set forth in Article 12.

A. Lending to subnationals

7. As part of the process to codify the existing practice of lending to subnationals in IFAD’s basic legal texts and, as agreed during the 128th session of the Executive Board in December 2019, the document “Approach Paper: Lending to Subnational Entities in the Context of IFAD’s New Business Model” was presented to the Audit Committee and the Executive Board in April 2020 for review. The Approach Paper outlined IFAD’s long-standing practice of lending to subnationals, dating back to the early 1980s. In the written comments received from the Executive Board, all Members who responded expressed their preference for an amendment to be made to the Agreement to codify this long-standing IFAD practice.
8. The Approach Paper has been further developed into an operational and strategic framework entitled Lending to Subnational Entities in the Context of IFAD’s New

Business Model,³ and will be submitted to the Executive Board in December 2020 for approval. As outlined in that paper, IFAD would only consider this lending option on the basis of a comprehensive due diligence and credit assessment undertaken in response to a Member State's request. In sum, IFAD could engage with subnational entities, including national development banks, but only with the support of an explicit enforceable sovereign guarantee that meets IFAD's criteria, following the normal IFAD project review process, including Executive Board approval.

9. Furthermore, IFAD has benchmarked the charters of seven peer international financial institutions (IFIs)⁴ and confirmed that the practice of lending to subnational entities is explicitly allowed (see benchmarking matrix, annex IV). The benchmarking also verified that six of the seven benchmarked peers are flexible as to the strict requirement for a sovereign guarantee. Consistent with both the existing text in the Agreement in relation to lending to intergovernmental organizations and with the practice of peer IFIs, Management proposes that the Agreement should not prescriptively require a guarantee. It is further noted that each individual lending proposal will be analysed in accordance with the relevant framework (as described in more detail in paragraph 8 above), and will be submitted to the Executive Board for approval. As already noted above, six of the seven benchmarked IFI peers follow this same approach.
10. Accordingly, Article 7, Section 1 (b), is to be amended to read as follows (added text is underlined and deleted text is shown in strikethrough):

Article 7, Section 1(b):

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.

B. Borrowing activities

11. As part of the transformation of its financial architecture, with the approval by the Executive Board of IFAD's Private Sector Engagement Strategy 2019-2024,⁵ pending the Executive Board's assessment of the Integrated Borrowing Framework in December 2020,⁶ and IFAD's credit rating, the following amendments are proposed to codify IFAD's ability to diversify and expand its funding sources, thereby aligning IFAD with peer IFIs on these matters.
12. Given IFAD's history of borrowing since 2014, from both sovereign and concessional partners, and the possibility to further diversify and expand its sources of funding, it is proposed that the Agreement be amended in Article 4 to

³ EB 2020/131/R.25/Rev.1.

⁴ The peer institutions are the Asian Development Bank (ADB), European Bank for Reconstruction and Development (EBRD), International Bank for Reconstruction and Development (IBRD), International Development Association (IDA), International Finance Corporation (IFC), the African Development Bank (AfDB), and the Inter-American Development Bank (IDB).

⁵ EB 2019/127/R.3.

⁶ EB 2020/131/R.21/Rev.1.

codify IFAD's existing capacity to borrow. In addition, Article 4, Sections 1 and 7 expand IFAD's ability to borrow from other sources to give effect to the Integrated Borrowing Framework, if approved by the Executive Board. It is further proposed that Article 10 be amended to provide for a limited waiver of IFAD's immunity from legal process⁷ to allow potential suit (such as a claim brought by a lender against IFAD for amounts due but not paid). Lenders would be limited to bringing such a suit against IFAD to jurisdictions where IFAD borrows funds or appoints a process agent. This proposed amendment reinforces the existing principle of Limitation of Liability enshrined in Article 3, Section 3, clarifying that any potential suit by a lender would be against IFAD and not against an individual Member. Together, the proposed amendments to Articles 4 and 10 recognize that strategic updates to the Agreement are prudent in order to enable delivery of IFAD12 while ensuring a high standard of risk management.

13. In order to ensure alignment between IFAD and its peer IFIs, Management extended the aforementioned benchmarking matrix (see annex IV) to review peer IFI borrowing powers. The benchmarking confirmed that each of the establishing agreements of all seven peer IFIs include: (i) the authorization to borrow funds from their member states, public entities, or IFIs; (ii) the authorization to issue securities; and (iii) a limited waiver of their privileges and immunities in the exercise of their borrowing power.
14. Accordingly, the following proposed amendments are aligned with the articles of peer IFIs, codifying IFAD's ability to borrow from its Member States or from other sources and ensuring that any potential suit is brought against IFAD, and not, for example, against a Member.
15. Article 4, Section 1 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 (added text is underlined and deleted text is shown in strikethrough):

Article 4, Section 1 – Resources of the Fund

The resources of the Fund shall consist of:

- (i) initial contributions;
- (ii) additional contributions;
- (iii) special contributions from non-member States and from other sources;
- (iv) funds derived or to be derived from operations or otherwise accruing to the Fund, including by borrowing from Members and other sources.

Article 4, 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.

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

⁷ Article III, Section 4 of the Convention on is the Privileges and Immunities of the Specialized Agencies, approved by the General Assembly of the United Nations on 21 November, 1947.

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) - (c) above, actions arising out of its authorities under Article 4, Section 7 may be brought against the Fund 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 or guaranteed 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

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 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 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 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 credit generated from the early encashment of contributions.
20. Accordingly, it is proposed that article 4, section 5 and article 6, section 3 be amended to read as follows (the text to be added is underlined):

Article 4, Section 5 – Conditions Governing Contributions

- (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.

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.

(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.

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

21. Amendments to the Policies are necessary in order to give effect to the Accelerated Repayment and Voluntary Prepayment Framework⁸ and the Debt Sustainability Framework Reform as well as codify the modalities of engagement with subnational entities to give effect to the related amendment to the Agreement.
22. At its 128th session, the Executive Board approved the Debt Sustainability Framework Reform aiming to build a tailored IFAD response and maximize the use of grants for the poorest countries with the highest levels of debt distress, while adhering to the international architecture of support for country debt sustainability assessments. The implementation of the framework required an amendment of the Policies and Criteria for IFAD Financing to reflect the introduction of the super highly concessional terms, which was endorsed by the Governing Council at its forty-third session.⁹ Paragraph 15A.(a)(ii)(4)¹⁰ is amended to reflect the introduction of the DSF reform and super highly concessional terms, and includes

⁸ EB 2020/130/R.34.

⁹ GC 43/L.9.

¹⁰ Super highly concessional terms will be effective from 1 January 2022, as per Governing Council resolution_213/XLIII.

blend terms as part of the concessional terms financing offered. This enshrines the latest definition by the IMF of concessional terms.

23. At its 130th session, the Executive Board approved the Accelerated Repayment and Voluntary Prepayment Framework, whose aim is to recognize the economic transition of certain Member States and their increased capacity to provide positive contributions to support other Member States in their economic journeys. The implementation of the framework requires an amendment to the Policies in paragraph 3 and paragraph 15A.(a)(iii)(6) to reflect the options to be introduced for accelerated repayments and to the General Conditions for Agricultural Development Financing which currently do not allow for accelerated repayments. The amendments to the General Conditions for Agricultural Development Financing have been approved by the Executive Board at its 131st session-(see Section V below).
24. Accordingly, the Policies are to be 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 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 DSF 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~~ 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.

IV. Proposed amendments to the Financial Regulations of IFAD

25. The following amendments are proposed to the Financial Regulations of IFAD to align them to evolving business model and policies previously approved by the Executive Board. In particular, the amendment to Financial Regulation V (Draw Down) was brought to the attention of the Executive Board at its 129th session in April 2020.¹¹ The Board document – Requirements for the Forty-first Drawdown of Member State Contributions in 2020 – recommended that, from IFAD12 onwards, contribution encashments be fully aligned to payment clauses as defined in the relevant replenishment resolutions with the objective of promoting greater efficiency in the proceedings of the Executive Board sessions and Audit Committee meetings. As noted in the document, the Executive Board approval of drawdown requirements was relevant in earlier years, when replenishment contributions were in excess of disbursement needs. Different drawdown and encashment schedules

¹¹ EB 2020/129/R.25 and EB 2020/129/R.25/Add.1.

are no longer required. This change is therefore proposed to reflect IFAD's current operational and financial profile. IFAD effectively draws down 100 per cent of replenishment contributions to ensure timely and adequate funding to its ongoing operations. As such, Management proposes to streamline this process, which also reduces the volume of documentation being submitted to the Governing Bodies.

26. Accordingly, Financial Regulation V, paragraph 3, is to be amended to read as follows (added text is underlined and deleted text is shown in strikethrough):
3. Contributions shall be drawn down on a pro rata basis, over such reasonable periods of time as ~~the Executive Board shall determined in~~ each replenishment resolution to meet estimated disbursements over the following period. ~~In applying a pro rata drawdown, an increase in a contribution shall be included, from the time the increase was made, in that part of the contribution that has not yet been draw down.~~
27. Furthermore, at its 127th session, the Executive Board approved the Internal Control Framework¹² to establish institutional standards and accountability for operating the internal control system and to integrate control mechanisms into one coherent and comprehensive framework. Under the Agreement Establishing IFAD and regulation X of the Financial Regulations of IFAD, ultimate responsibility for establishing and maintaining appropriate internal financial controls rests with the President.
28. In order to codify the responsibility of the President in the establishment, maintenance, and implementation of an appropriate internal control framework, Financial Regulation X, paragraph 1, is to be amended to read as follows (added text is underlined):
1. Consistent with well-recognized international standards of financial management and accountancy, the President shall:
 - (a) Establish detailed financial rules and procedures in order to ensure:
 - (i) Effective financial administration and the exercise of economy;
 - (ii) Effective custody of the physical assets of the Fund; and
 - (iii) That all payments are made on the basis of relevant supporting evidence;
 - (b) Designate the officers who may receive moneys, incur commitments or obligations and make payments on behalf of the Fund;
 - (c) Establish and maintain appropriate internal financial control and audit systems;
 - (d) Establish, maintain and implement an appropriate internal control framework.

V. Amendments to the General Conditions

29. The following amendments were approved by the Executive Board at its 131st session in order to introduce the provision on accelerated repayment into IFAD's General Conditions for Agricultural Development Financing, as provided for under the Accelerated Repayment and Voluntary Prepayment Framework approved by

¹² EB 2019/127/R.39.

the Executive Board at its 130th session (see paragraph 17 above) (added text is underlined):

Section 5.02. Repayments and Prepayments of Principal

- (a) (...)
- (b) (...)
- (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.
- (e) If, at any time after the repayment terms have been modified pursuant to paragraph (c) above, the Fund determines that the Borrower's economic condition has deteriorated significantly, the Fund may, if so requested by the Borrower, further reverse the terms of repayment of the principal amount to the ones originally agreed upon in this Agreement.

VI. Conclusion

30. In light of the above, it is proposed that the Executive Board:
 - (a) Review and endorse the draft resolutions contained in annexes I, II, III and IV, and submit said draft resolutions, together with this report and its recommendation, to the forty-fourth session of the Governing Council in February 2021 for its consideration and adoption.

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 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 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 underlined and deleted text is shown in strikethrough):

Article 7, Section 1(b):

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)- (c) above, actions arising out of its authorities under Article 4, Section 7 may be brought against the Fund 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 or guaranteed 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 DSF 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~~ 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.

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 Financial Regulations of 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;

Acting under Article 6, Section 2(f) of the Agreement Establishing IFAD;

Hereby decides:

1. Financial Regulation V, paragraph 3, is to be amended to read as follows (added text is underlined and deleted text is shown in strikethrough):
 3. Contributions shall be drawn down on a pro rata basis, over such reasonable periods of time as ~~the Executive Board shall~~ determined in each replenishment resolution to meet estimated disbursements over the following period. ~~In applying a pro rata drawdown, an increase in a contribution shall be included, from the time the increase was made, in that part of the contribution that has not yet been draw down.~~
2. A new subparagraph (d) is inserted in paragraph 1 of Financial Regulation X:
 - (d) Establish, maintain and implement an appropriate internal control framework.

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

Market Borrowing Authority

The Governing Council of IFAD,

Recalling Governing Council Resolution 204/XLI, which called upon the IFAD12 Consultation to consider progress made by IFAD in preparing for the possibility of market borrowing;

Hereby decides that:

Any commencement of market borrowing by IFAD must be first reviewed and endorsed by the Executive Board and ultimately approved by the Governing Council.

Benchmarking Matrix

IFI	Power to borrow including to issue bonds: Y/N?	Limited waiver of privileges and immunities for legal process: Y/N?	Lending to subnationals: Y/N?	Sovereign guarantee required: Shall be/May be/ Is not required?
ADB	Yes	Yes	Yes	May be required, Following a negative assessment of the subnational borrower's standing, ADB may require the member to provide a guarantee.
EBRD	Yes	Yes	Yes	May be required, EBRD may require the members to guarantee the repayment of the principal, the interest and other fees and charges.
IBRD	Yes	Yes	Yes	Shall be required, IBRD, in all cases, requires a sovereign guarantee and enters into a separate guarantee agreement with the member.
IDA	Yes	Yes	Yes	May be required, IDA may, at its discretion, require a suitable governmental or other guarantee.
AfDB	Yes	Yes	Yes	May be required, AfDB may require a sovereign guarantee following an assessment of the borrower on a case-by-case basis.
IDB	Yes	Yes	Yes	May be required, IDB may require a sovereign guarantee following an assessment of the borrower on a case-by-case basis.
IFC	Yes	Yes	Yes	Is not required, Under the IFC's Subnational Finance Programme, sovereign guarantee is not required.