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# COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

## Hundred and Fifth Session

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**Attendance by candidates or scrutineers appointed by candidates at the count of votes (Implementation of Rule XII, paragraphs 10(g) and (h) of the General Rules of the Organization)**

## I. Introduction

1. This matter is being referred to the Committee on Constitutional and Legal Matters (CCLM) for guidance, in accordance with Rule XXXIV, paragraph 7 (a) and (j) of the General Rules of the Organization (GRO). It concerns issues arising from attendance by candidates or scrutineers appointed by candidates at the count of votes on the occasion of secret ballots.

## II. The Issue

2. In general, secret ballots are held for elections, defined as “*the selection or appointment of more than one or more individuals, nations or localities*” (Rule XII, paragraph 9 of the GRO). Rule XII of the GRO establishes a detailed legal framework for decision-making by secret ballot by the Conference or the Council, both for situations when one elective place is to be filled and when more than one elective place is to be filled at the same election.

3. Under Rule XII, paragraph 10(a), the appointment of the Director-General and the admission of additional Member Nations and Associate Members are decided by secret ballot. Other elections are likewise decided by secret ballot except that in the case of an election in which there are not more candidates than vacancies, the Chairperson may submit to the Conference or Council that the appointment be decided by clear general consent.

4. The count of votes is carried out by tellers. For the purpose of a secret ballot, the Chairperson of the Conference or Council is required to appoint two tellers from among the delegates or representatives or their alternates. In case of a secret ballot for an election, the tellers are delegates or representatives or their alternate who are not parties directly interested in the elections. The duties of the tellers are to supervise the balloting procedure, count the ballot papers, decide on the validity of a ballot paper in any case of doubt, and certify the result of each ballot (see Rule XII, paragraph 10 (c)). As

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stipulated in Rule XII, paragraph 10(e), voting booths are set up and supervised in such a manner “*as to ensure complete secrecy of the ballot*”.

5. In situations governed by Rule XII when there is secret ballot for the election of an office holder (e.g. Director-General, Independent Chairperson of the Council or the Chairperson of a given body or committee), candidates or scrutineers appointed by the candidates may attend the count of votes. This is foreseen in paragraph 10 (g) of Rule XII, which provides that “*should the tellers withdraw from the presence of the delegates or representatives in order to carry out the count of the votes, only the candidates or scrutineers appointed by the candidates may attend the count, but they shall not take part in the count*”. Candidates or scrutineers appointed by them have no role in the count, aside from “*observing*” the count process.

6. In a few recent situations, scrutineers appointed by candidates have, through modern communication technology, informed their delegations or third parties of the outcome of the count of votes. In a recent situation this resulted in large number of delegates at the plenary of a Conference session being made informally aware of the outcome of a ballot before the announcement of the results by the Chairperson as part of his general duties under Rule IX, paragraph 1, to announce decisions, including the outcome of secret ballots.

7. It is questionable whether the disclosure of secret ballot results by scrutineers as described above is in accordance with the terms of Rule XII, paragraph 10 (h). While this provision is framed in broad terms, it could be seen as placing an obligation upon scrutineers attending the count to respect the secrecy of the count. Under this rule, “*members of delegations and of the secretariat of the Conference or Council who are responsible for the supervision of any vote by secret ballot shall not disclose to any unauthorized person any information which might tend, or be presumed to tend, towards destroying the secrecy of the ballot*”.

8. The CCLM may wish to advise on the approach to be taken at any future secret ballot, noting that a range of options could be considered.

9. One of these options could, perhaps, consist in removing the permission for candidates or scrutineers appointed by the candidates to attend the count. In recent years, the Secretariat has systematically invited and insisted that scrutineers appointed by candidates attend the count. However, this has not always occurred. For instance, scrutineers appointed by candidates have not always attended the count of votes at elections for the Independent Chairperson of the Council. This has also occurred on the occasion of elections governed by the provisions of Rule XII for officers of bodies other than the Conference or Council. Furthermore, notwithstanding the fact that Rule XII, paragraph 10 (g) applies to all elections, it is normally not applied to elections by the Conference of Council Members nor to votes on the admission of new Members of FAO. In this context, it has generally been considered that other existing procedures ensure the regularity of the process of count of ballots.

### **III. Suggested Action by the Committee**

10. The CCLM is invited to review this document and make such observations thereon as appropriate, including on the desirability and content of possible amendments to the GRO. Any possible amendments could be considered at the current or at a future session of the CCLM.