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FAO Policies on Protection of Data and Intellectual Property Rights: FAO Data Protection Principles and Rules

I. Introduction

1. This item has been placed on the Provisional Agenda of the Committee on Constitutional and Legal Matters (hereinafter “CCLM” or “the Committee”) under Rule XXXIV, paragraph 8 of the General Rules of the Organization (GRO), whereby the Committee shall consider “*the legal and constitutional aspects of any (...) matters submitted to it by the Council or the Director-General*”.

II. Background

2. The Council called for strengthening of the Organization’s data protection and intellectual property (IP) rights frameworks at its 165th Session, particularly within the context of the Hand-in-Hand Initiative,¹ the new Strategy for Private Sector Engagement,² the Strategic Framework 2022-2031, and FAO’s response to the COVID-19 pandemic.³ At its 166th Session, the Council recalled “*the need to develop a cross-cutting data policy to ensure data governance, data integrity and privacy, as well as intellectual property rights, and to adhere to internationally agreed standards and protocols*”.⁴ Subsequently, the 42nd Session of the Conference “*underlined the importance of all forms of innovation, taking into account proper science-based risk analysis, as appropriate, including digitalization, while ensuring protection of data privacy and intellectual property rights, as a driving force in agriculture, environment, commodities and food trade, and food security and nutrition*”.⁵

¹ CL 165/REP, paragraph 14 (i).

² CL 165/REP, paragraph 11 (j).

³ CL 165/REP, paragraph 13 (c).

⁴ CL 166/REP, paragraph 24 (k).

⁵ C 2021/REP, paragraph 64 (h).

3. The Strategic Framework 2022-31, endorsed by the 42nd Session of the Conference, established that the Organization shall apply “*four cross-cutting/cross-sectional ‘accelerators’: (i) technology, (ii) innovation, (iii) data, and (iv) complements (governance, human capital, and institutions) in all its programmatic interventions to accelerate impact while minimizing trade-offs*”.⁶

4. This document is presented pursuant to the above-mentioned requests and decisions of the Governing Bodies. It is underlined that, in the current exercise, the Organization is not embarking upon the development of general policy guidance for Members and other stakeholders on the protection of data and intellectual property rights. Rather, it is developing the policies that will apply to the activities it undertakes to implement the priorities and governance decisions of the Members and to discharge the mandate of the Organization. Such matters have, typically, been addressed in the context of the executive functions of the Organization.

III. Legal framework

5. As established in Article I of its Constitution, among the functions of the Organization are the collection, analysis, interpretation and dissemination of information relating to nutrition, food and agriculture.⁷ This includes “*scientific, technological, social and economic research relating to nutrition, food and agriculture*”, as well as “*the spread of public knowledge of nutritional and agricultural science and practice*”.⁸

6. The Organization operates under Public International Law and is an entity created by treaty: the FAO Constitution, from which it derives its legal personality and mandate.

7. As provided in Article XII of the Constitution, the Organization is a specialized agency of the United Nations and has entered into an agreement defining its relations with the United Nations. In that capacity, it is vested with privileges and immunities under Public International Law, including pursuant to the 1947 Convention on the Privileges and Immunities of the Specialized Agencies (CPISA)⁹ and bilateral agreements with Members.

8. It is observed that the records of the 1945 negotiations concerning the privileges and immunities of the future United Nations Organization reflect that: “[t]he terms privileges and immunities indicate in a general way all that could be considered necessary to the realization of the purposes of the Organization, the free functioning of its organs and to the independent exercise of the functions and duties of their officials: exemption from tax, immunity from jurisdiction, facilities for communication, inviolability of buildings, properties, and archives, etc. (...) But if there is one certain principle it is that no member state may hinder in any way the working of the Organization or take any measures the effect of which might be to increase its burdens, financial or other”.¹⁰

9. The CPISA codifies these general principles, establishing that specialized agencies “*shall enjoy immunity from every form of legal process except in so far as in any particular case they have expressly waived their immunity*”,¹¹ it being “*understood that no waiver of immunity shall extend to any measure of execution*”. In addition, their property and assets “*wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action*”.¹² National or regional legislation, including that governing data protection or intellectual property, does not apply to

⁶ C 2021/7, Executive Summary, paragraph 6.

⁷ Constitution, Article I (1).

⁸ Constitution, Article I (2) (a) and (b).

⁹ Convention on the Privileges and Immunities of the Specialized Agencies, United Nations, Treaty Series, vol. 33, p. 261. (CPISA), Article I (1) (b).

¹⁰ The United Nations Conference on International Organization, Doc. 933, IV/2/42(2), 12 June 1945, Commission IV (Judicial Organization), Committee 2 (Legal Problems), Report of the Rapporteur of Committee IV/2 as approved by the Committee, at page 705.

¹¹ CPISA, Article III, Section 4.

¹² CPISA, Article III, Section 5.

the activities of the Organization.¹³ The Organization instead promulgates its own rules and policies, having regard to generally recognized principles and good practices, including the rules, principles and practices of other entities of the UN System.

10. Rule XXXVIII of the GRO establishes that “[t]he Director-General is the executive officer of the Organization, and as such shall service the Conference and Council, carry out their decisions, and act on behalf of the Organization in all its transactions”. It provides that “[t]he Director-General shall have full powers and authority to direct the work of the Organization” and “be responsible for the internal administration of the Organization”.¹⁴ The Director-General, and the personnel of the Organization under his direction, promote and safeguard the interests of the Organization, including through the development and application of operational rules and policies governing its work.

11. The Organization’s internal policies and rules must not only ensure compliance with the Basic Texts, but also provide effective safeguards against risks, including financial liabilities. The Financial Regulations place fiduciary obligations upon the Director-General, for which he is accountable to the Members through the Governing Bodies. For example, Financial Regulation 10.1 (a) (i) requires the Director-General to establish detailed financial rules and procedures in order to ensure “*effective financial administration and the exercise of economy*”. Financial Regulation 6.7 establishes that the Director-General may not accept any voluntary contribution, whether or not in cash, “*which directly or indirectly involves additional financial obligations for Member Nations and Associate Members*” without the consent of the Conference. Thus, the new intellectual property and data protection frameworks must aim to prevent direct or indirect liabilities resulting from the Organization’s activities.

12. With respect to data protection specifically,¹⁵ an internal legal framework for the protection of data and IP exists but is fragmented. In January 2021, the Organization promulgated its Personal Data Protection Principles drawing and building upon the United Nations High-Level Committee on Management (HLCM) Personal Data Protection and Privacy Principles. This instrument governs personal data processed by the Organization and applies to all its activities.

IV. Proposed guiding principles

13. The Organization’s new policies and rules on data protection and intellectual property will:

- a) be defined according to the Organization’s functions and status as defined in the Basic Texts;
- b) take into account its special attributes: its “*global knowledge, neutral status, and convening authority*”;¹⁶
- c) respect and safeguard the rights of all those who entrust the Organization with data and other materials, including Members, beneficiaries, partners, and other stakeholders.

14. In addition, the Organization’s decentralized nature implies the need for a framework that may be operationalized in all locations where the Organization acts.

A. Data Protection Principles

15. Data protection is a process to protect and safeguard data – including personal data – from unauthorised access or disclosure, loss, unlawful destruction, and alteration.

¹³ Irrespective of the legal framework, from a practical perspective, FAO would be unable to comply with the different laws of its 194 Member Nations, one Member Organization, and two Associate Members.

¹⁴ General Rules of the Organization, Rule XXXVIII 1; 2 (a).

¹⁵ PC 130/3, paragraph 17.

¹⁶ C 2021/3, Medium-Term Plan 2022-2025, paragraph 40.

16. Personal data is defined as information relating to an identified or identifiable natural person (“data subject”).¹⁷ Conversely, non-personal data encompasses every other type of data which are not related to an identified or identifiable natural person.

17. The Organization’s overarching data protection framework will be based on the principles set out below. These are drawn from a broad range of materials,¹⁸ national and international, and reflect widely accepted standards.

Fair and Legitimate Processing

18. Data must be processed in a manner that is fair. This means that it will be processed in a way that the data subject would reasonably expect, and not in a manner that would have unjustified adverse effects on the data subject.¹⁹

19. In the case of personal data, consent is the main basis for processing. This consent must be freely given, specific, informed, and unambiguous.²⁰ Other legal bases, such as the vital interest of the data subject and the Organization’s mandate,²¹ may be relied upon, where necessary and appropriate, to justify processing of personal data. This would apply, for instance, to large scale processing of data for humanitarian activities, as in the case of the Organization’s support to vulnerable beneficiaries in the context of an epidemic, disaster, or armed conflict.

Data Security

20. Processing of data is subject to Confidentiality, Integrity, and Availability (“the CIA Triad goals”):²²

- a) *Confidentiality*: data is not accessed or used by unauthorised persons.²³
- b) *Integrity*: data is correct and cannot be modified by any individual unauthorised to do so.²⁴
- c) *Availability*: data can be accessed or used by authorised persons when required.²⁵

Data Management

21. Data must be Findable, Accessible, Interoperable, and Reusable (“the FAIR Guiding Principles”).²⁶

¹⁷ See UNHLCM “[Personal Data Protection and Privacy Principles](#)”.

¹⁸ See, for example, UNDG’s “[Data Privacy, Ethics and Protection: Guidance Note on Big Data for Achievement of the 2030 Agenda](#)”; IOM “[Data Protection Manual](#)”; OECD “[Decision of the Secretary-General on the Protection of Individuals with regard to the Processing of their Personal Data](#)”; ICRC “[Rules on Personal Data Protection](#)”; UNHCR “[Policy on the Protection of Personal Data of Persons of Concern to UNHCR](#)”; WFP “[Guide to Personal Data Protection and Privacy](#)”; and UNHLCM “[Personal Data Protection and Privacy Principles](#)”; Argentine Republic “[Law no. 25.326](#)”; European Union’s “[Convention 108+](#)” and “[General Data Protection Regulation](#)”; United States of America’s National Institute of Standards and Technology “[Framework for Improving Critical Infrastructure Cybersecurity Version 1.1](#)”; People’s Republic of China’s “[Personal Information Protection Law](#)”; Republic of Turkey’s [Law on the Protection of Personal Data](#); Kingdom of Morocco’s [Law no. 09-08](#).

¹⁹ See UNDG’s “[Data Privacy, Ethics and Protection: Guidance Note on Big Data for Achievement of the 2030 Agenda](#)”, Principle 1.

²⁰ See “[IOM Data Protection Manual](#)”, page 41.

²¹ Principle I b), c), d) of FAO Personal Data Protection Principles.

²² See, for example, Mir, Suhail & Quadri, Syed, “[Information Availability: An Insight into the Most Important Attribute of Information Security](#)”, *Journal of Information Security* 2016, 07, pages 185-194.

²³ Per Oscarson, “[Actual and Perceived Information Systems Security](#)”, Linköping 2007.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ See the “[GO FAIR initiative](#)”, and Wilkinson, M., Dumontier, M., Aalbersberg, I. et al., “The FAIR Guiding Principles for scientific data management and stewardship”, *Scientific Data*, 3, (2016).

22. Accordingly, data management and dissemination will permit open access to data, as far as possible, without prejudice to confidentiality and safeguards required by particular types of data.²⁷

Transfer

23. The Organization may share data with third parties under the condition that the third party affords a level of data protection the same or comparable to those implemented by the Organization for non-personal or personal data, as applicable depending on the type of data shared.²⁸

24. In the case of personal data, the transfer of data must also meet one of the legal requirements stipulated in FAO Personal Data Protection Principles for their processing.

Data Accuracy

25. Data processed by the Organization must be accurate and, where necessary, updated to fulfil the specified purposes of the relevant data processing.²⁹

Data Storage and Retention

26. Data must be retained or stored in accordance with the Organization's internal policy on archiving and record management.

27. Personal data must be retained only for the time that is necessary for the specified purposes of the personal data processing.³⁰

Sensitive Personal Data

28. A special category of "sensitive personal data"³¹ is established that warrants more protection and safeguards due to the particular sensitive nature of the information concerning the data subject.³²

Proportionality and Necessity

29. Personal data must be processed only when it is relevant, limited, and adequate to what is necessary in relation to the specified purposes of the personal data processing.³³

Transparency

30. Personal data must be processed with transparency to the data subjects, as appropriate and whenever possible.³⁴ Data subjects must be provided with information about the processing of their personal data, as well as on their rights to request access, verification, rectification, and/or deletion of that personal data ("Data Subject Rights"),³⁵ subject to the overriding operational interest of the Organization.

²⁷ See UNDG's "[Data Privacy, Ethics and Protection: Guidance Note on Big Data for Achievement of the 2030 Agenda](#)", Principle 8.

²⁸ See UNHCR "[Policy on the Protection of Personal Data of Persons of Concern to UNHCR](#)", Principle 6.1.

²⁹ See, for example, UNHCR "[Policy on the Protection of Personal Data of Persons of Concern to UNHCR](#)", Principle 2.5.

³⁰ See, for example, WFP "[Guide to Personal Data Protection and Privacy](#)", page 82; and European Union's "[General Data Protection Regulation](#)", Article 5(1)(c).

³¹ See UNDG's "[Data Privacy, Ethics and Protection: Guidance Note on Big Data for Achievement of the 2030 Agenda](#)", page 11.

³² See, for example, IOM "[Data Protection Manual](#)", page 72; and United Mexican States' "[Ley Federal de Protección de Datos Personales en Posesión de los Particulares](#)", Article 3(V).

³³ See, for example, UNHLCM "[Personal Data Protection and Privacy Principles](#)", Principle 3; and Argentine Republic's "[Law no. 25.326](#)", Article 4.

³⁴ See UNDG's "[Data Privacy, Ethics and Protection: Guidance Note on Big Data for Achievement of the 2030 Agenda](#)", Principle 8.

³⁵ ICRC Rules on Personal Data Protection, Chapter 2 Rights of Data Subjects.

Privileges and Immunities

31. The implementation of a data protection framework shall be without prejudice to the status of the Organization, and its privileges and immunities.³⁶

32. It is observed that certain non-personal data are also protected under the Intellectual Property (IP) rights regime, as they fall under the scope of, *inter alia*, copyrights and trade secrets. Accordingly, principles governing the management of the Organization's specific non-personal data protected under IP are further elaborated below.

B. Intellectual Property Principles

33. The Organization will adopt a series of principles with a view to improving the management of the intellectual outputs of its activities, such as publications, software, databases and other materials. The focus will be on strengthening the Organization's practices concerning the IP it produces and owns, either in its entirety, or jointly with other parties. Likewise, the increased use of frontier technologies³⁷ from the numerous digital initiatives, technology applications and high volume of data processing call for the reinforcement of the IP management framework at the Organization.

34. It is underlined, in this context, that the framework under development applies only to the activities of the Organization and do not constitute guidance from a global policy or regulatory perspective. The Organization is not seeking to develop policy guidance for Members on their management of intellectual property rights related to nutrition, food and agriculture. Discussions on these matters from a global policy and regulatory perspective fall within the mandate of the World Intellectual Property Organization (WIPO), or other competent bodies. The Organization will follow guidance issued by WIPO in the development of its internal framework. For instance, the WIPO Copyright Treaty addresses the applicability of copyright protection to compilations of data or other material ("databases").³⁸ In addition to the common rights granted to authors, the Treaty also grants: the rights to distribution,³⁹ of rental⁴⁰ and of communication to the public.⁴¹ Accordingly, these rights will be carefully considered by the Organization in the development of its specific IP framework.

35. The framework addressing the management of the Organization's IP will be based on the following principles, which are drawn from the existing practices and other broad range of materials.

Global Public Goods

36. The products and works created by, or on behalf of the Organization, in its role as a global knowledge organization delivering its mandate, must be considered as global public goods, subject to broad and unrestricted dissemination whenever possible.⁴² Cost or geographical location should not serve as a barrier to access the Organization's public goods.

37. The enjoyment of, and access to, cultural heritage, scientific knowledge technology, and opportunities to contribute to scientific enterprise, without discrimination to the benefits of science and its applications, is a fundamental consideration.⁴³ Access must be provided as open as possible to all scientific knowledge and their applications owned by the Organization and/or produced on the

³⁶ See, for example, UNHCR "[Policy on the Protection of Personal Data of Persons of Concern to UNHCR](#)", Principle 6.5; WFP "[Guide to Personal Data Protection and Privacy](#)", page 25; IOM "[Data Protection Manual](#)", page 21.

³⁷ See WIPO, "[Intellectual Property and Frontier Technologies](#)".

³⁸ WIPO Copyright Treaty, Article 5.

³⁹ WIPO Copyright Treaty, Article 6.

⁴⁰ WIPO Copyright Treaty, Article 7.

⁴¹ WIPO Copyright Treaty, Article 8.

⁴² This principle is consistent with the FAO Constitution, Article I (1).

⁴³ See "[International Covenant on Economics, Social and Cultural Rights](#)", Article 15 and OHCHR, "[The impact of intellectual property regimes on the enjoyment of right to science and culture](#)".

Organization's behalf, especially those linked to the realization of human rights, such as the right to food.⁴⁴

38. Global public goods must, as far as possible, be freely and equally accessible to anyone who wishes to use them, and must be freely shared, as far as possible, by anyone who wishes to reproduce them, provided that the Organization is properly identified as the source and copyright owner of these global public goods.⁴⁵

39. IP containing sensitive or confidential data of the Organization or Members must be subject to restrictions of access.

Dissemination through ownership of IP rights

40. The ownership of IP rights by the Organization is an integral part of the delivery of its technical mandate, enabling the Organization to secure the widest possible dissemination of knowledge and ensuring that the Organization, as copyright owner, retains the right to object to improper use of the material.⁴⁶

41. Consistent with established FAO and UN practice, the Organization owns IP rights in materials acquired or generated by the Organization, or generated on the Organization's behalf (e.g., through services procured by it). IP rights may be shared with other UN entities enjoying the same privileges and immunities as the Organization, provided that such UN entity has provided a substantial intellectual contribution to the material. The Organization may share rights with intergovernmental organizations (IGO) and FAO Members in the event that such Member or IGO has provided a substantial intellectual contribution to the material or, for country-specific activities, when the relevant Member will assume responsibility for ongoing maintenance and development of the material beyond the intervention of FAO.

Dissemination for Impact

42. The Organization's global public goods must be disseminated for maximum impact.

43. This will be achieved through "open" standards for information access in accordance with the Organization's Open Access Policy⁴⁷ as well as Open Data Licensing for Statistical Databases Policy⁴⁸ and successor versions of the said policies. FAO publications and documents published after 2018 and selected FAO databases are currently subject to a Creative Commons Attribution Non-Commercial-Share Alike 3.0 IGO licence (CC BY-NC-SA 3.0 IGO).⁴⁹ This licence permits third parties to reuse, redistribute, translate and adapt applicable works for non-commercial purposes, subject to the full attribution to the Organization as the source and copyright holder, and provided that any derivative works are subject to the same licensing conditions as the original work. The Creative Commons 3.0 IGO licence was developed specifically for intergovernmental organizations, including UN bodies, bearing in mind their legal status.

44. IP owned or otherwise produced on behalf of the Organization is generally restricted to non-commercial use only. Permission to use, redistribute, translate and adapt a FAO copyright material for commercial purposes is granted on a case-by-case basis, subject to a formal request and explicit written authorization by the Organization, which may include a delimitation of purpose and other conditions. The Organization, in collaboration with the other statistical agencies, members of the Committee for the Coordination of Statistics Activities, is exploring the possibility for international

⁴⁴ ECOSOC, "[General comment No. 25 \(2020\) on science and economic, social and cultural rights \(article 15 \(1\) \(b\), \(2\), \(3\) and \(4\) of the International Covenant on Economic, Social and Cultural Rights\)](#)", E/C.12/GC/25, paragraph 62.

⁴⁵ FAO Digital Portfolio Release 1, May 2020, page 3.

⁴⁶ See from the perspective of UNDP, "[United Nations Juridical Yearbook 1992, Part Two, Chapter VI](#)", page 245, paragraph 5.

⁴⁷ See [FAO Open Access Policy](#).

⁴⁸ See [FAO Open Data Licensing for Statistical Databases](#).

⁴⁹ See <https://creativecommons.org/licenses/by/3.0/igo/>.

organizations to adopt the Creative Commons Attribution 4.0 IGO (CC BY- 4.0 IGO) license, which allows users to share, copy and redistribute the material in any medium or format and for any purpose.

45. The Organization will not disseminate information or materials subject to confidentiality obligations, existing third-party rights and restrictions for the utilization of such third-party information or materials, unless otherwise agreed with the IP owner.

Third party IP rights

46. The IP rights of collaborators which transfer data and information to the Organization for the advancement of its mandate must be respected. The Organization will not claim ownership of rights in materials owned by third parties and will not transfer or disclose such IP materials to others without the consent of the owner of the rights.

47. When provided with access to such materials, the Organization ensures that the rights and obligations it acquired are documented and acknowledged. Furthermore, it will exercise IP review and clearance when utilizing third party materials, particularly those that are commercially sensitive in nature or related to national security and other sensitive matters.

Sensitive information/materials

48. Appropriate care will be exercised when receiving and using sensitive information or materials which include commercially sensitive information, information related to national security, financial information and other data/information that is deemed to be confidential in accordance with national and international laws.⁵⁰ Notably, third-party restrictions pertaining to the utilization of such acquired information or materials, which would ultimately restrict final dissemination, will be taken into consideration, as appropriate.

Privileges and Immunities

49. The implementation of an IP protection framework is without prejudice to the status of the Organization, and its privileges and immunities, in particular the inviolability of its property, which includes the Organization's IP, and jurisdictional immunity from national courts or any other form of action.⁵¹

V. Suggested action by the Committee

50. The CCLM is invited to provide its views or suggestions on this matter. It may, in particular, wish to consider whether the overarching principles articulated above, underpinning the Organization's Data Protection and IP Frameworks, allow to appropriately take into account the legal and constitutional status of the Organization.

⁵⁰ See "Sensitive Information" covered for example in FAO AIMS, "[Copyright, Creative Commons, Sensitive Information, Security Classification... What is it all about?](#)".

⁵¹ CPISA, Article III, Section 4 and 5.