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ISSUE OF REVISION OF THE RULES OF PROCEDURE
RELATING TO THE PROCESS OF ELECTION OF
MEMBERS OF THE COMMISSION

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I. INTRODUCTION

1. The Executive Council, vide Decision EX.CL/Dec.688 (XX) on the Report of the Ministerial Panel on the Election of Members of the Commission in January 2012, adopted at its Twentieth Ordinary Session held in Addis Ababa, Ethiopia, in January 2012, Council “*request [s] the Commission to review, in consultation with the Permanent Representatives’ Committee, the whole process of elections of Members of the Commission with a view to addressing the challenges, gaps and new developments in order to strengthen it, including through the review of the existing rules and procedures*”. Council also requested the Commission to report on the implementation of this Decision to the Ordinary Session of the Executive Council in January 2013.

2. The purpose of this report is to provide a road map on implementation of Decision EX.CL/Dec.688 (XX) on the Report of the Ministerial Panel on the Election of Members of the Commission in January 2012.

II. BACKGROUND

3. The elections of Members of the Commission are based on the provisions of the Rules of Procedure of the Assembly, the Rules of Procedure of the Executive Council and the Statutes of the Commission. In addition, before each election, the Executive Council adopts Modalities on Election of Members of the Commission upon the recommendations of the Ministerial Panel on Elections.

4. The Commission is composed of ten (10) Members, namely, the Chairperson, the Deputy Chairperson and eight (8) Commissioners. Article 9 of the Constitutive Act of the African Union provides that “i) [the Assembly shall] *appoint the Chairperson of the Commission and his or her deputy ...and Commissioners of the Commission...*”. In implementation of this provision, the Assembly decided that it would elect and appoint the Chairperson and his or her deputy while the Executive Council would elect the Commissioners and the latter would be appointed by the Assembly. Therefore, the Assembly elects the Chairperson and the Deputy Chairperson of the Commission whereas the Commissioners are elected by the Executive Council upon delegation of power by the Assembly.

III. THE NEED FOR THE REVIEW OF THE WHOLE PROCESS OF ELECTIONS

5. It would be recalled that during the election of Members of the Commission in January 2012 and in the light of the deadlock in the election of the Chairperson, it was felt that the existing rules in relation to elections were not clear enough and were not to

address the various scenarios and therefore, it was proposed that the Rules of Procedure should be amended.¹

6. For the January 2012 elections (which were postponed to July 2012) of Commissioners, it should be noted that the regions had not submitted the number of candidatures in the required number and gender configuration, namely eight (8) candidatures for each portfolio, and one (1) male and one (1) female per portfolio². The Commission only received a total of thirty one (31) candidatures out of which five (5) were withdrawn by one region. This is in contrast to the submission of seventy three (73) and forty five (45) candidatures in 2003 and 2008 respectively. It should be noted that the continental pool envisaged in the rules is at eighty (80).

7. The Ministerial Panel on Elections of Members of the Commission in January 2012, taking into account the imperative need to ensure that the required number of candidatures is submitted, recommended to the Executive Council, inter alia, *“that the whole process of elections should be reviewed with a view to addressing the challenges, gaps and new developments in order to strengthen it and make it more reliable, including a thorough review of the existing rules and procedures”*.³

8. In light of the recommendation of the Ministerial Panel on Elections, the Executive Council in its Decision EX.CL/Dec.688 (XX) adopted in January 2012 in Addis Ababa, Ethiopia requested the Commission, in consultation with the Permanent Representatives Committee, to undertake a review of the whole process of electing Members of the Commission⁴ and to report on the implementation of this decision to the Executive Council in January 2013.

IV. IMPLEMENTATION OF THE EXECUTIVE COUNCIL DECISION

9. The Commission did not undertake the review in the first quarter of 2012 due to the fact that the elections of Members of the Commission were postponed to July 2012 and the Ad Hoc Committee of Heads of State and Government on Elections that was established under Decision Assembly/AU/Dec.414(XVIII) gave guidance to the Commission that it was prudent to undertake the review after the elections of Members of the Commission⁵.

10. During the Nineteenth Ordinary Session of the Assembly held in July 2012 in Addis Ababa, Ethiopia, the Assembly elected the Chairperson, the Deputy Chairperson

¹ Mainly in relation to the majority required. Other delegations opposed the idea. However, all issues relating to the elections were referred to the Ad Hoc Committee of Heads of State and Government on elections.

² Making a total of sixteen candidates per region and a continental pool of eighty

³ See the Report of the Ministerial Panel to the Executive Council [EX.CL/713 (XX)]. The other recommendations were that Member States should comply with the modalities and rules and that where there is only one (1) candidate, the position should be advertised again.

⁴ It should be noted that the Ministerial Panel only deals with issues on election of Commissioners but not with the election of the Chairperson and Deputy Chairperson

⁵ On its part, the Ad Hoc Committee decided not to review the Rules of Procedure relating to the election of Chairperson and Deputy Chairperson

and appointed six (6) Commissioners elected by the Executive Council. The Commissioners for Human Resources, Science and Technology (HRST) and Economic Affairs were not elected.

11. The process of electing the remaining two (2) Commissioners will be concluded in January 2013 in line with the existing rules as the Commission is a collegial organ and the term of office of all Members of the Commission will expire on the same date, namely July 2016. It should be noted that the term of office of the Commissioners for HRST and Economic Affairs who will be elected in January 2013 will also expire in July 2016.

12. The Commission envisages to undertake the review of the provisions relating to elections of Members of the Commission provided for in the Rules of Procedure of the Assembly and the Executive Council as well as the Statutes of the Commission after completion of the election process of January 2013 in the following manner:

- a) The Commission will undertake desk review and solicit views from Member States, other AU organs and other experts on electoral processes;
- b) The Commission, in consultation with PRC, will prepare a paper outlining the challenges and gaps in the whole election process as well as new developments in electoral processes;
- c) The Commission, in consultation with PRC, will propose options/solutions to the existing challenges and gaps in the election process;
- d) Based on the proposed options/solutions in paragraph (c) above, amendments to the Rules of Procedure would be suggested for consideration of the policy organs of the Union.

13. The Commission will ensure that wide consultations are undertaken and will take into account diverse views on the matter. In this regard, it is important that Member States and other AU organs as well as other experts are committed to this process and submit their views to the Commission.

V. PROPOSED TIMELINE

14. The Commission proposes the timeframe outlined hereunder:

NO	ACTIVITY	PERIOD
1.	Desk review and solicitation of views from Member States, AU organs and other experts	February to April 2013 ⁶ (3 months)
2.	Compilation of a paper outlining the challenges and gaps as well as proposed solutions	June-July 2013 (2 months)

⁶ It should be noted that both the Commission and Member States will be busy because of the May 2012 Summit

3.	Consideration by the Commission	August 2013
4.	Submission of paper for the consideration of PRC	September 2013
5.	Drafting proposed amendments to the Rules of Procedure	October 2013 (1 month)
6.	Submission of proposed amendments to the Rules of Procedure for consideration of PRC	November 2013
7.	Submission to Executive Council	January 2014

15. The timeframe takes into account the importance and complexity of the matters to be considered as well as the need to finalize the process well ahead of the 2016 elections.

VI. PREVIOUS REVIEW OF THE RULES OF PROCEDURE RELATING TO ELECTIONS OF MEMBERS OF THE COMMISSION

16. It would be recalled that the Rules of Procedure of the Assembly and the Executive Council were adopted in Durban, South Africa in July 2002 during the First Ordinary sessions of the Policy Organs vide Decisions Assembly/AU/Dec.1 (I) and EX.CL/Dec.1 (I) respectively. During the same session, the Assembly also adopted the Statutes of the Commission.

17. It would also be recalled that the Executive Council during its Third Ordinary Session in Maputo, Mozambique in July 2003, in the light of constraints faced during the elections of Commissioners, requested the Permanent Representatives Committee (PRC) to examine, in collaboration with the Commission, the provisions relating to elections and any other proposals from Member States and to submit appropriate proposals for consideration by the Executive Council.⁷

18. The Office of the Legal Counsel undertook the review of the various Rules and Statutes and made recommendations through the PRC to the Fifth Ordinary Session of the Executive Council held in Addis Ababa, Ethiopia, from 25 June to 3 July 2004. The Executive Council, by Decision. EX/CL/Dec.134 (V), requested the PRC to undertake a thorough examination of the proposed amendments and to submit a report thereon to the Sixth Ordinary Session of Council.

19. The Office of the Legal undertook another review of the Rules and Statutes of the Organs of the Union and also received proposals from Member States in that regard.

⁷ This was in addition to another request by the Executive Council during its 2nd Ordinary Session held in N'djamena, Chad in March 2003, upon recommendations of the Dean of the African Diplomatic Corps in paragraph 26 (d) of the plenary report in which amongst other things, the latter recommended that; "the Legal Counsel should examine the issue of the apparent contradiction between the provisions which stipulate that the chair of the Executive Council shall be for one (1) year and those provisions that allow the Foreign Minister of a country hosting any Council session to preside over the session, and formulate appropriate recommendations thereon."

20. During the review of the rules relating to elections, the only issue⁸ that was considered related to the voting procedure when there are two (2) candidates initially. The recommendation was that the relevant rules⁹ needed to be amended to make it conform to the practice based on interpretation of the rules that where, initially there are only two (2) candidates, the candidate with fewer votes would withdraw after the third round.

21. The Report was presented to the policy organs in Addis Ababa, Ethiopia in January 2007. The Assembly and Executive Council respectively adopted the recommendation and the proposed amendments to the Rules vide Decision EX.CL/Dec.317 (X).

VII. FINANCIAL IMPLICATIONS

22. The Commission will undertake this activity itself. Therefore, there will be no financial implications to the Commission.

⁸ See Report EX.CL 298 (X)

⁹ Rule 42 of the Rules of Procedure of the Assembly, Rule 38 of the Rules of Procedure of the Executive Council, and Article 16 of the Statutes of the Commission

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