

CODEX ALIMENTARIUS COMMISSION



Food and Agriculture
Organization of the
United Nations



World Health
Organization

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REVIEW OF INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS WITH OBSERVER STATUS IN CODEX - DOUBLE REPRESENTATION CLAUSE

(Prepared by the Codex Secretariat in collaboration with the Legal Offices of FAO and WHO)

1. Background and Introduction

1.1 Following consideration of the document *Review of International Non-Governmental Organizations with Observer Status*¹ (the "Review"), the 83rd Session of the Executive Committee of the Codex Alimentarius Commission ("CCEXEC83") requested the Codex Secretariat to present a further review on the implications of the current interpretation of the *Principles Concerning the Participation of International Non-Governmental Organizations in the Work of the Codex Alimentarius Commission* ("the Principles"), contained within Section 7 of the Codex Procedural Manual, with regards to NGOs that are Members of other NGOs taking into account the points raised during the debate.

1.2 For a detailed analysis of the issue of double representation, including references to relevant documents and previous discussions on the history of the issue of double representation in the Codex context, reference is made to document CX/EXEC 22/83/6.

1.3 During the discussion at CCEXEC83, Members requested the Codex Secretariat to provide further clarification on whether the current implementation of the Principles regarding double representation presents issues for NGO participation, including in Electronic Working Groups (EWGs). At CCEXEC84, the Codex Secretariat explained that internal review and discussion of this issue was ongoing, and that additional information would be provided for discussion at the next session of the Executive Committee. The purpose of this paper is to provide an overview of the implications of the current implementation.

1.4 The document addresses the following:

- Implementation of the double representation clause of the Principles;
- Impact of the current implementation and number of (known) affected NGOs;
- Difficulty of monitoring whether an NGO is a member of an NGO that is already a Codex Observer;
- Issues arising with respect to an NGO applying for observer status where some members are already Codex Observers;
- Role of the Chairperson in guiding NGO participation in Codex;
- Participation of NGOs in EWGs;
- Summary;
- Conclusions; and
- Recommendation.

¹ CX/EXEC 22/83/6.

2. Implementation of the double representation clause of the Principles

2.1 Within the Codex Procedural Manual, the Principles refer to double representation in section 7 (paragraphs 19-24), *International Non-Governmental Organizations neither having Status with FAO nor Official Relations with WHO*, the last paragraph of which states:

Observer Status at specific meetings will not normally be granted to individual organizations that are members of a larger organization authorized and that intends to represent them at these meetings.

This paragraph does not constitute a limitation on NGOs that are part of a larger organization applying for Observer Status with Codex. Rather, the paragraph provides for restriction generally of their participation in meetings in which the larger authorized organization intends to represent them.

2.2 Since CCEXEC61 (2008) (after extensive discussions in CCEXEC58, CCEXEC60 on different possible applications²), any NGO that has neither status with FAO nor official relations with WHO and that is part of a larger NGO with Observer Status (so-called “umbrella organization”) may be admitted as a Codex Observer, provided that it accepts the following conditions:

- at meetings where the umbrella organization is represented, the smaller organization can only participate as part of the delegation of the umbrella organization and cannot speak using its own name;
- the smaller organization can submit written comments only on those issues for which the umbrella organization does not submit any comments; and
- the smaller organization would only participate in its own name in Codex meetings when the umbrella organization is not represented.

2.3 It should be noted that although it has not been part of the practice to date, the Principles seem to include the possibility of allowing observer status for a smaller NGO in specific meetings on an *ad hoc* basis, even where an authorized larger/umbrella organization would be present to represent them (i.e. “*not normally*”). The Principles, however, do not provide further details in this regard and no mechanisms have been put in place to address these details, in part because direct coordination is required between the larger and smaller organizations.

3. Impact of the current implementation and number of (known) affected NGOs

3.1 Implementation of the double representation clause is meant to prevent two entities from speaking to the same point where one is a member of the other. This is to guard against advantaging the perspective of one group by allowing more than one member of that group to speak to an issue. That said, Observers are not part of the decision-making process in Codex, and the decision taken does not depend on the number of Observer comments but on the positions taken by Members.

3.2 At present, there is no established mechanism for either the umbrella group or its members to indicate easily and routinely where one will be representing the other in specific meetings. The data available to the Codex Secretariat, which includes the information provided by NGOs at the time of their application or subsequently, e.g., via email, show that currently the double representation clause is an issue with respect to six percent of the total number of NGOs holding Observer Status with Codex (14 NGOs, of which only about half have participated in Codex meetings over the last seven years).

3.3 As a result, the likelihood of both an umbrella organization and one or more of its members speaking on an issue would likely be of little tangible impact on the meeting. The same would apply to documents (CRDs, comments, etc.) on a specific topic sent by NGOs subject to the double representation clause. Where it did occur, in some cases, it would afford an NGO a second duplicative voice on a matter, while in others the two organizations might take different views.

4. Difficulty of monitoring whether an NGO is member of an NGO that is already a Codex observer

4.1 The Codex Secretariat does not have the resources to actively monitor whether and when an NGO is part of another NGO that is already a Codex Observer; it relies on the information provided directly by each entity in its observer application, as prescribed by the Principles.

4.2 As mentioned in the Review, however, the number of NGOs potentially subject to the double representation clause may be greater than is known to the Secretariat, and the Secretariat list of NGOs subject to the provision is a “snapshot” based on information received at a specific point, and it may become inaccurate over time.

² See reports of CCEXEC58 (2006), paras 99-108; CCEXEC60 (2008), paras 72-75; and CCEXEC61 (2008), paras 147-155.

5. Issues arising with respect to an NGO applying for Observer Status where some members are already Codex observers

5.1 As observed in the Review, the Codex Secretariat has received an application for Observer Status from an umbrella organization with two members that are already Codex Observers.

5.2 After extensive discussions with the Legal offices of FAO and WHO, the application has been put on hold pending further discussions on the double representation issue.

5.3 A similar situation arose in the past with respect to the application of the International Council of Bottled Waters Associations (ICBWA). This case was particularly complex because one of ICBWA's members, the *Groupe ment international des Sources d'Eaux Naturelles et d'Eaux Conditioneés* (GISENEC), had already obtained Codex Observer status. Furthermore, GISENEC was in the process of transitioning to being the European Federation of Bottled Waters (EFBW). As a result, and following exchanges with the involved organizations, EFBW agreed that it would relinquish observer status as and when the umbrella organization (ICBWA) obtained it.³

5.4 In addition, EFBW stated in its application (when transitioning from the existing Codex observer GISENEC) that it was an active member of the European Food and Drink Federation (CIAA), which was also a Codex observer. To address this situation, EFBW provided a joint letter with CIAA clarifying the responsibilities of each organization with respect to their participation in Codex meetings, thereby ensuring that there was no issue of double representation.⁴

5.5 It may be drawn from this precedent that solutions may be found to avoid double representation of the smaller member organization and the umbrella organization. For example, the smaller organization may decide to relinquish its observer status, or a joint letter may be issued to clarify the relationship and responsibilities of the member organization and the umbrella organization with respect to their participation in Codex meetings.

6. The role of the Chairperson in guiding NGO participation in Codex

6.1 While there is no mandatory protocol regarding the order of speakers in Codex meetings, it is a well-established practice to give the floor to Members before Observers and to allow for a second round of interventions only after all speakers wishing to take the floor have had the opportunity to do so.⁵ This practice applies regardless of any regulation of double representation of NGO participation in Codex meetings.

6.2 In this sense, it is up to the Chairperson of the Committee to regulate the participation of an NGO, including by avoiding repetitive comments from NGOs and Members. As mentioned above (3.1), the number of interventions from Observers on the same issue does not give them more weight, and it is the Chairperson's privilege to direct the debate to prevent any party from dominating the floor.

7. Participation of NGOs in Electronic Working Groups (EWGs)

7.1 As noted during CCEXEC83 by a Member who was also leading an EWG, NGOs belonging to the same group, i.e. the umbrella and the smaller organization, may have diverging opinions, creating a challenging task for the Chair in regulating their participation in EWGs.

7.2 On the basis of the current interpretation of the double representation provision, only the umbrella organization is entitled to send experts and comments to an EWG. However, the Codex Secretariat does not have the capacity to ensure that the NGOs' participation in EWG complies with the double representation principle. This is mainly because the NGOs do not share sufficient information on their internal structure and do not necessarily coordinate with the umbrella organization or member organizations, as appropriate.

7.3 As a result, the Chair and the Co-chairs of an EWG must then check the origin of comments sent by organisations to ensure that the umbrella organization is: i) participating in the EWG; ii) aware of the participation of the smaller organization in the EWG; iii) coordinating positions with the smaller organization and vice versa.

7.4 It should be mentioned that EWGs do not take decisions and it is the task of the lead Member country to moderate replies to questions. As in committee meetings, Observers may contribute valuable information and know-how. This is irrespective as to whether the smaller organization's opinion is aligned to that of the larger organization.

³ See reports of CCEXEC60 (2007), paras 72-75; and CCEXEC62 (2009), paras 163-164

⁴ See report of CCEXEC60 (2007), para 73

⁵ The Codex Chairpersons' Handbook, "Chairing a session".

8. Summary

8.1 Codex Observer NGOs contribute to the Codex work in important ways through knowledge and experience in their specific sector of expertise.

8.2 Membership of one organization in another organization may be based on a variety of reasons, and there are instances where the designated Codex contact point in an organization may not be aware of its organization's membership. Furthermore, in many cases, the smaller and the larger organizations may not have an established mechanism for coordinating their positions.

8.3 The Secretariat often lacks information about NGO memberships and does not have the resources to monitor the compliance with the three conditions set by CCEXEC61 (2008) for participation of NGOs that are members of umbrella organizations. As a result, it is possible that both an umbrella organization and its member organization may be allowed to speak at a given meeting. Based on the Secretariat's current knowledge, it is believed, however, that only a small percentage of NGOs with Observer Status are subject to the double representation principle.

8.4 As described in paragraph 5, adherence to the three conditions with respect to double representation would limit the participation of a smaller organisation with Observer Status, should its umbrella organisation apply for and receive the same status. In fact, paragraphs 19 – 24 of the Principles with respect to double representation would seem to permit a limited degree of flexibility. In stating that individual organizations that are members of a larger organization that is authorized and intends to represent them would "not normally" be granted Observer Status, the Principles admit the possibility that such status could nonetheless be granted at specific meetings.

8.5 There may be circumstances in respect of specific meetings in which the direct participation and contribution of smaller NGOs subject to internal agreements with an umbrella organization could contribute directly to Codex's work. Such contributions might be especially valuable if there are cases where the smaller NGOs hold opinions that differ from those of their umbrella organizations.

9. Conclusions

9.1 The situation of NGOs being members of other NGOs is complex and might benefit from additional flexibility to serve Codex best, as well as more transparency to allow Chairpersons of Codex committees or EWGs to manage debates appropriately.

9.2 Consideration could be given to requesting additional information with respect to participation in specific Codex meetings. This would help address the lack of information about relationships between NGOs with Observer status – both with respect to membership in umbrella organizations and when the larger NGOs intend to represent their members – which may disadvantage smaller NGOs with Observer status and mean that Codex does not benefit from the full range of observer views. For example, in the context of specific Codex meetings, the Secretariat could request that an NGO with Observer status clarify its relationships to any larger or smaller organizations.

9.3 Gathering this information with respect to specific Codex meetings would aid Chairs in their management of meetings, including helping to inform when it is appropriate to give the floor to NGOs that are part of umbrella organizations. This could be done for a trial period to assess the scope of the issue and to inform development of any recommendations for change in the manner in which the double representation principle is implemented.

9.4 With respect to umbrella organizations that apply for observer status while one or more of their members are already Codex observers, Section 5 provides precedent for exploring means in which to address appropriate participation, consistent with the double representation clause and taking into account the specifics of the relationships between the NGOs. Information on the nature of the relations would be requested in the form of a joint letter signed by both parties. This would be reviewed by the Codex Secretariat and the Legal Offices of FAO and WHO, as appropriate.

10. Recommendation

10. CCEXEC85 is invited to review the present document and provide guidance as it deems appropriate and may invite the Codex Secretariat and the legal offices to proceed accordingly.