



JOINT FAO/WHO FOOD STANDARDS PROGRAMME
CODEX ALIMENTARIUS COMMISSION
Forty-fourth Session
AMENDMENTS TO THE PROCEDURAL MANUAL

Criteria and Procedural Guidelines for Codex Committees and *ad hoc* Intergovernmental Task Forces Working by Correspondence

(Prepared by the Codex Secretariat in collaboration with New Zealand, Germany, Japan and USA)

Background

The 32nd Session of the Codex Committee on General Principles (CCGP32) agreed to forward the draft Procedural Guidelines for Committees Working by Correspondence (CWBC) to CAC44 for adoption and inclusion in the Codex *Procedural Manual* (PM), preferably in Section III, further noting that the Codex Secretariat would ensure editorial consistency of the draft procedural guidance for CWBC with the PM prior to sending out a circular letter to Codex Members and observers before discussion at CAC (REP21/GP, paragraphs 22 and 23, Appendix II).

Following CCGP32, the Codex Secretariat in consultation with the legal offices of FAO and WHO conducted a thorough review of the text to ensure editorial consistency with the PM. It was realized that there were some redundant text covered elsewhere in the PM and that more clarity was needed regarding what was meant by CWBC and also to define a session of CWBC. Consequently, the document presented to CAC44 (CX/CAC 21/44/2 Annex I) was slightly amended as compared to what was contained in Appendix II of REP21/GP. Consistent with the conclusions of CCGP32, the purpose of the revision was to provide greater clarity and consistency in presentation, with no substantive change.

A Circular Letter, CL 2021/66/OCS-GP, was issued in August 2021 seeking members' and observers' comments on the draft Criteria and Procedural Guidelines for Codex Committees and *ad hoc* Intergovernmental Task Forces Working by Correspondence as presented to CAC44 (CX/CAC 21/44/2 Annex I). Comments submitted in response to CL 2021/66/OCS-GP are compiled in CX/CAC 21/44/2 Add.1.

Purpose of the CRD

The Codex Secretariat together with New Zealand, Germany, Japan and the United States of America as chair and co-chairs of the former CCGP EWG on Guidance for Committees Working by Correspondence (CWBC) have reviewed the comments contained in CX/CAC 21/44/2 Add.1 and based on these prepared a revised version of the the draft Criteria and Procedural Guidelines for Codex Committees and *ad hoc* Intergovernmental Task Forces Working by Correspondence (Annex I to this document).

The paragraphs below highlight the modifications proposed compared to CX/CAC 21/44/2 Annex I and provide a brief explanation of the rationale for the modifications contained in Annex I.

Regarding General Comments

The general comments submitted indicate broad support for adoption of the draft Criteria and Procedural Guidelines for Committees and *ad hoc* Intergovernmental Task Forces Working by Correspondence.

Regarding Specific comments

Comments relating to translation issues identified by Members will be addressed by the Secretariat in updating the text.

1. Introduction

Comments received in relation to the Introduction proposed some amendments to the definitions that the Codex Secretariat together with the legal offices of FAO and WHO had proposed for “working by correspondence” and “session of a CWBC.”

Working by correspondence: The main proposed amendment to the definition is to recognise that CWBC will not **normally** hold sessions that require the simultaneous presence of participants, to improve the clarity of the definition in line with the amendments proposed by Members.

It is recalled that CCGP32 extensively considered the opportunity to include the organisation of virtual sessions within the scope of these guidelines. As defining the concepts of “virtual” or “physical” sessions proved to be not straightforward, CCGP32 decided to use the term “simultaneous presence” to refer to physical or virtual sessions¹. The proposed amendment suggested by some Members in response to CX/CAC 21/44/2 Add.1, and consistent with the pragmatic approach taken in the organisation of CCFFP35, would therefore recognise and provide greater flexibility in terms of the possible use of virtual components within a CWBC.

Session of a CWBC: The Codex Secretariat in dialogue with the legal offices of FAO and WHO had introduced a definition as the original document was not clear on what was meant with a CWBC session and yet referred to it elsewhere in the document. The proposed amended definition herein takes account of the comments received and is intended to describe more accurately what constitutes a session and also include additional detail that pertain to registration, duration of session and reporting processes and requirements. The expanded definition is, again, intended to improve clarity and avoid any ambiguities.

2. Decision to assign work by correspondence

Criterion v: The amendment proposed is to recognise the option to refer the work to another committee and delete reference to physical meeting so as not to restrict option solely to committees meeting physically, but also recognise the option to assign the work to committees that may be meeting other than by physical means. The revised criterion is broader and reflects the current situation and realities.

3. Verification of membership and credentials for participation

The main amendment to this section is to remove reference to late registrations. Comments received to this section clearly supported deletion of the language around late registrations on the basis that registrations need to occur within a finite period. The proposed amendment to this section reflect these comments.

4. Sessions

Proposed amendments to this section are largely editorial and consequential to the the elaboration of a definition for ‘session of CWBC’. Again the reference to meeting physically is deleted to recognise that committees may be meeting other than by physical means.

5. Languages

No amendments proposed.

6. Determining quorum

No amendments proposed.

7. Roles of the Chairperson and the Codex Secretariat

Minor editorial amendments.

8. Advancement of standards and related texts

Some minor editorial amendments and amending the section on ‘Options when CWBC is not able to progress work’ to make it consistent with amendments to Section 2- Criterion v.

9. Reporting to the Commission

Amendments are largely editorial, but attention is drawn to the deletion of the sentence ‘**comments should be provided within two weeks of the circulation of the report**’ in the penultimate paragraph to provide flexibility in the report review and comment process (for example, the 35th Session of the Codex Committee on Fish and Fishery Products (CCFFP35) adopted the report via virtual means).

¹ REP 21/GP, paragraph 18

CRITERIA AND PROCEDURAL GUIDELINES FOR CODEX COMMITTEES AND AD HOC INTERGOVERNMENTAL TASK FORCES WORKING BY CORRESPONDENCE

1. Introduction

- a) *The criteria and procedural guidelines set out in this Section are intended to guide the work and conduct of sessions of Codex Committees and ad hoc Intergovernmental Task Forces working by correspondence (CWBC). The Rules of Procedure of the Commission apply mutatis mutandis to CWBC, unless otherwise specified in these Guidelines.*

1.1 Definitions

Working by correspondence: Describes a working modality that can be assigned by the Codex Alimentarius Commission for the development of an approved new work to a Codex Committee or *ad hoc* Intergovernmental Task Force, which will normally not hold sessions that require the simultaneous presence of participants.

Committees and *ad hoc* Intergovernmental Task Forces that are assigned to operate under this modality are defined as “Committees working by correspondence” or “CWBC” in the remainder of this document.

Session of a CWBC: ~~The period of time between the session of~~ After the Commission that approves the work, assigns it to the Committee, and authorizes the Committee to work by correspondence, the Chairperson of the Committee in consultation with the Codex Secretariat will determine dates for registration of Codex Members and observers to participate in Committee deliberations over a defined period of time that will constitute a “session” of the Committee. The duration of the session should be of sufficient length to allow for deliberations on agenda items and report adoption. ~~and the adoption of the report of the session of the CWBC, or alternatively, a specific period of time as determined by the Commission.~~ During a session of a CWBC, participants engage in formal consultations by correspondence.

1.2 Codex values

An overarching consideration and guiding principle in relation to CWBC is the need to respect and adhere to the Commission’s core values of collaboration, inclusiveness, consensus building, and transparency.

2. Decision to assign work by correspondence

In deciding whether an approved new work should be undertaken by a CWBC, the Executive Committee and the Commission’s assessment will take into account the following criteria:

Criteria	Reference
i. Scope, objective and content	Project Document
ii. Nature and complexity of the work and its previous and recent history in Codex (for example, this may include, inter alia, the timeframe to develop the work)	Meeting reports Project Document
iii. Urgency and importance	Project Document
iv. Availability of adequate scientific information and/or other supporting information, including any support from expert bodies	Project Document
v. Potential for assigning the work to an <u>other</u> existing committee, with relevant expertise, that is meeting physically . This should take into consideration whether the work can reasonably be expected to be completed within a set timeframe.	ToR of existing Codex committees

3. Verification of membership and credentials for participation

The status and credentials of participants in sessions of CWBC are subject to scrutiny and verification by the Codex Secretariat, according to official information provided by Codex Contact Points (CCPs).

Before work in a CWBC commences, and before each subsequent session of a CWBC, there shall be a period for registration (opening/closing date) during which Members and observers may register. After the registration period closes, work of the CWBC will take place among ~~registered~~ participants (i.e. communication will not be copied to the whole Codex membership) between the starting date and end date of a CWBC session as communicated in the invitation. ~~Late registrations shall be possible.~~

4. Sessions

To ensure comparability of sessions of Committees and *ad hoc* Intergovernmental Task Forces meeting with simultaneous presence of participants physically and those meeting by correspondence, a session of a CWBC is defined as in Section 1.1.

The timeframes for implementing the work plan, working languages, and tasks for the session of the CWBC including the timeframes for preparation of working documents² shall be clearly documented and shall be agreed by Members at the outset of the session of the CWBC.

The agenda, working documents, and reports should be published on the Codex website.

The work and outputs of the CWBC are subject to critical review by the Executive Committee prior to submission to the Commission.

Each session of the CWBC shall be concluded within the timeframe prescribed by the Commission.

5. Languages

Use of languages for CWBC shall be in line with Rule XIV of the Rules of Procedure of the Codex Alimentarius Commission².

It is the responsibility of the host government to ensure adequate funding for translation of working documents and the reports.

6. Determining a quorum

The quorum shall be calculated on the basis of Rule VI (7) of the Rules of Procedure of the Codex Alimentarius Commission³, on the understanding that the majority of Members "attending the session" is construed as those "having registered for the session within the registration period under Section 3".

The absence of a quorum shall be reported to the Commission for further guidance.

7. Roles of the Chairperson and the Codex Secretariat

The role of the Chairperson

The *Guidelines to Chairpersons of Codex Committees and ad hoc Intergovernmental Task Forces*⁴ apply *mutatis mutandis* to Chairpersons of CWBC.

In particular, Chairpersons of CWBC should ensure that:

- All communications are open to all ~~registered~~ participating Members and observers and are carried out in an open and transparent manner and in accordance with any guidelines or protocols that may be established by the Commission;
- All specific matters raised are fully considered by the CWBC;
- There is enough time and opportunity for Members and observers to respond or build on comments made by other Members, much like a plenary conversation in real time;
- The reports of the CWBC clearly document where there are significant points of difference either in relation to the content of the work or with respect to the advancement of a standard through the step process; and

² See Section III: Guidelines for Subsidiary Bodies, Guidelines to host governments of Codex committees and ad hoc Intergovernmental Task Forces.

³ See Section I: Basic Texts and Definitions.

⁴ See Section III: Guidelines for Subsidiary Bodies.

- The rules/procedures specified in the *Codex Procedural Manual* are adhered to in the CWBC setting.

The Chairperson(s) of CWBC may be supported by one or more co-Chairpersons.

The role of the Codex Secretariat

The Codex Secretariat shall perform its usual functions in support of the efficient operation of the CWBC, including verification of credentials of participants, preparing and circulating CWBC documents, and providing guidance and support to the Chairperson on procedural and other matters relating to the work of the CWBC.

Consensus

Chairpersons of CWBC should make every effort to promote consensus-based decision making, which may include informal discussions by using virtual technologies, and should also consider implementing measures as described in the *Guidelines to Chairpersons of Codex Committees and ad hoc Intergovernmental Task Forces*⁵ to facilitate consensus building in the elaboration of standards at the committee stage.

Interpretation of silence

Means of communication to signal support or objection shall be explicitly clarified in advance of sessions. It is, however, understood that silence or the absence of specific contrary views or objections shall be taken to mean tacit agreement or no objection to proceed **as proposed by the Chairperson**. This point should be clearly communicated to all participants to avoid any misunderstanding when seeking comment on specific matters under discussion including proposed conclusions on progression of a standard through the step process. Chairpersons should allow sufficient time for response to make sure that silence is not the result of temporary technical problems.

8. Advancement of standards and related texts

In determining the level of consensus when progressing through the step process, Chairpersons should typically propose a conclusion for consideration by Members, which may be modified and presented as revised to achieve consensus. The same practice should be followed by CWBC. For example, a Chairperson could propose a conclusion to advance a standard by asking a specific question, such as, *“Is there any objection to advancing the draft standard to Step X?”*

CWBC may use a similar approach, including when determining the level of consensus on more detailed points of discussion, such as text changes.

Reservations in the correspondence setting should be treated in the same manner as reservations in a physical meeting (i.e. by **identifying-specifying** the extent **basis or rationale** of the delegation's opposition to a decision) and should be recorded in the meeting report upon request⁶.

Options when CWBC is not able to progress work

When a CWBC is not able to progress work, it may recommend alternative working mechanisms to working by correspondence to the Commission, which may include but **are** not ~~be~~ limited to:

- i. Convening a session that requires the simultaneous presence of **all** participants;
- ii. Referring the work to **another** committee (other than the original committee) that has relevant expertise on the topic under consideration ~~and is meeting physically~~; or
- iii. Discontinuing the work.

In addition, the Chairperson has the opportunity, as part of the Critical Review process, to report on the status of work and prospects for advancement to the Commission for its consideration.

Voting

While the Rules of Procedure of the Codex Alimentarius Commission provide for voting in situations where all efforts to achieve consensus have failed, CWBC shall not resort to voting to resolve differences. In this regard, Rule VIII shall not be applicable to CWBC.

Instead, the option of alternative mechanisms (as described above) to resolve differences which cannot be addressed otherwise shall be submitted to the Commission for its consideration.

⁵ See Section III: Guidelines for Subsidiary Bodies.

⁶ See Section III: Guidelines for Subsidiary Bodies, Guidelines on the Conduct of Meetings of Codex Committees and ad hoc Intergovernmental Task Forces.

9. Reporting to the Commission

CWBC shall report to the Codex Alimentarius Commission. As with reports of physical sessions of Codex Committees and *ad hoc* Intergovernmental Task Forces, reports of CWBC shall be prepared by the Codex Secretariat in consultation with the Chairperson.

The conventions and practices that apply to drafting of reports of committees holding physical meetings should also be observed, to the extent relevant, by CWBC. Reports of CWBC should be objective and accurately reflect the discussions, conclusions, and recommendations.

Members of CWBC have the right to ask that their positions, including reservations and opposition to a recommendation or decision, be recorded in the report of the CWBC.

Members of CWBC should refrain from raising issues or seeking inclusion of comments that were not part of relevant to the deliberations matters under consideration, and such comments will not be included in the report of the session consistent with the Commission's procedure and practice.

The draft report of the CWBC session should be made available to all participants who were registered in the session within one week of the conclusion of the agenda and deliberations. ~~Comments should be provided within two weeks of the circulation of the report~~ The procedures for review and comments should be clearly communicated to all participants.

The Codex Secretariat should circulate the final report, as adopted, in not less than three of the working languages of the Commission, within one month of conclusion of the CWBC session.