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DISCUSSION PAPER ON PROCEDURAL GUIDANCE FOR COMMITTEES WORKING BY CORRESPONDENCE

(Prepared by the legal offices of FAO and WHO)

A. INTRODUCTION

1. The 41st session of the Codex Alimentarius Commission requested the CCGP to formulate procedural guidance for committees working by correspondence based on and consistent with relevant existing guidance in the Procedural Manual. The Commission requested that the Codex secretariat prepare a discussion paper.
2. Thus far, the procedural implications and other issues relating to committees working by correspondence have been discussed largely in the context of the Executive Committee and the Commission. The Commission and the Executive Committee have considered this working method as one of several options for the assignment of work to committees, with the broad objective of advancing the standard development work of Codex in a manner that is efficient and cost-effective. Such options are considered to be of particular relevance to the sporadic work that would normally have been assigned to committees that have been adjourned *sine die*, or to committees that may be adjourned in the near future.
3. The present session of the CCGP is the first opportunity to examine procedural issues in detail. Therefore the legal offices of FAO and WHO have prepared this background document, highlighting the particular procedural challenges of working by correspondence. In addition, it reviews the practice of correspondence procedures in the United Nations, which is the context in which Codex as an FAO/WHO body operates.
4. After giving a background about work by correspondence in Codex this document will discuss meetings by correspondence as compared to Electronic Working Groups. It will then address the practice within the United Nations system, before turning to specific procedural issues that arise in respect of Codex committee meetings by correspondence, including questions of effective participation.

B. BACKGROUND AND ISSUES RAISED IN CODEx BODIES

5. In recent years, several Codex Committees which were adjourned *sine die* have been reactivated and are working by correspondence. The reactivation of these Committees and the accompanying proposals for new work have been reviewed by the CCEXEC and approved by the CAC in cases where the workload and cost did not seem to warrant holding of a full physical meeting. The relevant committees have worked by correspondence (1) to advance Codex texts in the Codex step procedure and make relevant recommendations to CAC and (2) to prioritise work eventually to be followed by a physical meeting.
6. The Executive Committee, in the exercise of its functions to review the management of the work of Codex, has considered working by correspondence as one of the options available to efficiently organize the work of Codex. In this context, however, delegations have also raised questions and issues regarding meetings carried out by correspondence.

7. **CCGP30** (2016) took note of CRD2¹, which raised a number of procedural questions that needed to be addressed in connection with committees working by correspondence. It noted questions regarding “*the representativeness of participants, consensus and the role of the Chair.*” CCGP30 acknowledged the importance of consideration of this matter and the need to provide guidance which might assist Codex to work more effectively and efficiently².
8. **CCEXEC72** (2016) examined the issue of committees working by correspondence in some detail³. It noted possible advantages. It also noted the need for guidance on a number of procedural issues that were identified, including on the basis of limited experience gained at that point. These included the quality of work in terms of participation, the significant role of the “*host country (Chairperson)*” in the finalization of documents and decision-making, and whether the quality of consensus would be sufficient for the purpose of global standard setting. It further noted issues of transparency, and the manner in which conclusions would be reached. Concerns were expressed that standard advancement could be subject to criticism.
9. In this context, the legal advisor observed that there were no explicit rules for committees working by correspondence in the Procedural Manual, and recalled the differences between a working group operating electronically and reporting to its parent committee and a committee working by correspondence and reporting directly to CAC. It was further observed that it was necessary to consider rule-based issues as well as practical matters.
10. CCEXEC72 established a sub-committee to identify options available to the Commission when deciding on new work under different scenarios, and to identify possible procedural gaps and/or guidance needed.
11. **CCEXEC73** (2017) reviewed the results of the sub-committee⁴, including the option of reactivating relevant committees adjourned *sine die* to work by correspondence. The sub-committee suggested options for consideration regarding work management, including the reactivation of adjourned committees and the establishment of task forces to work by correspondence, noting that further procedural guidance would be required in relation to these particular options⁵. It also noted concerns regarding workload for Chairpersons in responding to comments received by correspondence, and suggested that only issues of limited complexity might be addressed by correspondence, leaving more intricate issues to physical meetings as a platform more amenable to consensus building.
12. CCEXEC73 subsequently requested the Secretariat to prepare a document for CCEXEC75 analyzing advantages and disadvantages of the options presented by the sub-committee in document CX/EXEC 17/73/7. It considered that these options could serve as procedural tools to increase efficiency and expedite the Codex standard setting process when working by correspondence, while ensuring transparency and inclusiveness.
13. **The Commission** (CAC40; 2017)⁶ agreed to request that the Codex Secretariat prepare a document summarizing all options for taking decisions on new work for which no committee was presently holding physical meetings, as considered in CCEXEC73. This document would review the advantages and disadvantages of each option, and could subsequently be revised based on the discussions at CAC41 and then further discussed at the next session of the CCGP.^{7, 8}

¹ CCGP30/CRD2

² REP 16/GP, para 59-60

³ REP 17/EXEC1, para 18–33

⁴ REP17/EXEC2, para 114-126

⁵ CX/EXEC 17/73/7

⁶ REP17/CAC, para 143-152

⁷ There was no consensus in the Commission to proceed with a pilot to establish a Codex Committee on Standards Advancement (CCSA), designed to take up work in physical meetings for decisions on matters considered by correspondence.

⁸ In relation to the Committee on Processed Fruits and Vegetables (CCPFV), the Commission (CAC40) agreed: “*that CCPFV would work by correspondence until CAC41 (2018) to: (i) prioritize its work on the proposals for new work and pending work on the review of the existing standards; (ii) prepare a work plan to address its overall work; and (iii) prepare recommendations for CAC41 on the establishment of EWGs to carry out standard-development work, as prioritized in the work plan, for consideration by a physical meeting of CCPFV to be held in 2019.*”

14. At its subsequent session, **the Commission** (CAC41; 2018)⁹ again considered options for expediting work on matters for which no committee was holding physical meetings. The Commission considered that there was general support for procedural guidance for committees working by correspondence based on existing guidance contained in the Procedural Manual to address issues in terms of procedures and management. It was further agreed that it was important to maintain a wide range of options and flexibility when deciding on working methods, and that decisions on the applicable working method should be made on a case-by-case basis depending on the nature of work. The Commission further requested that CCGP formulate procedural guidance for committees working by correspondence based on, and consistent with, relevant existing guidance in the Procedural Manual based on a discussion paper prepared by the Secretariat.

C. CODEX COMMITTEE MEETINGS BY CORRESPONDENCE VERSUS ELECTRONIC WORKING GROUPS

(1) Committee meetings by correspondence versus Electronic Working Groups

15. From the outset, it is important to clarify the difference between the existing mechanism of the Electronic Working Group (EWG) and a Codex Committee working by correspondence. The Guidelines on Electronic Working Groups¹⁰ are explicitly designed for “*work done between sessions of the Committees*”. EWGs have specific terms of reference, typically to discuss a defined topic, which result in “*final conclusions, in the form of either a discussion paper or a working document*”. The conclusions are included in the working papers for the next session of the relevant Codex Committee.
16. The Guidelines make it explicit that “*The Rules of Procedure and the guidelines governing the work of a Committee shall apply, mutatis mutandis, to the electronic working groups this Committee establishes, unless stated otherwise in these Guidelines.*” It is also made clear that “*no decision on behalf of the Committee, nor vote, either on point of substance or of procedure, shall take place in electronic working groups.*”
17. As such, EWGs provide a platform for the free exchange of views and discussion, but without consequences for members in terms of decision-making, which is expressly excluded in respect of EWGs. The outcome of the work of EWGs does not have to express a consensus, or conclude on anything that might resemble a “decision”.
18. This is different to the functions of various committees of Codex, which take formal decisions, and are an essential forum for the development of consensus within Codex¹¹. Committees also address a far broader array of topics as compared to the more limited, single-issue EWGs. Furthermore, committees make recommendations on complex and intricate matters such as, inter alia, the elaboration of standards or the establishment of MRLs. This output from the Committees suggests that, normally, a full consideration will have taken place on all relevant aspects of the matters under consideration, by all members, and that adequate consensus has been achieved within the committees. It is true that the Commission monitors and directs the work of Codex Committees, and is expressly involved in the standard development work of committees. Nevertheless, in practice, the Commission often relies on the conclusion of technical discussions and consensus achieved at the Committee level in the adoption of standards.
19. The above makes clear that significantly higher procedural standards apply to Committees as compared to EWGs. High standards of inclusiveness and transparency apply at the level of Codex committees, and this would apply equally to committees working by correspondence.

D. PRACTICE AND EXAMPLES IN THE UNITED NATIONS SYSTEM

(1) Practice in the United Nations System

20. A first important observation is that the conduct of meetings by correspondence should be considered in light of the broader context of the Codex Commission operating within the United Nations system. Such context is relevant, since most, if not all of the United Nation’s intergovernmental bodies provide for multilateral frameworks for decision-making similar to Codex.

⁹ REP18/CAC, para 96-101

¹⁰ Guidelines on Electronic Working Groups, Codex Procedural Manual, 26th edition, pp 119-122

¹¹ In the practice of Codex, voting does not normally take place within Codex (although on some occasions, some committees have come close to applying voting procedures). However, voting is not excluded at the committee level.

21. In the United Nations system, all procedural frameworks express that meetings are gatherings of delegations that are physically present. This is clear from requirements that deliberations and decision-making take place by majorities of members *present and voting*. The Rules of the General Assembly express this most directly by stating that “*The President may declare a meeting open and permit the debate to proceed when at least one third of the members of the General Assembly are present. The presence of a majority of the members shall be required for any decision to be taken.*”¹²
22. The Basic Texts of FAO and the Basic Document of the World Health Organization (WHO) make similar provision for the physical presence of members¹³ and do not address decision-making or voting by correspondence by the Governing or Statutory Bodies. In the context of FAO, there is one limited exception in respect of the FAO Council, which will be addressed below.
23. The same is true for deliberations, which are also not foreseen under a virtual format through correspondence, with the notable exception of the EWGs in Codex, and some standard setting procedures of the International Plant Protection Convention (IPPC).
24. However, there are examples of correspondence mechanisms for decision-making or consultation within the United Nations system.
25. **Rule 4 of the Rules of Procedure of the General Assembly**¹⁴ provides for the possibility to hold Assembly sessions away from United Nations headquarters, which requires the concurrence of the Member States of the United Nations. Although not specifically provided in the Rule, the practice is that such concurrence is communicated by mail as the Assembly is, at that stage, not yet in session. However, this is strictly limited to the question of the location of a session; it does not extend to the work to be conducted at that session.
26. **General Rule XXV-13 of FAO**¹⁵ authorizes the Director-General to “*seek the opinion of the members of the [FAO] Council*” by “*any rapid means of communication*” (including electronic means). However, this procedure is exceptional, and may only be invoked in circumstances where “*matters of extreme urgency arise*”. The Rule does not foresee a vote but, rather, a decision by correspondence on a particular matter that would otherwise have been addressed at a session of the FAO Council. This Rule has been applied twice, on one occasion to determine whether a particular conference convened by FAO could be postponed, which was a straightforward, binary question. The second occasion concerned the decision of the Council to submit an amendment to the General Regulations of the UN/FAO World Food Programme to the FAO Conference for its approval. The matter was consensual in substance. The urgency had arisen due to the different meeting schedules of the FAO Conference and the General Assembly, which both had to approve the proposed amendment. Nevertheless, despite the consensual and apparently urgent nature of the matter, some unease and reluctance was still expressed about the use of the correspondence procedure.

¹² United Nations General Assembly Rules of Procedure, Rule 67. (<http://undocs.org/en/A/520/rev.18> A/520/Rev.18*, downloaded on 23 January 2019). See also Rule 52 of the Rules of Procedure of the World Health Assembly “*A majority of the Members represented at the session shall constitute a quorum for the conduct of business at plenary meetings of the Health Assembly*” (<http://apps.who.int/gb/bd/PDF/bd48/basic-documents-48th-edition-en.pdf#page=145>, downloaded on 23 January 2019).

¹³ FAO GRO XII-2; Constitution of WHO, article 60 (<http://www.fao.org/docrep/meeting/022/K8024E.pdf> and <http://apps.who.int/gb/bd/PDF/bd48/basic-documents-48th-edition-en.pdf#page=145>, both downloaded on 23 January 2019).

¹⁴ “*Any Member of the United Nations may, at least one hundred and twenty days before the date fixed for the opening of a regular session, request that the session be held elsewhere than at the Headquarters of the United Nations. The Secretary-General shall immediately communicate the request, together with his recommendations, to the other Members of the United Nations. If within thirty days of the date of this communication a majority of the Members concur in the request, the session shall be held accordingly.*”

¹⁵ GRO XXV-13: “*Should matters of exceptional urgency arise between two sessions of the Council, on which Council action is required, the Director-General, after having consulted the Chairperson of the Council, or after notifying him, should such consultation not prove feasible, may seek the opinion of the Members of the Council by any rapid means of communication, informing at the same time all other Member Nations as well as Associate Members and the Chairperson of the Council. Subject to the provisions of paragraph 1 of this Rule, the Director-General may proceed with the action contemplated as soon as he has received concurrence by cable or letter either from the majority of the Members of the Council in cases where decisions of the Council normally have to be taken by a majority of the votes cast, or from two thirds of the Members of the Council where a qualified majority is required. Any such action shall be immediately reported by the Director-General to all Member Nations and Associate Members of the Organization and to the Chairperson of the Council.*”

(2) Examples of working by correspondence in the United Nations System

27. The **Commission on Narcotic Drugs** has adopted a procedure to vote “*by mail or telegram*”¹⁶ for the specific circumstance where the World Health Assembly (WHA) recommends that a certain narcotic substance be controlled. The Commission can respond, through a decision by correspondence, by placing such a substance under international control through the mechanisms of the Single Convention on Narcotic Drugs, 1961. Such a decision by correspondence could only be taken if the Commission will not be holding a session within three months of the relevant WHA recommendation. In addition, it will automatically be placed on the agenda of the next session of the Commission.
28. The **World Meteorological Organization (WMO)** is the only entity of the United Nations system that has made explicit provision in its Convention and General Regulations for a more elaborate and systematic use of decision-making by correspondence. The WMO Convention establishes that “*decisions may also be taken by Members by correspondence, when urgent action is required between sessions of Congress.*”¹⁷ This provision is limited to matters not involving financial implications or amendments to the Convention. The correspondence procedure should be understood in the context that the Congress of WMO meets once every four years¹⁸. The procedure is, in practice, mainly applied for elections when positions become vacant, as well as for urgent amendments to regulations of WMO, as well as other decisions that are considered urgent in the relatively lengthy intersessional period. In the context of the Executive Committee and technical commissions of WMO, the use of correspondence procedures is relatively open-ended, although it is expressly designed to address questions in the intersessional period: “*Between sessions, any matter which in the opinion of its President could be solved by correspondence may be submitted to a vote by correspondence*”¹⁹. In preparing the present discussion paper, consultations have been held with WMO on its experiences with correspondence procedures. Two elements were emphasized by WMO in this context; correspondence procedures are time consuming, and are not suitable as the sole procedure for the entire decision-making cycle, which would normally comprise a combination of physical and virtual deliberations.
29. The Procedural Manual of the **International Plant Protection Convention (IPPC)**, one of the standard setting ‘sisters’ of Codex, provides for electronic deliberations and decision-making in the Standards Committee, a subsidiary body of the Commission on Phytosanitary Measures (CPM).²⁰ The Standards Committee is a limited membership body (25 members drawn from the FAO regions), which holds physical meetings twice per year. The procedure adopted by the Standards Committee provides specific guidance on how decisions can be taken, including guidance on reaching consensus, objections, and some limited guidance to the Chairperson of the Standards Committee in case no consensus can be reached. The procedure further defines the specific decisions that the Standards Committee may address by means of electronic exchange, including specific portions of the step procedure of IPPC, which are within the scope of work of the Standards Committee.²¹ Finally, it is noted that the Standards Committee, whether in physical meetings or electronic meetings, works in English only.

¹⁶ CND Res. 1 (XX) on the Control of New Narcotic Substances, November/December 1965

(https://www.unodc.org/documents/commissions/CND/Drug_Resolutions/1960-1969/1965/CND_Resolution-1_XX.pdf).

See also Legal Opinion of the Secretariat of the United Nations to the Deputy Secretary-General, World Meteorological Organization, on the Question of Votes by Correspondence, UN Juridical Yearbook, 1970, p. 171.

¹⁷ WMO Convention, Article 5 (b) (https://library.wmo.int/pmb_ged/wmo_15-2015_en.pdf downloaded on 23 January 2019).

¹⁸ Article 10 (a), Convention of WMO.

¹⁹ WMO General Regulation 66 (ibid).

²⁰ “E-decisions: IPPC SC procedures for conducting discussions and making decisions by electronic means”. IPPC Procedure Manual for Standard Setting, October 2018, page 61

(https://www.ippc.int/static/media/files/publication/en/2018/10/IPPCProcedureManual_StSet_2018_2018-10-15.pdf).

This framework identifies the following decisions that may be made through the use of electronic communication: (i) approval of selected nominations for expert drafting groups; (ii) comment on explanatory documents in the reviewing process; (iii) clearance of draft ISPMs for the first consultation (Step 4 in the IPPC standard development process); (iv) consideration of comments (Step 5); (v) determining how to proceed with draft ISPMs that are modified as a result of comments (Step 6); (vi) development and approval of draft specifications for consultation; (vii) adjustments to stewards (of specifications, draft ISPMs and technical panels); (viii) any other tasks decided by the Commission on Phytosanitary Matters - CPM or the SC during a face to face meeting, and: (ix) exceptional cases determined in consultation with the Secretariat and the SC Chairperson.

²¹ See also Report of the Standards Committee, November 2008, document 2008-11, including Appendix 4 Report Standards Committee); and Report of the Standards Committee, November 2010, document SC 2010-11, Appendix 5 (https://www.ippc.int/static/media/files/publications/en/1290606367_2010_SC_Nov_Report_20101124.pdf).

(3) Review of the practice within the United Nations Systems and Implications for Codex

30. A review of the practice within the United Nations system indicates limited recourse to decision-making procedures by correspondence. Decision-making procedures by correspondence in the United Nations are available between formal, physical sessions of relevant bodies, and in most cases under conditions of urgency. Furthermore, correspondence procedures are in almost all cases reserved for specific decisions of a limited nature, or they are reserved for limited membership bodies. Finally, it is noted that a number of the correspondence procedures described here were adopted in the 1960's and 1970's, without, however, proliferating further in any significant manner, despite technical advancements and increased connectivity.
31. A further observation is that correspondence procedures are expressly reflected in relevant rules of procedure. Specific procedural modalities for decision-making by correspondence could not be resolved by the application, *mutatis mutandis*, of the existing Rules of Procedures of Codex as is provided for in Rule XI-11 of the Rules of Procedure. The adoption of correspondence procedures in Codex would require an amendment of the Rules of Procedure to clarify the relevant conditions for any such modality.

(4) Nature of Decisions Working by Correspondence in the United Nations System

32. As seen, procedural frameworks within the United Nations system address physical meetings only, with limited examples of explicit provision for electronic or correspondence deliberations or decision-making. The circumstances under which such modalities may apply normally address (i) matters of urgency between sessions; (ii) deliberations and decisions by limited membership bodies, and (iii) decisions of a specified and limited scope, or a straightforward nature. In almost all cases, decisions by correspondence are reported to physical meetings, where some form of validation or ratification of decisions by correspondence takes place.
33. The example of e-decisions taken by the IPPC Standards Committee, for example, reflects a defined scope of work and specific steps that are considered suitable for consideration and decision by correspondence.²² It is relevant that the IPPC Standards Committee is a limited membership body, which meets physically on average twice per year. Furthermore, the circumstance that physical meetings are frequently held could suggest that tasks for electronic deliberations are more easily identified, since physical meetings are in any case available for more contentious or complex matters.
34. In the experience of WMO, decision-making by correspondence is not applied to a comprehensive and self-sufficient decision-making process, but rather to isolated elements of the decision-making process and is part of a more comprehensive procedure that involves physical meetings.

E. PROCEDURAL ISSUES IN RESPECT OF CODEX COMMITTEES WORKING BY CORRESPONDENCE**(1) Introduction**

35. The difference in circumstances between physical meetings and committees working by correspondence raises a number of procedural issues. Many of these issues have already been noted by Codex members in the context of earlier discussions on work management options. The analysis of the practice of EWGs prepared by the secretariat²³ and reviewed by CCEXEC73 also identified a number of questions relevant to a discussion on committees working by correspondence.
36. As noted, the fundamental function of various sets of rules of procedure within the United Nations system is to ensure that each member is assured the protection of its rights to participate on an equal basis in the deliberations and decision-making of relevant bodies. A further consideration to note is the particular perspective of the parent Organizations of Codex, as FAO and WHO share a duty to ensure the proper conduct of meetings of Codex.
37. Considering that a number of questions of principle need to be considered, this document does not address questions of quorum and voting procedures. These are matters that might, if the members chose to further explore this working method, be addressed at a later stage in more technical detail. It is nevertheless noted that the question of quorum would need to be addressed, including the specific circumstance of the presence of Member Organizations. However, these issues should also be considered in light of the practice of Codex committees not to vote, even if voting is not excluded at the committee level.

²³ CX/EXEC 17/73/3

(2) Credentials of Delegations

38. Credentials serve to ascertain that delegation members legitimately represent their respective member. In physical meetings, the credentials are verified upon registration and acceptance is confirmed by the issuance of meeting passes. Before voting, tellers once again verify the identity of a delegate before issuing a ballot paper to that delegate. More generally, the identity and authority of delegates is established in a straightforward manner in a setting of a physical meeting.
39. In committee meetings by correspondence, it would be problematic to verify that comments coming from a particular email address or logon to an Online Commenting System are, in fact, from the delegate mandated to speak for a member and registered for a meeting by correspondence. Experience from the EWGs suggest that some delegations are represented by several persons, all of whom contribute to a particular discussion. At times, this has led to confusion as to the exact position of a certain member or observer, as well as doubts as to how a chairperson arrived at a conclusion of consensus under these circumstances. These matters are of much greater significance if genuine consensus is to be achieved in committees by correspondence on, for example, the development of standards, as opposed to EWGs with a more limited task.
40. The Rules of Procedure of WMO regulate the credentials of delegates in detail, placing explicit requirements on the identity of persons participating in meetings by correspondence. In many cases, votes must be cast by the Permanent Representative. It is noted that such a procedure is more easily applied in Geneva, where WMO's headquarters is based and most members are permanently represented.

(3) The role of Chairpersons

41. Experience with EWGs within Codex suggests that the role of the Chairperson quite significantly grows in importance in a correspondence context. The Chairperson is tasked with synthesizing and consolidating comments, and articulating amended proposals. This phenomenon has been noted by members, who have observed that the finalization of documents and decision-making appeared to be entirely the responsibility of the Chairperson of the relevant Codex Committee²⁴. In fact, the practice of physical meetings would seem to confirm that the complex and sensitive task of articulating conclusions is often undertaken in direct interaction with members, and transparency, which would not be possible in a context of meetings by correspondence.
42. A further effect of correspondence procedures is that the membership is much less capable of exercising its authority over the conduct of a meeting. In the circumstance of a physical meeting, the Chairperson expressly operates under the authority of the members at all times²⁵. Such authority can be exercised in physical meetings by members raising points of order, including the possibility of forcing a vote on a Chairperson's ruling in response to a point of order raised by members. More generally, the presence of members in a physical meeting allows for direct consultations between members and the Chairperson, whether formally or informally. Correspondence meetings could entail a shift of authority to the chairperson, which necessarily comes at the expense of the members.²⁶

(4) Effective participation

43. A primary consideration should be the effective participation in debates that lead to committee decisions. The ability of all delegations to articulate perspectives and contributions to the deliberations is an essential requirement before consensus can be validly achieved on any matter. In a physical meeting, deliberations take place in a format where delegations may take the floor, clarifications can be easily obtained, and the direct interaction among the members and chairpersons help to ensure that conclusions fully reflect the positions of members and the exchange of views that take place in the context of a discussion. Informal discussions in the margins to resolve more sensitive or difficult issues are also more readily conducted. Coordination among members of regions can also more easily be achieved.
44. In a correspondence format debates necessarily take place in a more rigid and isolated manner, and the opportunities for collaboration to build consensual outcomes are more limited. Furthermore, a very basic difference is that delegates typically provide their contributions in an electronic setting alongside their other daily duties.

²⁴ REP 17 EXEC1, para 18-33

²⁵ General Rule IX-4 of FAO.

²⁶ In this context, the General Regulations of WMO on decisions by correspondence also suggest an enhanced role of the Chair to decide on the conduct of correspondence deliberations and voting, under conditions where points of order and other procedural tools to exercise authority over a chair are out of effect.

45. The benefits of convening a physical meeting is the focus that delegates can give to the topic at hand. The quality of interaction at a physical meeting is undoubtedly higher than in a correspondence format, which provides assurances in respect of effective participation and quality of the deliberations, conclusions and consensus.
46. A number of related issues and concerns have already been raised in respect of EWGs, which are all relevant to the consideration of committees working by correspondence. The Executive Committee noted that, due to the number of EWGs, both in Codex and other standard-setting organizations, there was a need for members to prioritize areas of interest. Prioritization required coordination at the national level, which depended on the capacity of national food safety control systems²⁷. This indicates that the workload involved in the participation in EWGs is significant, and may already reach the capacity limits of countries to participate effectively, including in terms of their staffing and other resources. The analysis of experiences in EWGs presented to the Executive Committee further noted that the rate of registration by developing countries was low and not representative of the membership of the Commission²⁸. It was also reported that many EWGs depended on the active contributions of a small number of participants, typically much lower than the total numbers registered for the relevant EWG²⁹.
47. Finally, issues were reported regarding languages and translations. Some technical issues of access were also experienced. While these occurrences were relatively low, it must be noted that these issues directly affect the effective participation of some members. These particular problems do not present themselves in the context of a physical meeting, since interpretation is provided and access to deliberations is guaranteed.
48. As Codex committee meetings take decisions on topics of a more intricate nature, issues of effective participation are serious as they would affect to some degree the basic premise of equality and inclusiveness in an inter-governmental United Nations body. Standard development in the Codex process relies on inclusiveness, transparency and consensus, and all three of these foundations would be affected in an unrestricted format of Codex committees operating by correspondence.

F. CONCLUSIONS AND SUMMARY OF ISSUES

49. This document reveals a number of issues that arise in conducting deliberations by correspondence, especially in relation to full, decision-making meetings of universal membership, in several languages, which address potentially complex matters.
50. Generally, deliberations regarding the development of standards require deliberations where due attention can be paid to nuance and subtlety in the efforts to reach consensus. Decision-making procedures in Codex committees are important since the consensus that is fundamental to Codex is largely developed at the committee stage of the standard development process. Decision-making at the committee level includes the identification of issues, fact-finding, review of scientific analyses, deliberations and exchange of views, which ultimately culminates in a decision of a Codex committee.
51. Considering the inherent limitations of correspondence meeting formats, debates suitable for discussion by correspondence could include planning and prioritization work, work of a preparatory character, issue identification, discussion papers or work of a procedural nature. Subsequently, such debates could be discussed further and validated in a formal, physical session of a committee. It appears that the Commission has already made considerations of this nature, for example when it set out work for the Codex Committee on Processed Fruits and Vegetables, which essentially comprised of work planning activities before the next session of the Commission.³⁰

RECOMMENDATION

52. When discussing the request from CAC41 (see para 1), it is recommended that the Committee take into consideration the issues identified above, including the practice within the United Nations system, and the specific requirements of standard development in Codex.
53. The Committee may consider the following:
 - 1) Recommend discontinuing the practice of using Committees working by correspondence for standard setting work and discontinue the pilot of CCS at CAC42.
 - 2) Consider whether there is value to having procedures for limited committee work by correspondence (similar to IPPC) and criteria to identify such work.

²⁷ REP17/EXEC2, para 89

²⁸ CX/EXEC 17/73/3, para 20

²⁹ CX/EXEC 17/73/3, para 24

³⁰ Supra, para 9; REP17 CAC 40 (2017), para 95-96

- 3) With regards to Codex committees currently not holding physical meetings:
 - (a) Identify discrete topics that could be dealt with working by correspondence as a committee;
 - (b) what are the benefits working this way rather than working in an electronic working group under CAC.
- 4) With regards to Codex committees currently holding regular physical meetings:

Consider whether working by correspondence on certain topics could be used to reduce the frequency of physical meetings and what would be the advantage compared to EWG. E.g. Committees with no current work items could instead of adjourning, suspend physical meetings and work by correspondence on horizon scanning, topic identification, updating and corrections of standards etc. The committee could consider creating electronic working groups to prepare drafts that would then be discussed physically once sufficiently advanced.
- 5) Discuss the procedural changes needed in the Rules of Procedure to be able to do limited committee work by correspondence.
- 6) Prioritize the review of existing Guidelines on Electronic Working Groups over the development of further procedures regarding correspondence. Such review would elaborate on the findings of the regular review (recommendations on EWG in REP17/EXEC2, para 91).
- 7) Any other matter the Committee considers relevant in connection with the subject matter of this document.