

# codex alimentarius commission



FOOD AND AGRICULTURE  
ORGANIZATION  
OF THE UNITED NATIONS

WORLD  
HEALTH  
ORGANIZATION



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Agenda Item 6

## JOINT FAO/WHO FOOD STANDARDS PROGRAMME

### CODEX COMMITTEE ON GENERAL PRINCIPLES

*Seventeenth Session, Paris, France, 15 - 19 April 2002*

#### **MEMBERSHIP IN THE CODEX ALIMENTARIUS COMMISSION OF REGIONAL ECONOMIC INTEGRATION ORGANIZATIONS**

1. Following a request made by Sweden, on 28 February 2001, as the State holding the Presidency of the European Community, the 16<sup>th</sup> Session of the Committee on General Principles considered proposals to amend the Rules of Procedure to allow for membership of regional economic integration organizations in the Codex Alimentarius Commission. These amendments were set out in document CX/GP 01/8 submitted to that session, attached hereto as Appendix I. The Committee considered the matter and agreed to report its debate to the Commission, together with proposals for amendment of the Rules of Procedure. Appendix II hereto, reproduces document ALINORM 01/10-Add.2, submitted to the 24<sup>th</sup> Session of the Codex Alimentarius Commission, including proposed amendments to the Rules of Procedure, following further consultation between the Legal Counsels of FAO and WHO and the European Commission.

2. At its 24<sup>th</sup> Session (Geneva, Switzerland, 2-7 July 2001), as the quorum was not constituted, the Codex Alimentarius Commission decided to defer consideration of the proposed amendments until its next session, and to request the Committee on General Principles to consider them thoroughly in order to clarify relevant issues and facilitate the debate at the next session of the Commission (ALINORM 01/41, para. 88).

3. The proposals considered at the 16<sup>th</sup> Session of the Codex Committee on General Principles and at the 24<sup>th</sup> Session of the Codex Alimentarius Commission are appended to this document.

For reasons of economy, this document is produced in a limited number of copies. Delegates and observers are kindly requested to bring it to the meetings and to refrain from asking for additional copies, unless strictly indispensable.

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## Appendix I

## Document CX/GP 01/8

## MEMBERSHIP IN THE CODEX ALIMENTARIUS COMMISSION OF REGIONAL ECONOMIC INTEGRATION ORGANIZATIONS

(Codex Committee on General Principles, Sixteenth Session, Paris, 23-27 April 2001)

1. On 28 February 2001, Sweden, as the State holding the Presidency of the European Community, sent to the Secretary of the Codex Alimentarius Commission a letter requesting the Directors-General of FAO and WHO to include in the Provisional Agenda of the 16<sup>th</sup> Session of the Committee on General Principles an item entitled “membership in the Codex Alimentarius Commission of regional economic integration organizations”. The request was made pursuant to Rule V.5 of the Rules of Procedure of the Commission whereby “any Member of the Commission (...) may, after the dispatch of the Provisional Agenda, propose the inclusion of specific items in the Agenda with respect to matters of an urgent nature”. The letter refers to, and follows discussions held between officials of the European Commission and the Secretariats of FAO, WHO and the Codex Alimentarius Commission carried out in the course of 2000 and 2001 in the course of which the proposed amendments to the Rule of Procedure were discussed. A copy of the letter is annexed to document CX/GP 01/1-Add.1.

2. Article 2 of the Statutes of the Codex Alimentarius Commission provides that “membership of the Commission is open to all Member Nations and Associate Members of FAO and WHO which are interested in international food standards. Membership shall comprise such of these nations as have notified the Director-General of FAO or of WHO of their desire to be considered as members”.

3. The European Community is a Member Organization of FAO, but not of WHO. Under Article II.3 of the FAO Constitution, regional economic integration organizations may be admitted to membership of FAO. To be eligible to apply for membership of the Organization, a regional economic integration organization must be one constituted by sovereign States, a majority of which are Member Nations of FAO and to which its Member States have transferred competence over a range of matters within the purview of the Organization, including the authority to make decisions binding on its Member States in respect of those matters. A Member Organization exercises its membership rights on an alternative basis with its Member States that are Member Nations of FAO in the areas of their respective competences. A Member Organization has the right to participate in matters within its competence in any meeting of a body of FAO in which any of its Member States is entitled to participate, unless otherwise provided in rules adopted by the Conference. The FAO Constitution provides further that any references to Member Nations thereunder include Member Organizations, except as otherwise expressly provided (the so-called “assimilation clause”).

4. The Codex Alimentarius Commission is a joint FAO/WHO body. The issue of membership by FAO Member Organizations in bodies established jointly with other organizations, such as the Codex Alimentarius Commission, is not referred to explicitly in the FAO Constitution. However, the issue was dealt with in a legal opinion delivered to the Ninety-ninth session of the FAO Council in June 1991 by the FAO Legal Counsel with the concurrence of the UN Legal Counsel. The opinion read, *inter alia*, as follows:

*“In my opinion membership by a Member Organization in FAO would entitle that Member Organization to participate in bodies operated jointly with other organizations such as the Codex Alimentarius Commission, a joint FAO/WHO body, and the World Food Programme Committee on Food Aid Policies and Programmes (CFA), a joint subsidiary body of the UN and FAO. The effect of the proposed assimilation clause in the amendments to the FAO Constitution, however, would be to allow regional economic integration organizations that are members of FAO, as one of the parent organizations, also to be eligible for membership in such bodies (...) Following the general principle set down in the proposed amendments to the (FAO) Constitution, Member Organizations would not be eligible for election in their own right to such joint bodies, but would merely exercise the rights of*

*membership of their Member States that are elected, in accordance with the principle of the alternative exercise of membership rights. The issue of eligibility for election to the Codex Alimentarius does not of course arise, since membership in the Codex is open to all member Nations (and hence Member Organizations) that are interested in international food standards and that have notified the Director-General of FAO or WHO of their desire to be considered as members. However, I would point out that the exercise of right of membership may involve changes in the Rules of Procedure and working methods of such joint bodies. Thus my opinion would be without prejudice to whatever procedural decisions may be required by the relevant intergovernmental bodies”.*

5. In the course of 2000, the European Commission approached the Secretary of the Codex Alimentarius Commission with a view to identifying the amendments to the Rules of Procedure of the Commission which would allow the European Community to exercise rights of membership within the Codex Alimentarius Commission. During the discussions between officials of the European Commission and the Secretariats of FAO, WHO and the Codex Alimentarius Commission, the proposed amendments to the Rules of Procedure of the Commission, as set out in Annex I hereto, were prepared.

6. The Committee on General Principles is invited to review the proposed amendments to the Rules of Procedure of the Codex Alimentarius Commission and submit them to the Commission for adoption under the terms of Rule XIII of the Rules of Procedure, together with any further views and recommendations that the Committee may wish to present.

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## PROPOSED AMENDMENTS TO THE RULES OF PROCEDURE

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Add a new Rule I.3 to the Rules of Procedure, and re-number current Rule I.3 as Rule I.4:

"Membership shall also comprise regional economic integration organizations members of either FAO or WHO that notify the Director-General of FAO or WHO of their desire to be considered Members of the Commission".

Add a new Rule to the Rules of Procedure after Rule I to read as follows:

### **"Rule II - Member Organizations**

1. A Member Organization shall exercise membership rights on an alternative basis with its Member States that are Members of the Commission in the areas of their respective competence.
2. A Member Organization shall have the right to participate in matters within its competence in any meetings of the Commission or its subsidiary bodies in which any of its Member States is entitled to participate.
3. A Member Organization may exercise on matters within its competence, in any meetings of the Commission or any subsidiary body of the Commission in which it is entitled to participate in accordance with paragraph 2, a number of votes equal to the number of its Member States which are entitled to vote in such meetings. Whenever a Member Organization exercises its right to vote, its Member States shall not exercise theirs, and conversely.
4. A Member Organization shall not be eligible for election or designation, nor to hold office in the Commission or any subsidiary body. A Member Organization shall not participate in voting for any elective places in the Commission and its subsidiary bodies.
5. Before any meeting of the Commission or a subsidiary body of the Commission in which a Member Organization is entitled to participate, the Member Organization or its Member States shall indicate in writing which, as between the Member Organization and its Member States, has competence in respect of any specific question to be considered in the meeting and which, as between the Member Organization and its Member States, shall exercise the right to vote in respect of each particular agenda item. Nothing in this paragraph shall prevent a Member Organization or its Member States from making a single declaration in the Commission and each subsidiary body in which a Member Organization is entitled to participate for the purposes of this paragraph, which declaration

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shall remain in force for questions and agenda items to be considered at all subsequent meetings, subject to such exceptions or modifications as may be indicated before any individual meeting.

6. Any Member of the Commission may request a Member Organization or its Member States to provide information as to which, as between the Member Organization and its Member States, has competence in respect of any specific question. The Member Organization or the Member States concerned shall provide this information on such request.

7. In cases where an agenda item covers both matters in respect of which competence has been transferred to the Member Organization and matters which lie within the competence of its Member States, both the Member Organization and its Member States may participate in the discussions. In such cases the meeting, in arriving at its decisions, shall take into account only the intervention of the party which has the right to vote.

8. For the purpose of determining a quorum, as specified in paragraph 6 of Rule IV, the delegation of a Member Organization shall be counted for a number equal to the number of its Member States which are entitled to participate in the meeting, to the extent that it is entitled to vote under the agenda item in respect of which the quorum is sought."

Renumber the subsequent Rules accordingly.

## Document ALINORM 01/10-Add.2

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**MEMBERSHIP IN THE CODEX ALIMENTARIUS COMMISSION OF REGIONAL ECONOMIC  
INTEGRATION ORGANIZATIONS**

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**(Codex Committee Alimentarius Commission)****(Twenty-fourth Session, Geneva, Switzerland, 2-7 July 2001)**

1. At its Sixteenth Session, held in Paris, France, from 23 to 27 April 2001, the Codex Committee on General Principles considered an item, included in its agenda at the request of Sweden, entitled "Membership in the Codex Alimentarius Commission of regional economic integration organizations". The Committee had before it proposed amendments to the Rules of Procedure which would allow regional economic integration organizations, and in particular the European Community as a member organization of FAO, to exercise membership rights within the Codex Alimentarius Commission. The amendments, developed by the Secretariat of the Codex Alimentarius Commission in consultation with the Legal Offices of FAO and WHO and officials of the European Commission, were set out in document CX/GP 01/8.
2. At that Session, the delegation of Sweden, as the State holding the Presidency of the European Union, requested three changes to the proposed amendments to the Rules of Procedure. These changes were presented in Conference Room Document N° 4.
3. A general exchange of views on the proposals took place during the Sixteenth Session. "The Committee agreed to report (the) exchange of views to the Commission and to attach the text of the two proposals to (its) report. It noted that consultations between the Legal Counsels of FAO, WHO and the EC would continue" (Cf. Report of the Sixteenth Session of the Codex Committee on General Principles, Paragraph 135).
4. In the course of the consultations that were held thereafter, it was noted that the work carried out within the Codex Alimentarius Commission and its subsidiary bodies was of a technical and specialized nature. In order to respond to the concerns of the European Community, and at the request of the European Commission, three footnotes were added to the proposed amendments to the Rules of Procedure.
5. Two of these footnotes are shown **in bold** in the proposed amendments to the Rules of Procedure, presented in the Appendix to this document. A third footnote concerns the provisions on participation in discussions under agenda items covering both matters in respect of which competence has been transferred to the Member Organization and matters which lie within the competence of its Member States. It should be noted that this particular footnote reflects a footnote already approved by FAO Conference Resolution 7/91 of 18 November 1991, entitled "Amendments to the Constitution and the General Rules of the Organization to allow for membership of FAO by regional economic integration organizations".
6. The three footnotes are an alternative to the proposed changes contained in the above-mentioned Conference Room Document N° 4 and appended to the Report of the Sixteenth Session of the Committee on General Principles.

## PROPOSED AMENDMENTS TO THE RULES OF PROCEDURE

Add a new Rule I.3 to the Rules of Procedure, and re-number current Rule I.3 as Rule I.4:

"Membership shall also comprise regional economic integration organizations members of either FAO or WHO that notify the Director-General of FAO or WHO of their desire to be considered Members of the Commission".

Add a new Rule to the Rules of Procedure after Rule I to read as follows:

### **"Rule II - Member Organizations**

1. A Member Organization shall exercise membership rights on an alternative basis with its Member States that are Members of the Commission in the areas of their respective competence.
2. A Member Organization shall have the right to participate in matters within its competence in any meetings of the Commission or its subsidiary bodies in which any of its Member States is entitled to participate\*.
3. A Member Organization may exercise on matters within its competence, in any meetings of the Commission or any subsidiary body of the Commission in which it is entitled to participate in accordance with paragraph 2, a number of votes equal to the number of its Member States which are entitled to vote in such meetings. Whenever a Member Organization exercises its right to vote, its Member States shall not exercise theirs, and conversely.
4. A Member Organization shall not be eligible for election or designation, nor to hold office in the Commission or any subsidiary body. A Member Organization shall not participate in voting for any elective places in the Commission and its subsidiary bodies.
5. Before any meeting of the Commission or a subsidiary body of the Commission in which a Member Organization is entitled to participate, the Member Organization or its Member States shall indicate in writing which, as between the Member Organization and its Member States, has competence in respect of any specific question to be considered in the meeting and which, as between the Member Organization and its Member States, shall exercise the right to vote in respect of each particular agenda item. Nothing in this paragraph shall prevent a Member Organization or its Member States from making a single declaration in the Commission and each subsidiary body in which a Member Organization is entitled to participate for the purposes of this paragraph, which declaration shall remain in force for questions and agenda items to be considered at all subsequent meetings, subject to such exceptions or modifications as may be indicated before any individual meeting.
6. Any Member of the Commission may request a Member Organization or its Member States to provide information as to which, as between the Member Organization and its Member States, has competence in respect of any specific question. The Member Organization or the Member States concerned shall provide this information on such request.
7. In cases where an agenda item covers both matters in respect of which competence has been transferred to the Member Organization and matters which lie within the competence of its Member States, both the Member Organization and its Member States may participate in the discussions. In such cases the meeting, in arriving at its decisions\*\*, shall take into account only the intervention of the party which has the right to vote\*\*\*.

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\* This is without prejudice to the possibility for the Member States to develop or support the position of the Member Organization in areas within its competence.

\*\* The word 'decisions' should be understood to mean both voting and situations where a decision is taken by consensus.

\*\*\* The above is without prejudice to the question of whether or not the views of the party not having the right to vote shall be reflected in the report of the meeting. Where the views of the party not having the right to vote are reflected in the report, the fact that they are the views of the party not having the right to vote shall also be reflected in the report.

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8. For the purpose of determining a quorum, as specified in paragraph 6 of Rule IV, the delegation of a Member Organization shall be counted for a number equal to the number of its Member States which are entitled to participate in the meeting, to the extent that it is entitled to vote under the agenda item in respect of which the quorum is sought."

Renumber the subsequent Rules accordingly.