

# codex alimentarius commission



FOOD AND AGRICULTURE  
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Agenda Item 3b)

CX/GP 03/19/3-Add.1

## JOINT FAO/WHO FOOD STANDARDS PROGRAMME CODEX COMMITTEE ON GENERAL PRINCIPLES

Nineteenth (Extraordinary) Session  
Paris, France, 17 - 21 November 2003

### PROPOSED AMENDMENT TO RULE VII.5

#### REVIEW OF RULE VII.5 OF THE RULES OF PROCEDURE OF THE CODEX ALIMENTARIUS COMMISSION

#### BACKGROUND

1. The Codex Alimentarius Commission, at its 26<sup>th</sup> session, Rome, 30 June-7 July 2003, in connection with consideration of the Joint FAO/WHO Evaluation of the Codex Alimentarius and other FAO and WHO work on food standards, requested “*the FAO and WHO Legal Counsels and the Secretariat to prepare a preliminary paper on Rule VII.5 of the Rules of Procedure of the Commission for consideration by the Committee on General Principles*”. The Commission requested further the Committee on General Principles to revise Rule VII.5 on the basis of a paper to be presented by the Legal Counsels, and to submit its proposals to the Commission in 2004, if possible. The present document contains the proposals of the Legal Counsels of FAO and WHO, as requested.

2. It should be pointed out that a review of Rule VII.5 of the Rules of Procedure cannot be seen in isolation from questions being considered by the Committee under other agenda items, with particular reference to the issue of the status of observers in the Executive Committee and the review of principles concerning the participation of international non-governmental organizations in the work of the Codex Alimentarius Commission. As a matter of fact, it emerges from past discussions on the matter, as well as from document ALINORM 03/26/11, that the procedure for the admission of observers – which in the practice of Codex takes the form of the so-called granting of “*observer status*” to those organizations –, the desirability of stricter criteria to be applied in that respect, and the rights that the international non-governmental organizations should enjoy in that capacity, are interrelated matters that need to be approached together.

#### CURRENT PROVISIONS AND PRACTICE AT THE CODEX ALIMENTARIUS COMMISSION

3. Rule VII.5 of the Rules of Procedure reads as follows:

*“Participation of international organizations in the work of the Commission, and the relations between the Commission and such organizations shall be governed by the relevant provisions of the Constitutions of FAO or WHO, as well as by the applicable regulations of FAO or WHO on relations with international organizations; such relations shall be handled by the Director-General of FAO or of WHO as appropriate.”*

4. Rule VII.5 uses indistinctly the term “*international*” and applies to intergovernmental as well as international non-governmental organizations. However, in practice, while it would seem that the relationship between the Codex Alimentarius Commission and inter-governmental organizations have never

required particular consideration, the specific issue of the participation of international non-governmental organizations in the work of the Commission has been the subject of much discussion. Therefore, in practice, the scope of Article VII.5 came to be seen as applying only to international non-governmental organizations. As referred to elsewhere in the document, issues arising from the relationship of the Commission with international non-governmental organizations were often referred to the secretariat and kept under review by the Codex Alimentarius Commission and the Committee on General Principles.

5. For the sake of clarity, it is proposed, from the outset, to distinguish the situation of international non-governmental organizations from that of intergovernmental organizations. The need for a distinct treatment of these organizations seems to be reflected in the manner in which the report of the 26<sup>th</sup> Session of the Commission is drafted. Indeed, the Commission requested the Committee on General Principles to “*revise the Principles Concerning the Participation of International Non-Governmental Organizations in the Work of the Codex Alimentarius Commission and to complete the guidelines on the relations between the Commission and international intergovernmental organizations in a manner that is consistent with the revised Rule VII.5, by 2005*”. In view of the considerations set out in the previous paragraph, this document will deal only with international non-governmental organizations. In addition, as indicated in paragraph 23 below, it is proposed that any revision of the Rules of Procedure should make this distinction.

6. For their part, the Statutes of the Commission are silent on the relations with international organizations, while Articles 3 and 4 govern the participation of Nations which are not Members of the Commission in its work. Rules VII.1 and VII.2 of the Rules of Procedure implement in more detail Articles 3 and 4 and, subject the participation of Nations which are not Members of either FAO or WHO, but are Members of the United Nations to the provisions of the parent organizations related to the granting of observer status to Nations.

7. Rules VII. 4 and VII.5, as well as the aforementioned paragraph 2, of Rule VII, are based on the consideration that the Codex Alimentarius Commission is a joint subsidiary body of FAO and WHO, established concurrently by the Conference of FAO and the World Health Assembly for a specific purpose, and subject to the principles and oversight of the parent organizations. As far as the participation of observers in the work of the Commission is concerned, this means that relations with outside entities (i.e. entities other than Members or Associate Members of FAO or WHO) should respect, and be guided by, the relevant provisions of the parent organizations and be subject to some form of oversight by the latter. Seen under this light, the provisions of Rule VII.5 aim at clarifying that the procedures for admission of intergovernmental or international non-governmental organizations in Codex, as well as the rights enjoyed in that capacity, have to be in accordance with applicable procedures of both organizations.

8. The Commission adopted at its 23<sup>rd</sup> session, in 1999, “*Principles Concerning the Participation of International Non-Governmental Organizations in the Work of the Codex Alimentarius Commission*” which were incorporated in the Procedural Manual. On substance, these principles reflect the procedures as in force at WHO and to a greater extent, those that apply in FAO. Indeed, Part N of the Basic Texts of FAO defines the Organization’s policy concerning relations with international non-governmental organizations in great detail. In requiring the secretariat to prepare the Principles and adopting them, the Codex Alimentarius Commission had in mind that in view of the specific nature of the work of the Commission as well as its joint FAO/WHO status, it was appropriate to develop a self-standing document relying on the procedures in force in both organizations and which would provide a direct reference document for all concerned parties.

9. Under the Principles, as confirmed by consistent past practice on the matter, in order for an international non-governmental organization to be able to participate in the work of the Commission as observer it must be granted “*observer status*” with Codex<sup>1</sup>. In turn, the Principles define the organizations that are eligible for “*observers status*” as “*international non-governmental organizations in consultative*

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<sup>1</sup> In practice, broadly speaking, the mechanism of “admission” operates as follows: an “application” for observer status is made by an international non-governmental organization. This is reviewed by the Directors-General and light of the criteria set forth in the Principles and, as appropriate, “observer status is granted”. This determination “entitles” the international non-governmental organizations to participate in all Codex meetings of relevance to it as an observer. This came to constitute a peculiar feature of the procedures in force at the Codex Alimentarius Commission regarding admission of international non-governmental organizations as observers.

*status, specialized consultative status or liaison status with FAO*<sup>2</sup>, “*international non-governmental organization having official relations with WHO*”<sup>3</sup> and “*international non-governmental organizations*” that meet a number of requirements<sup>4</sup>. In this latter connection, it should be noted that the possibility for an international non-governmental organization, not having formal status, to be given observer status is consistent with the procedures in force in FAO whereby a decision taken by the Council in 1967 authorized the Director-General to invite non-governmental organizations that do not have any form of status with FAO (either consultative status, or specialized consultative status or liaison status) to attend meetings of statutory bodies, subject to some procedural requirements.

## **PERTINENT CONSIDERATIONS IN CONNECTION WITH THE REVIEW OF RULE VII.5 OF THE RULES OF PROCEDURE**

10. The issue of the relationship between the Codex Alimentarius Commission and international non-governmental organizations has been under consideration for quite some time, although not necessarily from the viewpoint addressed in this document. As far as recent debates in the Commission and the CCGP are concerned, at the 14<sup>th</sup> session of the CCGP in 1999, the question was raised as to whether proposals for admission to observer status should not be approved by the Commission, on the recommendation of the Directors-General (ALINORM 99/33, para. 77). As reported by the Secretariat to the 26<sup>th</sup> session of the Commission (ALINORM 03/26/11 Add.4, paras. 17-21), the Evaluation Report recommended that “*Codex should review its principles and procedures for observer status as required by the Procedural Manual and should consider applying stricter criteria to ensure that observers are genuinely international. New rules should apply to existing observers as well as future “applicants” and the credentials of Codex observers should be approved individually by the Executive Board.*” The Secretariat, in its observations on the report, proposed *inter alia* that Rule VII.5 be revised so that the Executive Committee provide an opinion to the Directors-General on the status of the international organizations in observer status or requesting such status.

11. Even though some of the foregoing proposals will have to be discussed with specific regard to the Principles on international non-governmental organizations, it appears that the main concerns emerging from the evaluation and recent discussions are the following: to ensure the *bona fide*, international and representative nature of the organizations admitted as observers; and to involve either the Commission or the Executive Committee in the process leading to the granting of observer status, so that Members of Codex may directly exercise control and oversight over participation in the work of Codex.

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<sup>2</sup> There are three forms of formal relations between international non-governmental organizations and FAO, as follows: (a) “consultative status” applying to organizations concerned with matters covering a substantial portion of FAO’s field of activity; “specialized consultative status” applying to organizations concerned with matters covering a particular portion of FAO’s field of activity; and “liaison status” applying to organizations concerned with matters covering a portion of FAO’s field of activity and in a position to give practical assistance in that field. Consultative status is granted upon a decision by the FAO Conference while specialized consultative status and liaison status are given by decision of the Director-General.

<sup>3</sup> At the moment, there is only one form of formal relations, known as “official relations”. All other contacts, including working relations, are considered to be of an informal character. NGOs have to meet a number of criteria to qualify for official relations. In particular, their main area of competence has to fall within the purview of WHO and their aims and activities have to be in conformity with the spirit, purposes and principles of the Constitution of WHO. Official relations are granted by decision of the Executive Board, and are reviewed in principle every three years. A proposal by the Secretariat to substantially revise the policy concerning NGOs will be considered by the 113<sup>th</sup> session of the Executive Board in January 2004, with a view to its approval by the 57<sup>th</sup> World Health Assembly in May 2004.

<sup>4</sup> They must (a) be international in structure and scope of activity, and representative of the specialized field of interest in which they operate; (b) be concerned with matters covering a part or all of the Commission’s field of activity; (c) have aims and purposes in conformity with the Statutes of the Codex Alimentarius Commission; and (d) have a permanent directing body, authorized representatives and systematic procedures and machinery for communicating with its members in various countries. Its members shall exercise voting rights in relation to its policies or action or shall have other appropriate mechanisms to express their views.

12. Any proposals for the revision of Rule VII.5, while taking into account the aforementioned concerns, would have also to reflect the joint nature of the Codex Commission, as well as the applicable provisions of FAO's and WHO's Constitutions and regulations. In particular, account should be taken of the fact that the admission of international non-governmental organizations sometimes falls within the authority of the Director-General, and sometimes within the authority of the competent governing body. This is especially the case in FAO where the granting of consultative status to an international non-governmental organization is done by decision of the FAO Conference, while the specialized consultative status and liaison status is given by the Director-General. Such status becomes effective on the occasion of such decision and upon acceptance by the organization concerned of a number of conditions set forth in the Basic Texts of FAO.

## **POSSIBLE OPTIONS FOR REVIEW OF RULE VII.5 OF THE RULES OF PROCEDURE**

13. In keeping the foregoing observations in mind, the Legal Counsels submit the following possible options for the consideration of the Codex Committee on General Principles: (a) maintaining the current *status quo* combined with stricter application of relevant criteria; (b) confer upon the Executive Committee, or the Commission acting on the basis of advice of the Executive Committee, authority to grant observer status to international non-governmental organizations and (c) entrust the Executive Committee with advisory functions with respect to the granting of observer status to such organizations.

### **(a) Maintaining the *status quo* combined with stricter application of relevant criteria**

14. Under this option, the *status quo* would be maintained, while making the criteria for the granting of observer status to international non-governmental organizations more precise. This proposal is based on the consideration that, in general, the process for the admission of international non-governmental organizations has arguably worked in a satisfactory manner, with the Directors-General exercising close scrutiny of each request for observer status while keeping the Commission informed. Proposals on possible revision of the criteria which have to be met by international non-governmental organizations are presented in document CX/GP/03/19/5 under agenda item 5, "Review of the Principles concerning the Participation of International Non-Governmental Organizations in the Work of the Codex Alimentarius Commission". As a possible addition to this proposal, it could be envisaged that organizations whose requests for observer status have been rejected, or whose observer status has been terminated, by the Directors-General may appeal such decisions before the Executive Committee<sup>5</sup>. At present, the Principles on international non-governmental organizations provide for an appeal against termination of observer status, but without further details as to the procedure and competent body.

15. However, this proposal may be seen as not going far enough in relation to proposals under consideration for the past few years, including the recommendations of the Joint Evaluation. Although the Commission, at its 26<sup>th</sup> Session, did not endorse specifically the recommendation of the Evaluation of the Codex Alimentarius and other FAO and WHO Food Standards Work that there should be a direct intervention of the Executive Committee in the process, there is a feeling that a suitable form of involvement of that Committee, or the Commission on the basis of advice provided by the Executive Committee, would be appropriate.

### **(b) Authority for the granting of observers status to be given to the Executive Committee or to the Commission acting on the advice of the Executive Committee**

16. Authority to admit observers could be granted, under a revised Rule VII.5, to the Executive Committee or to the Commission acting on the basis of advice of the Executive Committee. In this case, to ensure respect of the principles referred to in paragraphs 4 and 8 above, it could be envisaged that requests for observer status should first be submitted to the Directors-General, who would examine them against the established criteria and in the light of the applicable legal and policy principles of either organization. The Directors-General would submit to every session of the Executive Committee their recommendations about the organizations to admit as observers. This would be in conformity with Recommendation 27 of the Evaluation of the Codex Alimentarius and other FAO and WHO Food Standards Work. This proposal would involve changes to Rule VII.5 and to the Principles. The Executive Committee or the Commission acting on the basis of advice of the Executive Committee, would take the relevant decisions.

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<sup>5</sup> This is not provided for in the Principles, but was envisaged in a particular past situation. This could be reflected in revised Principles.

17. However, this option would raise legal difficulties, at least in the case of FAO, in view of the fact that, notwithstanding its increasing specificity and unique nature, the Codex Alimentarius Commission remains a subsidiary body of FAO and WHO, thus any rules to be developed in respect of Codex would need to be consistent with FAO's and WHO's rules and procedures. Thus, under this option, entrusting the Executive Committee or the Codex Alimentarius Commission with direct authority to admit observers would seem to run counter to the provisions of the FAO Basic Texts whereby consultative status is granted by a decision of the FAO Conference, and specialized consultative status or liaison status are accorded by the Director-General. In view of the importance and special nature of the Codex Alimentarius Commission and its work, the Director-General would be prepared to refer this matter to the Committee on Constitutional and Legal Matters of FAO, but there is reason to believe that it might not be easy to accommodate the concerns of the Codex Alimentarius Commission, under current legal provisions and practice of FAO, given the Commission's nature of a statutory body of FAO. Therefore, consideration could be given to another option.

**(c) Entrusting the Executive Committee with advisory functions with respect to the granting of observer status to international non-governmental organizations**

18. In view of the difficulties in implementing the above option, and as suggested by the Secretariat in document ALINORM 03/26/11 Add. 4, the Directors-General through the secretariat could seek the views of the Executive Committee in connection with requests for observer status. This alternative is likely to harmonize the considerations underlying the two previous proposals and overcome the difficulties raised. Therefore, while retaining their authority to grant observer status to international non-governmental organizations pursuant to applicable principles and procedures, applications by international non-governmental organizations would be referred by the Directors-General to the Executive Committee for advice. On the basis of advice provided by the Executive Committee, the Directors-General would take a decision. It could also be considered that advice provided by the Executive Committee would need to be endorsed by the Commission.

19. This proposal would seem to be justified in light of the considerations put forward in this document, past discussions in the Commission and the Codex Committee on General Principles, as well as the specific nature of the work carried out within the Codex Alimentarius Commission.

20. In view of the fact that, in the case of FAO, the Conference and the Council have established detailed procedures regarding admission of international non-governmental organizations as observers and insofar as a long-standing practice developed under that basis, the Director-General would be seeking the views of the FAO Committee on Constitutional and Legal Matters (CCLM) on the issue. The Director-General cannot of course prejudge the outcome of the discussions in the CCLM, but there is no reason to believe that that Committee would not consider carefully the concerns and specific needs of the Codex Alimentarius Commission in respect of the whole issue of participation of international non-governmental organizations in its work.

21. As a variant to the option under consideration, the Directors-General could seek the advice of the Executive Committee in appropriate cases. It could, thus, be envisaged that the Directors-General would refer to the Executive Committee specific questions of a more general nature, or in case a specific application raises questions or problems for which the Directors-General would need guidance. .

22. In normal circumstances, the implementation of this option, as well as the previous one, would presumably not affect the current status of international non-governmental organizations that were granted observer status prior to the entry into force of the new provisions. However, this issue might need further consideration.

23. In the same vein, in keeping with the observations made in paragraphs 5 and 6 of this document, it is suggested that revised Rule VII.5 should in future reflect a distinction between intergovernmental organizations and international non-governmental organizations. Subject to such views as the Committee may hold on this matter, insofar as it does not seem that any particular difficulties have been experienced in relation to intergovernmental organizations, it is proposed to retain existing arrangements. Alternatively, if any particular measure on the matter is required, this could be addressed at a later stage.

## **POSSIBLE ACTION BY THE COMMITTEE**

24. In general, the Committee is invited to review the present document and provide such guidance to the Secretariat and the Legal Counsels of FAO and WHO as deemed appropriate. More specifically, the Committee is invited to offer its views on the particular options proposed, so that the Legal Counsels would be in a position to submit a detailed proposal for the amendment of Rule VII.5 at the forthcoming session of the Codex Committee on General Principles.