

codex alimentarius commission



FOOD AND AGRICULTURE
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Agenda Item 3c)

CX/GP 03/19/3-Add.2

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

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

CONSIDERATION OF THE STATUS OF OBSERVERS IN THE EXECUTIVE COMMITTEE

BACKGROUND

1. The Codex Alimentarius Commission, at its 26th Session, held in Rome, from 30 June to 7 July 2003, considered the report of the “*Joint FAO/WHO Evaluation of the Codex Alimentarius and other FAO and WHO work on food standards*”. As regards the subject matter of the present document, the report of the Commission reads as follows.

“A majority of the members of the Commission agreed to the participation of Members of the Commission that are not members of the Executive Committee and recognized international organizations as observers in the Executive Committee meetings with clearly defined rights to address the Committee. It was also decided that the exact modalities of this participation needed further elaboration and consultation with FAO and WHO (See also Proposal N° 28, paragraphs 174-175 below). A number of delegations noted options available for web casting of meetings of the Executive Committee”.

2. In order to have a better understanding of the decisions taken by the Commission, reference should be made to its conclusions relating to Proposal N° 28 as follows:

“174. The Commission decided to:

- *request FAO and WHO to prepare a report on the status of the current international organizations in “Observer status” with the Commission and submit the report to the Commission’s next Regular Session;*
- *request FAO and WHO Legal Counsels and the Secretariat to prepare a preliminary paper on Rule VII.5 for consideration by the Committee on General Principles.*

175. The Commission also requested the Committee on General Principles to:

- *revise Rule VII.5 on the basis of the paper to be presented by the Legal Counsels of FAO and WHO, and submit its proposals to the Commission in 2004, if possible; and*
- *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 that is consistent with the revised Rule VII.5 by 2005”.*

3. At the outset, it is important to clarify two questions.
 - 3.1. The first is that, consistent with the extract of the report of the Commission referred to in paragraph 1 above, this document deals with the participation in the work of the Executive Committee of Members of the Commission that are not members of the Executive Committee, intergovernmental organizations, as well as international non-governmental organizations. As can be seen from this document, this matter has been under consideration at the Commission and the Committee on General Principles, primarily from the point of view of the participation of international non-governmental organizations in the work of the Executive Committee, but also, to a lesser extent, in relation to the Members of the Commission.
 - 3.2. The second is that, as regards specifically the issue of the participation of international non-governmental organizations in the work of the Executive Committee, as mentioned in document CX/GP 03/19/3-Add.1, it is essential to keep in mind the fact that the issues of the procedure for the admission of international non-governmental organizations as observers, the desirability of stricter criteria to be applied in that respect and the rights that international non-governmental organizations should enjoy as observers, are closely interrelated matters that need to be approached together.

CURRENT SITUATION OF OBSERVERS VIS-À-VIS THE EXECUTIVE COMMITTEE

(a) General position of principle

4. The position whereby observers, either Members of the Commission that are not members of the Executive Committee, or international organizations may not participate in the Executive Committee is based on a number of legal provisions and decisions regarding the Codex Alimentarius Commission, rules in force at the parent organizations, as well as long-standing practice, which is of great relevance for the consideration of the issue at hand. In addition, as can be seen from the following developments, the matter has been under review for the past fifteen years.

5. Thus, it was generally noted that the Rules of Procedure of the Commission make no provision for the participation of observers in the Executive Committee. Under Rule III.1 *“the Executive Committee shall consist of the Chairperson and Vice-Chairperson of the Commission, together with six further members, elected by the Commission at regular sessions from among the members of the Commission, one each coming from the following geographic locations: Africa, Asia, Europe, Latin America and the Caribbean, Near East, North America, South-West Pacific; it being understood that not more than one delegate from any one country shall be a member of the Executive Committee (...)”*.

6. At its 17th Session, in 1987, the Commission requested the Committee on General Principles to review the question of the composition and participation of observers in meetings of the Executive Committee. On the basis of this review, the Commission, at its 18th Session, in 1989, adopted the following “understanding” concerning Rule III.1:

- (i) Except for the Chairman and the three Vice-Chairmen, the (seven) further members of the Executive Committee elected by the Commission to represent the geographic locations are countries not individuals;
- (ii) The delegate of a Member may be accompanied by not more than two advisors from the same geographic location;
- (iii) Regional coordinators shall be invited to attend meetings of the Executive Committee, as observers;
- (iv) Only members or, with the permission of the Chairman, observers, may take part in the discussions”.

7. Subsequently, Rule II.4 (d) was revised to provide that *“in order to carry out their functions, Coordinators shall participate in the Executive Committee as observers”*.

8. However, the topic of the participation of observers, either Members of the Commission, or international non-governmental organizations, in the Executive Committee continued to be raised for a while. It was generally considered that in view of the above decision, as well as the spirit and the letter of the provisions defining the functions of the Executive Committee, participation of observers was not possible. In particular, it was pointed out that these functions were in the nature of those of a bureau, required to act on behalf of the Commission between its sessions as an executive organ, prepare its work or assist in the implementation of its programme of work and make organizational arrangements for the sessions. It was, furthermore, noted that, in the case of FAO, one of the parent organizations, Part L of the Basic Texts, including the “*Statement of principles relating to the granting of observer status to nations*”, contained a clause whereby “(c)ommittees consisting of a limited number of Member Nations and Associate Members established by the Conference or its commission or by the Council, under Article VI of the Constitution, or Rules XIV, XV or XXV.10 of the General Rules of the Organization, shall not be open to attendance by observers of Member Nations or Associate Members that are not members of such committees unless otherwise determined by the Conference, the said commissions or the Council”. It was felt that if such limitations were placed upon the participation of States as observers in bodies of restricted membership, it would be all the more difficult to justify the participation of representatives of international non-governmental organizations as observers in those committees, in the absence of well-defined procedures to that effect.

9. On the basis of the foregoing a restrictive practice developed. This paralleled the general practice, followed very consistently in FAO in relation to participation of observers in committees of limited membership, as well as in commissions established by international agreements under Article XIV of the FAO Constitution¹. The above provisions, as well as the practice developed thereunder, were recalled whenever the issue of the participation of observers in the Executive Committee was raised.

(b) Recent developments on the matter

10. The question of the possibility for Members of the Commission that are not members of the Executive Committee to participate in its meetings as observers has been raised occasionally in the course of the past few years.

11. However, it is essentially in relation to the possibility for international non-governmental organizations to participate in the Executive Committee that the issue of the participation of observers in the Executive Committee has been raised and much discussed. In particular, doubts were expressed as to whether the above restrictive position served the interests of the Codex Alimentarius Commission. In 1999, at its 23rd Session, the Commission, requested the Codex Committee on General Principles to discuss various issues concerning the Executive Committee, including the participation of observers in its work and the need for greater consumer’s involvement in the work of the Codex Alimentarius Commission². At that time, various suggestions were made to the effect that a limited number of representatives of international non-governmental organizations should be able to participate in the work of the Executive Committee, as observers³.

12. At its 16th Session, the Codex Committee on General Principles reviewed a detailed document on the Executive Committee which dealt with the matter. The document noted that an extension of the representative nature of the Executive Committee in order to include international non-governmental organizations would reflect the general inclusive nature of participation in the Commission and all other Codex Committees and Task Forces. The Committee recalled further that discussions in the Commission had reflected a few conflicting concerns. On the one hand, it was felt desirable to allow for more transparency in Codex processes and, in particular, in the deliberations of the Executive Committee, as a

¹ For instance the Executive Committees of the General Fisheries Commission for the Mediterranean and of the Asia and Pacific Fisheries Commission.

² ALINORM 99/37, paragraphs 35 to 46 and 59 to 66.

³ The Commission considered also the possibility of an enlargement of the Executive Committee to include additional Members from different Regions along the lines of the FAO Council or the WHO Executive Board; the clarification of the rights of Member countries to participate in sessions of the Executive Committee as observers and the possibility of the participation of a limited number of developing Member countries as observers.

means of reinforcing its authority. On the other hand, it was felt desirable to preserve the efficiency of the Executive Committee, as the organ of the Commission entrusted with overseeing the implementation of Commission decisions and preparing for Commission sessions. The Commission had suggested a way of achieving that balance through the representation of the three main groups of international non-governmental organizations as observers on the Executive Committee, namely consumers and other public interest groups; the food industry, trade and marketing organizations; and professional and scientific international non-governmental organizations.

13. The Committee noted that, in the case of FAO, a comparable approach had been taken during the *World Food Summit* in 1996, when international non-governmental organizations had been asked to network themselves into different interest groups or constituencies at the Summit, with a single observer representing and speaking for each constituency. At the *World Food Summit: five years later* again a similar approach to the matter was taken. An important element of this approach was that the international non-governmental organizations in each group were responsible for the selection of their own representatives and not the Summit. On the basis of this approach, the Codex Committee on General Principles envisaged that the international non-governmental organizations, having observer status, of each group, should be asked to form a network or caucus and to nominate a single representative of that network to be invited to attend sessions of the Executive Committee as an observer. From time to time, the Commission could be asked to review whether or not the number of representative organizations was adequate to ensure the best representation of all parties interested in contributing to the Commission's work. However, there was no consensus in the Committee as to the proposal, which was made in conjunction with a series of other proposals regarding the Executive Committee.

14. The possibility for international non-governmental organizations to participate in the Executive Committee was recommended by the "*Joint FAO/WHO Evaluation of the Codex Alimentarius and other FAO and WHO work on food standards*". In formulating this recommendation, the Joint Evaluation took into particular account the above discussions carried out over the past few years. As noted above, the Commission requested that further work on this matter be done. At the same time, as the matter has been under discussion for the past few years, there may have been some evolution on the position of a number of Members of the Commission in relation to this possibility.

15. In particular, it is felt that the proposals referred to the Committee on General Principles in 2001, which were based on the approach taken by the World Food Summit, might be considered again and provide a basis for further work on this matter. As recalled in paragraph 3.2. of this document this would need to be seen in conjunction with an improvement of the criteria for the participation of international non-governmental organizations in the work of the Commission and their application in a stricter manner.

16. On substance, such proposals are not very different from the situation prevailing in the Programme Coordinating Board of the Joint United Nations Programme on HIV/AIDS (UNAIDS), of which WHO is one of the cosponsors. UNAIDS is a programme co-sponsored by the following United Nations programmes and agencies: UNICEF, UNDP, UNFPA, UNDCP, UNESCO, WHO, World Bank and ILO. The steering body of the Programme is a Programme Coordinating Board (PCB) composed of 22 Member States elected by the UN Economic and Social Council (ECOSOC). Pursuant to ECOSOC resolution 1995/2, five non-governmental organizations are invited to participate in the meetings of the PCB without the right to vote, three from developing countries and two from developed countries or countries with economies in transition. The selection of the five organizations is determined by the organizations themselves from among those either in consultative status with ECOSOC or in relationship with one of the cosponsoring organizations or on the roster of non-governmental organizations dealing with matters pertaining to HIV/AIDS. The PCB formally approves the non-governmental organizations thus nominated, whose terms of office shall not exceed three years.

POSSIBLE PARTICIPATION AS OBSERVERS OF MEMBERS OF THE COMMISSION THAT ARE NOT MEMBERS OF THE EXECUTIVE COMMITTEE

17. The secretariat needs guidance from the Committee on General Principles on the possibility for Members of the Commission that are not members of the Executive Committee to participate in its meetings as observers. Subject to such views as the Committee may offer, it would seem that two main options could be considered. Under one option, Members of the Commission that are not members of the Executive Committee, would select, presumably after consultation within the regional groups, a limited number of

Members of the Commission that would be entitled to participate in meetings of the Executive Committee. Under another possible option, all Members of the Commission would be entitled to participate as observers in the Executive Committee.

18. The above options need to be seen in light of the rights enjoyed by observers. In general, subject to approval of the Chairperson, observers may participate in discussions after all members have spoken and without the right to vote. They may receive documents, other than those of a restricted nature, and submit written statements on particular items of the agenda. Thus, it would seem that a situation where all Members of the Commission would be entitled to exercise these rights, in an observer capacity, in meetings of the Executive Committee could limit the efficiency of the Committee, unless the Codex Alimentarius Commission were to decide that the above rights should be limited. In FAO, there have been recent limited and *ad hoc* situations where observers have been allowed to address particular meetings through regional spokespersons. It may also be of interest to mention, in this connection, that the question of the participation of Members of the Commission that are not members of the Executive Committee in its meetings as observers needs to be seen in light of the proposals - dealt with in document CX/GP 03/19/3 - that the membership of the Executive Committee be enlarged.

19. As recalled above, the secretariat needs guidance from the Committee on General Principles on this matter in order to be able to formulate any proposals. In the particular case of FAO, where participation of observers in committees of restricted membership exercising functions in the nature of those of a bureau, as is to a large extent the case with the Executive Committee, is not possible, any such proposals would be reviewed by the Committee on Constitutional and Legal Matters. The matter would be considered in the light of the particular status of the Codex Alimentarius Commission and the special nature of its work.

POSSIBLE PARTICIPATION OF INTERGOVERNMENTAL ORGANIZATIONS AS OBSERVERS IN THE EXECUTIVE COMMITTEE

20. If, consistent with the view taken by a majority of the Members of the Commission, the Committee on General Principles were to recommend that intergovernmental organizations be allowed to participate in the Executive Committee as observers, the issue that arises is essentially that of the practical modalities for that participation. Representatives of intergovernmental organizations participating in the Executive Committee as observers would be allowed to participate in discussions after all members, and Members of the Commission participating as observers, have spoken. They would be entitled to receive documents, other than those of a restricted nature, and submit written statements on particular items of the agenda.

21. The important question that would arise in this connection is whether all intergovernmental organizations that participate in meetings of the Codex Alimentarius Commission, and its subsidiary bodies, as observers would be entitled to participate, or whether they would be required to organize themselves under arrangements similar to those being proposed in respect of international non-governmental organizations. The Committee on General Principles is invited to provide guidance on this issue.

POSSIBLE PARTICIPATION OF INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS AS OBSERVERS IN THE EXECUTIVE COMMITTEE⁴

22. Should the Committee be of the opinion, in line with the view taken by a majority of the Members of the Commission, that observers of international non-governmental organizations should participate in sessions of the Executive Committee, then an amendment to the Rules of Procedure could be considered. This amendment could be drafted taking into account Rule 53 of the Rules of Procedure of the *World Food Summit* and the *World Food Summit: five years later*.⁵ In turn, this Rule was drafted taking into account similar provisions of the Rules of Procedure of comparable Summits organized by, or under the aegis of, the United Nations.

23. On the substance of the proposals, international non-governmental organizations, having observer status with the Codex Alimentarius Commission, could designate representatives to sit as observers at sessions of the Executive Committee. These organizations would be invited to form themselves into a limited number of constituencies on the basis of their objectives and interests. These constituencies, through their representatives, could, upon invitation of the Chairman and subject to his approval, make oral statements on questions within the scope of their activities.

24. A related issue, requiring perhaps some limited elaboration, is that of the modalities of participation of observers of international non-governmental organizations. The normal rules for the participation of such observers in any session of FAO or WHO, and indeed of the Codex Alimentarius Commission itself, are that observers of international non-governmental organizations should speak only after members of the body itself have spoken. In the event that there should be observers from Members of the Commission that are not members of the Executive Committee as well as observers of intergovernmental organizations, observers of international non-governmental organizations should speak after those Member countries have spoken. Of course, a certain flexibility is given to the Chairman of the meeting, under the authority of the meeting, in the application of this rule in practice.

25. In keeping with past practice of the Codex Alimentarius Commission, the representatives of international non-governmental organizations would be entitled to receive in advance of the session all working documents and discussion papers and to submit, under the authority of the Executive Committee, written statements on matters before the Committee.

26. Given the status of the Executive Committee as a “bureau” of the Codex Alimentarius Commission dealing with organizational and institutional issues, it could, exceptionally, be called upon to deal with matters of a confidential or restricted nature. Should that happen, any relevant documents would not be distributed to observers, including international non-governmental organizations. The Executive Committee could decide that for the consideration of particular items observers, including international non-governmental organizations, should not be present. In connection with this matter, it should be noted that, in line with the recommendations of the Joint Evaluation, under one of the proposals before the Committee on General Principles, the Executive Committee could be entrusted with important functions in relation to the granting of observer status to international non-governmental organizations. Under the circumstances, the question arises as to whether when performing such functions representatives of international non-governmental organizations should be present at the sessions of the Committee.

⁴ Developments under this section draw heavily from the report of the 23rd Session of the Codex Alimentarius Commission, held in 1999 (ALINORM 99/7) as well as document CX/GP 99/5, considered by the Committee on General Principles at its 15th Session, held in 2000.

⁵ Rule 53 of the Rules of Procedure of the World Food Summit provided as follows:

Observers of Non-Governmental Organizations

1. Non-governmental organizations invited to the Summit may designate representatives to sit as observers at public meetings of the Summit on questions within the scope of their activities.
2. The Chairman shall invite such non-governmental organizations to form themselves into a limited number of constituencies. Upon the invitation of the Chairman, and subject to his approval, such constituencies may, through their spokespersons, make oral statements on questions within the scope of their activities.

27. Insofar as the current proposal reflects an evolution with regard to the practice that the parent organizations have followed so far in relation to their statutory bodies, the proposal might require some discussion within the relevant bodies of those organizations. In the particular case of FAO, the Director-General would be seeking the views of the Committee on Constitutional and Legal Matters. In that connection, he would emphasize the particular nature of the work of the Codex Alimentarius Commission, as well as past consideration of the matter in the Commission and the Committee on General Principles.⁶ To the extent that the Executive Committee is comparable with the Executive Board of WHO, the latter would not have particular problems of a constitutional nature since the participation of non-governmental organizations in the work of the Executive Board is clearly provided for in its Rules of Procedure.

POSSIBLE ACTION BY THE COMMITTEE

28. 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 appropriate.

29. More specifically, the Committee on General Principles is invited to offer its views on the above proposals for the participation of representatives of Members of the Commission that are not members of the Executive Committee, intergovernmental organizations and international non-governmental organizations in the Executive Committee, and offer such views as deemed appropriate. On the basis of the guidance received, the Secretariat and the Legal Counsels would draft relevant proposals for the forthcoming session of the Codex Committee on General Principles.

⁶ This would concern participation as observers of both intergovernmental organizations and international non-governmental organizations.