

codex alimentarius commission



FOOD AND AGRICULTURE
ORGANIZATION
OF THE UNITED NATIONS

WORLD
HEALTH
ORGANIZATION



JOINT OFFICE: Viale delle Terme di Caracalla 00100 ROME Tel: 39 06 57051 www.codexalimentarius.net Email: codex@fao.org Facsimile: 39 06 5705 4593

Agenda Item 3

CX/GP 04/20/3-Add.1

**JOINT FAO/WHO FOOD STANDARDS PROGRAMME
CODEX COMMITTEE ON GENERAL PRINCIPLES
Twentieth Session
Paris, France, 3 - 7 May 2004**

PROPOSED AMENDMENT TO RULE VIII.5 (OBSERVERS) OF THE RULES OF PROCEDURE

COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS

**Seventy-sixth Session
FAO Headquarters, Rome, 30 March 2004**

DRAFT REPORT

I. INTRODUCTION

1. The Seventy-sixth Session of the Committee on Constitutional and Legal Matters (CCLM) was held on 30 March 2004. All the Members of the Committee, with the exception of Iraq, as listed below, were represented:

Canada, Czech Republic, France, Guatemala, Niger and Philippines.

II. ELECTION OF CHAIRPERSON AND VICE-CHAIRPERSON

2. The Committee elected Mr. Adam Maiga Zakariaou (NIGER), as Chairperson and Ms. Claire Gaudot (FRANCE) as Vice-Chairperson. In the absence of Mr. Zakariaou, the Session was chaired by Ms. Gaudot.

**III. PROPOSED AMENDMENT TO RULE VIII.5 OF THE RULES OF PROCEDURE OF THE
CODEX ALIMENTARIUS COMMISSION (ADVISORY FUNCTIONS OF THE EXECUTIVE
COMMITTEE IN RESPECT OF THE GRANTING, BY THE DIRECTORS-GENERAL OF FAO
AND WHO, OF OBSERVER STATUS TO INTERNATIONAL NON-GOVERNMENTAL
ORGANIZATIONS)**

3. The Committee considered document CCLM 76/2 "Proposed amendment to Rule VIII.5 of the Rules of Procedure of the Codex Alimentarius Commission (Advisory Functions of the Executive Committee in respect of the granting, by the Directors-General of FAO and WHO, of observer status to international non-governmental organizations)" which had been referred to it by the Director-General, under the terms of Rule XXXIV, paragraph 4 of the General Rules of the Organization. In doing so, the Director-General took into particular consideration the fact that, while being a Joint FAO/WHO subsidiary body, the Codex Alimentarius Commission has a specific mandate and functional requirements which led him, on past occasions, to refer specific matters of interest to that Commission to the CCLM.

4. The CCLM noted that, at its 26th session, held in Rome, from 30 June to 7 July 2003, the Codex Commission had examined proposals made by the “*Joint FAO/WHO Evaluation of the Codex Alimentarius and other FAO and WHO work on food standards*”, which had attracted considerable attention and discussion in past meetings of the Codex Commission and its subsidiary bodies. As regards international non-governmental organizations, the Joint Evaluation formulated three recommendations which it considered to be closely interrelated. First, rights and obligations of observers of international non-governmental organizations, including rights of participation in meetings of the Executive Committee, should be better defined. Second, the process for the granting of observer status to international non-governmental organizations should be improved and involve approval by the Executive Committee of individual organizations. Third, in the course of that process, stricter substantive criteria regarding the nature of the organizations eligible for such status should be applied.

5. A majority of the members of the Commission agreed to the participation of observers, including observers of international non-governmental organizations, in meetings of the Executive Committee with clearly defined rights. However, the Commission decided that the modalities of such participation needed further review and that proposals to that effect should be referred to the Committee on General Principles. The Commission “*requested the FAO and WHO Legal Counsels and the Secretariat to prepare a preliminary paper on Rule VIII.5 of the Rules of Procedure of the Commission for consideration by the Committee on General Principles*”. The Commission concurred with the need to apply stricter substantive criteria regarding organizations eligible to apply for observer status and that they be reflected in revised “*Principles Concerning the Participation of International Non-Governmental Organizations in the Work of the Codex Alimentarius Commission*”, set out in the Procedural Manual.

6. At its Nineteenth extraordinary Session, held in Paris, France, from 17 to 21 November 2003, the Codex Committee on General Principles examined these issues on the basis of various documents prepared by the secretariat.

7. As regards participation of representatives of observers, including observers of international non-governmental organizations, the Committee recalled that current provisions whereby observers were not allowed to participate in meetings of the Executive Committee were based on rules of the parent organizations and long-standing practice. In addition, the Committee underlined two concerns. The first was that participation of observers of international non-governmental organizations in the Executive Committee would increase transparency and inclusiveness in its work. The second was that it was essential to preserve the efficiency of the Executive Committee as a body of restricted membership exercising executive and managerial functions. After a debate, the Committee concluded that no particular provisions of the Rules of Procedure or guidelines should be prepared on the participation of observers in the Executive Committee, and, instead, that alternative options be explored, such as web casting of meetings of the Executive Committee, establishment of listening rooms and other facilities, for further consideration at future sessions.

8. As regards the proposal regarding involvement of the Executive Committee in the process of granting observer status to international non-governmental organizations, the Committee on General Principles considered the matter in connection with the review of Rule VIII.5 of the Rules of Procedure, on the basis of a document outlining various options. The document recalled that the procedures in force were set out in the “*Principles Concerning the Participation of International Non-Governmental Organizations in the Work of the Codex Alimentarius Commission*” reflecting the procedures in force at WHO and, to a greater extent, those of FAO. Under the Principles, as confirmed by consistent practice, 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. In turn, the Principles define the organizations eligible for “*observers status*” as “*international non-governmental organizations in consultative status, specialized consultative status or liaison status with FAO*”, “*international non-governmental organization having official relations with WHO*” and “*international non-governmental organizations*” which, while not having formal status with FAO or WHO, meet a number of requirements.

9. The Committee on General Principles noted that the procedures of the parent organizations reflected in the Principles, as well as the status of the Codex Commission, limited the scope of intervention either of the Codex Commission or the Executive Committee in the process of granting of observer status with the Commission. In particular, neither the Commission, nor the Executive Committee could be given direct authority of approval of applications for observer status. Under the circumstances, the Committee on General Principles endorsed an option whereby the Directors-General, acting through the secretariat of the Codex Commission, would seek the views of the Executive Committee in connection with requests for observer status. Under this option, the advisory functions entrusted to the Executive Committee would leave intact the authority of the Governing Bodies or of the Directors-General on the matter. The implementation of this option would imply that, prior to initiating a process leading to the establishment of any form of formal status between an international non-governmental organization and FAO or WHO, of interest to the Codex Commission, the views of the Executive Committee of the Codex Alimentarius Commission should be sought, depending, of course, on the mandate and activities of the international non-governmental organization concerned. This option was found to improve the transparency and democratic base of the Codex Commission, while being consistent with the status of the Commission in relation to its parent organizations and with the increased role assigned to the Executive Committee, as a result of the Joint FAO/WHO Evaluation of the Codex Commission.

10. The Committee on General Principles requested the Legal Counsels of FAO and WHO to prepare a document setting forth the proposed amendment to Rule VIII.5 of the Rules of Procedure for its regular session in May 2004. The Committee agreed that it would be appropriate, in the revised provisions, to introduce a distinction between intergovernmental organizations and international non-governmental organizations. The Committee noted that, insofar as FAO was concerned, the Director-General intended to seek the views of the Committee on Constitutional and Legal Matters on the proposal.

11. The CCLM noted that the proposed wording for revised Rules VIII.5 and VIII.6 of the Rules of Procedure would be:

Rule VIII. Observers

5. *Participation of intergovernmental 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 intergovernmental organizations; such relations shall be handled by the Director-General of FAO or WHO, as appropriate.*

6. *Participation of international non-governmental 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 Constitution of FAO or WHO, as well as by applicable regulations of FAO or WHO on relations with international non-governmental organizations. Such relations shall be handled by the Director-General of FAO or WHO, as appropriate, on the advice of the Executive Committee. The Commission shall develop and keep under review principles and criteria concerning the participation of international non-governmental organizations in its work, consistent with the applicable regulations of FAO or WHO.*

12. The CCLM reviewed the proposed Rules, with particular reference to proposed Rule VIII.6 of the Rules of Procedure of the Codex Commission, and was of the view that the proposed Rule, as well as its underlying approach, were consistent with existing procedures governing the relationship between FAO and international non-governmental organizations. In particular, the CCLM noted that, from a legal point of view, while the authority to grant observer status to international non-governmental organizations derived from decisions of the Governing Bodies of the Organization or the Director-General, there was no legal impediment to entrusting the Executive Committee with advisory functions in that process. On the substance, in providing its views, the Executive Committee would take into account the relevant criteria set out in the “*Principles Concerning the Participation of International Non-Governmental Organizations in the Work of the Codex Alimentarius Commission*”.

13. The CCLM considered that there was a need to address a number of practical issues arising from the implementation of the revised provisions and was informed that these would be dealt with by the Codex Alimentarius Commission and its subsidiary bodies.

14. The CCLM noted that the proposed amendments would be considered by the Committee on General Principles, at its forthcoming Twentieth Session, from 3 to 7 May 2004, together with the views of the CCLM. Depending on the outcome of this process, the proposed amendments could be approved by the Codex Alimentarius Commission at its Twenty-seventh Session, from 28 June 2004 to 2 July 2004.