

codex alimentarius commission



FOOD AND AGRICULTURE
ORGANIZATION
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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 5

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

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CONSIDERATION OF THE STATUS OF OBSERVERS IN THE EXECUTIVE COMMITTEE

WEBCASTING AND PUBLICIZING OF THE PROCEEDINGS OF THE EXECUTIVE COMMITTEE

INTRODUCTION

1. At its Nineteenth (Extraordinary) Session, the Committee on General Principles, hereinafter referred to as CCGP or the Committee, examined in some detail the issue of the participation of observers in the Executive Committee, especially as regards observers of international non-governmental organizations, on the basis of a document prepared by the Legal Offices of FAO and WHO¹. As a result of the debate, the Committee agreed that at that stage no guidelines needed to be developed as to the participation of observers in the Executive Committee. The Committee requested the Codex Secretariat to prepare for the forthcoming extraordinary session of the Committee a discussion document elaborating further possible alternative options, in light of all pertinent considerations with particular reference to cost and legal and institutional implications of any of the envisaged options. It was noted that consultation with other organizations, both within and outside the United Nations system, would be undertaken in connection with the preparation of the document².

2. This document deals with the legal and institutional aspects involved in the request. The document recalls the context in which the request has been formulated, relevant legal provisions and practices in the parent organizations, the outcome of consultation with organizations of the United Nations system and puts forward some general conclusions on the legal and institutional issues involved for review by the Committee. Information on costs and related material or physical matters are presented in an annex thereto.

BACKGROUND

(a) General considerations

3. As described in earlier documents prepared by the secretariat³, the issue of whether the proceedings of the Executive Committee could be webcast or publicized through similar means, should be placed in the context of a substantial number of discussions that have taken place for the past eight years, within the Codex Alimentarius Commission and some of its subsidiary bodies, concerning, *inter alia*, the possibility for international non-governmental organizations to participate more effectively in the work of Codex and, in particular, in the Executive Committee. On the one hand, it was considered desirable to allow for more transparency in Codex processes and, in particular, in the deliberations of the Executive Committee as a 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 the Commission's decisions and preparing for its sessions. The Codex Commission had envisaged a possibility

¹ CX/GP03/19/3-Add.2 – Consideration of the status of observers in the Executive Committee.

² ALINORM 04/27/33, paragraphs 40-45.

³ Ibid.

of achieving that balance through representation of the three main groups of international non-governmental organizations, namely, consumers and other public interest groups; the food industry, trade and marketing organizations; and professional and scientific international non-governmental organizations and required that the matter be elaborated further. There was however no consensus as regards these proposals. In addition, at its Twenty-sixth Session, held in 2003, in connection with the review of the report of the “*Joint FAO/WHO Evaluation of the Codex Alimentarius and other FAO and WHO Work on Food Standards*”, the Commission requested that the possibility that observers could participate in the work of the Executive Committee should concern not only international non-governmental organizations, but also Members and intergovernmental organizations. At its Nineteenth (Extraordinary) Session, the CCGP requested that alternative means such as webcasting and other forms of publicizing of the proceedings of the meetings be studied.

(b) Basic legal considerations, including in the parent organizations

4. It is important to clarify that the possibility of webcasting or resorting to listening rooms, or publicizing through similar means, the proceedings of meetings is not dealt with, as such, either in the Rules of Procedure of the Codex Alimentarius Commission, or in the Rules of Procedure or related documents of organizations of the United Nations system, at least as far as the secretariat is aware. Such possibility should thus be seen in light of relevant provisions and practices concerning the status of the meetings of the Executive Committee *vis-à-vis* access by the public and the media to meetings, and also, to a lesser extent, from the point of view of the participation of observers, to meetings. In this document, extensive references are therefore made to rules and procedures on these matters.

5. In the case of the Codex Alimentarius Commission, it has consistently been considered, in light of relevant practice and pertinent principles, that the Rules of Procedure make no provision for the participation of observers or of the general public in meetings of the Executive Committee. Rule V.5 does provide that meetings of the Commission are held in public, unless the Commission decides otherwise. While this applies to all subsidiary bodies of the Commission⁴, it has never been considered that these provisions should also apply to the meetings of the Executive Committee. On the contrary, the position that meetings of the Executive Committee are closed meetings was restated on several occasions, almost since the establishment of the Codex Commission⁵.

6. It may be of some interest to recall the rationale for meetings to be held in private. In general, the main purpose of a meeting held in private is to protect the confidentiality of the deliberations and decisions of the body concerned, in view of its mandate or of the nature of a particular item under discussion. From this point of view, allowing non-members of the Executive Committee to listen to its proceedings through webcasting or listening rooms would seem to contradict the purpose of excluding them from actual participation or attendance in the meeting. However, and especially for bodies of restricted composition, another purpose of holding meetings in private is to avoid the membership of the body being dwarfed by the number of non-members and the proceedings being slowed down or rendered less effective through statements by observers. From the latter point of view, an arrangement whereby observers and the public would be able to listen to proceedings of a meeting without however being able to attend it or to exercise the applicable rights of participation would seem to be compatible with that particular purpose.

7. Indeed, the position whereby the meetings of the Executive Committee are neither open to observers, nor to the public, are in line with FAO’s rules and practices on the matter in respect to similar bodies. The nature and functions of the Executive Committee remain to a large extent those of a bureau, required to act on behalf of the Commission between its sessions and make organizational arrangements for the sessions. In FAO, there are a number of comparable executive committees whose meetings are held in private and are not open to observers. Furthermore, in the case of FAO, the “*Statement of principles relating to the granting of observer status to nations*”, includes a general principle whereby committees consisting of a limited number of Member Nations are not open to attendance by observers, unless otherwise determined by the Conference, the parent commissions or the Council. If such limitations were placed upon the participation of Members 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 in such committees. Often, in the case of FAO, the relevant rules governing the proceedings of such committees of restricted membership, or consisting of selected countries, make provision to the effect that the meetings in question are held in private

⁴ Article 7 of the Statutes of the Codex Alimentarius Commission refers to the Executive Committee as a subsidiary body of the Commission.

⁵ While these bodies are not subsidiary bodies of the Codex Alimentarius Commission, it may be of some interest to recall that meetings of experts appointed in their individual capacity which work for the most part for Codex are not open to observers.

and are not open to observers and the public. Therefore, on the basis of the procedures and practices in FAO, as they stand at present, reasoning by analogy with the provisions regarding access by observers and the public to meetings, and taking into account some of the functions exercised by the Executive Committee, it would be difficult to consider that they would allow for the envisaged webcasting and publicizing of the proceedings of the Executive Committee.

8. Nevertheless, there are a few specific situations in FAO that should be referred to briefly. In addition, the position on this matter may be evolving in subsidiary bodies of FAO, other than the Codex Alimentarius Commission. First, there are a few specific situations concerning mainly committees of selected Members, established under Article VI of the FAO Constitution, dealing with technical matters, namely in forestry and fisheries, which are open both to observers and to the public. In general, it is considered that this concerns only plenary meetings of the committees. Second, the Council of FAO, to which the Executive Committee could be compared, is open to observers and the public. Third, there has been of late a distinct movement towards the involvement of civil society representatives in the work of FAO which has led to specific solutions for particular meetings. More generally, it could be considered that the situation on this subject matter is evolving in a significant manner and could lead to some changes in existing procedures.

9. The situation in WHO is less restrictive than that in FAO and would need to be seen in light of the following legal considerations. First, in general, in the case of WHO the Rules of Procedure of the Health Assembly and the Executive Board provide that the meetings of those organs are held in public. In the case of the Health Assembly, the meetings may be held in private as determined by the Assembly, but there is a clear assumption that this would be exceptional. In the case of the Executive Board, the Rules of Procedure as revised in 2003 foresee three types of meetings: public meetings, open to all Member States and Associate Members, intergovernmental as well as non-governmental organizations, and the public; open meetings, open to all Member States and Associate Members; and in exceptional circumstances restricted meetings, open only to Members of the Board. It may be also of interest to mention that in the earlier submission on the question of the participation of observers in meetings of the Executive Committee, WHO has taken the view that the Executive Committee is comparable with the Executive Board in terms of its functions and its relations with the principal plenary organ. Consequently, WHO would not have particular problems of a constitutional nature concerning the participation of observers and the public in meetings of the Executive Committee, because such participation in open meetings of the Executive Board is clearly provided for in its Rules of Procedure.

CONSULTATION WITH OTHER ORGANIZATIONS OF THE UNITED NATIONS SYSTEM

10. The CCGP, at its Nineteenth (Extraordinary) Session was informed that consultations with other organizations of the United Nations system would be held. The organizations of the United Nations system were consulted on this matter on two occasions by the Legal Office of FAO, i.e. first, in late 2002, in respect to the possibility of the public and the media being granted access to meetings and, second, in July 2004, in relation to the specific question raised by the CCGP, at its Nineteenth Session, and which is now under consideration.

11. In general – and this concerns more specifically the second consultation referred to in the previous paragraph – FAO obtained few responses to the specific question asked by the CCGP at its Nineteenth (Extraordinary) Session, as compared to other matters that were the subject of inter agency consultation. Presumably, this could mean that the question asked would not raise fundamental cross-cutting issues of principle, on which the organizations would hold strong views, and would seem to be one to be addressed by each of them in light of their particular situations. The information received concerns a highly diversified number of bodies and, at times, may not be of direct relevance to the situation of the Codex Alimentarius Commission. The information given below summarizes the responses received to both questions.

12. The United Nations reported that all meetings of the principal organs of the United Nations are public, unless otherwise decided. This concerns the Security Council, the General Assembly, and the Economic and Social Council⁶. The same general rule applies to other subsidiary organs, as well as to governing bodies of programmes of the United Nations. However, committees of restricted membership are held in private, unless otherwise decided⁷. So is the case with the bureau of the above bodies and

⁶ There is one exception whereby recommendations of the Security Council to the General Assembly on the appointment of the Secretary-General are discussed and decided at a private meeting of the Security Council

⁷ The general position at the United Nations is recorded in a long series of legal opinions and other relevant documents. See mainly United Nations Juridical Yearbook, 1971, p. 195; 1972, p. 168. See also, in the same Yearbook, 1970, pp. 172 and 181; 1976, p. 183 and 1983, p. 173.

committees. In this respect, the situation in FAO is generally very much in line with the prevailing situation at the United Nations.

13. The meeting of the principal organs of the International Labour Office are public, unless otherwise decided. However, particular meetings of other organs – for instance the Joint ILO/IMO (International Maritime Organization) Maritime Commission – are not public, although there may be situations where provision may be made as to the admission of any person to such meetings.

14. As concerns the United Nations Industrial Development Organization (UNIDO), the plenary meetings of the General Conference and of those of its main committees are held in public unless the organ concerned decides otherwise. The same procedures apply to the meetings of the Industrial Development Board, its committees of the whole and subsidiary bodies. Meeting of other organs of the Executive Board are held in private unless the Board or the body concerned decides otherwise. Members of the general public and representatives of the media are not admitted to private meetings. At the close of a private meeting, the organ concerned may issue a communiqué through the secretariat.

15. The World Intellectual Property Organization (WIPO) does not admit the public, nor journalists to any of its Member States meeting, whether treaty organ, committee or working group. In the case of WIPO, under the procedures in force for the participation of non-governmental organizations in WIPO meetings, once an NGO has been granted permanent observer status by the Assembly, it is invited to participate in all WIPO meetings⁸.

16. As regards the International Telecommunications Union (ITU), the Rules of Procedure of the Conference and other meetings of ITU provide that the press and the public may, to the extent practicable, be present at conferences in accordance with the guidelines approved by the meeting of heads of delegations which precedes each inaugural meeting of a conference and with practical arrangements made by the Secretary-General. In practice, and provided that the necessary infrastructure is at the conference's disposal, the Secretary-General proposes to the heads of delegations to admit the press and the public to all plenary meetings as well as to the plenary meetings of "*substantive committees*". Press and public are not allowed to be present in the Steering Committee and it is a common practice not to admit them in the Credentials Committee, the Budget Control Committee, the Editorial Committee, as well as in sub-committees and working groups. These latter committees are not open to observers except to the extent determined.

17. The World Meteorological Organization (WMO) reported that under Regulation 123 of the WMO Regulations entitled Publicity of Meetings, the meetings of constituent bodies are held in public unless otherwise decided by the constituent bodies concerned. The Rules of Procedure of the WMO Executive Council provide that, apart from the opening of the session, which is public, meetings of the Executive Council are normally held in private. However, when there are special circumstances, the Executive Council may decide to hold all or part of a meeting in public.

18. In the International Atomic Energy Agency (IAEA) the Rules of Procedure of the General Conference prescribe that the meetings of the General Conference, its committees and other subsidiary bodies are held in public, unless the body concerned decides that the circumstances require that the meeting be held in private. The Rules of Procedure are generally applied *mutatis mutandis* to the meetings of the subsidiary bodies of the General Conference. As a matter of practice, the plenary meetings of the General Conference are public meetings and also individuals from the public and journalists are permitted to attend, after having secured appropriate accreditation. There are two standing subsidiary bodies of the General Conference, the General Committee and the Committee of the Whole, whose sessions are closed ones, by decision of these Committees. The practice with respect to other meetings is established on an *ad hoc* basis, depending on the subject matter under discussion and the nature of the meeting.

19. The World Bank informed that, as a general rule, deliberative proceedings of its bodies are not available to the public. The only manner in which that may be done, is through a decision of the Executive Directors, taken in accordance with its policy of disclosure of information. The World Bank has adopted a Policy on Disclosure of Information that is available on their website (<http://www.worldbank.com>)

⁸ The Legal Counsel of WIPO reported that at a recent meeting of the Standing Committee on Copyright and Related Rights a non-governmental organization had prepared simultaneous word-for-word reports of statements made by delegations of Member States and disseminated them on the Internet. It was considered that opening meetings to NGOs does not imply that the deliberations taking place in these meetings can be disseminated to the public at large, before the report has been prepared and approved by the concerned Member States, as required by the General Rules of Procedure. No decision was taken on this matter which is still under consideration and it is ultimately up to the Member States of WIPO to decide whether to authorize such reporting by accredited NGOs.

20. There are a number of so-called treaty or conference bodies operating under the aegis of the United Nations or of some of its programmes and funds, such as the United Nations Environment Programme. The general rule followed by these bodies is that meetings are open to observers as well as the public and the media, unless the Conferences of the Parties concerned or their subsidiary bodies decide otherwise. On the basis of information received, the convening of private, closed meetings, has been described as very exceptional.

POSSIBLE COURSE OF ACTION

21. In considering the legal and institutional aspects of a proposal to webcast or otherwise publicize the proceedings of meetings of the Executive Committee of the Codex Alimentarius Commission, the CCGP may wish to take into account the following considerations.

22. First, to the extent that it is possible to derive precise conclusions from situations that remain highly differentiated, it would seem from the above that general meetings of the main organs of intergovernmental organizations are open to observers and the public, except if otherwise decided. As indicated, this concerns the main governing bodies of the various organizations, but also some of their subsidiary bodies. The above also shows that the main bodies of the organizations enjoy substantial autonomy and discretion in determining whether particular proceedings should be carried out in a public meeting or in a closed meeting.

23. Under the circumstances, having regard to their own procedures and practices, seen in light of the information received from other organizations, with particular reference to the organizations of the United Nations system, FAO and WHO would not have difficulties of principle if the Commission were to decide that the proceedings of the sessions of the Executive Committee could be webcast or publicized, under such conditions as the Commission or the Executive Committee would decide. In this connection, both FAO and WHO note that for the past eight years considerable discussion has surrounded the issue of how the proceedings and deliberations of the Executive Committee could be made more transparent as a means of reinforcing its authority, without undermining its efficiency .

24. Second, it appears from the foregoing that committees dealing essentially with the working of the main organs or exercising executive functions are usually not open to observers and the public. This consideration would seem to exclude the possibility that deliberations of the Executive Committee could be publicized.

25. However, it is essential to consider the actual functions of the Executive Committee. While the Executive Committee of the Codex Alimentarius Commission exercises administrative and procedural functions akin to those of the bureau of a conference or commission, it has, over the years, been entrusted with functions that go beyond those performed by the bureau of a commission. The Executive Committee does exercise a number of “*substantive*” functions with regard to the overall operation of the Commission. Thus, the Executive Committee makes proposals regarding the general orientation and programme of work of the Commission. It may study special problems and help implement the programme of work as adopted by the Commission and take a number of important decisions subject to confirmation by the Commission. The Executive Committee discharges also important, if not critical, functions in the context of the Procedures for the Elaboration of Codex Standards and Related Texts, to such a point that the “*Joint FAO/WHO Evaluation of the Codex Alimentarius and other FAO and WHO Work on Food Standards*” admitted the possibility of establishing a Standards Management Committee whose functions would elaborate upon those exercised at present by the Executive Committee. Consequently, in view of the broad range of functions performed by the Executive Committee, if a decision were to be taken to the effect that its proceedings should be publicized, this would not be inconsistent with the generally established practice whereby meetings of committees dealing with the internal working of main bodies are normally closed meetings.

26. In view of the above considerations, the decision whether or not the proceedings of the Executive Committee could be webcast, or listening rooms could be established, or the proceedings could be otherwise publicized, would seem to be essentially one for the CCGP to recommend and the Commission to decide upon.

27. In line with the above procedures and practices followed in intergovernmental organizations, it would be up to the Commission or the Executive Committee to decide whether all, or only particular proceedings, should be publicized under particular agenda items in light of the criteria that they could establish, as appropriate. Presumably, the Commission or the Executive Committee could always decide that particular issues would be deliberated upon in private meetings and not be publicized.

28. In the same vein, should the CCGP or the Commission be of the view that proceedings of the Executive Committee could be publicized as per above, then it might be useful to amend the Rules of Procedure of the Commission. Any possible amendment to that effect should be couched in general and flexible terms, in order to allow the Commission or the Executive Committee to exercise discretion in deciding whether particular proceedings should be publicized and under which conditions that could be done.

29. Finally, in view of the status of the Codex Alimentarius Commission as a joint subsidiary body of FAO and WHO, it would be important to note that the proposal under review had to be seen in light of the specific requirements of the Codex Alimentarius Commission and the particular nature of its work and would not set a precedent for other bodies of the parent organizations, with particular reference to FAO.

POSSIBLE ACTION BY THE COMMITTEE

30. The Committee is invited to review the present document and provide such views thereon, and guidance to the Secretariat as appropriate.