



JOINT FAO/WHO FOOD STANDARDS PROGRAMME

CODEX COMMITTEE ON GENERAL PRINCIPLES

Thirty-third Session

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REVIEW AND POSSIBLE AMENDMENTS TO THE RULES OF PROCEDURE ON SESSIONS OF THE COMMISSION

(Prepared by the Codex Secretariat in collaboration with the Legal Offices of FAO and WHO)

1. Introduction

1.1 Following consideration of the Interim report¹ prepared by the subcommittee of the Executive Committee of the Codex Alimentarius Commission (CCEXEC) on the *Future of Codex*, the 45th Session of the Codex Alimentarius Commission (CAC45) “requested the Codex Secretariat to consult with the FAO and WHO Legal Offices on a possible amendment to the rules of procedure allowing the Commission to take place virtually if needed and to prepare a paper on this specific issue for consideration by CCGP33, which in turn should advise CAC46”².

2. Background

2.1 The COVID-19 pandemic presented new challenges to the work of Codex, in particular with regard to the convening of in-person meetings. As a direct consequence of the pandemic and the associated containment measures, all physical meetings of the Codex Alimentarius Commission (“CAC” or the “Commission”) and its subsidiary bodies scheduled for 2020 were cancelled or postponed. In these circumstances, and following consultations between FAO, WHO, the Chairperson of the Commission and the Codex Secretariat, it was considered necessary to explore alternative arrangements for the holding of Codex meetings, such as through remote participation, in order to ensure the continuity of essential work during the period of the pandemic, taking into account the special arrangements that FAO and WHO had put in place for their respective governing bodies’ meetings.

a) Holding of virtual sessions of the Commission and its subsidiary bodies during the COVID-19 pandemic

2.2 In July 2020, in view of the unexpected circumstances created by the COVID-19 pandemic, the Members of CCEXEC decided to hold the 79th session of the Executive Committee (CCEXEC79) virtually and to only address urgent items within the Executive Committee’s mandate. In the absence of any rules in the Codex Procedural Manual, this decision was adopted by more than half of the Members of the Executive Committee drawing upon the procedure laid down in Rule XXV(13)³ of the General Rules of FAO.

2.3 The COVID-19 pandemic also affected the meetings of the Commission, starting with CAC43 in 2020, which could not meet physically on the dates originally announced. To ensure continuity in the work of the Commission, the Codex Secretariat extensively liaised with the relevant offices of FAO and WHO, and received

¹ CX/EXEC 22/83/5

² REP22/CAC, paragraph 41

³ Rule XXV(13) provides for an exceptional procedure when urgent action is required between two sessions of the FAO Council, allowing the Director-General, after having consulted the Independent Chairperson of Council (ICC), to seek the opinion of the Council Members by any rapid means of communication. Pursuant to Rule XXV(13), a decision may be taken by “concurrency by cable or letter” and “any such action shall be immediately reported by the Director-General to all Member Nations and Associate Members of the Organization and to the Chairperson of the Council”.

support from both Organizations to prepare all necessary steps to convene a virtual session of CAC43 from 24 to 26 September, and 12 to 19 October 2020, subject to the endorsement of the virtual session by the Members of the Commission. In this context, the endorsement of the Members of the Commission was sought on a proposal to hold CAC43 virtually and to suspend the rules of the Codex Rules of Procedure that are incompatible with a virtual setting for the purposes of CAC43, pursuant to Rule XV(2), "Amendments and Suspension of Rules"⁴. This proposal was endorsed by more than a two-thirds of the Members of the Commission in accordance with Rule XV(2) and, thus, a decision was taken to hold CAC43 virtually.

2.4 Similarly, CAC44 could not be convened in person as the COVID-19 pandemic continued throughout 2021. As a result, as was done for CAC43, a decision was taken by a two-thirds majority of the Members of the Commission to hold CAC44 virtually and to suspend the rules of the Codex Rules of Procedure presupposing physical participation.

b) Current practice at Codex with regard to the holding of virtual sessions

2.5 At CAC43⁵ in 2020, the Commission agreed on an exceptional basis that, with respect to sessions of the Codex Subsidiary Bodies to be held in 2021, including CCEXEC80 and CCEXEC81, Rule XI (7) and (8) of the Codex Rules of Procedure could be interpreted as including a virtual setting. On this basis, the Commission also agreed on the possibility of holding the Codex Subsidiary Bodies virtually in 2021. In particular, CAC43:

"i) agreed, on an exceptional basis in view of the circumstances surrounding the pandemic that, with respect to meetings and sessions of the Codex Subsidiary Bodies to be held in 2021, Rule XI (7) and (8) may be interpreted in a manner that includes a virtual setting;

ii) agreed, on this basis, that Codex Subsidiary Bodies may be held virtually in 2021, if determined appropriate by FAO and WHO, in consultation with the host governments concerned and the Codex Secretariat;

iii) agreed that the 80th and the 81st sessions of the Executive Committee may be held virtually in 2021 should physical meetings not be possible."

2.6 At CAC44⁶ in 2021, the Commission "*recommended that Rule XI (7) and (8) continue to be interpreted in a manner that includes a virtual setting with respect to sessions of Codex Subsidiary Bodies including CCEXEC and that application of this should take into consideration the criteria outlined by CCEXEC80*", thereby allowing all subsidiary bodies to be convened virtually when necessary to ensure work continuity. The same interpretation, however, was not extended to the Commission.

2.7 In January 2021, CCEXEC80 recommended that the following criteria be considered by FAO, WHO, the Codex Secretariat and host countries in deciding whether to convene virtual Codex sessions: "*any UN declared global emergency situation; the extent of travel restrictions or changes/expected changes in travel restrictions; priority of the matters scheduled for the relevant Codex session; information from Codex Members concerning their inability to participate in physical meetings; and security concerns (global, regional or local as appropriate to the meeting of interest)*".⁷

2.8 Since then, many Codex subsidiary body sessions have been convened virtually in accordance with the above criteria, including CCEXEC81 and CCEXEC82. Following improvement of the situation related to the COVID-19 pandemic, a gradual return to physical meetings has been possible. In November 2022, CCEXEC83 and CAC45 were held in person with the possibility of remote participation.⁸ In July 2023, CCEXEC84 met in a fully physical setting. It is planned that CCEXEC85 and CAC46 scheduled for November 2023 will also be held in person, with the possibility of remote participation for listening and verbal interventions only in the case of CAC46.

⁴ Rule XV(2) of the Codex Rules of Procedure reads as follows: "*The Rules of the Commission, other than Rule I, Rule III.1, 2, 3 and 5, Rule V, Rule VI.2 and 7, Rule VII.1, 4 and 6, Rule VIII.1, 2 and 3, Rule IX, Rule X.3 and 4, Rule XI.5, 7 and 9, Rule XIII, Rule XV and Rule XVI, may be suspended by the Commission by a two thirds majority of the votes cast, provided that 24 hours' notice of the proposal for suspension has been given. Such notice may be waived if no representative of the Members of the Commission objects*".

⁵ REP20/CAC, paragraph 20

⁶ REP21/CAC, paragraph 12 (iii)

⁷ REP21/EXEC1, paragraph 35

⁸ However, with regard to CAC45, all Members were invited to plan to have at least one in-person delegate attend the session for in-person voting. See REP22/CAC, paragraph 1.

3. Considerations

3.1 As reflected above, the COVID-19 pandemic with the related health and public safety concerns required a rapid change in the manner of conducting meetings to facilitate remote participation and decision-making. In this situation, a flexible approach was taken and certain provisions of the Codex Rules of Procedure were suspended or interpreted more broadly on an exceptional basis, with the approval of the Codex membership, because of the need to continue work under unusual conditions.

3.2 That said, experience during the COVID-19 pandemic has shown that virtual meetings give rise to a range of complex procedural questions, such as how to define participation by Members, conduct a vote or establish a quorum in a virtual setting. These questions need careful consideration by FAO and WHO, and may also require wider consultations with other organizations of the United Nations System.

3.3 As a result, there remains a level of uncertainty regarding the precise nature and extent of amendments required to accommodate virtual meetings effectively, while maintaining the integrity and transparency of debate and decision-making. Amending the Codex Rules of Procedure without a thorough understanding of these necessary adjustments could potentially lead to procedural difficulties or complexities. It is also possible that certain aspects could be overlooked, or that the Rules of Procedure might not be adequately amended to address the unique challenges posed by virtual meetings. There could also be difficulties if procedural issues arise in the future that are not covered by the Codex Rules of Procedure and cannot be resolved by reference to FAO's rules and practices, as required by the Codex Rules of Procedure.

3.4 Indeed, at this point in time, neither FAO nor WHO have formally amended their rules to address virtual meetings of their Governing Bodies, and both Organizations continue to adopt *ad hoc* procedures, where necessary, depending on the evolving circumstances.

3.5 In view of the above, it would be advisable to defer the amendments of the Codex Rules of Procedure incorporating virtual meetings of the Commission until a comprehensive approach to virtual meetings is developed by the two parent Organizations, in particular FAO, considering that the rules of FAO apply to matters that are not specifically dealt with under the Codex Rules of Procedure.

4. Proposed actions by the committee

4.1 CCGP33 is invited to consider recommending that review of a possible amendment to the Codex Rules of Procedure allowing virtual sessions of the Commission be deferred, consistent with section 3.5.