

CODEX ALIMENTARIUS COMMISSION



Food and Agriculture
Organization of the
United Nations



World Health
Organization

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Comments of European Food Law Association

Should WHO documents and WHA resolutions be referred to in Codex Standards?

The European Food Law Association (EFLA) members are professionals and/or lawyers specialized in Food law as well as academics, from 16 different EU and from non-EU countries. EFLA does not represent or defend any specific interest and generally does not take positions on specific product matters, but is happy to contribute to the general debates from a horizontal legal perspective.

In this regard, EFLA wishes to submit its comments regarding the General question as to whether WHO documents and WHA resolutions must be referred to in the Standard (as it is currently in the Standard for Infant Formula).

This question is currently under discussion at the CCFSDU regarding the review of the Standard for follow-up formulae, but it has been acknowledged by the eWG members of the Committee that this question may also impact other Committees and other Codex standards and guidelines. It is therefore a very important question which has not only political impact, but also legal consequences. For this reason, EFLA is happy that this question is discussed at the Commission level.

From a general legal point of view, EFLA has strong doubts as to including references by FAO and WHO policies and resolutions in a Codex Standard.

The parent organizations, FAO and WHO, are mandated to set policies, strategies and guidelines in the areas of food security and public health, respectively. The Codex mandate is however confined to set food standards that serve to protect consumer health and ensure fair practices in food trade.

It is not disputed that Codex Standards should not contradict the policies of WHO and FAO, and that Codex should allow the enforcement of these policies by the national governments. In that sense, EFLA agrees that when setting up standards, Codex members should be *informed* about the policies of WHO and FAO, and Codex must take them into consideration in order to prevent contradicting standards.

However, Codex should confine to its specified mandate as per the procedural manual that describes the legal foundations of the functioning of the Codex Commission and its subsidiary bodies. This would allow the FAO/WHO members the decision to implement policies and resolutions and how to enforce them.

In this context, EFLA considers that introducing a reference to WHO resolutions in a Standard is inappropriate.

This strict distinction between the mandates of the parent organizations and Codex is all the more important as Codex standards have been recognized as a reference in international trade at the World Trade Organization (WTO) level. The agreement on Technical Barriers to Trade (TBT) refers in its article 2.4 to "*relevant international standards*"¹, among which Codex standards have been recognized in several dispute resolution procedures after a thorough analysis of their relevance to the case at stake. As to the agreement on Sanitary and Phytosanitary measures (SPS), it explicitly mentions the Codex Alimentarius, among other standards, "*to promote (...) the development and periodic review of standards, guidelines and recommendations with respect to all aspects of sanitary and phytosanitary measures*" (article 3.4).

¹ Art 2.4 of the TBT agreement : "*Where technical regulations are required and relevant international standards exist or their completion is imminent, Members shall use them, or the relevant parts of them, as a basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems.*"

Inclusion of WHA resolutions, which are of political nature, in Codex standards would undermine the credibility and the relevance of these standards, which should remain purely scientifically internationally agreed references.

For all these reasons, EFLA considers that WHO resolutions and policies should not be referred to as such in Codex standards.