

**EXPLANATORY NOTES BY STEVE WEARNE, CHAIRPERSON, CODEX ALIMENTARIUS COMMISSION**

I would like to thank everyone who has found the time to review the parts of the CAC45 draft report we were unable to adopt in our virtual sessions in December, particularly those who have submitted comments for changes to improve the text of the report. The Codex Secretariat and I have reviewed these and a revised text of paragraphs 177 to 229 of the report is attached. I would like to describe how some of the more substantive comments received have been dealt with in the revised text.

You will recall that we had opened but not concluded discussion of paragraph 180bis when we needed to suspend our virtual sessions having lost interpretation. The proposed 180bis in my view strikes a balance between the further comments made and comments made in the session, aided by a review of the original intervention in CAC45. I recall also my proposal at the start of CAC45, which drew no objections from Members, that general or declaratory statements by Observers should be submitted as CRDs and would not be reflected in the text of the report. With this in mind, the revised text does not include the additional text for paragraphs 194 or 199 proposed by an Observer, but does include part of their proposal for a new paragraph 219bis which adds useful balance and is relevant to the point under discussion.

Section 14.1, our only item of other business, also attracted several comments. In considering these and proposing a revised text the Codex Secretariat and I have sought to improve the clarity of the text, for example by attributing comments to a speaker where appropriate, expanding text where this aids understanding, and including a footnote which references key documentation.

I am pleased to report that no comments were received on the appendices, which accordingly we will adopt.

The second round is now open. The purpose of this round is not to invite further detailed comments on paragraphs 177 to 229, but for Members to decide whether they accept the revised report or not. If there are no objections to the revised report, it will be adopted when the round closes on 26 January.<sup>1</sup>

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<sup>1</sup> Please note that the comments provided in Round 1 can be seen on the Online Commenting System (OCS), under "CL 2022/82/OCS-CAC - Request for comments from participating delegations of CAC45 on the CAC45 draft report paragraphs 177-229 and draft Appendices II-VII and X - Round 1"

**STRATEGIC PLAN 2020-2025: IMPLEMENTATION REPORT 2020-2021 (Agenda Item 7)<sup>2</sup>****Introduction** (Adopted in virtual session)**Discussion**

177. Members expressed appreciation for the comprehensive report. There was agreement on the need to review the monitoring framework of the SP with the aim of providing accurate and complete information, and with the proposal of the Codex Secretariat to reduce the number of indicators, while ensuring that there be at least one indicator per result and that the one related to timely distribution of documents should remain. It was also suggested that the prioritization and work management mechanisms of the different committees be collated in one place for ease of access and understanding. The Codex Secretariat noted that this could be undertaken as part of guidance requested by CCEXEC on development of new work proposals.
178. Members particularly commended the Codex Secretariat for the efforts undertaken under objective 3.1 (raise the awareness of Codex standards) on sustained communication activities. Members also commended the Secretariat for providing preliminary results of the pilot survey on the use and impact of Codex texts in a timely manner. They looked forward to a more in-depth analysis of the results and how this could inform the next Codex SP.
179. Several Members raised the issue of timely distribution of documents and the importance of publication of documents two months in advance of committee meetings to facilitate review and preparation by Member delegations.
180. The Codex Secretariat acknowledged the importance of improvements in this area and noted that, while reasons for delays were multifold and often outside the control of the Secretariat (e.g. late arrival of EWG reports), they were in many areas directly related to the workload of the Secretariat and it would be difficult to improve the situation without reducing the output requested by Members. The Codex Secretariat encouraged input on how to address the issue.
- 180bis One Observer, referring to a recent study on how Codex standards were used in the area of infant and young child nutrition, was of the opinion that Codex standards in this area should adhere more strictly to WHO recommendations, particularly on marketing practices to enable governments to bring in good safeguards for infants and young child feeding.

**Conclusion**

181. CAC45:
- i. Welcomed the comprehensive report on the implementation of the SP and noted the highlights presented by the Codex Secretariat;
  - ii. Commended the Codex Secretariat on its efforts to raise awareness of Codex standards through the continued communication activities and the resulting increased visibility, even in challenging circumstances such as the COVID-19 pandemic;
  - iii. Commended the Codex Secretariat for the preliminary report and analysis of the survey on the use and impact of Codex texts, recognizing its potential as an important tool for Codex;
  - iv. Requested that further attention be given to the timely distribution of working documents in all languages while recognizing the resource constraints on the Codex Secretariat;
  - v. Noted the continuing evolution of the SP monitoring framework and requested the Codex Secretariat to further review the SP monitoring framework with the intent to reduce the number of indicators to those where the most useful information was collected, noting in this respect that the Codex Secretariat would propose a revised framework for review at CCEXEC84; and

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<sup>2</sup> CX/CAC 22/45/14 & Add. 1

- vi. Noted that there would be benefit in undertaking the elaboration of the next SP with the membership in parallel with the development of the monitoring framework led by the Codex Secretariat.

### **CODEX BUDGETARY AND FINANCIAL MATTERS (Agenda Item 8)<sup>3</sup>**

#### **Introduction**

- 182. The Codex Secretariat introduced the item highlighting that the COVID-19 pandemic had resulted in dramatic changes in how Codex work was implemented, which had affected most of the 2020-21 biennium. The Secretariat had thus adopted a flexible approach and had managed to deliver the Codex work plan with a 98 percent delivery.
- 183. For the 2022-23 biennium, as of September 2022, 44 percent of the budget had been spent. Expenditures in 2022 were progressing according to the Codex work plan. Estimated expenditures for 2023 were planned according to the Codex work plan and full delivery was expected by the end of the biennium.
- 184. The proposed budget for 2024-25 biennium would be in line with the objectives of the SP. Highlighting some of the underlying assumptions to the proposal, it was noted that uncertainties remained in terms of the format of Codex meetings, but it was assumed that physical meetings will have resumed and that it will remain necessary to make provisions for remote participation in meetings of CCEXEC and CAC.
- 185. Looking at the Codex budget from a more overarching perspective, the Codex Secretariat noted that Codex had operated in a zero-growth budget environment for several biennia. Considering that overall costs were increasing for salaries, contracts, services, etc. and the impact this had on the costs for organizing committees, in particular hybrid sessions of the Commission and potentially supporting hybrid sessions of committees, it was becoming increasingly difficult to run Codex in line with Members' expectations with the available resources. Members were asked to consider requesting FAO and WHO to increase the Codex budget. It was noted that Codex was also seeking extra-budgetary contributions to support its work under Goal 3 and 5 of the SP.
- 186. The Chairperson highlighted the conclusions made by CCEXEC83 on this item, including the need for a flexible approach in delivering the Codex work plan and the request to advocate for additional funding to the Codex programme.

#### **Discussion**

- 187. Members welcomed the report and the efforts made by the Secretariat during the COVID-19 pandemic, and supported the recommendations made by CCEXEC83.

#### **Conclusion**

- 188. CAC45:
  - i. noted the final report for the biennium 2020-2021, progress in line with budgeted expenditure in the biennium 2022-2023; and the proposed budget for 2024-2025;
  - ii. noted the continued need for a flexible approach to the redistribution of resources, within the total financial limit, to best support delivery of the Codex work plan;
  - iii. noted the increasing difficulty in delivering the Codex work plan in a zero-growth budget environment and that, accordingly, Codex was seeking extra-budgetary resources; and
  - iv. urged Members to advocate with their government representatives to FAO and WHO for additional funding for the Codex programme.

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<sup>3</sup> CX/CAC 22/45/15

### **MATTERS ARISING FROM FAO AND WHO (Agenda Item 9)<sup>4</sup>**

189. The Representatives of FAO and WHO highlighted their joint work, including capacity building and scientific advice activities and budget matters. They also provided the update on the Codex Trust Fund (CTF) to CAC45 for consideration and possible action.
190. The Representative of WHO referred to the work of WHO on nutrition and healthy diets, highlighting four areas of work including the WHO guideline on RUTF, the WHO Action Plan to reduce the harmful use of alcohol which highlighted the importance of labelling requirements for alcoholic beverages, elimination of industrially produced *trans*-fatty acids (TFA) by 2023, and global efforts in accelerating actions to achieve the global target of reducing population sodium intake.
191. The Representative of WHO further highlighted that CCEXEC83<sup>5</sup> had requested Codex committees to give due regard to ongoing global efforts to reduce NCD risk factors such as sodium intake, when prioritising and undertaking work on new standards or reviewing existing standards and guidelines.

### **Discussion**

192. CAC45 welcomed the reports from FAO and WHO, commended their work, supported the conclusions of CCEXEC83, and encouraged both organisations to sustain their efforts, particularly regarding the provision of scientific advice to support Codex work and their efforts to address new and emerging food safety and nutrition issues.
193. Members appreciated the collaboration of FAO and WHO in implementing both the FAO Food Safety Priorities and WHO Global Strategy for Food Safety, including through the food safety element of the Quadripartite One Health Joint Plan of Action. Members further requested that this be done respecting the mandates of each organization.
194. Members recognised the benefits of capacity building and awareness raising events, including those delivered virtually. They supported continuing using virtual modalities as part of a blended approach to capacity development, tailored according to the context, and building engagement.
195. The Representatives of FAO and WHO appreciated the strong interest of Members in the work of FAO and WHO and highlighted that the work of the two organizations would not be possible without the active and continuing support of Members. For example, the provision of independent scientific advice provided by FAO and WHO that was central to the work of the CAC was only possible because Members were willing to fund the operational cost of the scientific committees and were willing to promote and facilitate the participation of their experts. The representatives of FAO and WHO further highlighted their appreciation that experts were willing to support and make themselves available to contribute to the scientific advice work of FAO and WHO.

### **Codex Trust Fund (CTF)**

196. CAC45 welcomed the information and analysis provided by the CTF Secretariat.
197. Some Members pointed out that the COVID-19 pandemic had a profound impact on how they carried out Codex related work at national and regional level, and requested that the CTF change the criteria for eligibility to further facilitate the application process and consequently extend the number of Member Countries that could benefit from CTF support.
198. CTF beneficiaries appreciated the support from CTF and donor countries and requested the CTF Secretariat to clarify whether it was possible for a beneficiary to apply to CTF in future rounds and what the relevant follow up steps would be.
199. An Observer emphasized the value of CTF and stressed the importance for CTF to only accept public funds for reasons of transparency.
200. The Representative of WHO welcomed the positive feedback on the CTF2 projects and acknowledged the high expectations for capacity building through CTF and other food safety work streams such as the

<sup>4</sup> CX/CAC 22/45/16; CAC45/INF1; CAC45/INF2; CAC45/INF3; CRD4; CRD27 (Mali)

<sup>5</sup> REP22/EXEC2, paragraph 154

assessment of national food control systems. The WHO food safety strategy was an attempt to bring these work streams together.

201. The CTF Secretariat welcomed the high interest expressed by Members and noted the requests regarding the eligibility criteria, the need for possible extensions, and the questions on other forms of support such as coaching/mentorship for eligible countries to prepare and submit robust applications. He pointed out that the operations and support of CTF remained bound to the CTF2 project document and that requests for changes would be taken into consideration in the CTF2 mid-term evaluation. He encouraged Members to contact the CTF Secretariat with any specific concerns and reassured them that the CTF Secretariat remained committed to continuously improving the programme. He informed about regional trainings planned for eligible countries in 2023. Finally, the CTF Secretariat encouraged donor countries to increase the contributions to the CTF to match the increasing requests for assistance.
202. The Representative of FAO pointed out that the focus of the CTF was to enable countries to better participate in Codex and encouraged Members to contact FAO and WHO directly for other capacity building requests, for instance on the application of the food control systems assessment tool.

### **Conclusion**

203. CAC45:
  - i. Supported the conclusions of CCEXEC83 and thanked FAO and WHO for their continued support to Codex Alimentarius, its committees, and Members, and in particular its continuing work on:
    - a. Mitigation of foodborne AMR;
    - b. Risk assessment related to foods including edible seaweed, noting the long history of its consumption in some countries;
    - c. Potential risks including those posed by microplastics;
    - d. Review and implementation of guidance on traditional food markets; and
    - e. Issues related to nutrition, including sodium reduction and elimination of *trans*-fatty acids
  - ii. Encouraged FAO and WHO to continue their collaboration in implementation of the FAO Food Safety Priorities and WHO Global Strategy for Food Safety, including through the food safety element of the Quadripartite One Health Joint Plan of Action, which should respect the mandates of and draw on the expertise of each organization;
  - iii. Recognized the benefits to Codex Members of capacity building and awareness raising events, including those delivered virtually; supported the continued use of virtual modalities as part of a blended approach to capacity development, tailored according to the specific context and objective; welcomed the reports from CTF beneficiaries; recognized the important role of CTF in strengthening developing countries' effective participation in Codex; and encouraged all eligible countries to apply to the CTF to benefit from its support; noted the need to develop approaches that sustain the benefits of CTF projects beyond their duration; and
  - iv. Noted the concerns of Members regarding the eligibility criteria for CTF projects.

### **APPOINTMENT OF COORDINATORS (Agenda Item 10)<sup>6</sup>**

204. The Codex Secretariat informed CAC45 that four FAO/WHO Coordinating Committees (RCCs) had met since CAC43, namely, the FAO/WHO Coordinating Committee for Europe (CCEURO) (May 2022), the FAO/WHO Coordinating Committee for Africa (CCAFRICA) (September 2022), the FAO/WHO Coordinating Committee for Asia (CCASIA) (October 2022) and the FAO/WHO Coordinating Committee for Latin America and the Caribbean (CCLAC) (October 2022). The Codex Secretariat further informed CAC45 that CCAFRICA, CCASIA and CCLAC had nominated the current Coordinators, namely Uganda, China and Ecuador, respectively, for re-appointment.

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<sup>6</sup> CX/CAC 22/45/17

205. The Codex Secretariat also informed CAC45 that the next Sessions of the FAO/WHO Coordinating Committees for North America and South-West Pacific (CCNASWP) and the Near East (CCNE) had been scheduled for 2023.
206. With regards to Europe, the Codex Secretariat noted that CCEURO recommended the appointment of Germany as the next Coordinator recalling that since Germany was currently serving as Member for Europe elected on a geographic basis to CCEXEC, it could not also serve as Coordinator according to Rule V.1 of the PM.
207. The Delegation of Germany informed CAC45 that following the appointment as Coordinator, they would step down from the position of Member for Europe.
208. The Codex Secretariat noted that the appointment of Germany as Coordinator for Europe would leave a vacancy in CCEXEC for the position of Member for Europe elected on a geographic basis. The Commission would therefore need to be invited to nominate and elect a new Member for Europe to complete the current term as Germany had only served half of their second term.

### **Conclusion**

209. In accordance with Rule IV.2 of the Commission's Rule of Procedure, and on the basis of the nominations made by the FAO/WHO Coordinating Committees, the following Members of the Commission were appointed/reappointed as Coordinators to hold office from the end of CAC45 until the end of the first regular session of the Commission following the next session of the relevant FAO/WHO Coordinating Committee (in accordance with current plans this would be until the end of CAC47 (2024)):
  - CCAFRICA: Uganda (re-appointed)
  - CCASIA: China (re-appointed)
  - CCEURO: Germany (appointed)
  - CCLAC: Ecuador (re-appointed)
210. The Chairperson thanked Uganda, China and Ecuador for their successful and productive work despite the challenges faced in taking on the Coordinator role during the COVID-19 pandemic and wished them success for their second term. He also welcomed Germany as new Coordinator for Europe and wished them success. The Chairperson also thanked Kazakhstan for all their work during their two terms as Coordinator for Europe and for ensuring the views of all countries in the region were brought to the attention of CCEXEC and CAC.

### **ELECTION OF MEMBERS ELECTED OF THE EXECUTIVE COMMITTEE ON A GEOGRAPHICAL BASIS**

211. Following the appointment of Germany as Coordinator for Europe and consequently stepping down from its role as Member for Europe elected on a geographic basis, CAC45 elected Finland as the Member for Europe elected on a geographical basis to complete the current term (expected until the end of CAC46).

### **ELECTION OF THE CHAIRPERSON AND VICE-CHAIRPERSONS (Agenda Item 11)<sup>7</sup>**

211 bis CAC45 elected the following persons to hold office from the end of its present Session to the end of the next regular Session of the Commission (CAC46):

<b>Chairperson:</b>	Mr Steve Wearne (United Kingdom)
<b>Vice-Chairpersons:</b>	Mr Allan Azegele (Kenya)
	Mr Raj Rajasekar (New Zealand)
	Mr Diego Varela (Chile)

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<sup>7</sup> CX/CAC 22/45/18; CRD 31 (Comments of Dominican Republic)

## **DESIGNATION OF COUNTRIES RESPONSIBLE FOR APPOINTING THE CHAIRPERSONS OF CODEX SUBSIDIARY BODIES (Agenda Item 12)<sup>8</sup>**

212. The Chairperson expressed appreciation to the Member Countries responsible for appointing Chairpersons of Codex Subsidiary bodies recalling their relentless efforts to ensure the functioning of Codex and Codex meetings in the virtual environment.

### **Conclusion**

213. CAC45 confirmed the designation of countries responsible for appointing the Chairpersons of Codex subsidiary bodies as outlined in CX/CAC 22/45/19.

## **60th Anniversary of the Codex Alimentarius Commission: 1963-2023 (Agenda Item 13)<sup>9</sup>**

214. The Codex Secretariat presented the progress on preparations for the 60th Anniversary of the Codex Alimentarius Commission (Codex@60) since CAC44, noting that FAO senior management had recommended a year of celebration rather than limiting it to a specific day. The Secretariat reiterated the need for Members and Observers to take a proactive approach to organizing events, including through the Codex regional groupings, and sought updates and inputs from them on their plans to mark the occasion.
215. The discussions highlighted the commitment and enthusiasm of Members to celebrate Codex@60 in multiple ways, at regional, national and international levels, using different modalities, ranging from formal to more informal events. Delegations outlined ideas involving all actors throughout the food chain and plans to connect with youth, academia, industry, agriculture, consumers, media and government including at ministerial level. With World Food Safety Day in 2023 dedicated to the theme of standards, opportunities to link events to this UN celebration were noted and encouraged.
216. Celebrating those Members and experts who had dedicated much of their time and careers to steering the work of Codex was another idea that received support.
217. Members and Observers gave several examples of topics that could be the focus for Codex@60 such as strengthening understanding of risk management; food safety control; health and food markets; compliance with food safety policies and regulations; a reflection on the success of Codex standards; and food safety for human health.
218. The Secretariat responded that countries were welcome and encouraged to place emphasis for Codex@60 on local realities and national food safety priorities.
219. Activities planned from the Secretariat, described in CX/CAC 22/45/20, were expanded on, including the desire to engage with Members to develop case studies on the implementation of Codex texts, and their adaptation to national scenarios, as well as ongoing work on the revised, richer layout of Codex publications and the forthcoming website upgrades.
- 219bis One observer appealed to members to be frank in their assessments of Codex achievements, acknowledging not only its successes but also its problems and risks.

### **Conclusion**

220. CAC45:
- i. noted the information provided by the Secretariat and the planned celebrations under development by the Secretariat and Members;
  - ii. encouraged Members and Observers to fully engage in the celebrations and to share information on their plans and activities directly and through the Codex Secretariat; and
  - iii. urged Members to commit to advocacy at all levels to ensure both the widest possible participation in the celebrations and the widest possible promotion of the work of Codex.

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<sup>8</sup> CX/CAC 22/45/19

<sup>9</sup> CX/CAC 22/45/20; CRD 31 (Comments of Dominican Republic), 32 (Comments of Indonesia).

## **PARTICIPATION OF THE EUROPEAN UNION AS ADVISER TO THE MEMBER FOR EUROPE IN THE EXECUTIVE COMMITTEE OF THE CODEX ALIMENTARIUS COMMISSION (Agenda Item 14.1)<sup>10</sup>**

### *Introduction*

221. The Representative of the Legal Office of FAO speaking on behalf of the Legal Offices of FAO and WHO recalled that at CCEXEC78 and CCEXEC79 (in February and July 2020), the Member for North America had drawn the attention of CCEXEC to the presence of the EU as adviser to the Member for Europe and sought clarifications from the FAO and WHO Legal Offices as to whether this participation was in line with the PM and the 2003 voluntary declaration from the EU concerning its presence at CCEXEC. In response, at CCEXEC79, the FAO/WHO Legal Offices had indicated that any decision on the matter would lie with the Codex membership, bearing in mind that the rules of Codex are silent on the question of the right of the EU to participate in CCEXEC and that the EU had submitted a declaration on the subject.
222. As these concerns had been raised during the COVID-19 pandemic and required a review of the Organizations' archives, the FAO and WHO Legal Offices had committed to prepare a paper addressing the legal aspects of the issue, to assist Members in taking a decision on the matter at the next physical session of the Commission which was the present session.
223. The Representative explained that the first part of the document set out the historical background of the issue, including the practice that has developed over time regarding the participation of Member Organizations in meetings of FAO Governing Bodies and of Codex:
  - Paragraph 13 explained the apparent gap in the Codex Rules of Procedure concerning the right of Member Organizations to participate in sessions of CCEXEC as is it only referred to the right of a Member Organization to participate in matters within its competence in meetings of the Commission or its subsidiary bodies, but did not refer to CCEXEC specifically.
224. The Representative further recalled that:

The FAO Committee on Constitutional and Legal Matters (CCLM) had examined the question of the EU's entitlement to participate in CCEXEC at its 74th session in 2002 and considered that the matter required a review of the functions of CCEXEC to determine whether CCEXEC could be equated with the FAO Council, and noted that this had to be *"dealt by the [CCGP] and ultimately by the Commission"*.

- After the CCLM's review, at CCGP18 in 2003, the Observer from the European Community had submitted the Declaration concerning the EU participation in the Executive Committee, which was reproduced in para. 18 of the document.<sup>11</sup>
  - The records of the legal offices had revealed that the Commission did not express any view on the 2003 EU Declaration.
  - Since the 2003 EU Declaration, a practice had evolved whereby the EU had not participated as a Member in CCEXEC sessions; however, individuals employed at the European Commission had occasionally attended sessions of CCEXEC as advisers to the Member for Europe (in 2012, 2013 and 2014, and recently in 2020 and 2021).
225. The Representative explained that the second part of the document outlined the relevant rules providing that:
    - The composition of delegations was a matter of sovereignty, i.e.; it was the right of each Member to decide the composition of its delegation – and that advisers formed part of the delegation (Rule III.1 of GROs, Article V.I of the FAO Constitution and Rule VI (paragraphs 4 and 5) of the Codex rules).

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<sup>10</sup> CX/CAC 22/45/21

<sup>11</sup> CX/CAC 22/45/21, para 18



- In Codex, the CCGP had clarified that the sovereign right of a Member to choose its advisers was subject to two conditions: must be from the same geographic location as the Member, and no more than two.
- As concerns their role, the relevant rules (Codex Rule VI (paragraph 5) and Rule VIII (paragraph 1)) reveal that advisers were present at a session as part of the Member's delegation without any other status or rights.

226. The Representative further stated that the FAO and WHO Legal Offices had recognized that there might be a lack of clarity between the issue of the presence of the EU as adviser to the Member for Europe and the broader question of EU's entitlement to participate in CCEXEC sessions.
227. Following a thorough review of the background, and all relevant rules and practices in FAO and Codex, the FAO and WHO Legal Offices had concluded that both issues were ultimately for deliberation by the Commission.

#### *Discussion*

228. Members that intervened welcomed the document especially the clarification that advisers form part of the delegation of the Member, and that is the sovereign right of the Member to choose its advisers, subject only to the two conditions mentioned (that the adviser had to come from the same geographic location and a Member cannot bring more than two advisers). They also welcomed the confirmation that the Members of the CCEXEC elected on a geographical basis for Europe who had previously been accompanied by an adviser from the European Commission had acted consistent with the rules of Codex. One Member requested that CAC45 reconfirm these rules.

#### **Conclusion**

229. CAC45 noted the advice of the Legal Offices of FAO and WHO as in CX/CAC 22/45/21, paragraphs 27-30.