

CODEX ALIMENTARIUS COMMISSION



Food and Agriculture
Organization of the
United Nations



World Health
Organization

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Agenda Item 3

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JOINT FAO/WHO FOOD STANDARDS PROGRAMME

CODEX ALIMENTARIUS COMMISSION

Forty-fourth Session

COMMENTS ON AMENDMENTS TO THE PROCEDURAL MANUAL

“Criteria and procedural guidelines for Codex Committees and *ad hoc* Intergovernmental Task Forces working by correspondence”¹

BACKGROUND

This document compiles the comments on proposed amendments to the Procedural Manual. The comments are those received through the Codex Online Commenting Systems (OCS), or via email by the time this document was issued. The comments are as shown in Appendix I.

OCS is an online tool that enables Codex Contact Points to submit comments on draft texts in a standardised way, thus providing more transparency and better management of comments on different Codex texts as requested through Circular Letters. Since its launching at CAC39 (2016), the OCS has been used for different Codex Committees.

EXPLANATORY NOTES ON APPENDIX I

The comments received are presented in a table format, with two columns as follows:

First column – Presents the comments with the rationale.

Second column – Presents the provider of the comments (name of country or observer)

¹ This document compiles comments submitted through OCS, or via email by the time this document was issued, in reply to CL 2021/66/OCS – GP

Appendix I

Comments in regard to Amendments to the Procedural Manual: "Criteria and procedural guidelines for Codex Committees working by correspondence"

In reply to CL 2021/66/OCS-GP

Comments of: Chile, Colombia, Costa Rica, Cuba, Egypt, France, Indonesia, Iraq, Japan, Kenya, Malaysia, Morocco, Norway, Uruguay, USA

GENERAL COMMENTS	MEMBER / OBSERVER
Cuba agradece la oportunidad de expresar sus comentarios sobre esta carta circular CL 2021/66/OCS-GP y en principio se esta de acuerdo con los criterios y directrices de procedimiento para los Comités de Codex y Grupos de acción Intergubernamentales Especiales que trabajan por correspondencia.	Cuba
Egypt agrees on the proposed criteria and procedural guidelines for Codex Committees and Ad Hoc Intergovernmental Task Forces working by correspondence with no comments	Egypt
CCGP32 agreed that general references to the PM with references to relevant sections to the PM be replaced and cross-references to the PM included rather than repeating or paraphrasing existing text. Some of the changes contained in the text of the CL go beyond this mandate and beyond insurance of editorial consistency. Such changes should have been marked clearly by the Codex Secretariat and accompanied by a rationale.	France
Due to the complexities for conducting CWBC in term of achievement of Codex core values, we appreciate that the document has included the possibility to use virtual technologies in informal discussion in order to promote consensus-based decision making. In addition, the Commission should also take note the decision of the CCGP32 that CWBC would be the exception rather than the rule for Codex. With that consideration, we support the advancement of the document to be adopted by Commission and included in Section III of the Procedural Manual.	Indonesia
Agree without comments.	Iraq
Kenya supports the advancement/adoption/ inclusion in the PM of the Criteria and Procedural Guidelines for Codex Committees and ad hoc intergovernmental forces working by correspondence.	Kenya
Malaysia supports draft Procedural Guidance for CWBC (Appendix II, REP21/GP) to be adopted by the CAC44 for inclusion in the Procedural Manual, preferably in Section III. Further, Malaysia would like to offer some responses on the draft that has been amended based on the review by the Codex Secretariat and the with the legal offices of FAO and WHO, as in the specific sections.	Malaysia
The Philippines supports the approval of the Draft Procedural Guidance for Committees Working for Correspondence (CWBC). We believe that its inclusion in the Codex Procedural Manual is needed considering the current situation and that the text as drafted has taken into account the comments and recommendations, thus, providing sufficient guidance to Committees to work via correspondence.	Philippines
The United States appreciates the work of the Committee and the Electronic Working Group (EWG) and believes that, with some clarifying modifications, the text can be adopted at CAC44. It is unfortunate that the Committee did not have the opportunity to review the revised text of the draft guidelines before the adoption of the meeting report at the most recent session of CCGP, which could have allowed the Committee to address the issues outlined below. (As a general rule, whenever there are substantial revisions during a committee session, we encourage that the revised text be provided while plenary sessions are still open, and technical and clarifying changes can still be considered.)	USA

SPECIFIC COMMENTS	MEMBER / OBSERVER
1. Introduction	
<p>Una consideración general y un principio rector en relación con los comités que trabajan por correspondencia es la necesidad de respetar y atenerse a los valores fundamentales de la Comisión, a saber: colaboración, inclusión, creación de consenso y transparencia.</p> <p>Reemplazar en esta versión español, el termino "atenerse" por "adherirse". Si bien podrían utilizarse como sinónimos adherirse para este efecto el término correcto.</p>	Costa Rica
<p>Working by correspondence: CCFFP has agreed to hold the adoption of its report using virtual technologies, which would constitute a formal discussion. While CCFFP35 will be held prior to the adoption of the new guidelines for CWBC by the CAC, this could indicate that the categorical exclusion of the use of virtual technologies for formal discussions in the frame of a CWBC could be questioned as it limits the options a chairperson has to conclude work efficiently.</p>	France
<p>Session of a CWBC: The specific period of time from the starting date till the end date (i.e. the adoption of the report) of a CWBC. Thebetween the session of the Commission that approved the work and the adoption of the report of the session of the CWBC, or alternatively, a specific period of time as is determined by the Commissionthe Directors-General of FAO and WHO in consultation with a host country. During a session of a CWBC, participants engage in formal consultations by correspondence.</p> <p>With regard to sessions which require the simultaneous presence of participants, those specific date may be communicated to participants but are not determined by the Subsidiary Committees or the Commission. The determination of the specific period of a CWBC should keep consistency with the existing way.</p>	Japan
<p>Malaysia has no objection to the added text, noting that the exception refers to Rules VIII related to voting. As in principle Rules of Procedure of the Commission shall apply mutatis mutandis to CWBC, an exception to a rule should be carefully considered and only agreed upon when there is clear justification.</p>	Malaysia
<p>Working by correspondence: Describes a working modality that can be assigned by the Codex Alimentarius Commission for the development of an approved new work to a Codex Committee or <i>ad hoc</i> Intergovernmental Task Force, which will not hold sessions that which normally require the simultaneous presence of participants.</p> <p>Times are changing as we speak, new tools are developed. We would therefore like the definition to reflect this and at the same time keep the concept. For example: Parts of a session working by correspondence could be held virtually, like the adoption of the report. By inserting "normally" the necessary flexibility would, in our view, be taken care of.</p>	Norway
<p>Working by correspondence: Describes a working modality that can be assigned by the Codex Alimentarius Commission for the development of an approved new work to project by a Codex Committee or and/or ad hoc Intergovernmental Task Force, which will not hold sessions that require the simultaneous presence of participants. <u>It means that the body in question will not hold physical sessions and will normally work on an electronic platform without requiring the simultaneous presence of participants on the platform.</u></p> <p>U.S. Comment: The United States offers some edits to this definition to distinguish committees working by correspondence (CWBC) from committees that convene virtual sessions as well as those that meet in person (physical sessions).</p> <p>Session of a CWBC: The period of time After between the session of the Commission that approved approves the work-work, assigns it to committee, and authorizes the adoption-committee to work by correspondence, the chair of the report-committee in consultation with the Secretariat will determine dates for registration of Codex members and observers to participate in committee deliberations over</p>	USA

<p>a defined period of time that will constitute a “session” of the committee. The duration of the session should be of sufficient length to allow for deliberations on agenda items by correspondence and allow for the CWBC, or alternatively, a specific period adoption of the report by correspondence in sufficient time as determined for inclusion in the critical review conducted by the Executive Committee before the next session of the Commission. During a session of a CWBC, participants engage in formal consultations by correspondence.</p> <p>U.S. Comment: The United States believes that this definition as presented is problematic and not consistent with how “sessions” have been defined in recent years, e.g., CCPFV and CCFFP. The CAC approves a new work proposal, and assigns it to a committee that will work by correspondence. The committee chair, in consultation with the Secretariat, then decides on when to convene a session of the committee and establishes a registration date, etc. The “session” does not begin with the Commission decision.</p>	
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<p>2. Decision to assign work by correspondence</p>	
<p>v. Potential for assigning the work to an another existing committee, with relevant expertise, that is meeting physically. This should take into consideration whether the work can reasonably be expected to be completed within a set timeframe.</p> <p>The United States believes that it should be generally understood that this would include committees meeting virtually, if the CAC agrees to the interpretation of “place” to include virtual space in the future.</p>	<p>USA</p>

<p>3. Verification of membership and credentials for participation</p>	
<p>Antes de que se inicien los trabajos de un comité que trabaje por correspondencia, y antes de cada una de sus subsiguientes sesiones, se dispondrá de un período de inscripción (fecha de apertura y de cierre) durante el cual podrán inscribirse los miembros y los observadores. Una vez cerrado ese período de inscripción, los trabajos del comité en cuestión se llevarán a cabo entre los participantes inscritos (es decir, la comunicación no se enviará a todos los miembros del Codex) entre la fecha de inicio y la fecha de finalización notificadas en la invitación. Se podrán efectuar inscripciones tardías. Esta posibilidad no fue discutida en la reunión. De haber flexibilidad para los tiempos de inscripciones debería indicarse al menos, en qué condiciones específicas. De otro modo se pierde el propósito de establecer un período de inscripciones. Pero en principio Chile no está de acuerdo con explicitar en la Directriz posibilidades de inscripciones fuera de plazo</p>	<p>Chile</p>
<p>Section 3 “Verification of membership and credentials for participation“ has been significantly revised. Reference to heads of delegations have been deleted and a statement on late registrations has been added. There is no explanation for the rationale of these revisions. In particular, the statement on late registration causes further questions when looking for instance at section 6 “determining a quorum”. There is also no definition of what is considered “late”. France therefore suggests deletion of the last sentence in section 3 or alternatively that the original version as adopted by CCGP32 be used.</p>	<p>France</p>
<p>Before work in a CWBC commences, and before each subsequent session of a CWBC, there shall be a period for registration (opening/closing date) during which Members and observers may register. After the registration period closes, work of the CWBC will take place among registered participants (i.e. communication will not be copied to the whole Codex membership) between the starting date and end date as communicated in the invitation. Late <u>The request for registrations from Members and observers after the registration period closes shall be possible.</u></p>	<p>Japan</p>
<p>“Late” is unclear. Japan suggests it be more specified or the sentence be deleted.</p>	

<p>Malaysia proposes an editorial addition for clarity:</p> <p>After the registration period closes, work of the CWBC will take place among registered participants (i.e. communication will not be copied to the whole Codex membership) between the starting date and end date of a CWBC session as communicated in the invitation.</p>	Malaysia
<p>Une période (délimitée par une date de début et une date de fin) au cours de laquelle les membres et les observateurs peuvent s'inscrire est prévue avant le commencement des travaux d'un comité travaillant par correspondance et avant chaque session ultérieure. À l'issue de cette période, les activités du comité sont menées par les participants inscrits (c'est-à-dire que les communications ne sont pas transmises à l'ensemble des membres du Codex), entre les dates prévues de début et de fin des travaux, telles qu'elles figurent dans l'invitation. Les inscriptions tardives sont possibles.</p> <p>Il serait préférable de préciser les conditions des inscriptions tardives, pour rester cohérent avec le point 6 (Détermination du quorum) qui stipule qu'une période (délimitée par une date de début et une date de fin) est prévue afin de déterminer le nombre de participants inscrits.</p>	Morocco
<p>Before work in a CWBC commences, and before each subsequent session of a CWBC, there shall be a period for registration (opening/closing date) during which Members and observers may register. After the registration period closes, work of the CWBC will take place among registered among participants (i.e. communication will not be copied to the whole Codex membership) between the starting date and end date as communicated in the invitation. Late registrations shall be possible.</p> <p>There is a difference between those registered in the ORS (online registration system) and those participating by correspondence whether on an electronic platform or by other means. Like for physical meetings, only those who "appear" in the meeting (on the platform) are considered as participants and will appear on the LoP (list of participants). Especially for work by correspondence using electronic platforms, participants have to register themselves to the work platform in order to be regarded as a participant, it would not be sufficient to only register on the ORS. This is of importance and should be reflected here.</p>	Norway
<p>La situación y las credenciales de los participantes en las sesiones de los comités que trabajan por correspondencia están sujetas al escrutinio y la verificación de la Secretaría del Codex, de acuerdo con la información oficial proporcionada por los puntos de contacto del Codex.</p> <p>Sugerimos cambiar el término "situación" por "condición", como figuraba en el apéndice II del REP21/GP, ya que es una mejor traducción del término "status"</p> <p>Antes de que se inicien los trabajos de un comité que trabaje por correspondencia, y antes de cada una de sus subsiguientes sesiones, se dispondrá de un período de inscripción (fecha de apertura y de cierre) durante el cual podrán inscribirse los miembros y los observadores. Una vez cerrado ese período de inscripción, los trabajos del comité en cuestión se llevarán a cabo entre los participantes inscritos (es decir, la comunicación no se enviará a todos los miembros del Codex) entre la fecha de inicio y la fecha de finalización notificadas en la invitación. <i>Se podrán efectuar inscripciones tardías.</i></p> <p>Agregaríamos:"hasta el día antes del inicio de los trabajos del comité que trabaje por correspondencia" a la frase "se podrán efectuar inscripciones tardías". Es necesario especificar hasta cuándo se pueden realizar inscripciones tardías, ya que éstas podrían modificar el quórum de la reunión y eventualmente hasta modificar el consenso sobre un tema. Entendemos que como la participación de un miembro va a contar para el quórum, la inscripción debería ser hasta, como máximo, el día antes del comienzo de los trabajos del CWBC.</p> <p>Para las reuniones presenciales, el Manual de Procedimiento, en la Sección III: Directrices</p>	Uruguay

<p>para los órganos auxiliares establece que: “Normalmente, se pedirá que las respuestas a las invitaciones se envíen para que estén en poder del Presidente lo antes posible y en todo caso no menos de 30 días antes de la reunión”.</p> <p>Si bien en este caso, no es necesaria tanta anticipación, sí es necesario contemplar el tema de quórum y de una eventual afectación del consenso si las inscripciones se dan luego de iniciadas las discusiones.</p>	
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4. Sessions	
<p>The timeframes for implementing the work plan, and tasks for the session of the CWBC including the timeframes for preparation of working documents¹ shall be clearly documented and shall be agreed by Members at the outset of the session of the CWBC.</p> <p>The term “working languages” has been deleted from the statement “The timeframes for implementing the work plan, and tasks for the session of the CWBC including the timeframes for preparation of working documents shall be clearly documented and shall be agreed by Members at the outset of the session of the CWBC”. No similar statement is made under section 5 “languages”. Rule XIV does not inform about the need to document and agree to the working languages at the outset of the session. This information should however be included in the guidelines either here or under section 5.</p>	France
<p>To ensure comparability of sessions of Committees and <i>ad hoc</i> Intergovernmental Task Forces meeting physically that require the simultaneous presence of participants and those meeting by correspondence, a session of a CWBC is defined as in 1.1.</p> <p>For consistency with the text in 1.1 Definitions.</p>	Japan
<p>To ensure comparability of sessions of Committees and <i>ad hoc</i> Intergovernmental Task Forces meeting physically and those meeting by correspondence, a session of a CWBC is defined as in <u>Section 1.1</u>.</p>	USA
<p>The agenda, working documents <u>documents</u>, and reports should be published on the Codex website.</p>	
<p>Each session of the CWBC shall be concluded within the timeframe prescribed <u>prescribed</u>. <u>If the assigned work has not been completed, subsequent sessions may be authorized by the Commission.</u></p> <p>U.S. Comment: The United States offers the following edits to help clarify that the Commission may authorize CWBC to continue beyond one session if work is not completed. Outcomes will be evaluated in the CCEXEC critical review, and the committee may be authorized to continue to work by correspondence for another session.</p>	

6. Determining a quorum	
<p>De acuerdo a esto y lo indicado en la sección 3 las inscripciones fuera de plazo no cuentan para calcular el quorum. Independiente del momento de la inscripción, si ésta fue aceptada no vemos motivo para no considerarla en el cálculo del quórum</p>	Chile
<p>Se sugiere revisar y aclarar el mecanismo para garantizar la participación en los comités que trabajan por correspondencia donde se establezca claramente como se aprueban los informes para garantizar la validez de estos. Consideramos que el registro en una reunión no garantiza la participación.</p>	Colombia

Malaysia seek clarification on the introduction of the term 'majority', why is it majority and beside members registered for the session within the registration period and which will be subjected to scrutiny and verification by the Codex Secretariat under Section 3, who else are Members "attending the session"? The current text is not clear and could create misunderstanding. It should be clarified or alternatively delete the word 'majority'.	Malaysia
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7. Roles of the Chairperson and the Codex Secretariat	
Todos los miembros registrados y los observadores puedan participar en todas las comunicaciones, comunicaciones y que estas se realizan-realicen de forma abierta y transparente y de acuerdo con las directrices o protocolos que pueda establecer la Comisión;	Chile
El medio de comunicación empleado para señalar el apoyo o la objeción se aclarará explícitamente antes de las sesiones. No obstante, se entiende que el silencio o la ausencia de opiniones u objeciones específicas en contra se entenderá como constituirán un acuerdo tácito o una ausencia de objeción para seguir adelante. Este aspecto deberá transmitirse claramente a todos los participantes para evitar cualquier malentendido cuando se soliciten observaciones sobre asuntos específicos que se estén debatiendo, incluidas las conclusiones propuestas sobre la progresión de una norma en el proceso de trámites. Los presidentes deben dejar tiempo suficiente para efectuar las respuestas, a fin de asegurarse de que el silencio no es el resultado de problemas técnicos temporales.	
<p>Chairpersons of CWBC should make every effort to promote consensus-based decision making, which may include informal discussions by using virtual technologies, and should also consider implementing measures as described in the <i>Guidelines to Chairpersons of Codex Committees and ad hoc Intergovernmental Task Forces</i>⁴ to facilitate consensus building in the elaboration of standards at the Committee stage.</p> <p>For the upcoming CCFFP35 session, it has been announced that the adoption of the report will take place using virtual technologies, which would constitute a formal discussion. While CCFFP35 will be held prior to the adoption of the new guidelines for CWBC by the CAC, this could indicate that the categorical exclusion of the use of virtual technologies for formal discussions in the frame of a CWBC could be questioned as it limits the options a chairperson has to conclude work efficiently.</p>	France
Il serait préférable de définir "le temps de réaction suffisant" pour enlever toutes ambiguïtés d'interprétation par les présidents, en précisant un temps minimum et maximum.	Morocco
<p>All communications are open to all registered-participating Members and observers and are carried out in an open and transparent manner and in accordance with any guidelines or protocols that may be established by the Commission;</p> <p>Again, those who are registered on the ORS are not necessarily those who have entered into the platform (or the "room") to participate in the ongoing discussions. Therefore "registered members" should be replaced with "participants" in order to avoid misunderstanding.</p>	Norway
<p>There is enough time and opportunity for Members and observers to respond or build on comments made by other Members, much like a plenary conversation in real time;</p> <p>This is a very important point to be kept. Some might think that discussing by <u>correspondance</u> is similar to an ewg, however it is not.</p>	
<p>The Chairpersons of CWBC may be supported by one or more co-Chairpersons.</p> <p>Redundant and unnecessary. Same guidance apply as for other committees</p>	

<p>The rules/procedures specified in the Codex Procedural Manual<u>Procedural Manual</u> are adhered to in the CWBC setting. <u>are adhered to in the CWBC setting.</u></p>	USA
<p>The Chairpersons <u>Chairperson(s)</u> of CWBC may be supported by one or more co-Chairpersons.</p>	
<p>The Codex Secretariat shall perform its usual functions in support of the efficient operation of the CWBC, including verification of credentials of participants, preparing and circulating CWBC documents <u>documents</u>, and providing guidance and support to the Chairperson on procedural and other matters relating to the work of the CWBC.</p>	
<p>Chairpersons of CWBC should make every effort to promote consensus-based decision making, which may include informal discussions by using virtual technologies, and should also consider implementing measures as described in the <i>Guidelines to Chairpersons of Codex Committees and ad hoc Intergovernmental Task Forces</i>⁴ to facilitate consensus building in the elaboration of standards at the Committee <u>committee</u> stage.</p>	
<p>Means of communication to signal support or objection shall be explicitly clarified in advance of sessions. It is however <u>is, however</u>, understood that silence or the absence of specific contrary views or objections shall be taken to mean tacit agreement or no objection to proceed <u>proceed as proposed by the chairperson</u>. This point should be clearly communicated to all participants to avoid any misunderstanding when seeking comment on specific matters under discussion including proposed conclusions on progression of a standard through the step process. Chairpersons should allow sufficient time for response to make sure that silence is not the result of temporary technical problems.</p>	

8. Advancement of standards and related texts	
<p>Se propone cambiar la redacción del literal (i) en el siguiente sentido, i. La convocatoria a una reunión que requiera la presencia simultánea de todos los asistentes.</p>	Colombia
<p>Reservations in the correspondence setting should be treated in the same manner as reservations in a physical meeting (i.e., by identifying specifying the extent of basis or rationale the delegation's opposition to a decision) and should be recorded in the meeting report upon request⁵.</p>	USA
<p>When a CWBC is not able to progress work, it may recommend alternative working mechanisms to working by correspondence to the Commission, which may include but <u>are not</u> be limited to:</p>	
<p>Referring the work to a <u>another</u> committee (other than the original committee) that has relevant expertise on the topic under consideration and is meeting physically <u>consideration</u>; or</p> <p>U.S. Comment: The United States believes that it should be generally understood that this would include committees meeting virtually, if the CAC agrees to the interpretation of "place" to include virtual space in the future.</p>	

9. Reporting to the Commission	
<p>Le projet de rapport de session d'un comité travaillant par correspondance doit être mis à la disposition de tous les participants inscrits à la session au plus tard une semaine après la fin de l'examen des points figurant à l'ordre du jour et la clôture des débats. Les observations doivent être transmises dans les deux semaines qui suivent la diffusion du rapport. Les modalités relatives à l'examen et aux observations doivent être clairement communiquées à tous les participants.</p> <p>Ajouter le terme " projet" au niveau de la phrase "avant la diffusion du rapport", puisque le rapport est toujours à l'état de projet.</p>	Morocco
<p>The draft report of the CWBC session should be made available to all participants who were registered in the session within one week of the conclusion of the agenda and deliberations. Comments should be provided within two weeks of the circulation of the report. The procedures for review and comments should be clearly communicated to all participants.</p> <p>Would better reflect the reality and provide for flexibility when other means are used for adoption of the report.</p>	Norway
<p>Members of CWBC should refrain from raising issues or seeking inclusion of comments that were not part of relevant to the deliberations <u>matters under consideration</u>, and such comments will not be included in the report of the session, <u>unless the comment is editorial in nature</u>, consistent with the Commission's procedure and practice.</p> <p>Clarifying, for consistency with current practice.</p>	USA
<p>The Codex Secretariat should circulate the final report <u>report</u>, as adopted, in not less than three of the working languages of the Commission, within one month of conclusion of the CWBC session.</p>	