

CODEX ALIMENTARIUS COMMISSION



Food and Agriculture
Organization of the
United Nations



World Health
Organization

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REVIEW OF INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS WITH OBSERVER STATUS IN CODEX

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

BACKGROUND

1. Following consideration of the document *Review of International Non-Governmental Organizations with Observer Status*¹ (the “Review”), the 82nd Session of the Executive Committee of the Codex Alimentarius Commission (CCEXEC82) requested the Codex Secretariat to prepare an analysis on i) modalities by which non-governmental organizations (NGOs) with Observer Status contribute to Codex work; and ii) the double representation clause.
2. This document aims to provide an overview of the status of both issues and to propose possible ways forward.

CODEX AND NGOS: PARTICIPATION AND RELEVANT RULES

Review and current criteria

3. As highlighted in the Review, NGOs with Observer Status with Codex continue to play an important role in the Codex standard setting process. NGO with Observer Status participate in Codex work by providing experts, data and documents, which contribute to making Codex the global benchmark in the field of international food safety and quality standards.
4. Following the increasing participation of NGOs over the years², the Codex Alimentarius Commission (CAC) adopted the *Principles Concerning the Participation of International Non-Governmental Organizations in the Work of the Codex Alimentarius Commission* (the “Principles”), currently included in Section VII of the Codex Procedural Manual (PM), to regulate the participation, obligations, and privileges of NGOs with Observer Status in Codex.
5. Among other matters, the Principles provide the criteria governing the “Review of “Observer Status”” in its section 6. In particular, section 6 of the Principles establishes in its second paragraph that *an International Non-Governmental Organization in Observer Status which has neither attended any meetings nor provided any written comments during a period of four years shall be deemed not to have sufficient interest to warrant the continuance of such relationship*.
6. Based on the Review, CCEXEC82 acknowledged that although the criteria related to the attendance of Codex meetings and the provision of written input (including the submission of comments via e.g. email, the Online Commenting System – OCS, CRDs) remained pivotal in judging an NGO's effective participation in Codex, further consideration was needed to assess whether other criteria needed to be included.

¹ CX/EXEC 22/82/7

² See, *inter alia*, the Review.

Social Media, Webinars, Publications

7. The way by which NGOs participate in Codex and promote its work and standards has changed over the years as new means of communication emerged. This is the case, for example, of social media: as mentioned in the Review, this is illustrated by the case of one NGO with Observer Status with Codex which did not take part in the formal Codex governance meetings between 2016 and 2021, by either sending documents, comments and/or attending Codex meetings, but actively promoted Codex work through its Twitter handle, by publishing ad hoc posts and participating in Codex-organised events such as those scheduled for World Food Safety Day (Twitter chats, posts et al).
8. This modality of promoting Codex work is shared by at least 56 NGOs with Observer Status³ that, while actively participating in Codex have, at the same time, produced web and social media content, brochures, videos, and organized webinars on the work of Codex and on its importance. Such ways of promoting Codex are currently not formally taken into account as a factor balancing out the lack of participation in Codex meetings and/or submission of written input by the NGO concerned, although they reach an audience potentially larger than the one represented by Codex stakeholders only.
9. Moreover, these modalities of participation, which contribute to the promotion of the mandate and goals of Codex, are in line with the Principles and with Goal 3 of the Codex Strategic Plan 2020-2025 (SP), *Increase impact through the recognition and use of Codex standards*, more precisely, with Goal 3.1, *Raise the awareness of Codex standards*.
10. Therefore, it would seem appropriate and in line with the Principles and SP to also take into consideration the means of participation and promotion of Codex work when assessing whether an NGO with Observer Status continues to have sufficient interest in Codex, in particular the promotion of Codex work on social media, the publication of Codex-related materials and the organization of events such as Codex-related webinars.

Conclusion

11. Considering the evolution of modalities by which NGOs contribute to the aims of CAC, recalling that the Codex Secretariat, FAO and WHO carefully analyse the information provided by an NGO during the review of its application for observer status, CCEXEC83 could recommend that CCGP considers updating the criteria currently established in the PM, to include other means by which NGOs with Observer Status contribute to Codex work.

MEMBERSHIP OF NGOS IN LARGER NGOS

Introduction

12. At the margins of the discussion on the Review, a Member of CCEXEC pointed out that Codex Members needed further guidance on the implementation of the rules regulating the double representation of NGOs with Observer Status, especially at the early stages of Codex work, including *inter alia*, the participation of such NGOs in Electronic Working Groups (EWGs).

Consequences of membership of an NGO in a larger NGO as mentioned in the Principles

13. The Principles mention this issue in its section 4.2 entitled *International Non-Governmental Organizations neither having Status with FAO nor Official Relations with WHO*, in particular the last paragraph which reads as follows:

Observer Status at specific meetings will not normally be granted to individual organizations that are members of a larger organization authorized and that intends to represent them at these meetings.

14. This paragraph, per se, does not imply or constitute a limitation on NGOs that are already part of a larger organization to apply for Observer Status with Codex. It only restricts their right to participate in meetings in which the larger organization would represent them and therefore requires that smaller and larger NGOs coordinate prior to the meeting to avoid the issue of double representation. It should be noted that even in those cases, the Principles appear to allow the participation of smaller NGOs in meetings where the larger organization would be present on an ad hoc basis (*not normally*), without however providing further details in this regard.

³ Results based on the activity of NGO with Observer Status with a Twitter handle.

Current interpretation and implementation of the rule: the double representation clause

15. This matter was initially discussed in 2006⁴, when an NGO, namely the *Bureau Européen des Unions de Consommateurs* (BEUC), applied for Observer Status. During the review of its application, the Codex Secretariat noted that BEUC was part of another NGO which already held Observer Status with Codex, i.e., Consumers International (CI).
16. In the ensuing discussion, CCEXEC58, while agreeing that participation of consumer organisations in Codex was important, and that regional representation could be useful, noted that it was not in a position to formulate a firm view concerning the application of BEUC *until a clear policy concerning the issue of double representation was established*, and requested the Codex Committee on General Principles (CCGP) to provide further guidance on this matter.
17. CCGP24⁵, after discussing whether the double representation clause should be applied to new Observers only or also to current NGOs with Observer Status, agreed to treat existing Observers and new applicants equally. Following these discussions, CCEXEC61 gave positive consideration to the application of BEUC, on the understanding that the “principle of alternate representation”, i.e. the double representation clause, would apply to the participation of BEUC and CI at Codex meetings.
18. In accordance with the current interpretation of the double representation clause, the participation of NGOs which are part of a larger organization with Observer Status (so-called “umbrella organization”) is allowed under the following terms:
 - at meetings where the umbrella organization is represented, the smaller organization can only participate as part of the delegation of the umbrella organization and cannot speak using its name;
 - the smaller organization can submit written comments only on those issues for which the umbrella organization does not submit any comments; and
 - the smaller organization would only participate in its own name in Codex meetings when the umbrella organization is not represented.
19. During the application process, the smaller organization is requested to accept and adhere to the double representation clause to be granted with Observer Status with Codex.
20. Following such decisions, since 2008, CCEXEC recommended granting Observer Status to seven NGOs which were part of an umbrella organization, on the basis that they would adhere to the double representation clause.

The double representation clause: problems observed*A larger organization applying for observer status while some of its members are already Codex observers*

21. The Codex Secretariat has recently been confronted with an application for observer status submitted by an umbrella organization and the circumstance that two of its members already hold Observer Status.
22. It is noted that, if the application for Observer Status of the umbrella organization was accepted, the application of the double representation clause, as outlined above, would lead to significantly affecting the rights of participation enjoyed by the two member NGOs with Observer Status.
23. In line with the currently applied double representation clause, granting observer status to the umbrella organization would consequently limit the possibility of participation of the other two NGOs, which would find their current entitlement to contribute to the work of Codex limited abruptly.
24. Moreover, following the rules applied to new applications, these NGOs with Observer Status could see their participation in Codex disrupted should they refuse to accept to the double representation clause.
25. Considering that this is a new area subject to further interpretation, after extensive discussions with the Legal Counsels of FAO and WHO, the application has currently been put on hold pending further discussions on the double representation issue.
26. It should be nonetheless noted that the Principles, if applied as written could address this issue easily as they would only restrict the participation of the smaller organizations in case the larger one wants to represent them at a particular meeting.

⁴ ALINORM 06/29/3A

⁵ ALINORM 07/30/33

Submission of comments in early stages such as electronic working groups (EWG)

27. Hosts of EWGs may be confused whether to accept comments from member organizations of larger organizations in case both are Codex observers and submit comments.

Discussion

28. In a world of continuous evolution and increasing interconnectivity, monitoring NGO with Observer Status subject, or potentially subject, to the double representation clause is becoming increasingly difficult, as these organizations join or leave different partners for objectives often outside the mandate of Codex.
29. Although the Principles include among the obligations that NGOs should *promptly report to the Secretary of the Commission changes in its structure and membership, important changes in its secretariat as well as any other important changes in the information provided* the Codex Secretariat often does not receive such notifications nor is able to monitor changes occurring within the internal structures of NGOs, before and/or after the Observer Status is granted.
30. The rules included in the PM regarding the double representation issue have been applied in a stricter modality than the one originally included in the PM, which states that *Observer Status at specific meetings will not normally be granted to individual organizations that are members of a larger organization authorized and that intends to represent them at these meetings* extending such provision to all Codex committees *tout court* and before the fact i.e. without even asking if any of the implied organizations ever intended or had the possibility to represent the other in CAC or any subsidiary meetings as the larger organization might neither have the interest nor the know-how to do so. The reasons for the membership of one NGO in another might be unrelated to the standard setting work of Codex.
31. In addition, the restrictions imposed on NGOs that are members of others seem disproportional. The Codex principles allow an NGO with activities in just three countries to become full observers. This organization escapes any restrictions under the double representation rule if it steers clear from becoming a member to any other organization. A larger NGO working in over 20 countries will however face restrictions if that organization has chosen and is transparent about being member of a yet larger organization.
32. Currently, the double representation clause involves only approximately 5% of the total list of NGOs with Observer Status, however the number may already have grown and will probably increase in the future as the current applications show and as interest in Codex continues to grow. This may complicate the work of the Codex Secretariat and host governments when receiving comments from observers.

Conclusion

33. The broad participation of NGOs benefits the work of Codex: as requests for data, experts and documents increase due to the quantity of new texts being drafted by the CAC and its subsidiary bodies, information provided by NGOs is in many cases essential to the timely completion of work.
34. The process for the admission of NGOs has arguably worked in a satisfactory manner, with the Directors-General of FAO and WHO exercising scrutiny of each request for observer status, based on a long and rather rigorous process finalised by CCEXEC.
35. The Principles, as written, limit the participation of an NGO that is member to a larger NGO only in specific situations. The double presentation clause, as currently interpreted, limits the participation of such NGOs strictly, allowing their direct participation in Codex in specific situations only.
36. In view of the Codex Secretariat, applying the double representation clause creates more complications than it solves and in an increasingly interconnected world, complex interrelationships arise among different NGOs with independent organizations choosing to be members of each other however still wishing to be able to contribute positively to Codex meetings with their own unique experience.
37. Recalling that privileges and obligations of NGO with Observer Status are specifically mentioned in the Principles and based on the above paragraphs, CCEXEC83 could consider whether the complications caused by the double representation clause could be avoided by applying the Principles as written and request the Codex Secretariat and the Legal Offices of FAO and WHO to present a proposal to update the relevant interpretation guidance accordingly. This would not necessitate any changes to the Principles as currently contained in the PM.

RECOMMENDATIONS

38. CCEXEC83 is invited to review the present document and provide guidance as deemed appropriate. More specifically, CCEXEC83 is invited to offer its views on the options proposed in paragraphs 11 and 37, so that the Codex Secretariat and the Legal Offices of FAO and WHO would be in a position to submit a detailed proposal for the amendments of the Principles, if necessary, at the forthcoming session of CCGP.