

# ASSOCIATION EUROPEENNE POUR LE DROIT DE L'ALIMENTATION

## EUROPEAN FOOD LAW ASSOCIATION

### Joint FAO/WHO Evaluation of Codex Alimentarius and Other FAO and WHO Work of Food Standards

#### **Comments from the Europe Food Law Association (EFLA)**

The European Food Law Association does not represent any specific economic interest. Its membership is interested in the development of Food Law and is happy to contribute to Codex works when legal questions are discussed, without taking any position regarding political choices. Therefore, the following comments are limited to a few points which, in EFLA's view, may raise legal problems regarding the three following criteria :

- practicality of the rule
- efficiency of the rule as compared to its objectives
- legal certainty for all stakeholders

Reference is made to Doc. Alinorm 03/25/3-Add.2 (Note by the Codex Secretariat summarizing the Conclusions and Recommendations).

#### **General remark**

EFLA suggests that, whenever appropriate, the Recommendations make explicit reference to the need for ensuring fair practices in trade of foods, and for risk assessment based on scientific requirements when adopting standards.

#### **Recommendations 1 to 3**

No reference is made to fair practices in trade, although ensuring fair practices in trade is, together with the protection of the consumer's health, the main objective of Codex (cf. article 1 a) of the Codex Commission Statute). Codex works should be undertaken only when trade issues are at stake.

Therefore, EFLA suggests that a reference to fair practices in trade should be explicitly made in those Recommendations

#### **Recommendation 6**

EFLA fully support the purpose of reducing the scope of disputes in the WTO, provided the standards and guidelines adopted to this purpose are practical and clearly implementable.

#### **Recommendation 16**

The review which is proposed should take into account the status of Codex standards in the present international legal context, regarding the SPS and the TBT agreements in WTO

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### **Recommendation 18**

EFLA supports this Recommendation, since it provides flexibility with the possibility for the Commission to give an extension of the time limit. Therefore, the actual flexibility of the system will depend on the decision making process at the Commission (see particularly Recommendations 20 and 24)

### **Recommendation 20**

Any procedural innovation with a view to speeding the work is welcome, provided in any case full transparency is assured. Therefore, EFLA suggests that the need for transparency be explicitly quoted.

### **Recommendation 21**

EFLA supports the view that Codex meeting minutes may be shorter than presently. However, it is important to have at least a brief report regarding the discussions, for those who did not attend the meeting. Also, keeping track of the discussions may be important and contribute to the transparency of the debates and to the legal certainty.

### **Recommendation 23**

EFLA supports this recommendation as in its experience significant issues on any draft standard have always arisen before step 5

### **Recommendation 24**

EFLA draws the attention to the fact that, by essence, defining a consensus may change the very nature of the decision making process. By definition, consensus is flexible and therefore does not accept a rigid definition. Otherwise, the decision making process is either unanimity, or a qualified majority (to be defined). The notion of "near-consensus" is confusing : when the Chairperson considers that no consensus is reached and that a decision is needed, a vote will be necessary.

### **Recommendation 25**

Regardless of the political choice underlying this Recommendation, EFLA is of the opinion that it should not be officially formalized

**Recommendation 26**

The presence of two Chairs of equal power can create unsolved problems if they do not agree on how to proceed. At least, one should have precedence on the other, or should not be in charge of the same functions. In any case, the respective roles should be clearly defined.

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We have deliberately been brief in our responses in the interest of easing the task of the Secretariat. If however the Codex Secretariat would like us to elaborate further on any point, please get in touch with us.