

Framework of engagement with non-State actors

Report by the Secretariat

1. As part of WHO reform, the governing bodies have requested the Director-General to develop a framework of engagement with non-State actors and separate policies on the engagement with different groups of non-State actors.
2. In May 2014, the Health Assembly adopted decision WHA67(14) on the framework of engagement with non-State actors. In the decision, among other things, the Director-General was requested:
 - (a) to prepare a comprehensive report of the comments made by Member States during the Sixty-seventh World Health Assembly and the follow-up comments and questions raised, including clarification and response thereon from the Secretariat, by the end of July 2014; and
 - (b) to submit a paper to the Executive Board at its 136th session in January 2015, ensuring that Member States receive it by mid-December 2014, in order to allow them sufficient time to study the content and to be better prepared for discussion and deliberation.
3. In response to decision WHA67(14), the Secretariat prepared the comprehensive report, which was then submitted to the six regional committees for their consideration. The reports of the regional committees' discussions on the matter are submitted to the Executive Board in a separate document.¹
4. The present report, which responds to the second request made above, sets out (i) the main issues raised by Member States² and (ii) the Secretariat's proposals for addressing these issues. A revised version of the draft framework of engagement with non-State actors based on the comments made is proposed in the Annex.

¹ Document EB136/INF./2. Further information requested by Member States is provided on the WHO reform webpage, which is available at http://www.who.int/about/who_reform/non-state-actors/en/ (accessed 20 November 2014).

² Provided as follows: during the Health Assembly; in written comments submitted by 17 June 2014; and at the regional committees (including in preparatory meetings).

MAIN ISSUES RAISED BY MEMBER STATES

Conflicts of interest

5. Conflict of interest and its management were identified by all regions as the most critical aspects of the framework of engagement. There were several calls for a stronger approach or policy on conflict of interest as integral part of the framework of engagement.

Due diligence: process and criteria

6. Further clarity was requested on the process and modalities of conducting due diligence, the criteria applied, and the link between due diligence and conflict of interest.

Receipt by WHO of financial resources from private sector entities

7. Member States stressed that WHO should accept financial resources from private sector entities only if potential conflicts of interest are ruled out and if this engagement does not compromise WHO's integrity and reputation.

Secondments

8. Member States questioned the seconding of non-State actors' representatives to WHO. The key concern in this regard is to protect the independence and the integrity of WHO, particularly with respect to its normative and standard-setting functions. Member States pointed out that although the draft framework states explicitly that WHO does not accept secondments from private sector entities, it proposes accepting secondments from other types of non-State actors. Some Member States proposed that WHO should not allow secondments from any non-State actors, while others only sought to exclude secondments from private sector entities, allowing secondments from other types of non-State actors as long as there are clear criteria regarding the circumstances under which WHO could accept them.

Applicability of provisions of private sector policy to non-private sector entities

9. Some Member States were worried that some non-private sector entities may be influenced by private sector entities. It was suggested that nongovernmental organizations, philanthropic foundations and academic institutions not "at arm's length" from private sector entities should be also considered as private sector entities. In this regard, it has been suggested that WHO may consider adding the definition of "international business associations" as a subcategory of "private sector entities" since WHO has stated that these associations are considered private sector entities and that the Organization has not developed a separate policy for international business associations. The importance of an explicit process and criteria to determine when the provisions of private sector policy should be applied to non-private sector entities was highlighted.

Official relations

10. There was uncertainty over which organizations should be eligible for admission into official relations, with particular regard to international business associations. Some Member States proposed that national and regional affiliates of non-State actors that are themselves in official relations, should not be considered "by definition" to be in official relations.

Boundaries: entities with which WHO will not engage

11. Although there is agreement that WHO should not engage with the tobacco and arms industries, this restriction, in the view of a number of Member States, should be extended to others, including notably the alcohol, food and beverage industries.

Involvement of Member States in oversight and management of engagement

12. It was suggested that the respective roles of the governing bodies and of the Secretariat should be clarified, that private sector involvement should be open to Member States' scrutiny and that Member States should be involved in due diligence. It was further proposed to increase to more than six the number of members of the Committee on non-State actors of the Executive Board, to allow Member States not members of the Executive Board to be part of the Committee, and to require the Committee to report also to the Health Assembly. Some Member States proposed that Member States should be able to participate in the Senior Management Committee on Engagement.

Partnerships

13. It was pointed out that it is not clear whether the framework applies also to partnerships that WHO is hosting or involved with or how conflicts of interest are managed in such partnerships. It was further suggested that WHO should learn from successful multistakeholder initiatives and public-private partnerships outside the Organization.

14. Some Member States suggested that the concept of "non-State actor" could be further refined to include entities falling outside the definition, such as public-private partnerships and multistakeholder initiatives.

Competitive neutrality

15. It was suggested that WHO should introduce the concept of "competitive neutrality" (also known as "level playing field," or "competition on equal terms") with regard to WHO's engagement with the private sector. The suggestion was designed to ensure that the Organization's interactions with entities that are subject to market forces do not confer undue competitive advantages upon the entities concerned or place them at a competitive disadvantage.

Medicine donations

16. It was proposed that provisions be added in order to clarify how the Organization should act in emergency situations and how it should avoid the disguised dumping of medicines in the form of donations. Some Member States suggested the need for objective and justifiable criteria for the selection of the countries, communities or patients to benefit from such donations.

Protection of WHO's name and emblem

17. It was asked whether WHO is using the appropriate mechanism and measures to ensure the protection of its name and emblem against misuse for promotional purposes, in particular by private sector entities.

Evaluation of the framework

18. Some Member States noted that a process for evaluation of the framework, including with regard to due diligence and risk assessment, is missing from the draft policy. They suggested that the evaluation function should be embedded into the framework in order to allow for: regular review, by the Health Assembly through the Executive Board, of the application of the framework; identification of problems, obstacles and other challenges; and the identification of lessons learnt with a view to informing future decisions on the revision of the framework two, three or five years after its approval.

Role of academic institutions

19. One WHO region proposed that the revised framework should better reflect the role and function of academic institutions, in particular regarding the ways in which such institutions can complement WHO's work.

Readability of the document

20. Some Member States have suggested that the readability of the framework of engagement should be further improved in order to allow an easier understanding.

PROPOSALS BY THE SECRETARIAT FOR ADDRESSING ISSUES RAISED BY MEMBER STATES

21. This section provides a broad overview of how the Secretariat proposes to deal with issues raised by Member States. It also provides some clarifications, particularly for those issues that do not appear to require the text of the framework to be changed.

Conflicts of interest

22. The framework has been strengthened through the addition of a section on the management of institutional¹ conflict of interest and other risks of engagement.² Although a lack of engagement with non-State actors would create a risk to WHO's relevance and to the Organization's role as the directing and coordinating authority of international health work, any uncontrolled engagement could place WHO's integrity, impartiality and reputation at risk.

23. The new section defines conflict of interest, both in general and in the institutional context. For WHO, the most important institutional conflicts of interest arise in situations where the economic interests of private sector entities are in conflict with the Organization's interests, its independence and impartiality in setting norms and standards. This new section also includes provisions on how conflict of interest will be managed through due diligence, risk assessment, risk management and strengthened oversight by Member States.

¹ The management of individual conflict of interest is not within the scope of the framework of engagement with non-State actors. The separate reform efforts in this area will, however, be closely coordinated with the implementation of the framework.

² See paragraphs 22–43 of the overarching framework.

Due diligence: process and criteria

24. The process and criteria of due diligence have been further specified and integrated as a part of the above-mentioned section on management of institutional conflict of interest and other risks of engagement.

Receipt by WHO of financial resources from private sector entities

25. In order to preserve WHO's integrity when accepting financial contributions from the private sector, the relevant rules of the policy on engagement with private sector entities are both more detailed and more restrictive than the rules for other non-State actors. In the context of the risk-management approach to due diligence and risk assessment, such engagements have to undergo the most detailed analysis and monitoring. Furthermore the Director-General can set up pooling mechanisms to protect WHO further from any undue influence of private sector entities.

Secondments

26. It is proposed as a new rule that WHO does not accept secondments from non-State actors.¹

Applicability of provisions of private sector policy to non-private sector entities

27. The provisions distinguishing private sector entities from other groupings of non-State actors can now be found in the section defining non-State actors and the section on due diligence.² Any non-State actor clearly influenced by private sector entities will be considered as a private sector entity. Thus, engagement with such entities will be circumscribed by the policy on engagement with private sector entities with its more stringent rules. If a non-State actor is clearly independent from private sector entities, but still receives funding from such entities, the individual engagement will be examined to determine if the provisions of the private sector policy should be applied. Funding from such a non-State actor would for instant not be acceptable for normative work linked to the interest of those private sector entities that provide funding to them. Evidence provided by such non-State actors would be considered as potentially influenced, while funding for, or other collaborations on, an implementation project in the area of expertise of this non-State actor could be acceptable.

Official relations

28. Official relations has been used as the main channel for interaction with nongovernmental organizations since the creation of WHO in 1948. In practice, however, over time WHO has had interactions with many more nongovernmental organizations than those in official relations, with the main significance of official relations for the nongovernmental organizations concerned being the privilege of attending the meetings of the Organization's governing bodies. During the informal consultations and the governing body debates on this matter, Member States have indicated their preference for keeping the system of official relations and not replacing it by another accreditation system.

¹ See paragraph 46 of the overarching framework.

² See paragraphs 14 and 31 of the overarching framework.

29. In the past, the Executive Board has consistently given a broad interpretation to the term “nongovernmental organizations” and has also admitted business associations and philanthropic foundations into official relations. The draft framework for engagement proposes to increase transparency by narrowing the definition of nongovernmental organizations compared with past practice, while still allowing international business associations and philanthropic foundations to be accepted as non-State actors in official relations.

30. In the framework, most of the text regulating official relations is fundamentally similar to the Principles governing relations between the World Health Organization and nongovernmental organizations (adopted by the Health Assembly in 1987 in resolution WHA40.25). However, the implementation of the framework will involve the following changes.

- Until now official relations were the central part of the policies governing interaction, whereas in the framework they will be only one aspect. The status of non-State actors in official relations does not mean that any engagement with such entities would be accepted. Engagements other than attending governing body meetings will be subject to due diligence and management of risks similar to any other engagement with non-State actors.
- The framework applies to engagement with all non-State actors, not only the engagements with non-State actors in official relations.
- All non-State actors will have to provide information on their organization that will be published in the register of non-State actors. For non-State actors in official relations, this published information will include the joint work plan, a report on its implementation and a summary of individual engagements with this non-State actor.
- The Executive Board and its subcommittee will have more information to decide on admissions and confirmations of non-State actors in official relations. This information is newly in the public domain.
- International business associations are only admissible for official relations if they represent a business sector. Entities considered by WHO as private sector entities and which do not represent a business sector in the sense of international business associations will not qualify for admission into official relations.

Boundaries: entities with which WHO will not engage

31. Most of the provisions of the former paragraph on boundaries have been moved to the paragraph on principles.¹ The provisions concerning non-engagement with the tobacco and arms industries have been moved into a new paragraph on engagement with particular industries in the section on specific provisions.² For other industries affecting health or being affected by WHO’s norms and standards, no simple total exclusion from any engagement is proposed, but WHO should apply particular caution when engaging with them.

¹ See paragraph 6 of the overarching framework.

² See paragraph 44 of the overarching framework.

Involvement of Member States in oversight and management of engagement

32. The oversight function of Member States in respect of engagement with non-State actors will be significantly strengthened. The version of the framework considered by the Sixty-seventh World Health Assembly¹ set out the functions for a Committee on Non-State Actors of the Executive Board. It is now proposed that these should be performed by the Board's Programme, Budget and Administration Committee. The annual report on engagement of the Director-General to the Executive Board through the Programme, Budget and Administration Committee will allow the governing bodies to provide guidance on the interpretation and implementation of the framework of engagement. The register of non-State actors will give transparency on all the non-State actors with which WHO engages, and on the individual engagements, and will also allow the governing bodies to request clarification if there are inconsistencies in the implementation of the framework.

Partnerships

33. The framework will apply throughout the Organization, for headquarters, regional offices, country offices, hosted partnerships and entities set up under WHO (e.g. IARC). On the other hand, when WHO engages in a partnership that it does not host, this engagement will follow the policy on WHO's engagement with global health partnerships and hosting arrangements and be managed in accordance with the framework of engagement, meaning that WHO's engagement is subject to an explicit management decision based on due diligence and risk assessment. In support of increased transparency, all partnerships and other collaborative arrangements in which WHO is currently involved will soon be listed on the WHO website.

Competitive neutrality

34. Even if there are no conflicts of interest or other risks in engagement, WHO should not provide a competitive advantage to one private sector entity over another. To make this explicit a clause on competitive neutrality has been added.²

Medicine donations

35. The paragraph on donations of medicines and other health technologies has been amended to clarify flexibilities necessary in emergencies and assure that producers cannot discharge products at the end of their shelf life through donations.³

Protection of WHO's name and emblem

36. WHO has always been very cautious in allowing the use of its name and emblem. The framework does not change the policy on the protection of WHO's name and emblem; however, application of the framework should enable the policy to be implemented more consistently throughout the Organization.

¹ Document A67/6.

² See paragraph 3 of the private sector policy.

³ See paragraph 20 of the private sector policy.

Evaluation of the framework

37. A clause requiring regular monitoring of the implementation of the framework has been added. Furthermore the implementation of the framework should be periodically evaluated. In addition it is proposed that the resolution adopting the framework should ask for the first evaluation to be initiated after two years in order to allow a revision of the framework to be proposed to the Seventieth World Health Assembly in 2018 through the Executive Board.

Role of academic institutions

38. The policy on engagement with academic institutions provides a framework for collaboration with such institutions, insuring that the same due diligence and transparency as for other non-State actors are applied. The policy will be applied in conjunction with the Regulations for Study and Scientific Groups, Collaborating Institutions and Other Mechanisms of Collaboration,¹ which provides to WHO additional possibilities for enhanced collaboration with academic institutions, such as the designation of WHO collaborating centres.

Readability of the document

39. In order to improve the readability of the document, the structure of the overarching framework has been slightly adjusted to provide the following main sections:

- **Introduction**, describing the relation of the overarching framework and the four separate policies
- **Rationale, principles, benefits and risks of engagement**
- **Non-state actors**, defining nongovernmental organizations, private sector entities, philanthropic foundations and academic institutions, as well as the limit between private sector entities and other non-State actors
- **Types of interaction**, describing the five types of interaction: participation, resources, evidence, advocacy and technical cooperation
- **Management of conflict of interest and other risks of engagement**, defining conflict of interest and describing the transparent process of management of engagement involving due diligence, risk assessment and risk management

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