

## 5.4 Framework of engagement with non-State actors

*Secretariat note: “In response to the request made in decision [EB133\(2\)](#), the Director-General presents a report on the development of a framework of engagement with non-State actors, following the informal consultation held in October 2013. The Board is requested to note the report (Document [EB134/8](#)) and provide further guidance”.*

### Background

WHO’s relationship with various non-state actors (NSAs) has been an important and sensitive element of the current WHO reform program.

There has been a number of high profile controversies centred around the perception of undue or inappropriate influence on WHO decision making. WHO’s role in IMPACT (International Medical Products Anti-Counterfeiting Taskforce) illustrates. The approach of IMPACT to the problem of counterfeit medical products conflated contentious intellectual property issues with the very real problem of quality, safety and efficacy compromised products and sought to harness the power of national drug regulation in policing intellectual property claims. International pharmaceutical corporations were very prominent in the conception and establishment of IMPACT and WHO’s participation from 2006 was never authorised by any governing body resolutions or decisions.

For many years WHO has found it very difficult to formulate a policy regarding the relationships between the Secretariat and various NSAs, including individuals (experts etc) and organisations (including corporations, industry front organizations, public interest civil society organisations, philanthropies, etc). This challenge has come to the fore again in the context of the current WHO Reform.

The current paper ([EB134/8](#)) provides a framework for WHO’s engagement with NSAs with a view to supporting governing body decisions in this area.

### PHM comment

The proposed framework is highly flawed:

- In defining ‘conflict of interest’ it treats having an opinion (referred to as ‘intellectual bias’ and ‘fixed policy positions’) as being somehow comparable to having a significant material interest (eg corporate sales and profits) in the outcomes of policy making; (IBFAN, which has a fixed policy position on the marketing of breast-milk substitutes, is somehow equivalent to Nestlé’s which has a material interest in maximising sales);
- In considering the risk of perversion of WHO decision making the paper focuses on conflict of interest but does not consider the power that different NSAs may have to

suborn such decision making and does not consider the modalities of influence that different NSAs may exercise;

- It fails to handle with any coherence the different faces of private enterprise: the corporation, the peak body, the front organisation and corporate philanthropy (commercial entities are treated as different from NGOs but industry peak bodies are treated as NGOs);
- The paper confuses the corporation and the industry (we do not engage with the tobacco industry but this does not apply to corporations which are owned by tobacco conglomerates but belong to the food and beverage industry);
- It confuses 'conflict of interest' and 'risk management'.

## The need for clarity in relating conflict of interest to risk

Conflicts between different interests and between different objectives are everywhere (including in the decision making of Member States).

What is at issue is the **risk of perversion of WHO's mandate**. The mandate belongs to the Member States, so the risk of perversion depends (a) on NSAs having ulterior purposes, and (b) on their having power to pervert the course of Member State decision making.

Risk is a function of power as well as purpose: in this respect people who have unlimited resources and the support of large donors represent a greater risk of 'improper influence' than civil society organisations who happen to offer a different perspective on the various issues in contention.

## Managing the risks

The risk management strategies needed to guard against undue or improper influence need to reflect some appreciation of the **power and modalities of influence of various NSAs**. Transparency and due diligence are critical in effectively managing these risks.

When civil society organisations which are largely funded by the pharmaceutical industry speak at governing body meetings or work with Member States to bring forth resolutions the governing body should be aware of this relationship.

A further study of the modalities of improper influence (as in the case of IMPACT) would be useful in operationalising the principles of transparency and due diligence.

[blah](#)

Among the possible risks associated with WHO's engagement with NSAs the reputational risk to WHO of being seen as being muzzled because of the power of the donors would seem to outweigh by far the risks to WHO from listening to civil society organisations which are perceived by Secretariat officials to have an 'intellectual bias' or 'fixed policy positions'.

## Notes from Debate

*The item was considered on Day 3 (Wed 22 Jan).*

Mexico appreciated the principles of transparency, due diligence and risk assessment and agreed with the need for a web based registry of NSAs.

Cuba appreciated the positive elements of the report but highlighted some problematic issues, chief amongst which was that the paper appears to overlook the important differences among NSAs between public interest and business interest NGOs. Cuba suggested that new policies need to be based on an analysis of the policies currently in place (principles of interaction with private entities; global health partners; principles on NGOs): what has not worked; what needs to be improved? This should be the basis. Cuba urged caution noting that the definitions in this document vary from previously agreed ones.

Maldives welcomed the emphasis on transparency and integrity. Maldives also called for an analysis of WHO's experience with different types of NSA and anticipated that different policies would be called for for the different NSAs.

Switzerland supported the proposed approach and returned to comments made by Germany in earlier debate to the effect that WHO should adapt to changes regarding global health partners. Switzerland supported the proposed principles and called for clear and precise rules in order to safeguard WHO's good reputation.

Namibia, speaking on behalf of AFRO, reiterated that WHO should remain a MS organization only! Namibia called for further discussion on the overarching principles including COI and transparency and further consideration of the proposed definition of NSAs.

Qatar emphasized the need to take regional contexts in consideration and called for an inventory of health related NGOs.

Australia welcomed the Secretariat report and; supported the 5 overarching principles and the 4 categories; supported the emphasis on transparency, due diligence and risk assessment / management (for all NSAs); supported the creation of an on line transparency register. Australia asked if there might be any useful research which the Secretariat might have carried out while engaging with NSAs and suggested a mapping of interactions with NSAs.

Panama noted the report and suggested that the goal should be NSAs helping WHO to fulfill its mandate. Panama supported the publication of documents provided to the Standing Committee on NGOs for improved transparency.

Brazil welcomed the report and the definitions. There are serious risks related to the different nature and purposes of different actors. The dialogue established in relation to PIP show that collaboration is possible. The Secretariat must develop different procedures for the different actors, we need more work on definitions of the different NSAs. A deep differentiation is needed in order to modulate the engagement. COI is a central issue. Need to improve the quality of engagement, maximizing the added value, but preserving the integrity of WHO. We need to continue the discussion before the WHA.

Argentina supported the 5 principles and the 4 clear boundaries; recognised the intergovernmental nature of the organisation, the need for transparency and the need to protect against undue influence and COI. Argentina suggests an ethics committee of MSs as a standing committee to analyze and manage of Col. Argentina argued for a case by case evaluation and emphasised that concern for due diligence goes beyond the private sector. NGOs should submit their statements (to MSs) for transparency. Argentina queried the definition of NGOs in the Spanish translation.

Albania welcomed progress made so far on NSA engagement. Risk assessment should be applied systematically, ensuring proper functioning of engagement. Albania supported the proposals listed in paragraph 28 a-d.

Myanmar underlined the importance of this issue as there are many partners wanting to engage with WHO. Some NSA activities are competing with WHO, so what are going to do? One way is to develop a detailed checklist when we assess these actors (as suggested in para 25). MoH need to know the NSAs at country level and inform WHO. We welcome the consultation to be carried out before next EB.

Surinam welcomed the report and supported Namibia's intervention. WHO should stay a MS organization. Working together needs the creation of mechanisms not making them part of "our" organization.

Belgium aligned with the statement made by Croatia. Interaction with NSA is essential to a strong WHO. We face public health challenges which require a multisectoral approach and so need to maintain WHO integrity and objectivity by protecting it from any form of COI. Need to reach an agreement on principles and criteria in the light of future activities on NCDs. Proposals for procedures to implement risk assessment and risk management should be prepared along with due diligence and proposed at the next WHA.

China appreciated the clear definition of principles and types of partners. Regarding next steps (in para 28) China urged caution. Should NGO statements be put online without any clearance? How to control the risks?

Monaco posed the question: would we have been able to finalise the PIP without NSA engagement? No! Monaco agreed with the need to increase transparency and implement risk management to avoid any risk to WHO's reputation. Support the proposals contained in the report and will participate in the consultation before next EB.

UK supported the earlier statement by Croatia on behalf of the EU. It would be impossible for WHO to fulfill its role without engaging with other actors; although the policy space is exclusive, other actors can contribute. Transparency is the key and the safeguard for the preservation of integrity. Policies should apply to all NSA without any differentiation about NSA. We need to move forward and avoid repeating this discussion about COI in each agenda item.

Norway appreciated the report which provided a good summary of discussions so far. Suggested that EB endorses goals and principles, boundaries. Support section on immediate action. Consultation in spring with prepared options.

USA endorsed the intervention made by the UK. Enhanced transparency, due diligence, risk assessment and risk management are important. We need to develop a policy soon but it is more important to us that we made concrete steps to enable WHO to play its role even if we need more time to finalize this work. We need to build momentum in the process. The register for transparency will give us a good basis from which to continue the consultation in the spring. We need fair and constructive engagement with NSAs. We question the exclusion of individuals working for the private sectors in advisory groups; they are advisory bodies and not decision making bodies. Urge that NSAs policy be applied throughout the whole Organisation including ROs.

Canada saw the need to define appropriate entry points for NSA. Need to ensure WHO decision is independent. Supported due diligence and risk assessment and management. Emphasised importance of this framework in specific fields such as NCDs. Need one comprehensive policy dealing with all NSAs but criteria differentiated to ensure transparency and protect from COI. Avoid subjectivity and differences through a clear methodology.

Finland aligned with the earlier statement by Croatia on behalf of the EU. Maintaining the credibility of WHO is important.

France endorsed the earlier statement by Croatia/EU. France did not agree with para 29 [separate policies and procedures for different types of NSA]. France thinks that the broad direction is ok, such as transparency and due diligence. Appreciate the fact that "risk for reputation" is included. But there is still progress to be made in other fields including distinction of types of engagement. It is absolutely essential to clearly analyse the different types of risks related to different types of engagement.

Turkey welcomed the approach taken in the paper. Due diligence and risk assessment should be applied to all the actors. Fully support the boundaries described in the report, need for clear criteria to preserve those boundaries. Need to have separate policies on different NSAs. Need for more information on the the numbers and on the type of the NSAs. The role of the Standing Committee on NGOs should be clarified.

Germany aligned with the Croatian statement for EU and with the UK statement and focused primarily on risk. The starting point should be: why does WHO need to engage with NSA? There is a clear need in order to strengthen the work of WHO. WHO should be the coordinator in the global health field; how can it be if it's not the coordinator of NSAs? If not coordinating, miss the chance to take advantage of NSA activities. Engaging with NSAs should not change the nature of WHO. Supported the 5 principles and 4 boundaries and looked forward to future consultations between now and WHA.

IAPO supported WHO's engagement with non state actors and recognised the need to improve accountability. NSAs have a crucial role in implementation and should be able to submit comments to WHO. What constitutes conflict of interest? The values of transparency and inclusion should be accomplished.

Corporate accountability international emphasised the need to protect public health from vested interests and quoted Article 5 of the FCTC which refers to safeguarding of WHO from vested interests. Called for differentiation between public interest and business interest organisations. Analysis of current policy and procedures is needed, compiling all the information in one summary document will help MS to contribute to the discussion. Clear safeguard from COI, limit engagement between MS and agro-alcohol industries.

## **MMI / PHM**

*The proposed framework is highly flawed:*

- 1. In defining 'conflict of interest', the paper treats having an opinion (referred to as 'intellectual bias' and 'fixed policy positions'), as being somehow comparable to having a commercial interest in the outcomes of policy making;*
- 2. The paper focuses on conflict of interest but does not consider the power nor the modalities of influence that different NSAs exercise;*
- 3. The paper fails to properly consider the different faces of private enterprise: the corporation, the industry federation, the front organisation and corporate philanthropy;*
- 4. Finally, the paper confuses 'risk management' with 'conflict of interest'.*

*Conflicts between different interests and purposes are everywhere. What is at issue is the risk of perversion of WHO's mandate.*

*Risk is a function of power as well as purpose. The risk management strategies needed to guard against improper influence need to reflect an appreciation of the power and the modalities of influence of various NSAs as well as their different purposes and objectives.*

*For example, if an NGO, largely funded by the pharmaceutical industry, were to work with a Member State to generate a resolution benefiting particular corporations, should other governing body members know about such a relationship?*

*WHO's involvement in the International Medical Products Anti-counterfeiting Taskforce (or IMPACT) also provides a useful case study. What protocols should have been in place to ensure that the Secretariat was fully aware of the implications of its relationship with IMPACT?*

*This paper needs to be reworked with a stronger analysis of the modalities of improper influence so that the principles of risk management can be operationalized in ways which contain the real risks to WHO's mandate.*

*Consumers International recalled that for 3 years CI and affiliates such as IBFAN have been actively contributing to the debate on WHO's engagement with external actors hoping that this would lead to ensuring that such engagements, will further the fulfillment of WHO's constitutional mandate while protecting WHO's independence, integrity and trustworthiness. As the debate approaches its decision-making phase, we hoped the Secretariat's Report would advance the Reform in that direction.*

*EB 134/8 does not distinguish between public-interest actors, who are guided by a public-health mission, and private commercial sector and other actors who are guided by market profit-making logic. Making this distinction is critical from a public health perspective, and is a politically indispensable step in the process. The working definitions illustrate this problem. Moreover, PPPs and multi-stakeholder engagements are entirely left out of the scope.*

*Also missing is the analysis requested by Member States of what policies and internal procedures are in place, what worked in their implementation and what did not with respect to the safeguarding WHO's mandate.*

CI expressed concern regarding paragraph 25 on conflict of interest. It introduces the inappropriate, and in the context of conflict of interest debate, irrelevant concept of, 'intellectual bias' and, 'fixed policy position' as a secondary interest. This argument would exclude experts with 'fixed' pro-public health positions from contributing to WHO's work. Conflicts of interest that pose the greatest risks to WHO's integrity, independence and trustworthiness are invariably related to interaction with commercial and for-profit interests. Member States may wish to call for, as part of the planned series of consultations before the WHA, an expert meeting on conflicts of interest with public participation.

ISDI (International Special Dietary Foods Industries) welcomed the proposals emphasising in particular due diligence and transparency and the overall principles and boundaries. All actors have interests and therefore the potential of COI. Reinforcing trust in managing risks is crucial.

??? argued that there is no need to distinguish different types of NSA, as the same processes should apply for all. Often NGOs receive invitations only a few days before a meeting - not acceptable. Engage through remote access for those not based in Geneva. Support 28.

The Chair noted that there was general support for para 28 for for the principles and boundaries and for the consultation before the WHA.

The Secretariat spokesperson agreed that there was support for para 28 and on managing of engagement. Offered some clarification on what some MSs had raised:

1. Maldives asked an analysis of existing engagement: we have already published this analysis on the reform page.
2. Turkey: we realized there are other source of information that are not so easy to analyze. we suggest to have this analysis while we develop the web based register.
3. Australia: we are in touch with other international organisations. MS give different guidance to these organisations so we cannot copy and paste.
4. We will review the 1987 rule for engagement with NGOs and private sector but we will need your guidance on the architecture of the policy to base our work on this.
5. Panama: apology for the translation error; we take on board what you said on the Standing Committee.

The DG commented that a lot of importance points had been raised. What is decided on NSA should be applied at all levels of the WHO.

The DG emphasised her view that WHO engagement with NSAs is part of WHO's exercising its leading and coordinating role in public health; not because of money. Engagement is necessary in order to fulfil the mandate.

The DG stated that no member states are arguing that they do not want to engage and she agreed that the success of the PIP framework illustrates that it can be necessary and fruitful. WHO listens to everybody (pharmaceutical industries and NGOs) and MSs maintain their policy space.

The DG appreciated the support for the 5 principles and the interest in COI and the need to strengthen it. Industrial organisations will have no influence in the policy and technical space: this is a red line.

The DG agreed that WHO does not have a clear differentiation between on BINGOs and PINGOs. She asked for more patience but "we will disaggregate them".

She spoke about publishing information on the web about NGOs in official relations. If what is published in the web is not correct please advise the Secretariat.

Speaking directly to China (and China's concerns about not screening NGO statements) the DG noted that in ten years she has never looked at one statement. "If they break the rules of engagement they will not allow to read next time."

"Eventually we shall have disaggregation of PINGO and BINGO: give us more time. On the question of one policy for everybody or different policies: give me the time to do some analysis and I will present something at the next opportunity. We must make progress, give me a bit of flexibility."



