

## DGH Review of the Document EB 134/8, “Framework of engagement with non-State actors”

This review of this WHO Secretariat report for EB 134 was prepared by public-interest organisations whose main goal related to the WHO reform process has been to support the WHO in fulfilling its constitutional mandate and functions. These require it to act as the directing and coordinating authority in international health as well as to regulate powerful economic actors to prevent harm to people’s health and lives. As the entire document EB134/8 blurs distinctions between governance concerns and technical managerial issues, it is unclear to what level the Framework document refers, thus making commenting difficult.

***Member States may wish to request WHO secretariat to more clearly distinguish between the governance and management levels.*** In our review we wish to point out some major issues to be addressed if Member States want to protect WHO’s mandate and prevent undue corporate influence, while increasing meaningful participation of public-interest actors in WHO’s work.

WHO Secretariat needs Member States’ urgent guidance as this is a political rather than a technical matter.

### **Objective and rationale**

From the public health perspective, the objective of reforming WHO engagements and interactions with external actors should not be centred around ‘making better use of resources’ but around improving the quality of such interactions and engagement to further the fulfilment of the WHO’s constitutional mandate while protecting the independence, integrity and trustworthiness of the organisation.

The chief rationale for redefining the WHO’s engagement with external actors seems to be contained in *document EB 134/9, pg. 3, on Financing dialogue* “to facilitate expansion of the contributor base beyond Member States”. If this is indeed the underlying rationale, the framework should have been centred around safeguarding WHO’s mandate and core functions from undue influence.

***Member States may thus wish to request WHO secretariat to clarify the merit and rationale for increased engagement with external actors guided by a market logic***

Decision 65(9) of the 65th WHA was explicit in requesting the Director-General:

- *(a) to present a draft policy paper on WHO’s engagement with nongovernmental organizations to the Executive Board at its 132nd session in January 2013;*
- *(b) to present a draft policy paper on the relationships with private commercial entities to the Executive Board at its 133rd session in May 2013;*

This corresponds with the current practice of WHO and with the fact that the way WHO engages with different categories of external actors must be rooted in the recognition of the fundamentally different nature of public-interest actors guided by a public-health mission and private commercial sector and other actors guided by market profit-making logic<sup>1</sup>. Not clearly separating these two primary sets of actors amounts to leaving out the critical step in this part of the reform process.

***Member States may thus wish to request WHO Secretariat to take the vital step of clearly recognizing the fundamentally different nature of the two primary sets of actors and approach the policy development process from that position.***

Moreover, despite repeated requests from Member States, WHO Secretariat has not yet provided an **analysis** 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 independence, integrity and trustworthiness.

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<sup>1</sup> Such as transnational corporations, corporate and venture philanthropic foundations, business associations and front groups, public-private partnerships and other hybrid organisations)

**Member States may wish to reiterate their request for such an analysis, conducted against the objective we specified above.**

Absence of this vital step will make it difficult to determine the amendments that are needed in terms of the policy provisions, if any, as well as improvements in implementation.

Without such analysis, establishment of the **resource needs**, in term of budgetary and human resources, is equally unworkable. We have learned that the existing safeguarding policies were implemented in an ad hoc manner primarily for lack of resources, including adequate know-how capacity in this area. The resources to be invested in this essential exercise must be weighed against those that might be wasted at WHO and national level (e.g. on the purchase of inappropriate medicines, or as a result of corporate influence on key WHO policies) if conflicts of interest were not adequately addressed.

#### **Further key elements of the document**

**The Overarching principles** fails to refer to the ‘contribution to the fulfilment of the WHO’s mandate’.

“*Inclusiveness*” in 4 (e) is a very helpful principle if it refers to increasing participation of public-interest actors, but is extremely problematic whenever it groups together all external actors. The term “non-state actors” linked to inclusiveness introduces a risk to have TNCs included in decision-making processes. TNCs already influence the agenda through their problematic participation as NGOs which we hope will be addressed adequately.

The sections on **boundaries and management of engagement** suggest that WHO’s prime concern is about its reputation, while the main concerns should be that “engagement with non-State actors must not compromise WHO’s integrity, independence, trustworthiness”.

The definitions are either unhelpful or truncated. The **definition of NGOs** is very unhelpful, blurs lines and allows for profit-making related groupings, such as business associations, to be classified as NGOs. Due to inadequate implementation of the policy in the past, some business-related groupings (e.g. ISDI, ILSI, Croplife International) managed, by conflating the ‘not-for profit’ status and the ‘not working in the interest of profit-making’, to receive the status of Official relations with WHO. This should be prevented in the future and the existing situation rectified. FAO policy definition on NGOs (2013) may be a useful example to follow<sup>2</sup>.

**The definition of Private Commercial Entities** uses only the first part of the definition from the *Guidelines for interaction with commercial enterprises to achieve health outcomes*. It leaves out the critically important second part, that refers to “a variety of other institutions, including State-run enterprises, associations representing commercial enterprises, foundations not at - arms- length from their sponsors, ...”

Most importantly, **hybrid groupings such as public-private partnerships and multi-stakeholder alliances** and various other forms are not at all addressed in the definitions and the framework document.

**Member States may wish to request WHO to: clarify the question of incorporation of hybrid groupings such as public-private partnerships and multi-stakeholder alliances into the scope of discussions on ‘non-state actors’**

The section on **types of interactions** is a step back from previous WHO Secretariat’s documents.

**Member States may reiterate their request to present an exhaustive list of the various types of interactions they engage in to serve as basis for typologies, as needed.**

The segment on **conflicts of interest** is perhaps the most alarming one. It illustrates a poor understanding of the concept of conflicts of interest in the agency. NGOs have repeatedly submitted to WHO definitions of both individual and institutional conflicts of interest:

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<sup>2</sup> NGOs are formally constituted, legally registered, free from commercial interests, non-profit organisations that provide services, information and expertise, sensitize public opinion, and conduct advocacy activities (FAO, CL146/8)

*"[Individual] conflicts of interest are defined as circumstances that create a risk that professional judgments or actions regarding a primary interest will be unduly influenced by a secondary interest."*

*"Institutional conflicts of interest arise when an institution's own financial interest or those of its senior officials pose risks of undue influence on decisions involving the institution's primary interests."<sup>3</sup>*

The document EB 134/8 presents a peculiar amalgam that entirely changes the meaning and indicates that WHO is shying away from the central issue: that the conflicts of interest that pose the greatest risk to WHO integrity, independence and trustworthiness are related to interactions with commercial and for-profit interests.

WHO also seems to be bowing to the insistence of powerful economic interests' by introducing the inappropriate, and in the context of conflict of interest debate, totally irrelevant arguments of 'intellectual bias' and 'fixed policy position'.

***We hope that Member States will remove these terms from the debate. Otherwise, WHO's work will not be able to benefit from expert contributions if experts are coming with 'fixed' pro-public health position.***

We trust the Member States will see the serious shortcoming of the document EB 134/8 regarding the central issue of conflicts of interest.

***Member States may wish to request WHO to organize, before the 2014 WHA and as part of the further consultations mentioned in Para 28, an expert meeting on Conflicts of interest with participation of public-interest NGOs***

Such a meeting would help to discuss development of a comprehensive framework of safeguards for adequately and effectively address conflicts of interest so that the two policies (NGOs and private commercial sector) are developed on sound basis.

***As a conclusion, we reiterate our request to WHO Secretariat and to Member States to ensure that WHO emerges from this reform process as the prime actor in global public health and not as an agency with weakened position in public health acting under influence of actors who are guided by a market logic.***

*Review by members of the Democratizing Global Health Coalition on the WHO Reform, January 2013.*

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<sup>3</sup> Lo, B. and M. Field, editors. Institute of Medicine (US) Committee on Conflict of Interest in Medical Research, Education and Practice, Eds. (2009). Conflict of interest in medical research, education and practice. Washington DC, National Academics Press, cf. in particular chapter 2 & 8 (available on the web). Other definitions and clarifications might be found in literature on conflicts of interest in government or public service.