



THE INTERNATIONAL FOOD & BEVERAGE ALLIANCE'S COMMENTS ON THE WORLD HEALTH ORGANIZATION'S ENGAGEMENT WITH NON-STATE ENTITIES

The International Food & Beverage Alliance is pleased to submit comments to WHO as part of the organization's public web consultation relating to its engagement with non-State actors.¹

IFBA has been constructively involved with WHO and several of its regional organizations for many years. We strongly believe that we have all benefitted from our interactions as Member States and international organizations have made global public health a greater priority for concerted action. In fact, key public health initiatives, such as the development of salt reduction strategies, could not realistically have been achieved in the absence of constructive engagement between WHO and the food and non-alcoholic beverage industry.

We welcome the WHO reform process which is leading the organization to reassess how it engages with all non-State entities in the most effective and appropriate ways. It is clear from the WHO Constitution that the organization was created by sovereign Member States for the purpose of enhancing health for peoples the world over. IFBA recognizes and respects the sovereignty of Member States and the role, responsibility and independence of WHO. Member States are the principal funders of WHO - they participate in its governance, establish its priorities and oversee its work. IFBA acknowledges the supremacy of Member States in WHO is an essential hallmark of the organization and one that should never be eroded.

As the complex challenge to improve health outcomes has advanced to become a greater priority for all nations, a basic reality of how to manage this challenge has been forcefully embraced by the current Director-General of WHO, Dr. Margaret Chan, and her two previous predecessors. That reality acknowledges that improving global health, combatting specific diseases and prolonging life for billions of people simply cannot be achieved without a massive effort. An effort which requires the participation, with WHO, of a wide variety of diverse actors such as Member States, NGOs, the private sector, the academic community, special purpose non-profit organizations, individual experts and other international organizations. We endorse this basic approach and believe it lies at the core of the reforms which Dr. Chan and Member States have launched. IFBA's detailed response to the eight categories of questions posed by the WHO Secretariat is guided by this basic approach and the following six overarching principles:

- the best interest of global public health should be the overarching and guiding principle of engagement;
- a flexible approach for engagement should be adopted;
- a robust and transparent disclosure standard can manage reputational risks and conflicts of interest;
- the creation of hierarchies of non-State entities must be avoided;

¹ IFBA is a group of eleven companies – The Coca-Cola Company, Ferrero, General Mills, Grupo Bimbo, Kellogg's, Mars, McDonald's, Mondelēz International, Nestlé, PepsiCo and Unilever – who share a common goal of helping people around the world achieve balanced diets and healthy, active lifestyles.

- new paradigms for fundraising should be considered; and
- the “official relations” category should be retired in favour of a new system.

1. THE SCOPE OF NON-STATE ACTORS

How should WHO best address the challenge of ensuring that its principles and policies of engagement with “non-State actors” are relevant and applicable to the wide range of entities that may fall therein? How should WHO best address the challenge of developing policies and procedures for engagement with non-State actors, given the range of diversity within this sector? Are there entities with which WHO should never engage?

The Constitution of WHO states in Article 1 that its objective is “the attainment by all peoples of the highest possible level of health.”² Article 2(v) states that its functions will be “generally to take all necessary action to attain the objective of the Organization.” In considering WHO’s engagement with non-State entities, it is IFBA’s considered view that the point of departure should always be whether an engagement with a non-State entity will support WHO in fulfilling its constitutional obligation of serving the best interest of global public health. This principled pragmatic approach will allow WHO not to focus solely on *who* to engage with, but rather *whether* an engagement is in the best interest of global public health policy. This overriding principle should also govern the development of policies and procedures which should encompass a broad and comprehensive consultation process. Consideration should be given to how WHO has managed its relations with non-State entities in the development of WHO NCD policies and strategies. WHO has held numerous in-person and online consultations, which were sometimes open to all and sometimes by invitation only depending on the specific context and the needs of WHO.

2. THE SCOPE OF DIFFERENT GROUPS WITHIN NON-STATE ACTORS

How should WHO best address the challenge of developing policies and procedures for engagement with non-State actors, given the range of diversity within this sector? Are there entities with which WHO should never engage?

WHO engagement policy should not be exclusionary to any non-State entity. Rather, engagement should be inclusive and guided by the overarching goal to find the most effective solutions that serve the best interest of global health policy. We strongly believe WHO would make a fundamental error if it created a “hierarchy” of non-State entities, each with special roles and differing “access” to the organization based on a pre-determined view of the “value” of an organization in relation to achieving certain goals. WHO should not permit non-State entities to be politically categorized, classified or stigmatized for purposes of engagement as this will inevitably work to the detriment of the organization which must have the flexibility to engage with a diverse group of persons and organizations to fulfill its mandate.

² Constitution of the World Health Organization, Forty-fifth edition, Supplement, October 2006.

3. OVERARCHING PRINCIPLES FOR ENGAGEMENT

Do the principles above encompass all elements that are needed to articulate overarching principles to guide WHO's interaction with non-State actors? Are there others?

The argument is often made that there is a fundamental conflict of interest between the public health and private sectors. But as Dr. Chan stated at the WHO Global Forum in advance of the Moscow Ministerial Conference in April 2011, "everyone has interests." All stakeholders have vested interests, including WHO, Member States and all non-State entities, and inevitably conflicts of interest will arise from time to time. Policies and procedures exist in both the public and private sectors to identify, manage and resolve these. We agree that the overarching principle of transparency is paramount for engagement. But, as WHO notes, there is also a need to distinguish between actual and perceived conflicts of interest. It is important that perceptions do not get in the way of facts, positive results and beneficial outcomes in advancing public health. Accordingly, we believe an overarching principle for engagement must also include a principle of full disclosure of actual or perceived conflicts of interest, and a clear process to identify, manage and resolve such conflicts of interest.

(See response to question 4a) for details.)

4. MODALITIES OF ENGAGEMENT

a) General: How can WHO best ensure that its principles and policies of engagement with non-State actors are relevant and applicable to the wide range of activities undertaken by WHO? What mechanisms should WHO develop to more systematically manage its engagement with non-State actors?

We recommend that WHO develop a governance system which includes: a Code of Conduct to guide the organization's engagement with non-State entities; the establishment of a WHO Office of Ethics (or ethics committee similar to those managed in clinical research), with a clear mandate to manage the process of engagement; and a review process to ensure enforcement of the Code of Conduct and the conflict of interest rules and procedures.

The Code of Conduct should be constructed with the general principles of fairness, transparency, accountability and predictability in mind. It should incorporate clear objectives, a clear delineation of responsibilities and roles and safeguards governing use of the WHO name and logo. It should set out a clear ethical framework with a fact-based disclosure standard and concrete timeframe to identify, publish, manage and resolve conflicts of interest. This Code of Conduct and ethical framework should be used to guide any engagement with non-State entities at WHO, global or regional level. It should be mandated as a good practice recommendation for action by Member States, and accompanied by a toolkit for non-State entities to guide disclosure and help identify, disclose, manage and help resolve actual or perceived conflicts of interest.

The WHO Office of Ethics would be managed primarily by the agency's legal function and report directly to the office of the Director-General. We recognize WHO has a process and guidelines for declaring and managing interests, but this proposed office would administer a new process requiring thorough and transparent standards of disclosure of various defined interests, such as affiliations, terms of reference,

governance, funding etc., of all non-State entities who are asked to provide substantive services or engage in a specific relationship with WHO, before they engage with WHO.³ The Ethics Office would be available to assist WHO determine if a disclosed interest would impede or conflict with the work of the organization based solely on objective facts, criteria for specific participation established by WHO and scope of the contemplated engagement. The Office of Ethics would rely on a strict, fact-based disclosure standard, not political views, to determine the advisability of permitting a non-State entity to engage with WHO. It could determine whether a conflict of interest exists and whether such a conflict would, in fact, impede the specific engagements contemplated with its work plan.

To ensure that the principles of the Code of Conduct are understood, implemented and enforced, we also recommend a process for fostering partnership and collaboration with non-State entities, similar to that undertaken by OECD.

b) Context-specific: How should WHO best address the issue of engaging with non-State actors in different contexts, and in view of different modalities of engagement? How can WHO best ensure consistency and predictability in engagement of non-State actors?

Given the enormous complexity of the numerous tasks and mandates which WHO is now pursuing at the direction of Member States, the organization must possess the absolute and total flexibility to seek advice, expertise and assistance from a diverse and broad range of non-State entities. While there must be general guidelines and processes which should serve to both facilitate and protect the organization in these engagements, we believe it would be counterproductive to encumber WHO with a narrowly focused set of rules and procedures which would, in fact, reduce the flexibility it requires and either slow or limit its engagement which could well occur in an emergency situation. The Director-General of WHO is elected by Member States as are the heads of the six regional WHO bodies. These elected officials should be granted the widest possible latitude with proper oversight to establish internal mechanisms to oversee relations with all categories of non-State entities of their choosing.

As set out in our response to question 4a) above, we believe that full disclosure of specific information is the basic standard which should govern engagement and that such disclosure will enable WHO to make fair and useful decisions in a timely fashion. We feel certain that in addition to an Office of Ethics, WHO can create a bureaucratically lean and efficient internal mechanism which could assist in the evaluation of specific engagements with non-State entities in differing contexts. We also believe that this approach provides the necessary framework and oversight to enable WHO to manage the engagement on a case-by-case basis, guided by the importance and severity of the public health challenge.

c) Engagement with WHO's governance processes: What methods should WHO employ to strengthen and widen engagement with non-State actors in relation to WHO's governance processes or towards the development of health policies and strategies? What are the factors that WHO should take into consideration when defining the parameters of this engagement?

We appreciate that engagement with non-State entities in the context of governing bodies is somewhat complex. However, the current system of preferred access to some NGOs, as opposed to others, is at

³ The WHO Handbook for Guideline Development, Chapter 4: Declaration and management of interests: 19-23.

times unhelpful and can potentially frustrate the development of sound public health policy. For example, as IFBA is not in official relations with WHO, it does not enjoy the timely access to official documentation or to the NGO galleries during the World Health Assemblies (WHA) and Executive Board (EB) meetings. As there are no live webcasts of relevant WHO policy discussions (as is the case in other UN agencies), engagement with appropriate non-State entities is hampered.

We would suggest that the concept of non-State entities “in official relations with WHO” be retired and in its place, WHO should consider undertaking the following steps which could broaden participation, increase quality and relevance of non-State entity participation and give WHO greater flexibility to deal with any non-State entity of its choosing:

- Allow non-State entities access to WHO governing body meetings to improve understanding of the WHO policy development process and procedure. This can be achieved through live webcasts of all non-confidential sessions of the EB and the WHA and increased access to physical meeting rooms.
- In the Secretariat’s planning for EB and WHA agenda items, open an online “public registry” for two purposes. First, the registry would enable non-State entities to indicate an interest in the agenda item and inform the Secretariat that they would be prepared to file a statement of a limited length by a date to be set by the Secretariat. Second, the Secretariat could then decide which non-State entities would be invited to make an oral presentation of its position based on WHO’s assessment of relevance and quality of the submission. Those not selected for oral presentations, would be asked by the Secretariat if their statements could be made public on the WHO website at the time the agenda item is discussed in the governing body for all stakeholders to review.
- Request relevant non-State entities to provide WHO with relevant data or reports on ways to support WHO current policy or policies-in-development.
- Other forms of engagement now covered by non-State entities “in official relations” with WHO can continue to be carried out as long as they meet the needs of the organization and are consistent with the disclosure and other requirements to be established.

In defining the parameters of this engagement, we believe the appropriate guiding principle for a successful outcome should be: follow procedures for engagement by non-State entities based on what is in the best interest of WHO and its Member States, and consider factors such as commercial interests, decision-making authority or positions in WHO, or at the local, regional or national level.

d) Strengthening country-level engagement: What actions should WHO explore to strengthen engagement with non-State actors at country-level? What are the factors that WHO should take into consideration when defining the parameters of this engagement?

We would recommend a stakeholder mapping exercise of all non-State entities relevant to specific WHO policies. To manage potential conflicts of interest and ensure robust standards of disclosure and transparency in the decision-making process at the national level, we would recommend the distribution of toolkits, translated and adapted to address specific cultural needs.

As mentioned in our response to question 4a) above, consistency and coherence with the WHO global Code of Conduct and conflict of interest policy, procedure and governance system should define the parameters of engagement with non-State entities at the country level.

5. CHALLENGES AND RISKS ARISING FROM ENGAGEMENT

What are the different challenges and risks that may be associated with WHO’s engagement with non-State actors, both from the perspective of WHO and that of the non-State actor?

Certain challenges and risks may be present for both WHO and non-State entities stemming from: undue influence in the award of contracts; unfair advantage; favouritism towards certain Member States; and a weakening or denial of the evidence necessary to build sound public health policy. However, we believe that “reputational risks” for WHO can be effectively managed by a strong and transparent disclosure system to assess engagement combined with the judgment exercised by its senior officials, strong leadership and open communication. In addition, a strong and prominent general declaration on the WHO website that engagement never conveys endorsement of a party’s products, services and positions would be advised.

6. MANAGEMENT OF CONFLICTS OF INTEREST

Given the spectrum of entities that comprise “non-State actors”, and in view of the complexities that arise when engaging with these actors both in the context of different activities undertaken by WHO and towards the development of health policies and strategies, how should WHO best ensure that vested interests are adequately addressed and managed?

Please see response to question 4 above.

7. BENEFITS FOR NON-STATE ACTORS

How can WHO proceed to ensure a mutually derived benefit for non-State actors when engaging with WHO, while taking into account perceived reputational or other risks associated with such engagement?

WHO has a long history of engaging with civil society and the private sector on public health issues. The current challenge is to manage the relationships in a way that can harness the knowledge, expertise and resources non-State entities can contribute to ensure the best interest of global public health is served. Appropriate attention must be paid to principles of transparency and accountability. In that regard, as mentioned previously, we believe WHO needs the total flexibility to engage with a diverse and broad range on non-State entities. A determination of whether or not to engage should be made on a case-by-case basis, and on the basis of whether the proposed engagement is in the best interest of public health and not on an arbitrary categorization or classification system of non-State entities. Such a classification system will only work to the detriment of the organization. For example, if a breakthrough innovation or product was developed that could substantially contribute towards a decrease in morbidity and mortality, but had been developed by an “excluded” non-State entity, the WHO would be precluded from taking advantage of it.

A mutually derived benefit accrues from a robust and transparent disclosure standard backed by wide publication of the collaboration. The Code of Conduct will govern branding and endorsements and provide safeguards against the improper use of WHO name and logo, positions or speeches. Sanctions and penalties for infringement or breach by non-State entities of the rules of engagement must be laid out in the governance documents.

8. ENGAGEMENT IN RELATION TO WHO'S FINANCING

What are considerations and concerns that WHO should take into account when defining parameters and procedures for the involvement of non-State actors in the financing of WHO? What are the elements of these parameters and procedures that should be considered?

Certain organizations opposed to the engagement of WHO with non-State entities, and specifically the private sector, argue that any stakeholder with a “for-profit” motive should be excluded from engagement with WHO. This is an erroneous position and does not reflect the reality of a complex global health world and the increasingly significant role of public-private partnerships and the donor community. The private sector, NGOs and academic institutions contribute billions each year to global health initiatives. Numerous nongovernmental organizations are aligned with, or funded by the private sector (both for-profit and not-for-profit entities).

Given the tremendous pressure among WHO donor nations for budget reductions, we believe two courses of action should be considered. First, WHO should hire a high level senior official with the specific, full-time assignment of promoting the organization’s financial needs with Member State donors in order to increase voluntary contributions. This official’s focus should also be on fundraising among Member States which do not have a tradition of making contributions to WHO beyond their assessed levels and which now possess the national wealth to do so. Such an initiative takes a full-time commitment not available to the Director-General given her other responsibilities. Second, other UN agencies such as UNICEF and UNHCR have established not-for-profit mechanisms to raise funds from wealthy individuals, foundations and private corporations in wealthy nations where such activities are allowed. PAHO seeks outside funding to be used for capacity building and establishing partnerships based on global and regional public health strategies, and formed the Pan American Health and Education Foundation (PAHEF) in 1968 to receive contributions. The trust fund is administered transparently and its annual reports are public. These types of activities are carried out without compromising the organizations’ values and standards and can be an important source of enhanced revenue. However, such initiatives must be supported and overseen by capable internal staff with backgrounds in fundraising as both UNICEF and UNHCR have done. Here as well, disclosure of the source of funds flowing into these national groups needs to be carefully supervised by headquarters and WHO can easily establish rules whereby donations from certain categories of organizations or individuals will not be accepted.

WHO projects funded by non-State entities will be subject to public scrutiny and must be based on the fundamental principles and best practice standards of ethics and sound governance, transparency and accountability, monitoring and public reporting. They must have access and input to WHO governance bodies charged with this type of funding.