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Are the responses approved or endorsed by your organization?

Yes

## Comments on the "[Discussion paper](#)"

General comments : Please comment on the clarity and comprehensiveness of the approach

Summary of our key comments:

- Not enough consultation time
- Too negative tone about the food and beverage industries
- Mechanism proposed to avoid conflict of interest is too complex
- Partnership with business is critical for achieving Agenda 2030 and the Sustainable Development Goals
- Recommendations do not fall in line with international principles of good governance
- Shared purpose is critical for development
- The Private Sector Mechanism to the UN Committee on World Food Security could not continue to function under these recommendations.

The Private Sector Mechanism (PSM) to the UN Committee on World Food Security (CFS) wishes to thank the World Health Organization (WHO) for the opportunity to provide comments to the consultation on the prevention and management of conflicts of interest of nutrition programmes.

The Private Sector Mechanism (PSM) is an open platform providing a permanent seat in the Advisory Group of the UN Committee on World Food Security for private enterprises right across the agri-food value

chain, from farmers, to input providers, cooperatives, processors, SMEs and food companies. The private sector and the Bill and Melinda Gates Foundation, along with civil society and the research community, have permanent seats on the CFS Advisory Group alongside member countries of the Food and Agriculture Organisation (FAO) of the United Nations.

The PSM is deeply concerned by the three papers. The PSM also wishes to raise its strong concerns on the consultation timeline that has been proposed. We received the first notice of information on September 13 and the deadline is September 24. We do not believe that having effectively 7 working days is sufficient for the public and member states to review these three highly important documents. The WHO should postpone further action until it is able to provide adequate time for stakeholder and member state consultation and meaningfully consider and incorporate input into a revised approach.

While the PSM understands well the importance of handling conflict of interest, it is important to note in the preamble of all the documents that all parties working on nutrition programmes innately have interests. The cases where those interests intersect with fiduciary relationships and proposed funding should be the focus of conflicts of interest measures. Such potential cases may exist among any actor involved in the nutrition sector. However, the PSM notes with great concern that the three papers take an inherently negative view of the private sector in general, and the food and beverage industries specifically. The Introductory Paper, in particular, views the private sector with suspicion, frequently implying that engagement with private sector non-State entities is necessarily likely to compromise governments' mandates to promote public health and nutrition. There is virtually no acknowledgement in any of the three documents of the food and beverage industries' unique contribution, insights, know-how, and capacity; despite references that other industries may have "critical resources to bring to the table." In fact, the documents take a tone antithetical to the WHO's own Framework for Engagement with Non-State Actors (FENSA), which lays out guidelines for engagement with all types of non-state actors, emphasizes the benefits of maximizing engagement while minimizing actual or perceived conflicts, and does not inappropriately expand the scope of excluded industries. WHO member states committed significant resources to negotiating the FENSA, which is not yet fully implemented. It is unclear to us what would be the rationale for WHO to deviate from the FENSA approach and to recommend national governments take a more restrictive approach with regard to one particular non-state actor only: the private sector..

The PSM is further concerned that implementation of this proposed tool would place an extraordinary burden on governments and any possible non-State collaborators (including organizations not directly part of the private sector but which partner with, receive funds from, or otherwise engage the private sector). Strict adherence to the tool would rule out a vast number of possible engagements, needlessly eliminating fruitful, mutually-beneficial partnerships between governments and most non-State actors. Use of the proposed tool in its entirety would require exceptional amounts of time and attention, which would both misuse limited resources and slow or effectively freeze the process of partnership. While all six steps and every included sub-step may be necessary for complex, long-term, multi-stakeholder projects, use of the tool is infeasible for most engagements. For example, use of Steps 1 and 2 would suffice for many collaborations. This is particularly true given that the tool starts to show frustrating redundancies starting in Step 3. As a whole, the tool could be streamlined to be both more effective and less cumbersome.

Other global development strategies and international policy-making processes recognize the criticality of multi-stakeholder partnerships. The 2030 Agenda for Sustainable Development, in particular Sustainable Development Goal (SDG) 17, calls for a revitalized and enhanced global partnership, that brings together governments, civil society, the private sector, the UN system, and other actors, and mobilizes all available resources to achieve the ambitious SDG targets. The report of the Third International Conference on Financing for Development (paragraph 10), and the FAO Strategy for Partnership with the Private Sector also provide clear calls to action for delivering global partnerships for sustainable development, including private sector engagement. We are concerned that this proposed new approach by WHO in this consultation goes directly against that of Agenda 2030 and most other United Nations agencies.

The recommendations are not consistent with most member states principles for democratic, transparent, good governance in consultation and rule-making. Unjustifiably restricting engagement with the private sector would not only be antithetical to democracy and good governance, it would also deprive member

states of the knowledge, expertise, and resources of the private sector and put at risk programs that are helping member states achieve their own public health objectives. These recommendations could be used by governments to arbitrarily restrict engagement with the food and beverage industry (in contravention of many domestic and international legal obligations), and they would also likely serve as a very damaging precedent for policies in the WHO and other international organizations.

For example, the UN Committee on World Food Security (CFS) is a unique decision-making forum, explicitly predicated on multi-stakeholder engagement. It has been hailed as a model of success for the inclusion of non-state actors (in particular the Civil Society Mechanism and the Private Sector Mechanism). This cooperation has led to the development of fundamental documents such as the Voluntary Guidelines on the Governance of Land, Fisheries and Forests, the Principles for Responsible Agricultural Investment, and the Framework for Action for Countries in Protracted Crises. Achieving the SDGs and ending hunger and malnutrition requires all actors to join forces to scale up successful programs and link actions for better results. An exceptional level of collaboration between the public sector, private sector, civil society and academia is necessary to develop initiatives that can transform agricultural production and meet future food, nutrition and employment demands.

Bringing key stakeholders and alliances together on the basis of a common purpose plays a key role in achieving real actions and impact. Positive collaboration, mutual accountability and shared goals are key elements in multi-stakeholder efforts where actors from diverse backgrounds must work together effectively in implementing solution-driven approaches.

As the official platform for private sector participation in the UN Committee on World Food Security, we strongly feel that the recommendations go against the CFS' core raison d'être and purpose. If the WHO approach were to set a precedent for other organizations or if member states were to implement WHO's guidelines with regard to their engagement in international organizations, the CFS multi-stakeholder platform could no longer exist, despite its ; reputation as a model of multi-stakeholder engagement and consultation with the strong participation of civil society, private sector, philanthropies, research and international financial institutions.

#### Specific comments

It is inappropriate for the WHO to compare the food and beverage industry to industries excluded from engagement with the WHO. The "tactics" which the WHO claims to analyze are, in fact, normal elements of political discourse, employed by most types of non-state actors. The draft documents denigrate the food and beverage industries and cast a negative light on possible engagements with Member States even before such engagements have a chance to develop (Page 2).

It is unfair to allow a perception of conflict of interest to affect decisions on whether to continue to engage with a particular private sector actor (page 3). This language should be adjusted to acknowledge that, while perceptions of conflict of interest may cause a negative image, it is the responsibility of the Member State to ensure that it is not missing opportunities to collaborate based on (mis)perceptions alone.

In the general principles, the WHO claims engagement can only be successful when the engagement "conforms with the Member State's agenda." While governments and non-state actors may share common objectives, excluding engagement and debate on the basis of differing opinions of tactics or "agendas" is antithetical to the transparent, open governance for which member states and international organizations should strive , including in the agenda-setting process. The requirement would also eliminate the possibility for governments to develop innovative programs with the support and input of non-State actors. This phrasing reduces engagements to the level of contracted work or consulting terms, leaving no space for creative co-creation of projects that benefit public health and nutrition (Page 4).

Drawing on our experience with the CFS, the PSM recommends the WHO to consider the following measures which serve successfully to maximize the benefits and minimize the risks of multi-stakeholder engagement as defined in the CFS rules of procedure :

1. Voting is exclusively reserved for CFS member states, not participants

- Non-state actors have a voice at every stage of debate to inform and enhance policy consideration, but voting and are the exclusive prerogative of Member States (see CFS Reform Document (2009), paragraph 10).
- No participant (member state or non-state) is precluded from participation by virtue of having an opinion; agreement is not a prerequisite for participation, thus fostering free and meaningful debate which improves outcomes.

## 2. Transparency must be upfront

- Transparency is a prerequisite to successful participation. Private sector and civil society participants must disclose their affiliations, and all stakeholders should proactively develop and share positions on key topics of interest to the CFS.
- Consultation/coordination mechanisms (that is, the PSM and the CSM) should report their respective funding sources for all CFS engagement.

## 3. Financing for CFS

- Funding from multiple actors is encouraged.
- Funding that is given to CFS must be directed by the CFS Bureau as per the normal rules of procedure of CFS. Any earmarked funding must support the operations of a workstream without providing any direction on the substantive aspects of the workstream or the negotiated policy outcomes.

## 4. Direct conflict of interest

- A conflict of interest in the CFS context may occur when groups that are receiving funding from the United Nations to prepare policy positions are simultaneously advocating in their roles as independent bodies. This occurs, for instance, when consultants who write reports for the CFS and are also members of consultation mechanisms. These interests must be declared and such a consultant should remain silent on the issues where they have been contracted to provide advice to CFS.
- Conflicts of interest may also exist when parties advocate for programs for which they anticipate applying for funding to execute. Such potential conflicts of interest should be declared as well.

## 5. Anti-Corruption and Rule of Law

- Preventing conflicts of interest requires all parties to work together and contribute solutions to build credible institutions and practices based on the rule of law, good governance, accountability, and transparency.
- All actors of the CFS may be concerned with conflict of interest: governments, private sector, research bodies, NGOs, etc.
- The private sector has demonstrated its commitment to join anti-corruption efforts implementing and enforcing company-wide anti-corruption policies and practices, increasing transparency and accountability through public reporting, and promoting integrity through the implementation of the UN Convention against Corruption and the UN Global Compact's 10th Principle against Corruption. The PSM has steadily advocated for the incorporation of language in all CFS negotiations on "rule of law, anti-corruption, transparency and accountability".

## 6. Anti-trust

- Outcomes shall not allow combinations or agreements in restraint of trade.
- Discussions among members involving pricing, sale terms, territories, production, mergers and acquisitions must be avoided to be compliant with national and regional anti-trust law.

## Comments on the "[Introductory paper](#)"

General comments : Please comment on the clarity and comprehensiveness of the introductory paper

The Private Sector Mechanism notes these documents and recommendations were developed without inclusion of the food and beverage industries. This lack of inclusion is troubling. In addition, the extraordinarily short consultation period does not provide adequate time for stakeholders or member states to provide comprehensive input and for the WHO to meaningfully consider this input. (Page 2-3).

Specific comments

Throughout the Introductory Paper, and in the Tool as well, various terms and phrases are not precisely defined and/or are defined inconsistently with the FENSA. For example, the term “at arm’s length” is not well defined. It is not clear on what criteria member states would determine whether entities are “at arm’s length” from industries or actors subject to exclusion from engagement. (Page 5).

As in the discussion paper, the Private Sector Mechanism notes that the introductory paper makes inappropriate comparisons between the food and beverage industries and the tobacco industry. The document’s language reveals categorical and unhelpful distrust of any private sector actor: “Engagement of the private sector...should be treated with great caution, as the commercial interests in the outcome of the evaluation have the potential to compromise the independence of the process.” Commercial motives are not incompatible with public health interests. They, in fact, may drive the exact innovation and investment necessary to achieve sustainable improvements in health and development. The food and beverage industries are also unique drivers of employment and economic growth, enabling millions of people to access the jobs and income that also improve personal, family, and community health. Rather than denigrating industry, the WHO should focus on identifying common objectives and shared responsibilities where member states and non-state actors can leverage their unique strengths to accelerate achievement of the Sustainable Development Goals.

## Comments on the "[Tool](#)"

General comments : Please comment on the clarity and practical value of the tool

The PSM is further concerned that implementation of this proposed tool would place an extraordinary burden on governments and any possible non-State collaborators (including organizations not directly part of the private sector but which partner with, receive funds from, or otherwise engage the private sector). Strict adherence to the tool would rule out a vast number of possible engagements, needlessly eliminating fruitful, mutually-beneficial partnerships between governments and most non-State actors. Use of the proposed tool in its entirety would require exceptional amounts of time and attention, which would both misuse limited resources and slow or effectively freeze the process of partnership. While all six steps and every included sub-step may be necessary for complex, long-term, multi-stakeholder projects, use of the tool is infeasible for most engagements. For example, use of Steps 1 and 2 would suffice for many collaborations. This is particularly true given that the tool starts to show frustrating redundancies starting in Step 3. As a whole, the tool could be streamlined to be both more effective and less cumbersome.

Specific comments

In the very first step of the tool, the WHO states that “the scope, objectives and expected outcomes of the proposed engagement should be clearly defined before the first interaction with the non-State institution or individual” (page 5). As stated above, it seems counterproductive and overly burdensome to require such a firm understanding of outcomes before first contact occurs. This requirement strips collaborators of the opportunity to meaningfully contribute to a program’s objectives. As collaborators presumably have strengths and insights that the government may lack, working together at this early stage is critical to successful execution of a partnership or policy dialogue.

Step 2 seems reasonable, and appears to be the most practically usable part of the Tool; indeed, Steps 1 and 2 alone probably suffice to manage the risks and benefits of engagement in most instances. The exclusionary criteria proposed are, however, inappropriate, particularly without consideration of governments’ own domestic and international legal obligations for transparency and good governance. The stipulation that non-State actors must not “aim to participate in policy development” (page 6) is problematic and inconsistent with best practices for transparency in rule-making.

Step 3 (Page 14) is the point at which use of the tool becomes more clearly and unnecessarily burdensome and complicated. Step 3 may certainly be useful for complex projects, but it does not seem essential for more straightforward collaborations. It repeats key elements from Step 2, making Step 3 a good use of time only if Step 2 has yielded an exact balance of high and low risk, which in most cases will be unlikely.

Step 4 is poorly formulated to the point of being unusable. In order to be practical, it requires either far greater elaboration or, preferably, simplification and inclusion in another step. Given that step 5 acknowledges this tendency toward redundancy – “In this regard, step five is closely related to step four, because if the outcome of M&E suggests that there are weaknesses in the mitigation measures, the national authorities may reconsider their approach related to mitigation measures as well as whether to continue the engagement or disengage” (Page 17) – perhaps the two steps could be streamlined and collapsed into one.

Step 6 (Page 18) is not objectionable, but may not be strictly necessary if such work falls under the normal purview of governmental operations.