

**WHO Discussion Paper, Introductory Paper and Tool**  
**EB142 Agenda Item: “Safeguarding Against Possible Conflicts of Interest (COI) in**  
**Nutrition Programs”**

We thank WHO for the comment opportunity, and for their effort to respond to Member State requests for tools and approaches to enable effective multi-sectoral engagement to reach the global nutrition goals and facilitate more effective nutrition programming within countries. We recognize that no single sector can achieve these goals alone and multisector, multistakeholder action is needed. The private sector, comprised of diverse entities, has an important role to play supporting attainment of nutrition goals, in partnership with national authorities, civil society and donors.

*Process*

- Given the complexity of this topic, it is essential that WHO dedicate sufficient time for consultation on and review of papers and tools prepared for the consideration of WHO Governing Bodies. Within and across countries, nutrition programs are developed, implemented, and evaluated by a range of partners. Ensuring the adequacy of Member State and stakeholder consultation processes is therefore vital to producing tools for end-users. Continued consultation with the Scaling Up Nutrition (SUN) work on conflict of interest will also benefit the WHO approach.
- We find the time provided for the current consultation insufficient for Member States to adequately review the documents and provide meaningful feedback, including seeking views from program implementing partners and other stakeholders. We herein provide preliminary feedback. Given the short consultation window and the broad impact of this work, we request that WHO provide another consultation opportunity following document revision prior to consideration by the Executive Board of these documents and tools. We recommend that WHO extend the development timeline and plan with the intent of finalizing these documents for the 144<sup>th</sup> Executive Board (2019), to enable WHO to consider FENSA tools currently under development and to fully take into account feedback received on this and future iterations.

*Framing*

- We are deeply concerned by the overarching tone of exclusion present in the draft documents, which directly runs counter to the current global approach of inclusiveness and recognition of the need for all stakeholders to work together to achieve global nutrition goals. Such language must be remedied in the interest of better promoting alliance and partnerships to expand nutrition actions. Further, the approach presented is clearly out of line with the dual aims of the WHO’s Framework of Engagement with non-State Actors (FENSA) to conduct due diligence and to facilitate engagement. Examples of problematic language include language in the proposed decision-making process and tool advising where “great caution” should be exercised. FENSA states WHO will exercise “particular caution” when engaging with private sector entities and other non-State actors whose policies or activities are not in line with WHO’s policies, norms and standards. The proposed decision-making process and tool states “alignment with nutrition goals is based on whether the external actor products, policies, and practices are in line with government public health policies.” The overly broad inclusion of products in these criteria is inappropriate.
- We note that these papers do not acknowledge potential benefits of engagement. The proposed decision-making process and tool should be simplified and significantly overhauled

in consideration of how best to maximize the positive benefits of engagement with the private sector while protecting the integrity of nutrition programs and promoting the management of actual COI and the broader goal of scientific integrity. In addition, the documents conflate the term ‘conflict of interest’ with a private sector entity’s opinion or perspective on public policy. One does not equate the other and we are severely concerned that this flawed premise is consistently repeated throughout the documents. We also note that several areas of the document flag that the perception of a conflict of interest is as damaging as an actual conflict and further notes that even the risk of a conflict should be sufficient for some public sectors to avoid contact with certain stakeholders. Effective multisectoral action requires identifying and managing any potential conflicts of interest, to the extent possible, rather than simply avoiding them.

### *Clarifying Engagement*

- We recommend providing a more clear and robust definition of ‘engagement’ to avoid confusion. We note that engagement between the public sector and external stakeholders can take a range of forms, ranging from responding to public comment period to jointly developed public-private partnerships. Some, but not all, of these forms could be termed engagement and ‘engagement’ should not be read to encompass all interaction. General exclusion of the private sector from providing input to any kind of policy development could risk an ineffective and unbalanced approach, ignoring data and expertise that could be provided by the private sector, positive areas of collaboration and partnership in tackling complex issues. Such exclusion could result in the development of programs that are impractical, not achievable, or unduly limited in support attaining nutrition goals.
- For external engagement, these documents present a negative, exclusive, and burdensome approach that would be difficult for any national authority to manage. Countries following the presented approach may conclude that they should prohibit any kind of engagement with any processed food or beverage manufacturer, as the documents note that even the appearance of a potential risk of conflict of interest should preclude engagement with an NSA. This approach runs directly counter to the spirit of the FENSA debate. Also, the processes outlined in these documents will preclude open and transparent processes in the development of nutrition programs that could provide strategic partnerships quite beneficial to public health. In addition, they could also result in significant and unnecessary administrative burdens.
- Issues around actual COIs should begin with an intention to bring in stakeholders to work towards common public health goals. COI mitigation and management tools, such as Codes of Conduct, can be used to increase transparency and reduce risk around actual COIs while promote successful multi-stakeholder partnerships. Codes of Conduct, non-binding sets of principles for engagement among stakeholders, promote transparency and accountability; create a common agreement for diverse stakeholders to come together to work towards common goals; and describe roles and responsibilities in relation to the engagement. Consider exploring current work ongoing in SUN countries for potential inclusion in the WHO tools, which note the value of establishing such principles in promoting and assessing individual and organizational behavior and identifying conflicts of interests .
- A country’s national authorities should be open to engaging with its citizens, with its institutions and with companies around a common set of principles outlined, for example, in a Code of Conduct Entities can choose to either follow or not follow such a Code of Conduct. National Authorities can establish a COI unit to review complaints that the Code of Conduct

has not been appropriately followed, and a process for review can be mutually determined that includes the ability to put in place mitigation and management measures to prevent undue influence. In addition, a process by which a non-State actor could appeal for review of a decision must be included.

- OECD, APEC and a number of international forums have conducted extensive work on Good Regulatory Practice (GRP). This body of work on GRPs, including specific practices to avoid conflict of interest, should be drawn on to inform WHO's response to the Assembly's request for guidance specific to nutrition. We request that the next iteration of this work mention the importance of transparency and stakeholder engagement, including the private sector, in GRPs. For example, the tool notes 'public consultation is excluded'. It is critically important to clarify that in the area of regulations, good regulatory practices would include public consultations open to external entities providing information and views on proposed measures. Inappropriately applying such a COI tool could have the counterproductive result of regulators insulating themselves from interaction with food and beverage manufacturers leading to incomplete or inadequate public health policy within Member States.
- Additionally, blanket consideration of the food and beverage sector in the same manner as the tobacco industry is inappropriate. Tobacco is quite distinct from the broad food and beverage category, which provides a range of necessary as well as nutritious products.

#### General Comments on Introductory and Discussion Papers

- The overarching principles of engagement need to include a reference to Member State's legal obligations. We suggest including the following under the first bullet:
  - "Recognizes legally binding obligations entered into by Member States, and consideration of a Member State's public health nutrition objectives when they are in conflict"
- Annex 4 suggests that national authorities should never engage with food and beverage industries, which would be unproductive. The Annex should be reworked to show examples, consisting of scenarios of actual COIs, and add a column showing practical examples of how the conflict raised in the scenario can be mitigated or managed to the greatest possible extent. Providing examples of mitigation empowers stakeholders to identify potential issues, develop solutions, and implement them, striving for inclusiveness to achieve common goals.
- Consider how to better reflect the other elements taken into account in risk management, namely, social, economic, and cultural contexts, mentioned in the other documents and in the presentation.
- We are disappointed that the October 2015 technical consultation appears not to have included experts from the food and agriculture sector. Future consultations should be inclusive of expert views from all relevant sectors.
  - Rights-related language requires thorough legal review and revision for accuracy. For example, language contained in the document appears inconsistent with language of the WHO Constitution and with the FAO Voluntary Guidelines "Progressive Realization of the Right to Adequate Food in the Context of National Food Security".

- Besides including unrealistic or misleading examples, the overwhelming majority of the examples listed target sugar-sweetened beverage companies. Even if these are just illustrative, there should be a diversity of scenarios/actors described to provide countries with realistic scenarios across nutrition program areas and to avoid inappropriately targeting one sub-sector of the food industry.

#### Draft Tool

- As noted, the tool should not be regulatory or prescriptive, but rather centered on national goals guided by a set of principles outlined in a Code of Conduct, along with a review and administration board housed in the national body to guide COI mitigation and management tools, and to act on concerns or violations as needed. The current tool is exclusionary, rather than inclusive, and does little to promote a multi-stakeholder approach that is vital to improving nutrition. Precluding engagement with any processed food and beverage manufacturer under these parameters presents a concern for the use of a transparent, measured, science-based, and outcome-based approach towards policy and program development.
- The tool should be simplified to be more accessible and easy to use for policy makers. We recommend redrafting the tools following significant revision of the discussion paper and introductory papers to reflect a nuanced approach towards engagement with non-state actors and to more closely reflect the dual aims of WHO's FENSA policy.
- Many food companies have diverse portfolios to manage risk. Automatically classifying manufacturers or promoters of food and beverages as "high risk" unless they solely manufacture "healthy or non-harmful products" is overly simplistic. The risk profile in the draft tool should be expanded to include a category of medium risk engagement.
- The form used to present information in table 2 is unclear. Consider an alternative form, including appropriate column headings.
- Consider using the term "Monitoring & Evaluation/Accountability (M&E/A)" rather than Monitoring and Evaluation and Accountability. This would be consistent with other frameworks such as the (M&E/A) Framework for the Global Vaccine Action Plan.