

Implication of implementing the Framework of engagement with non-State actors

**Non-paper by the WHO Secretariat for consideration by the informal meeting of
Member States on 19-23 October**

14.10.2015

INTRODUCTION

1. The 68th WHA requested the Secretariat to provide an overview of the implications of the implementation of the Framework of engagement with non-State actors (FENSA). To this end, all WHO Regional Offices and Clusters in Headquarters have been invited to provide inputs. The purpose of this paper is to describe some of the possible implications of implementing FENSA, from a policy, financial and human resource perspective at all levels of WHO.
2. Implementing FENSA will have clearly foreseeable and intended consequences, including the fact that it will put WHO's engagement with non-State actors on a more solid basis and strengthen the management of risks of engagement. It will also change and influence the way of working across the organization which creates the risk of major unintended consequences. If an engagement management policy and system is too cumbersome for non-State actors and the Secretariat, it could lead to an important reduction of WHO's engagement with non-State actors and thereby hamper WHO's ability to fulfil its mandate.
3. In the context of the Sustainable Development Goals, the international community is asking the United Nations and its agencies to strengthen its engagement with non-State actors. In response to this call, FENSA should therefore reinforce and advance WHO's engagement with non-State actors while at the same time strengthening the protection of WHO's name and reputation by increasing transparency and accountability and strengthening the conflict of interest management. As FENSA is currently drafted, there is a significant risk of an unintentional restriction of WHO's engagement with non-State actors.

INTENDED CONSEQUENCES OF FENSA IMPLEMENTATION

A: Changes to the work of WHO governing bodies

4. It is proposed to establish an overall oversight function of the Executive Board through its Programme Budget and Administration Committee (PBAC) by examining an annual report of the Director-General on WHO's engagement with non-State actors. In addition, the Executive Board Standing Committee on NGOs would be abolished and its functions transferred to the PBAC. This would add three additional agenda items to the PBAC's agenda (the annual report on engagement, the proposals of admitting non-State actors into official relations and the review of official relations every 3 years). The PBAC might need to add systematically a third day to its January session.

B: Direct financial and human resource costs of implementing FENSA

5. The direct financial costs of implementing FENSA have been calculated and budgeted as follows:

- a. Building up and maintaining system for the Register of non-State actors: Global engagement management (in 2015): 734'000 USD start-up costs; thereafter 76'000 USD/ year.
- b. Training costs for launching the Register of non-State actors and FENSA: Estimate 100'000 USD (for 2016)
- c. Communication of change internally and externally: Estimate 50'000 USD (for 2016)
- d. Possibly an extra day of PBAC: 30'000 USD/ year (As of 2017)
- e. Publication requirements for inputs received from non-State actors in consultations have resource implications

6. It is expected that the major part of additional workload will happen in technical unit and at country level. With thousands of non-State actors WHO engages with and tens of thousands of engagements per year, this workload is significant¹. This work will have to be performed by professional offices across the Organization as part of their daily work. Its financial and human resource implications cannot be estimated with a sufficient degree of accuracy to provide a solid figure, but will need to be monitored as FENSA gets progressively implemented.

7. Each region and cluster has already appointed a focal point on FENSA usually performing that function besides other functions. With the implementation of the Framework, the workload of these focal points will increase to take an estimated half to full-time professional officer's post per region and cluster.

8. The number of professional positions in the central unit performing due diligence and risk assessment has already been increased from three to five. With the 2016-17 budget, an additional professional officer will be recruited. During the roll-out of FENSA, an evaluation of the unit workforce capacity will have to be conducted so as to identify the needs and adjust accordingly. FENSA will also lead to additional workload for other specific departments such as the Office of the Legal Counsel; Governing bodies; Compliance, Risks and Ethics and Department of Finance.

RISKS OF UNINTENDED CONSEQUENCES OF FENSA IMPLEMENTATION

9. While FENSA is intended to encourage the engagement of WHO with non-State actors to achieve health outcomes and strengthen the management of risks associated to such engagement, there is a significant risk that FENSA could also have detrimental consequences on the work of WHO. There is no other organization yet, within the UN, implementing a system of management of engagement which is as detailed and as transparent as FENSA would introduce. Therefore benefits and risks cannot be assessed with certainty. The main risks include the following:

- a. The high number of engagements could lead to a systematic overload of the clearance system if all engagements from a minor engagement with a small NGO participating in a meeting of a country office to a major financial contribution have to go through the full system with all details and the same process.
- b. Transparency beyond a certain level could lead to the unwillingness of some key actors to engage with WHO and expose WHO to the risk of litigation and claims to justify in details each due diligence and risk assessment. While a transparent process is in principle in the

¹ The European Region (EURO) has estimated it's engagement with non-State actors in 2014 as follows: EURO Country offices had about 4200 engagements with 1000 non-State actors; while the Regional Office had 1140 engagements with 590 non-State actors.

interest of the Organization, there are cases where some aspects of transparency may conflict with legal undertakings entered into by WHO with regards to accessing or disclosing certain information such as trade secrets or could expose some non-State actors to major risks such as during conflict and civil war situations.

- c. If all aspects of FENSA had to be rolled-out at once, the system would likely collapse or create major bottlenecks and delays in decision making, which may lead to major operational, financial and reputational ramifications for the Organization.
 - d. Using the full FENSA system during emergencies could jeopardize WHO's important role currently being strengthened through emergency reforms.
 - e. Although FENSA does not apply to individuals, if all engagements with individuals employed by or otherwise linked with a non-State actors such as experts from universities were to be vetted in addition to their individual declaration of interest through a due diligence and risk assessment of their employers, it would probably discourage the willingness of some individuals to perform advisory functions for WHO. There would consequently be a high risk that WHO could not be able to perform its normative and technical functions to meet the expectations of Member States and other stakeholders, and could no longer access most up-to-date knowledge and expertise.
 - f. Some of the detailed provisions of FENSA might prove difficult to implement in specific situations that are hard to foresee at this stage. If the Secretariat had to wait until the WHA changes such provisions and did not have a certain degree of flexibilities in adjusting their implementation, this could lead to significant hindrances and delays in WHO's fulfilment of its mandate.
 - g. Vetting all non-State actors participating in meetings would be cumbersome and might delay processes. If each non-State actor had to provide its full detailed information to the register of non-State actors as from the first meeting it attends, many non-State actors might be discouraged from attending meetings (especially for NGOs at country level)
10. In addition some of the proposed but so far not yet agreed provisions of FENSA also imply risks if they were agreed and implemented:
- a. A ceiling of earmarked contributions would probably deter non-state contributors from making such contribution and have important resource mobilization implication
 - b. WHO could not perform its work on preparing norm and standards if no experts connected to a non-State actors could be involved, since a large part of the expert knowledge WHO needs is outside of state actors.
 - c. An extensive interpretation of the non-engagement with the arms industry could lead to important missed opportunities, such as engagement with the IT sector on e-health and m-health, since most of companies operating in this field have either close ties with defence industry or have developed expertise, branches and subsidiaries in this area.
 - d. Making full due diligence and risk assessment reports available may put at stake WHO's reputation and may encourage non-State actors to press charges against WHO and create major litigation risks and additional workload for the Organization. This could also politicize the review process which should be neutral.
 - e. Publishing summary reports of due diligence and risk assessments could also expose WHO to external criticism and complaints in case the non-state actors concerned challenge its conclusions.
 - f. If there are no more secondments from non-State actors to WHO, their expertise will have to be found otherwise, which might prove difficult.
 - g. A separate accreditation procedure in addition to the procedure for accepting entities into official relations could create confusion and uncertainties with regard to their respective procedures and would create significant additional workload for governing bodies and for the Secretariat to manage this separate procedure

POSSIBLE MITIGATION MEASURES TO LIMIT UNINTENDED NEGATIVE CONSEQUENCES OF FENSA

11. The abovementioned risk of negative unintended consequences of FENSA could be mitigated by the following measures:

- a. Allowing for a step-wise implementation of FENSA starting with those engagements involving the highest risks, such as financial contributions.
- b. The Secretariat could use a simpler procedure for minor engagement with very limited risks for the organization. The report of the Director-General to the Executive Board could then describe how this works and allow governing bodies to decide if a full application of all FENSA provisions to each small and low risk engagement would be feasible and desirable.
- c. The authority of the Director-General to decide in situations where FENSA procedures and provisions would be detrimental to the Organization to suspend their application could be made explicit. The Director-General would then report to the Executive Board on these decisions allowing the governing bodies to decide on how such situations should be handled in the future.
- d. Providing explicitly of necessary flexibilities in the implementation of FENSA
- e. Excluding emergency response from the procedures of FENSA
- f. For the occasional attendance of meetings by non-State actors other than those relevant for the global normative processes the information non-State actors need to provide could simply be their name, address and webpage
