

Implementation of the Framework of engagement with non-State actors (FENSA)

Respondents: Regional offices, Country offices and Headquarter clusters assessing its implications

Introduction:

1. The 138th Executive requested the Secretariat to provide a balanced and objective report of the implications of the implementation of the Framework of engagement with non-State actors (FENSA) well in advance of the resumed session of the Open-ended intergovernmental meeting of 25-27 April 2016.

2. To this end, all WHO Regional Offices and Clusters in Headquarters and a selection of Country Offices are invited to provide their inputs through this questionnaire. In addition a more detailed matrix of analysis will be sent for comments to FENSA focal points in regions and clusters.

3. In order to assure that we can present a balanced and objective report to Member States, the External Auditor has kindly agreed to validate and comment this questionnaire, the more detailed analysis matrix and write the final report.

4. The adoption and implementation of FENSA will modify the way WHO manages its engagement with non-State actors (NGO's, private sector entities, philanthropic foundations and academic institutions). The main changes concern the following points

- a. FENSA is covering all engagements within with all non-State actors, while the current policies covered engagement with private sector entities and NGOs in official relations only
- b. Transparency will be increased through the Register of non-State actors (including information on objectives, governance and funding of non-State actors and description of engagements)
- c. FENSA calls for a consistent implementation at all 3 levels of the Organization and all regions and hosted partnerships through an electronic workflow, due diligence by central unit for, a guide for staff, clear decision making
- d. FENSA will increase accountability towards Members States by strengthened oversight of the Executive Board
- e. The Director General will report annually on engagement with non-State actors

5. Some of the proposals made during the negotiation process have not been included in the text and are no longer under consideration. They should therefore also be excluded from the analysis of implications of FENSA implementation. Such issues include in particular:

- a. FENSA applies only to engagement with non-State actors as institutions and not to engagements with individual experts.
- b. There will not be a defined ceiling for contributions received from non-State actors

- c. Due diligence and risk assessment is a process conducted by the Secretariat with no direct involvement of Member States
 - d. Free services provided by non-State actors are an in-kind contribution, but not covered by the not yet agreed provisions on secondments.
6. Several current policies are confirmed by the draft Framework and often made more explicit:
- a. WHO does not engage with the tobacco and arms industries
 - b. Official relations (while currently all entities are called NGO's, non-State actors in official relations will in the future be distinguished in NGOs, International Business Associations and Philanthropic foundations)
 - c. Several specific paragraphs on private sector engagement (such as clinical trials) are transposed from the current guidelines into the private sector policy.
 - d. The CPSC (Committee on Private Sector Cooperation) will be replaced by an engagement coordination group ECG
7. For information here are the elements which would likely be covered in the report on implications of implementation of FENSA:
- a. Changes to the work of WHO governing bodies
 - b. Costs of implementation
 - i. Direct financial costs of implementation
 - ii. Direct human resource costs
 - iii. Indirect human resource costs
 - iv. Startup costs
 - GEM build up to provide the IT tool for the Register of non-State actors
 - Training costs
 - Additional burden of filling the register with first time entries
 - c. Potential efficiency savings through implementation of FENSA
 - i. Information gathering
 - ii. Clarity on actors, process and earlier decisions
 - d. Added value of FENSA
 - i. Stronger protection from undue influences
 - ii. Coherence in engagement across WHO and across different engagements
 - iii. Clarity on engagement

- iv. Transparency
- v. Better information, documentation, intelligence and lessons learnt on non-State actors and engagements
- vi. Clear process of senior management decision making
- e. Risks of FENSA
 - i. Potentially cumbersome process
 - ii. High number of engagement
 - iii. Lack of flexibility
 - iv. Potential bottle-neck in due diligence and risk assessment process
 - f. Changes to the engagement opportunities and risks
 - i. Policy changes in engagement
 - ii. Incentive changes for engagement

QUESTIONS:

8. Estimation of the volume of engagements. Questions in paragraphs 9 and 10 try to estimate the volume of engagements which should in the future be handled through the process defined by FENSA. The External Auditors will compile your input from country, regional and headquarter level into an overall estimation. Please note that this refers to formalized engagement as defined in the paragraphs 15-21 of the draft FENSA and not to informal interactions. Formal engagements include amongst others: a meeting with official invitations, agenda, list of participants, etc; any interaction involving a signature of a agreement or MoU to receive resources, work as implementing partner, allow the use of advocacy material, enter into technical collaboration, etc. Preparation for such engagement or informal contacts by phone, e-mail or informal discussion are considered as engagements.
9. Please provide a rough estimate of the **numbers of non-State actors** you engaged with in 2015 by type of engagement in the following table for your region (excluding country level), cluster or country office respectively

Cluster: HQ Department of Emergency Risk Management (OHE Cluster)

	Participation	Resources	Evidence	Advocacy	Technical collaboration
NGOs	25 (Global Health Cluster); 24 Country Clusters with a number of NGO members ranging from 10 to 200 members	75 (NGOs we transfer funds from donor contributions)	6 Standby partners	-	3 Standby partners

	(awaiting for details on number from countries)*, 5 stand-by partners				
Private sector entities	-	-	-	-	-
Philanthropic foundations	4 (standby partners)	2 (entities from which we received funds in 2015)	-	-	-
Academic institutions	3 (Global health Cluster) 3 (standby partners)	-	-	-	-

- *Countries with a Health Cluster in place under the umbrella of the HQ Global Health Cluster: Afghanistan, Central African Republic, Chad, Colombia, Democratic Republic of the Congo, Guinea, Iraq, Liberia, Mali, Myanmar, Niger, occupied Palestinian territory, Western Pacific, Pakistan, Philippines, Somalia, South Sudan, Sudan, Turkey, Ukraine, Yemen.

10. Please provide a rough estimate of the numbers of **engagements** in 2015 by type of engagement in the following table. For engagements covering more than one type count them only once for the most relevant type.

	Participation	Resources	Evidence	Advocacy	Technical collaboration
NGOs	25 meetings at HQ level (Global Health Cluster); 64 (24 country health clusters), 5 (standby partners)	Many clusters have a NGO co-lead	-	-	16 (Global Health Cluster and country Health Clusters)
Private sector entities	-	-	-	-	-
Philanthropic foundations	4 (standby partners)	-	-	-	-
Academic institutions	25 meetings at HQ level (Global Health Cluster), unknown number for 24 country health clusters)**; 3 (standby	-	-	-	-

	partners)				
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** Waiting for information of the nature of the partners at country health clusters.

Comments on the methodology used and its difficulties of this estimation,

Methodology for the calculation of engagements under the Global Health Cluster arrangement. The Cluster Approach as multi-agency coordination mechanism, adopted by the Inter-Agency Standing Committee (IASC) in 2005 to address humanitarian gaps and to increase the effectiveness of humanitarian response by building partnerships that result in timely, predictable and accountable assistance. The calculation of engagements at HQ level is based on the number of meetings (noting that those meetings are part of a yearly workplan of the Global Health Cluster therefore even if the topics are different, they may be counted as one engagement). Under the umbrella of the Global Health Cluster, currently, there are health clusters active in 24 countries affected by humanitarian health emergencies (list provided above). Within each country health cluster, partners (the majority of whom are operational /technical I/NGOs) attend meetings to share information, participate in joint needs assessment and planning, contribute to delivery of services defined in the plan and assist with monitoring and evaluating the response. In some settings NGOs provide staff to co-lead the cluster at the national or sub-national level in collaboration with WHO.

The estimation of engagements at country level for health cluster participation is difficult because the number of stakeholders and engagements varies depending on whether there is a crisis or the type of crisis. The methodology used is 50% of the country health clusters meet 1 time per week, the other 50% 1 time per month.

Methodology for the calculation of engagements with NSA standby partners. These are NGOs or academic institutions that sign an agreement with WHO to deploy experts in emergencies. We have counted 1 engagement per agreement signed organization. Several engagements occur after but based on the agreement.

Methodology for the calculation of NSAs under resources: 1 engagement per preparation of the agreements for the transfer/receipt of funds per organization.

11. Please estimate the number of non-State actors you engage with in emergency situations (as described in the Emergency Response Framework) and describe the type of these engagements

This is very difficult to estimate, when acute emergencies occur, such as the Philippines Haiyan Typhoon, the Nepal earthquake, or the Ebola outbreak in West Africa, hundreds of NGOs participate in country health cluster meetings and some of them become implementation partners (receive resources). After the earthquake in Haiti in 2010, over 300 NGOs participated in health cluster meetings. So in average we could say that for acute onset emergencies there will be 150 NSA partners. The engagements may occur as early as 24 hours after the event.

12. Please describe the main opportunities you see for the work of your region / cluster / country office through the adoption and implementation of FENSA

Through this process, WHO will have a better overview of its partners (especially NGOs at country level), and more clarity on the rules of partnership engagement.

13. Please describe the main risks you see for the work of your region / cluster/ country office through the adoption and implementation of FENSA. This question does not refer to the risks of individual engagements as defined in FENSA but rather to the overall risks and challenges of implementing FENSA as a new policy.

FENSA bears the risk of limiting and slowing down partner engagement which in emergency

setting is a huge risk for WHO. The strength of the WHO's partnerships with NSAs (mainly NGOs) in emergencies is based on its cooperation with a wide range of partners who provide the requisite technical skills and operational capacity needed to rapidly response to complex and diverse health needs. Based on current understanding, the requirements of FENSA, the number of partners may decline (due to the current requirement for disclosure of information) and the health impact suffer, if some current and potential new partners are deemed non-compliant.

For acute onset emergencies the main risk is to stop engagement with key NSA (mainly NGOs) because due diligence process takes weeks. This would be unacceptable for WHO as the lead agency for coordinator on health interventions in emergencies.

Other risks include:

Some NSA might appreciate the collaboration with WHO as part of the coordination mechanism, but for variety of reasons might not want to be or be perceived as being in "official relations" with WHO. This could be because of the organizations values and orientation, for example some organizations stress their independence from the government in order to ensure services to all parts of the population (including minorities or opposition), whereas WHO might have close relations with the Ministry of Health or other government agencies.

Further NSA might have concerns disclosing their financial resources. While in general it is welcomed to require a high level of transparency of partners, and they should be disclosing their assets in order to avoid them not being in accordance with WHO's standards. In practice some organizations in particular in conflict or complex emergencies might feel that disclosing this sort of information could expose them to harm and/or discrimination. They might prefer working with other organizations, which do not have the same requirements as WHO.

In particular if the process of allowing partners to attend coordination meetings is limited or slowed down in settings of sudden onset (i.e. earthquake) or acute need (i.e. refugee surge in a protracted crisis), the work to facilitate access to health might significantly loose impact because not all relevant partners will be admitted to the cluster in time. In consequence, the service delivered to those in most urgent need will receive less or less coordinated support. In addition to reducing WHO's impact as Cluster Lead agency, it would have a significant competitive disadvantage in comparison to other agencies which have more flexible, operationally oriented procedures.

In the emergency sector there has been a significant shift towards working with more local partners. This is due to different factors, which include but are not limited to: 1) more contexts are difficult to access or unsafe for international staff therefore local partner organisations take over service delivery in these areas; 2) more funding goes directly to local NGOs rather than being channelled through international bodies because it is seen as strengthening local capacity which are more sustainable long term and 3) better value for money.

The danger in particular is to exclude smaller local NGOs which are not known internationally to contribute to the health response because they are not admitted through FENSA.

This might lead to losing the support from partners as they do not see that WHO implements the recommendations of the various bodies working on the Emergency Reform which stress the need for WHO's increased openness to partners and stronger coordination with partners at the field level. Ebola has demonstrated in the most painful way the need to improve the cooperation and coordination with partners. In the current Emergency Reform, effective engagement with partners is seen as a crucial pillar of WHO's future success. It requires the organisation to further open up to partners, acknowledging partners capacity and facilitating a joint response to emergency health needs. As a single agency, WHO which does not usually provide direct health services itself, and does not have capacity to respond to the ever growing needs alone. Its strength should be the coordination of the response including NSA.

Partners in the response might further doubt that WHO is the best choice as Cluster Lead

Agency in the context of a wider UN humanitarian response, and doubt its true commitment to lead the health segment of the humanitarian response. WHO might lose the leadership to other organisations who are more agile and operational and open to partnerships. In consequence, alternative structures of coordination to WHO might be used or newly established, allowing for a quicker response to emergencies making the health cluster irrelevant.

14. Please describe the specific resources (staff and activity costs) currently working on engagement with non-State actors within your region / cluster/ country office.

One Technical Officer (P3) for Global Health Cluster engagement

- 2 Technical officers for Standby partner engagement

- 2 Technical offices for resource disbursement/receipt

Awaiting information from countries and regions on country health clusters

15. Please describe the specific incremental resources (staff and activity costs) that you would expect to be necessary to implement FENSA :

One off resources/costs:

- The process of negotiating, registering and gathering the information required for the due diligence process for what could be up to 1,000 NSAs will require at least 1 person per country cluster (24), plus a dedicate team in HQ to brief/train countries and facilitate the process. It may take several months or years depending on the capacity put in place.

Recurring or On-going resources/costs:

Similar to above with additional resources (especially at country level) for acute emergencies.

The non-monetary costs has been outlined above: FENSA might lead to a reduction of number of active partners as well as a loss of impact and importance of the health cluster as well as WHO as the cluster lead agency.

Draft matrix of analysis of implications of implementation of FENSA

Issue	Current policy and practice	FENSA policy and practice	Change	Importance / volumes	Opportunities	Risks	Comments
Applicable policies	Constitution, NGO principles, private sector guidelines	Constitution, FENSA	One framework covering all engagements with non-State actors	n/a	Create clarity of policy	Possible “over-regulation”	In its current state, FENSA is overwhelming in many respects: the complexity of the text and the lack of clarity of (or inconsistency between) many of the terms has the potential to create a chilling effect on the willingness of NSA’s to engage with WHO – and the incentive of WHO to reach out to NSAs as partners to address important public health matters.
Scope of application	Private sector guidelines do not provide tools to assess levels of implementation	FENSA is explicitly applicable to all 3 levels of the organization					If one Region does not participate, will that create 2 standards and a potential loophole that leave FENSA as a hollow shell.
Overall engagement principles	No explicit guiding principles other than the constitutional principles	Explicit definition of principles, benefits and risks of engagement	Explicit codification of current practice	n/a	Create clarity for staff and non-State actors, promotes coherence of engagement	None, since it reflects established practice	
Definitions and distinction of actors	NGO’s defined in a broad sense in the NGO principles (1987), private sector; Commercial enterprises and not-at arm’s length entities defined in the Private sector guidelines (2001)	Definition of 4 groups of non-State actors	Clear and public attribution of each non-State actors to one of the 4 groups. International business associations are no longer attributed to NGOs but as a subgroup of private sector entities	n/a	Clarity for all staff and other stakeholders on which entity is subject to which policy	Some non-State actors might disagree with their attribution by WHO to one of the groups	
Participation in governing bodies	Open to NGOs in official relations, modalities regulates by NGO principles and rules of procedures	Open to non-State actors in official relations, modalities regulates by FENSA and rules of procedures	No major change (Mostly the same entities can qualify but will be called differently). Currently only some operative foundations are in official relations, philanthropic foundations would clearly qualify under FENSA. Private sector entities not considered as international business associations would no longer qualify.	Currently 206 NGOs are in official relations, no important changes are expected	Member States will know better which non-State actor in governing bodies has which background	Some entities will disagree if the EB excludes them from official relations	An additional accreditation system would imply more changes and possibly an increase of numbers
Participation in other meetings	Based on practice and mostly decided by the technical units. Co-sponsoring regulated in the e-manual and reviewed	Clear distinction of consultations, hearings and other meetings	FENSA makes participation in meetings subject to due diligence and risk assessment	(xx high numbers)	More clarity affiliations and background of entities participating in meetings	High volumes could create delays, centralization and bottlenecks	How can due diligence be undertaken if one does not know <i>in advance</i> who will attend a meeting or contribute to a public

Issue	Current policy and practice	FENSA policy and practice	Change	Importance / volumes	Opportunities	Risks	Comments
	by LEG in consultation with PNA						consultation
Receiving resources	Financing rules and regulations; private sector guidelines	Financing rules and regulations; FENSA	For private sector no policy changes, for other non-State actors more clarity on policy with no major changes, transparency already exists through the PB web-portal	(xx add from financial report)			Under the PIP Framework, manufacturers are expected to pay a yearly contribution equal to 50% of the running costs of GISRS (currently \$28M). However, MS and other stakeholders are also encouraged to contribute “donations and in-kind resources”. Likewise, manufacturers commit (through binding contracts) to provide in-kind resources to WHO at the time of a pandemic. These mechanisms should be guaranteed to fall outside FENSA.
Providing resources	Financing rules and regulations, procurement policy	Financing rules and regulations, procurement policy, FENSA for implementing partners	Procurement remains unchanged and not covered by FENSA; collaboration with NGOs and academic institutions as implementing partners will follow FENSA procedures	(do we have any data on numbers of implementing partners?)			
Evidence	Regulations for Study and Scientific Groups, Collaborating Institutions and other Mechanisms of Collaboration	Regulations for Study and Scientific Groups, Collaborating Institutions and other Mechanisms of Collaboration + FENSA	For provision of evidence there is more clarity on policy with no major change				Individual experts do not fall under FENSA.
Advocacy	No specific policies	FENSA	More clarity of policy, no major change in content				
Technical collaboration	private sector guidelines	+ FENSA	More clarity of policy, no major change in content	Xx			
Management of institutional conflicts of interest	Private sector guidelines	FENSA					
Management of individual conflicts of interest			No change due to FENSA, system has been strengthened separately		Use of synergies between institutional and individual COI management through common IT tool	Risk of confusion between institutional and individual COI	Management of individual conflicts of interest is not regulated by FENSA
Due diligence and risk assessment procedures	Private sector guidelines	FENSA	Will become more systematic and more efficient through IT tool GEM. More engagements will be subject to due diligence	Currently 620/ year, in future much more	More systematic due diligence; clear SOPs and electronic workflow, synergies of merger with other clearance processes (RM, LEG, management)	High volumes, bottleneck with delays	What exactly does this entail? How often must due diligence be conducted? For what types of interactions?
Risk management	Delegation of authority, advised by due diligence. Private sector guidelines	Delegation of authority, advised by due diligence and FENSA with	Due diligence advice cannot be ignored, but escalated for senior	The CPSC was hardly used in recent years, the ECG should initially decide on	Better coherence of decision making and clear documentation of	Centralization of decision making for “jurisprudence cases”	How do we comply with this if the advice comes after the engagement has

Issue	Current policy and practice	FENSA policy and practice	Change	Importance / volumes	Opportunities	Risks	Comments
	with Committee on Private Sector Collaboration (CPSC)	Engagement Coordination Group ECG	management decision making	key questions of interpretation, but afterwards be used for a low number of cases	jurisprudence		occurred?
Transparency	No overarching transparency rules	FENSA provided a high degree of transparency	Register of non-State actors will provide transparency and accountability non-State actors engages with and what engagements have happened		Transparency improves accountability. WHO can less be criticized for having hidden an engagement .	Transparency can expose inconsistencies publicly, lead to attacks on individual decisions and might expose non-State actors in some situations	
Register of non-State actors	Only a pilot exists since 2015	FENSA		Currently 200 entities in the pilot, several thousand entities are expected to be registered	The register could become a central database of all main global health actors and thereby strengthen WHO's coordinating role in global health. Internally the register should provide better intelligence on actors and thereby create synergies and efficiency gains in engagements	Non-state actors might challenge the fact that their information is published and some might chose not to engage fearing this transparency.	Who will gather the information and enter it into the system? What if a company cannot provide certain information due to company policy/ proprietary information issues? Are there any potential anti-trust implications/ramifications/ concerns that could arise as a result of the types of information that will be asked of companies? Is there a chance that the register could in fact reduce competitiveness among companies? The will need to be should be great clarity about what will be made public.
Non-engagements	Private sector guidelines	FENSA	No change to policy of non-engagement with tobacco and arms industry. Transparency will force WHO into more consistency in the interpretation of these rules				
Particular caution	Private sector guidelines	FENSA	No policy change				
Association with WHO's name and emblem	Private sector guidelines	FENSA	No policy change		Synergies by using GEM for the procedure of clearance on co-sponsorship and the use of name and emblem.		
Secondments	Staff rules and regulations + Established practice of a small number of secondments and none from private sector entities.	Staff rules and regulations + FENSA	Depending on outcome of FENSA negotiations				
Official relations	NGO principles	FENSA	No major changes (details see participation), but clearer designation of the		MS will be better documented on engagements through the		

Issue	Current policy and practice	FENSA policy and practice	Change	Importance / volumes	Opportunities	Risks	Comments
			nature of entities in official relations. Review of proposals by PBAC instead of NGO Standing Committee.		register and can thereby take better informed decisions.		
Oversight of engagement	No overall oversight other than generic organizational rules	FENSA defines governing body oversight	DG will report annually to EB on engagement through the PBAC; MS can see all engagement through register		Stronger oversight can strengthen trust in the Secretariat	Micromanagement	This seems inordinately burdensome especially if there is a public register
Non-compliance	Ad hoc procedures	FENSA defines non-compliance	Clearer basis for the Secretariat to react to non-compliance by non-State actors				
Applicability to emergencies	Private sector guidelines	FENSA	To be defined how much flexibility the Director General will have to avoid delaying emergency responses.				Clarity will be absolutely critical; temporary suspension of compliance should be provided if compliance impedes response efficiency.

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Overall engagement principles	No explicit guiding principles other than the constitutional principles	Explicit definition of principles, benefits and risks of engagement	Explicit codification of current practice	n/a	Create clarity for staff and non-State actors, promotes coherence of engagement	None, since it reflects established practice	
Definitions and distinction of actors	NGO’s defined in a broad sense in the NGO principles (1987), private sector; Commercial enterprises and not-at arm’s length entities defined in the Private sector guidelines (2001)	Definition of 4 groups of non-State actors	Clear and public attribution of each non-State actors to one of the 4 groups. International business associations are no longer attributed to NGOs but as a subgroup of private sector entities	n/a	Clarity for all staff and other stakeholders on which entity is subject to which policy	Some non-State actors might disagree with their attribution by WHO to one of the groups	
Participation in governing bodies	Open to NGOs in official relations, modalities regulates by NGO principles and rules of procedures	Open to non-State actors in official relations, modalities regulates by FENSA and rules of procedures	No major change (Mostly the same entities can qualify but will be called differently). Currently only some operative foundations are in official relations, philanthropic foundations would clearly qualify under FENSA. Private sector entities not considered as international business associations would no longer qualify.	Currently 206 NGOs are in official relations, no important changes are expected	Member States will know better which non-State actor in governing bodies has which background	Some entities will disagree if the EB excludes them from official relations	An additional accreditation system would imply more changes and possibly an increase of numbers
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Evidence	Regulations for Study and Scientific Groups, Collaborating Institutions and other Mechanisms of Collaboration	Regulations for Study and Scientific Groups, Collaborating Institutions and other Mechanisms of Collaboration + FENSA	For provision of evidence there is more clarity on policy with no major change				Individual experts do not fall under FENSA.
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