

55th DIRECTING COUNCIL

68th SESSION OF THE REGIONAL COMMITTEE OF WHO FOR THE AMERICAS

Washington, D.C., USA, 26-30 September 2016

Provisional Agenda Item 4.4

CD55/8, Rev.1
21 September 2016
Original: English

FRAMEWORK ON ENGAGEMENT WITH NON-STATE ACTORS

Introduction

1. In 2005, as part of the “Process of Institutional Strengthening of the Pan American Sanitary Bureau” under the initiative on “Standards of Accountability and Transparency,” the Organization adopted and implemented the Guidelines of the Pan American Health Organization on Collaboration with Private Enterprises. These guidelines were prepared on the basis of generally accepted conflict-of-interest principles and best practices of other internationally recognized public health institutions, including the guidelines that were being used by the World Health Organization (WHO) at the time. Since the adoption of the PAHO Guidelines, the Organization has consistently implemented a structured and principled approach when considering proposed engagements with the private sector, civil society, foundations, and academia.
 2. The reform process in WHO began in 2011. It included broad objectives in programmatic, governance, and managerial reform. In the area of governance reform, WHO Member States sought to strengthen WHO’s Governing Bodies’ oversight and strategic decision-making roles, and set the terms for a proposed framework for WHO’s engagement with non-State actors.
 3. From the beginning of WHO’s Reform process, the Pan American Sanitary Bureau (Secretariat), actively participated in, contributed to, and aligned with, as appropriate, the WHO Reform.
 4. In 2015, after consensus was reached in several parts of the proposed WHO Framework of Engagement with Non-State Actors (FENSA), including the introduction, rationale, and benefits and risks of engagement, the WHO Executive Board requested Member States to submit to the Director-General of WHO specific proposals for amendments to the draft FENSA. Pursuant to that decision, the Director-General of WHO convened an open-ended intergovernmental working group to finalize FENSA. Argentina
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was designated as chair of the intergovernmental working group, and several PAHO Member States actively participated and made contributions to the proposed framework.

5. At the time, and at the request of PAHO Member States, the Secretariat prepared and distributed a number of information papers regarding the implications for PAHO to implement the draft FENSA document that was being negotiated in WHO.

Implementation of FENSA by PAHO

6. The information papers clarified that, due to PAHO's independent legal status,¹ once FENSA was adopted by the World Health Assembly (WHA), it would not automatically apply to PAHO until such time as PAHO Member States expressly approved and adopted it through PAHO's Governing Bodies. Such action is required pursuant to PAHO's Constitution² which stipulates that the Pan American Sanitary Conference is the supreme governing authority that sets the Organization's general policies (including its regulations and rules)³ and that the Directing Council acts on behalf of the Conference in years in which the Conference does not meet.⁴ The Constitution of PAHO further stipulates that the Director is the chief technical and administrative officer of PAHO, accountable exclusively to PAHO Member States.⁵

7. Having considered the implications for PAHO to implement FENSA, PAHO Member States at the 69th WHA in May 2016 committed to adopt FENSA through PAHO Governing Bodies in a manner that respects PAHO's independent legal status as an international organization. Accordingly, PAHO Member States understood that certain accommodations and adjustments to FENSA would be required, but that these would not affect the substantive provisions of FENSA or prevent coherent and consistent global application.

8. The required accommodations relate to matters of PAHO Constitution, e.g., oversight by PAHO Governing Bodies and decision-making authority resting with PAHO's Director. These are imperative, as PAHO must retain responsibility over those activities for which it has legal and fiduciary obligations, such as its engagement with non-State actors, i.e., the same way that PAHO independently enters into agreements with State actors, PAHO must retain authority to review, analyze, and make its own decisions on this Organization's interactions with non-State actors.

¹ PAHO is a public international organization with its own Constitution. It was founded in 1902 as part of the Pan American Union and achieved independent legal status by treaty in 1924. WHO was established in 1948. Recognizing PAHO's independent legal status, in 1949 PAHO and WHO signed an agreement that provides that PAHO would also serve as the Regional Office of WHO for the Americas. The following year, in 1950, PAHO also signed an agreement with the Organization of American States (OAS) recognizing PAHO as an Inter-American Specialized Organization under the Charter of the OAS.

² Constitution of the Pan American Health Organization was adopted in 1947.

³ Id at Art. 4.

⁴ Id. at Art. 9.

⁵ Id. at Art. 21.

9. PAHO's Secretariat will work closely with WHO's Secretariat in the implementation of FENSA, using among other mechanisms, PAHO's electronic workflow and WHO's Registry of Non-State Actors, in order to ensure its coherent and consistent implementation. In addition, annual reports related to FENSA provided to PAHO Governing Bodies will be shared with WHO.

10. PAHO Member States should note that the FENSA document adopted by the 69th WHA also modified WHO's process for granting nongovernmental organizations (NGOs) the status of "Official Relations". It is therefore proposed that PAHO Member States follow similar procedures for granting NGOs "Official Relations" with PAHO. Accordingly, the attached draft resolution proposed for the Directing Council's consideration also replaces previous PAHO resolutions related to NGOs in Official Relations with PAHO. This would not substantively affect official relations status.

Action by the Directing Council

11. The Directing Council is requested to review the information provided in this document and consider adopting the proposed resolution presented in Annex A.

Annexes



Pan American
Health
Organization



World Health
Organization

REGIONAL OFFICE FOR THE
Americas

55th DIRECTING COUNCIL

68th SESSION OF THE REGIONAL COMMITTEE OF WHO FOR THE AMERICAS

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CD55/8, Rev.1
Annex A
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PROPOSED RESOLUTION

FRAMEWORK OF ENGAGEMENT WITH NON-STATE ACTORS

THE 55th DIRECTING COUNCIL,

(PP1) Having considered the report on the Framework of Engagement with Non-State Actors (Document CD55/8, Rev.1), and the adoption of the Framework of Engagement with Non-State Actors (FENSA) by the 69th World Health Assembly through Resolution WHA69.10;

(PP2) Noting that the engagement of the Pan American Health Organization (PAHO) with non-State actors can bring important benefits to public health in the Americas and to the Organization itself in fulfilment of its constitutional principles and objectives;

(PP3) Recognizing that PAHO is an independent international organization with its own Constitution, and serves as an Inter-American Specialized Organization under the Charter of the Organization of American States (OAS) and as the Regional Office for the Americas of the World Health Organization (WHO) pursuant an Agreement with WHO;

(PP4) Underscoring the political commitment of PAHO Member States towards the consistent and coherent implementation of FENSA across the three levels of the WHO,

RESOLVES:

(OP)1. To adopt the Framework of Engagement with Non-State Actors (FENSA);

(OP)2. To replace the Guidelines of the Pan American Health Organization on Collaboration with Commercial Enterprises¹ and the Principles Governing Relations between the Pan American Health Organization and Nongovernmental Organizations² with FENSA;

(OP)3. To underscore the need to implement FENSA in a manner that respects PAHO's Constitution, while ensuring the full, coherent and consistent implementation of FENSA;

(OP)4. To request the Director to:

- a) implement FENSA within PAHO's Constitutional and legal framework;
- b) implement FENSA in a coherent and consistent manner, and in coordination with the secretariat of the World Health Organization (WHO), with a view to achieving full operationalization within a two-year timeframe;
- c) report on the implementation of FENSA to the Executive Committee at each of its June sessions under a standing agenda item, through its Subcommittee on Program, Budget, and Administration (SPBA), and to share this report with WHO.

(OP)5. To request the 29th Pan American Sanitary Conference to review progress on implementation of FENSA.

¹ Presented at the 46th Directing Council, CD46/28 (2005).

² Adopted by the 38th Directing Council in September 1995, revised by the 126th Session of the Executive Committee in June 2000; revised again by Resolution CESS.R1 of the special session of the Executive Committee on 11 January 2007; and amended by Resolution CE148.R7 (2011).

Report on the Financial and Administrative Implications of the Proposed Resolution for PASB

1. **Agenda item:** 4.4 Framework of Engagement with Non-State Actors

2. **Linkage to [PAHO Program and Budget 2016-2017](#):**

a) **Categories:**

Category 6 (Corporate Services/Enabling Functions)

b) **Program areas and outcomes:**

- Program Area: Leadership and Governance
- Outcome 6.1: Greater coherence in regional health, with PAHO/WHO playing a leading role in enabling the many different actors to contribute effectively to the health of all people in the Americas.

3. **Financial implications:**

a) **Total estimated cost in US\$ for implementation over the lifecycle of the resolution (including staff and activities):**

The planned lifecycle of the Framework is in accordance to PAHO Strategic Plans. Its annual estimated implementation cost is \$490,800. This cost correspond to two professional staff at the P-2 level (\$288,000), and one general service staff at the G-5 level (\$96,000). These costs have not been considered in the 2015-2016 budget for the Office of the Legal Counsel (LEG). In addition, the cost of 10% of the time of the Legal Counsel (\$ 27,600), and 30% of the time of a senior legal officer at the P-5 level (\$79,200) would have to be considered as well.

b) **Estimated cost in US\$ for the 2016-2017 biennium (including staff and activities):**

The biennial estimated implementation cost is \$981,600. Out of this total, \$768,000 have not been included in those estimated for the implementation of the 2014-2019 PAHO Strategic Plan.

c) **Of the estimated cost noted in b), what can be subsumed under existing programmed activities?**

The activities for the implementation of the Framework will be integrated in to the programmed activities of LEG, maximizing efficiencies and avoiding additional costs.

4. Administrative implications:

a) Indicate the levels of the Organization at which the work will be undertaken:

FENSA will apply to all levels of the Organization.

b) Additional staffing requirements (indicate additional required staff full-time equivalents, noting necessary skills profile):

Two additional professional staff and one additional general service staff will be required.

c) Time frames (indicate broad time frames for the implementation and evaluation):

Implementation will begin in 2016 with a goal of full implementation within a two-year timeframe. An initial evaluation on the implementation of FENSA will be conducted in 2019.

ANALYTICAL FORM TO LINK AGENDA ITEM WITH ORGANIZATIONAL MANDATES

1. **Agenda item:** 4.4 Framework of Engagement with Non-State Actors
2. **Responsible unit:** Office of the Legal Counsel (LEG)
3. **Preparing officers:** Heidi Jiménez
4. **Link between Agenda item and [Health Agenda for the Americas 2008-2017](#):**
 - Declaration of the Ministers and Secretaries of Health
 - Statement of Intent
 - Principles and Values
5. **Link between Agenda item and the [PAHO Strategic Plan 2014-2019](#):**
 - Category 6: Corporate Services/Enabling Functions
 - Program Area: Leadership and Governance
 - Outcome 6.1: Greater coherence in regional health, with PAHO/WHO playing a leading role in enabling the many different actors to contribute effectively to the health of all people in the Americas.
6. **List of collaborating centers and national institutions linked to this Agenda item:**

FENSA will apply to all levels of the Organization.
7. **Best practices in this area and examples from countries within the Region of the Americas:**

PAHO Guidelines on Collaboration with Private Enterprises, which is consistent with FENSA. Thus, FENSA is, in itself, best practice on how to engage with non-State actors.
8. **Financial implications of this Agenda item:**

Its annual estimated implementation cost is US \$490,800. Out of this total, US \$384,000 have not been included in the budget for the implementation of the 2014-2019 PAHO Strategic Plan.