

Conflict of Interest: A Case for Legislation

AACI Update-2
July 2011

Special

- US Supreme Court upholds law to prevent COI
- France to enact law on COI
- NGO statement to UN to clarify role of industry in decision making



"The value of the private sector has been well accepted and well regarded. If you have not got a potential conflict you probably should not be at the table." *Jon Pender, vice-president for government affairs at GSK*

Protecting people against vested interests in public policy

The purpose of this update is to provide specialised information on the issue of conflict of interest in food, health and nutrition sectors to the concerned people including members of AACI, public interest groups, people fighting corruption, interested policy makers and others.

Service rules for bureaucrats now allows COI

Rule 6(2)(ii) of Rules {IAS (Cadre) Rules, 1954}, prohibiting deputation of bureaucrats to Companies registered under the Companies Act of 1956, was changed in March 2011 to allow serving bureaucrats to be deputed to private sector companies for up to five years.

The new National Health Research Policy, finalized in April 2011, seeks to develop "*Mechanisms favouring seamless movement of personnel between teaching, research and industry.*"

WHO's Definition of "Conflict of Interest"

The World Health Organization (WHO) defines a potential conflict of interest more broadly, as in its guidelines for the Roll Back Malaria (RBM) program:

A conflict of interest can occur when a Partner's ability to exercise judgment in one role is impaired by his or her obligations in another role or by the existence of competing interests. Such situations create a risk of a tendency towards bias in favor of one interest over another or that the individual would not fulfill his or her duties impartially and in the best interest of the RBM Partnership.

A conflict of interest may exist even if no unethical or improper act results from it. It can create an appearance of impropriety that can undermine confidence in the individual, his/her constituency or organization. Both actual and perceived conflicts of interest can undermine the reputation and work of the Partnership.

GAVI board hit with conflict of interest

The board of the Global Alliance for Vaccines and Immunizations is facing conflict of interest woes, as vaccine maker Crucell becomes a board member. According to the *Financial Times*, almost 60 percent of Crucell's revenue last year came from GAVI-appropriated contracts. Crucell, a Johnson & Johnson subsidiary, sells Quinvaxem, a pentavalent vaccine that protects against diphtheria, pertussis, Hib disease, hepatitis and tetanus, to GAVI. Its current contracts are worth €800 million between 2007 and 2012.

GAVI told the *FT* that board members are removed from discussions in which they have a direct conflict, and the news service noted that all board members--including UNICEF, which purchases the vaccines for GAVI contracts--have a conflict. Other members include the World Health Organization and countries that receive support from the vaccines.

Scientist bends rules for wife's GM trial

In a clear case of conflict of interest in clearing GM crop trials, a member of the environment ministry's statutory appraisal body and senior agriculture ministry scientist Swapan Kumar Datta has pushed and got clearance for trials of GM rice to be conducted by his wife, Karabi Datta, faculty with the botany department of Calcutta University in which he too will be participating.

Chinsurah Rice Research Station, West Bengal, which was to do the trials, said such trials could not be conducted at their facility under the given conditions. They also said, under an RTI reply, that they held hundreds of traditional varieties of rice – which activists always worry about getting contaminated by GM crops.

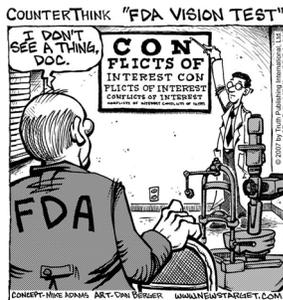
On the insistence of Datta, who is a member of GEAC and also deputy director general at the Indian Council for Agricultural Research, the appraisal body

re-opened the case. Datta insisted that the isolation distance was too much and cited a non-relevant seed certification standards rules to claim the safety barrier should be reduced from 200 metres to 10 metres. The GEAC went against the Supreme Court orders and was persuaded by Datta to rework the clearance and permit Karabi Datta to carry out trials at 10-metre isolation distance instead.

Datta, when contacted by TOI, admitted that he was also involved in the GM rice trials with his wife but denied any conflict of interest, claiming it was only an academic project at the moment.

Adapted from Nitin Sethi's article "Scientist bends rules for wife's GM trial", Times News Network, July 2, 2011.

<http://timesofindia.indiatimes.com/home/environment/developmental-issues/Scientist-bends-rules-for-wifes-GM-trial/articleshow/9069879.cms>



France to introduce law on COI

France is to introduce a conflict of interest law that will make probity, impartiality, objectivity and integrity a legal obligation for elected officials and top civil servants.

The country will also set up an ethics authority with the right to seize documents, especially tax returns, if conflict of interest is suspected.

The measures have been proposed by a committee of three experts named by the French Prime Minister Nicholas Sarkozy last summer.

US Supreme Court upholds law to prevent COI

In a refreshing nod to good government, justices of the U.S. Supreme Court decision this week upheld the legitimacy of laws that prevent officials from voting on issues in which they have a conflict of interest.

They unanimously rejected the claim of a city councilman from Sparks City, Nev., who was found to be in violation of state ethics laws when he voted to award a casino contract to a bidder with close ties to his campaign manager.

The councilman contended, and the Nevada Supreme Court agreed, that the ruling by the Nevada Commission on Ethics violated his right to free speech.

Justice Antonin Scalia, who penned the U.S. Supreme Court's decision, said the right to vote "is not personal to the legislator but belongs to the people. The legislator has no personal right to it."

NGO Statement calling for clarity on role of industry in the UN

Statement of concern on lack of clarity on role of industry for June UN interactive hearing and September UN High Level Meeting 2011

For the attention of: His Excellency Dr. Joseph Deiss, President of the UN General Assembly, Ambassador Sylvie Lucas, Permanent Representative of Luxembourg, Ambassador Raymond Wolfe, Permanent Representative of Jamaica

Our organisations strongly support the objective of raising the profile of NCDs globally. This statement concerns the lack of clarity regarding the role of the private sector at the upcoming Civil Society Interactive Hearing in New York and UN High Level Meeting (UN HLM) in September.

We call on the UN to:

1. Recognise and distinguish between industry including business-interest not-for-profit organisations (BINGOs) and public interest non-governmental organisations (PINGOs) that are both currently under the 'Civil Society' umbrella without distinction.
2. Develop a 'code of conduct' that sets out a clear framework for engaging the food and beverage industry and managing conflicts of interest, and which differentiates between policy development and implementation.
3. Address and acknowledge these concerns ahead of the UN High Level Summit in September.

Since diseases related to tobacco drive the major causes of preventable death, diet, physical inactivity and alcohol drinking, we are concerned that many of the proposals to address NCDs call for 'partnerships' in these areas with no clarification of what this actually means.

Public-private partnerships in these areas can counteract efforts to regulate harmful marketing practices.

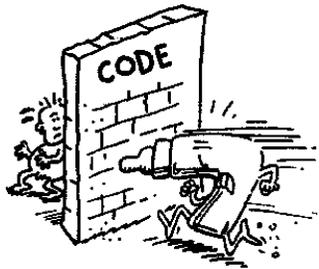
It is essential that a strong and clear policy on conflicts of interest is established by the international community to provide Member States with guidance to identify conflicts, eliminate those that are not permissible and manage those considered, based on thorough risk/benefit analysis, acceptable. Transparency, although an essential requirement and first step, is not a sufficient safeguard in and of itself against negative impacts of conflicts of interest.

We propose that the following framework be used as a basis for a 'code of conduct' for industry

The policy development stage should be free from industry involvement to ensure a "health in all policies" approach, which is not compromised by the obvious conflicts of interests associated with the food alcohol, beverage and other industries, who are primarily answerable to shareholders.

The food and beverage industry should, of course, be kept informed about policy development, through stakeholder briefings for example, but should not be in an influencing position when it comes to setting policy and strategies for addressing public health issues, such as NCD prevention and control.

While it is important for the food and beverage industries to be in dialogue during the policy development process, this should be as a means of informing the process relating to practical issues rather than as members of the policy development team. Industries are both part of the NCD problem and the solution. It is vital therefore to engage them in the most appropriate way when implementing policy and not when developing policy, to ensure that public health policy is protected from commercial interests.



Develop a 'code of conduct' that sets out a clear framework for engaging the food and beverage industry and managing conflicts of interest, and which differentiates between policy development and implementation.

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Without this approach, WHO's principles of democratic policy-making for health, its constitutional mandate of the attainment of the highest possible level of health for all, and its independence, integrity and effectiveness will be undermined. 1 Without such a policy, conflicts of interest can become institutionalised as the norm, impacting on the authority of governments. Industries with a strong interest in the outcome will increasingly assume greater roles in policy and decision shaping. This can fundamentally compromise and distort international and national public health priorities and policies.

The conflict of interest concern is not limited to the direct involvement of industry. UN agencies, including the WHO, are unanimous in recognising the important contributions NGOs make in the area of public health and are aware of the growth of these organisations in their numbers and influence in health at global, regional and national levels, including in the area of NCDs. However, WHO and others have so far not made a clear distinction between BINGOs (business- interest NGOs not-for-profit organisations that are set up by, representing or closely linked to, business interests) and PINGOs - public interest NGOs. This failure to distinguish between the two groupings exacerbates any existing lack of transparency and complicates implementation of any procedures, which aim to manage the role of these actors in policy and standard-setting consultations. In the Civil Society Interactive Hearing on 16th June, there was no clear differentiation between groups within Civil Society. The voice of Civil Society ought to reflect only public health interests.

The safeguards in Article 5.3 of the Framework Convention on Tobacco Control, the WHO International Code of Marketing of Breast-milk Substitutes, the Resolutions on Infant and Young Child Nutrition and the Global Strategy on Diet, Physical Activity and Health can be used among other helpful tools to establish measures that go beyond individual conflicts of interests, and address institutional conflicts of interest.

In summary, we call on the UN to recognise and distinguish between BINGOs and PINGOs that are currently under the 'Civil Society' umbrella and to develop a 'code of conduct' framework for industry engagement that differentiates between policy development and implementation. We ask for the UN to consider our comments and take them into account for the UN High Level Meeting in September.

Signed by 126 Organisations

<http://info.babymilkaction.org/sites/info.babymilkaction.org/files/COI%20126.pdf>

AACI Calls Upon People and its Representatives

Alliance Against Conflict of Interest (AACI) believes that declaration of conflicts of interests is not enough, and therefore calls upon all public policy makers, political parties, and others concerned

To propose and support development of a legislative framework that protects from interference of vested interests across all sectors – that deals with prevention, identification and management of conflict of interest.

About AACI

The Alliance Against Conflict of Interest (AACI) is an alliance of organisations and individuals working in various sectors – doctors, lawyers, women's and children's health groups, activists and media. AACI works on issues conflict of interest and brings them to the notice of the parties involved, the government and media. AACI aims at having a legal protection from conflict of interest in all sectors in public policy and institutionalise ethics and transparency.