DEVELOPMENT CO-OPERATION DIRECTORATE
DEVELOPMENT ASSISTANCE COMMITTEE

Working Party on Financial Aspects of Development Assistance

REVIEW OF THE 1996 DAC RECOMMENDATION ON ANTI-CORRUPTION PROPOSALS FOR AID-FUNDED PROCUREMENT

This document is submitted for CONSIDERATION at the meeting to be held on 12-13 October, 2000.

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EXECUTIVE SUMMARY

1. This draft reviews DAC Members’ experiences with and assessment of the impact of the 1996 DAC Recommendation on Anti-Corruption Proposals for Aid-Funded Procurement [DCD/DAC/(96)11/Final].

2. The previous review in 1997-98 showed that all Members have introduced anti-corruption clauses in compliance with the Recommendation. Some have implemented additional provisions and strengthened their procurement practices.

3. This current review is based on responses to the questionnaire [DCD/DAC/FA(1999)7] received to date from 13 DAC Members: i.e. Austria; Belgium; Canada; Finland, Germany; Greece; Italy; Japan; Netherlands; New Zealand; Portugal; Sweden; United States. Switzerland replied that a response would be forthcoming after completion of an in-depth internal evaluation.

4. The current review shows that:
   - Further actions to implement the Recommendation have been taken in a number of the reporting countries to strengthen provisions and procedures to fight corruption.
   - The impact of the Recommendation is largely based on the clear message it conveys that donors are resolved to fight corruption through common and co-ordinated approaches.
   - The effectiveness of the Recommendation could be improved through closer co-ordination and co-operation among donors.

5. Taking a more systemic view, the review also suggests that:
   - Combating corruption should be an integral part of the development agenda.
   - Aid procurement-related anti-corruption approaches should be linked to the broader issue of government procurement.
   - Initiatives to fight corruption are an integral part of the agenda on strengthening governance and technical co-operation policies to increase human and institutional capacities.

6. On the basis of the above suggestions, the draft sets out proposals for the Working Party to consider in terms of possible actions to strengthen the impact of the Recommendation and, more generally, to strengthen donors’ initiatives to fight corruption.
At the 12–13 October 2000 Meeting, Members of the Working Party are invited to:

- Agree that this report, revised to take account of the discussion, be submitted to the December 2000 SLM, via the DAC “SLM preparations” meeting on 7 November 2000.
- Consider whether the report should also include proposals aimed at further strengthening donor co-ordination and co-operation on anti-corruption measures.
REVIEW OF THE 1996 DAC RECOMMENDATION ON
ANTI-CORRUPTION PROPOSALS FOR AID-FUNDED PROCUREMENT

DRAFT

I. Introduction and background

7. At its 1996 High Level Meeting, the DAC endorsed a Recommendation on Anti-Corruption Proposals for Bilateral Aid-Funded Procurement [DCD/DAC(96)11/Final, reproduced in the Annex II to this note]. The DAC Recommendation was subsequently integrated into the wider 1997 OECD Revised Recommendation on Combating Bribery in International Business Transactions, which has since been incorporated into the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which entered into force in 1999.

8. The previous review of the DAC Recommendation in 1997/98 focused on efforts to implement the Recommendation. It showed that all Members, in line with the scope and intent of the Recommendation, introduced or strengthened explicit anti-corruption clauses or put in place equivalent provisions in their procedures governing aid-funded procurement. Members agreed that the effectiveness of the Recommendation would be reviewed at a later date on the basis of experience.

9. The remainder of this note sets out the results of this current review of experiences with the DAC Recommendation. It is structured as follows:

- Section II briefly reviews the provision taken pursuant to the Recommendation;
- Section III reports on Members’ experience with the implementation of the Recommendation and their views on its impact, on the basis of the responses received to the questionnaire [see DCD/DAC/FA(99)7]; and
- Section IV summarises Members’ suggestions to strengthen the impact of the Recommendation and other possible actions to fight corruption.

For Members’ information, Annex I briefly sets out the main elements of the broader OECD programme of activities to combat corruption and bribery.

II. Members’ actions pursuant to the Recommendation

10. Since the adoption of the Recommendation, all Members have introduced specific anti-corruption provisions in compliance with the scope and content of the Recommendation. These provisions governing the aid-funded procurement systems of all Members are still in force.

11. Some Members have implemented additional provisions to handle allegations of corruption in the context of contractual agreements and strengthened the coherence and transparency of their procurement practices. Other Members have introduced or reinforced measures to disqualify and blacklist contractors
who have acted in ways contrary to the anti-corruption provisions. In addition, a number of Members are providing assistance to build capacities in partner countries to fight corruption.

12. One Member has established a new “controller” function to oversee adherence to the anti-corruption provisions, and uses in-depth studies on the incidence of corruption as background material for its preparation of country strategies.

III. Members’ experiences with the implementation of the Recommendation

13. Members were requested to comment on their experience to date with the Recommendation, including possible issues arising with partner countries and suppliers, and whether they considered that the Recommendation has contributed to combating corruption and bribery.

14. Members considered that the impact of the Recommendation is largely based on the clear messages it conveys to partners and contractors that donors are resolved to fight corruption and bribery through common and co-ordinated legal provisions. However, since corruption involves complex, interrelated issues that require long-term solutions, short-term progress might not be straightforward. Some Members are concerned that the increased awareness of their resolve to combat corruption would remain confined primarily with the partner representatives directly involved in the negotiations and would not extend to broader levels of government.

15. Germany and Sweden have already conducted a formal and systematic review of their experiences with the provisions pursuant to the approval of the Recommendation:

- Germany reported that: (i) most partner countries accepted the introduction of anti-corruption provisions without major discussion; (ii) some accepted the provisions, but only with amendments that weakened its impact, and (iii) a few partner countries refused categorically to consent to the introduction of the provisions. No problems were encountered with contractors or suppliers. **Germany is invited to comment on how they dealt with points (ii) and (iii) above.**

- Sweden experienced difficulties in combating corruption at lower levels of government when the practice continued unabated at higher levels. Furthermore, internal guidelines on corruption prevention have proved to be too detailed to be of practical use in the normal project preparation procedures. Moreover, introductory training for the agency staff was lacking. A revision of the guidelines is being prepared at present. **Sweden is invited to comment on the process of translating agency guidelines so that they are of practical use at field level.**

16. Some Members carried out informal surveys with their field staff and procurement agencies. With the exception of Germany and the Netherlands, they reported no instances of specific issues arising with partner countries and/or contractors related to the introduction of anti-corruption provisions. However, they noted that because of the very nature of corruption it is often difficult to obtain precise information on either its extent or its forms. Furthermore, they noted the difficulty of conducting audits in collaboration with recipient authorities as they often result in conflicts of loyalty. **Members are invited to comment on how these issues might be dealt with.**

17. Some Members indicated that while they encountered no difficulties with partners and contractors, intergovernmental organisations and NGOs sometimes suggest a different wording of the anti-corruption provisions to make them more consistent with similar provisions in their own staff rules and
regulations. *Members may wish to comment on any substantive differences in provisions and how they dealt with them.*

### IV. Possible actions to strengthen donors’ fight against corruption

18. This section is in two parts:

   • Actions to strengthen the impact of the Recommendation; and
   
   • Actions to strengthen donor initiatives to tackle corruption, more generally.

#### a) Actions to strengthen the impact of the Recommendation

19. One of the main findings of the review of the Recommendation is that its effectiveness could be improved through closer co-ordination and co-operation among donors, particularly in partner countries, and with respect to systematic evaluations such as audits. Partner countries should be encouraged to consider these audits as a supportive measure to combat bribery and not as harassment on the side of donors.

20. Improving transparency is regarded as a key element in strengthening co-operation and co-ordination. Some Members suggested that since openness and transparency are critical to combating corruption, donors should make the full details of their programs and especially the bidding procedures and contract awards publicly available. Combining transparency with monitoring and evaluation procedures, including ex-post ones, would place Members in a stronger position to effectively address the issue of corruption.

21. In addition, some Members considered that seminars and conferences on the issue of corruption would strengthen the awareness among donor and recipient agencies that corruption and bribery will not be tolerated. In this respect, Members might wish to be aware of preparations underway for the Second Global Forum on Fighting Corruption, hosted by the government of the Netherlands on 28-31 May 2001, which might offer a useful forum for dialogue with partner countries [see [http://www.usinfo.state.gov/topical/econ/integrity/hague/homepage.htm](http://www.usinfo.state.gov/topical/econ/integrity/hague/homepage.htm)].

22. Some Members considered that sanctions are a key element of enforcement, but alone, they are not enough. Donors can interrupt disbursement in the case of corruption, but as long as the enforcement in the partner country is not guaranteed, donor driven sanctions remain ineffective in the fight against corruption. To be effective, sanctions (e.g. suspension or withdrawal of financial support) should be combined with positive actions to strengthen capacities in partner countries’ procurement systems. In this connection, it was suggested that the DAC develop a checklist to assess procurement capacities in partner countries. [Note: this suggestion links up with work underway in the WP/FA to strengthen partner country procurement capacities -- see item 5 of the present agenda of the Working Party.]

23. In view of the above, *Members are invited to discuss possible roles of the Working Party in respect of such suggestions.* Some possible directions for such work are sketched out below:

   • *Transparency* -- the Working Party could be used as a forum or “clearing house” to exchange information between donors on experiences, actions and their impacts in dealing with corruption. Such a role could be supported by developing a web site through which donors could exchange information and consult each other. Such a web site could link up with others already in operation, such as that of the Anti-Corruption Network for Transition
Economies (ACN) and the OECD Anti-Corruption Ring Online (AnCorR). The latter [see http://oecd.org/daf/nocorruptionweb/] responds to the need of anti-corruption practitioners for concrete information to design and implement anti-corruption activities. It also acts as a gateway by providing direct access to local initiatives in OECD countries, Latin America, the Middle East and Africa.

- **Co-ordination** -- Members might wish to use the Working Party as a forum to develop common approaches to tackling corruption, e.g. through working towards checklists, guidelines or best practices in order to strengthen donor co-ordination on anti-corruption measures. The new DAC Informal Network on Governance and Capacity Building may provide a complementary or alternative forum for work on corruption.

### b) Actions to strengthen donor initiatives to tackle corruption more generally

24. The survey emphasises the need to intensify the policy dialogue with partner countries on the problem of corruption and its costs to economic and social development. This is considered as the most important implication for donor approaches to fight corruption. Tackling corruption should become an integral part of the development agenda. The dialogues should be based on an in-depth understanding of the local problems involved in corruption. For such a dialogue to be effective, partner countries should be offered practical solutions, advice, approaches and assistance to improve their own efforts to combat corruption. This could be achieved via technical assistance and other forms of donor support to build local capacities.

25. Some Members have publicly stated their joint commitment to eliminate the damaging effects of corruption on development. These Members intend to work closely with all those in government, civil society, the private sector and multilateral and bilateral development agencies to ensure transparency, accountability and probity in the use of public resources and eliminate any opportunities which may exist for corrupt practices in their development co-operation.

26. Responses to the questionnaire indicate that DAC Members broadly share these principles and objectives. Reading across these responses suggests the elements of a “checklist” or “action plan” to strengthen awareness of the issues associated with corruption and to improve donor co-ordination. Some of the main components of such an action plan, as seen from responses, include:

- Linking anti-corruption provisions focused on aid procurement to the broader issue of government procurement;
- Developing a checklist to assess the procurement capacity of partner countries;
- Dovetailing anti-corruption initiatives with good governance programmes;
- Strengthening human and institutional capacities (e.g. via ethics codes, transparency and accountability standards);
- Strengthening efforts to raise awareness in partner countries, both with government employees, but also with the public more generally;
- Sharing and exploiting with partner countries the results and lessons of other OECD anti-corruption work and propagating best practices [see Annex I] and the accumulated experiences of the International Financial Institutions;
Improving information about corruption (collection of data and statistics) to contribute to developing and monitoring initiatives.

27. The Working Party is invited to consider whether it would wish to develop in more detail such an “action plan” and how it could be used to assist donors in designing and monitoring initiatives to fight corruption. Such an action plan could be used within agencies and/or in the DAC to design, monitor and assess efforts to fight corruption.
ANNEX I

OECD WORK ON ANTI-CORRUPTION

28. The issue of corruption has been given a very high priority among OECD Member governments, both in their relations with each other and with non-Members. The OECD has a two-pronged objective: to fight corruption in international business and to help level the competitive playing field for all companies. The main elements of the broader OECD-wide programmes on anti-corruption are summarised below [additional information can be obtained from the recent OECD Policy Brief “The Fight against Bribery and Corruption http://www.oecd.org ], with more detail available in the forthcoming OECD publication “No Longer Business As Usual: Fighting Bribery and Corruption”.

- The **OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions** entered into force in 1999. All 29 OECD Member countries and 5 non-Member countries (Argentina, Brazil, Bulgaria, Chile and the Slovak Republic) have signed the Convention. The overall objective of the Convention is to prevent bribery in international business transactions by requiring countries to establish the criminal offence of bribing a foreign public official, and to put in place adequate sanctions and reliable means for detecting the offence. In addition, the convention also provides for full transparency and co-operation between countries, as well as monitoring and follow-up to promote the full implementation of the Convention.

- As part of the implementation of the **Council Recommendation on Improving Ethical Conduct in the Public Service** (1998), the Public Management Service launched a survey on managing ethics in the public service of its Member countries in summer 1999. The objective of this work is to provide comparative information to assist governments in developing and maintaining institutions and systems for promoting ethics in the public service. In particular, the survey aims to:
  
i) provide, for analytical purposes, a comprehensive database from OECD Member countries;
ii) identify promising practices -- what works and how -- in the respective national settings; and
iii) create a framework for assessment of the "ethics infrastructure" in each Member country.

A report on the basis of the survey results has been submitted to the OECD Council Meeting at the Ministerial Level in June 2000. The OECD will release the report to the public in September. It will also disseminate a policy brief of key findings, and summary leaflets for use by public administration practitioners and other targeted groups. The first part of the report comprises analysis of the data from 29 countries collected through the survey. This part of the report is analytical and can be used to support the design of national ethics strategies. The second part of the report presents specific actions by countries -- regulations, institutions and procedures -- and places them in their surrounding political-administrative and social environments.

- The **OECD Support for Improvement in Governance and Management [SIGMA]** advises Central and East European countries on improving accountability, efficiency, management and transparency in public administration. One element of this work examines government procurement systems and how these compare with EU norms and Directives.
• The OECD **Guidelines for Multinational Enterprises**, designed to encourage MNEs to operate in harmony with the policies of the countries where they have activities have recently been revised. The revision has the objective of ensuring that the Guidelines play a more effective role in setting standards for international corporate conduct, including in the area of integrity. The revised Guidelines now include a specific chapter on “Combating Bribery”, which inter alia specifies that enterprises should not, directly or indirectly, offer, promise, give or demand a bribe or other undue advantage to obtain or retain business or other improper advantage.

• The OECD **Principles of Corporate Governance**, currently being promulgated in Member and non-Member countries, include provisions to encourage integrity in relationships among the various stakeholders of corporations. In this, improving accounting and transparency are given central roles.

• OECD work on **Taxation** helps combat corruption, especially the work on tax havens and on the appropriate rules for apportioning income among countries in inter-corporate transfer pricing.

• The **Financial Action Task Force on Money Laundering**, which includes OECD Members as well as some in key financial centres outside OECD, is directly concerned with corruption that may be hidden through money laundering operations.

• The **Development Centre** undertakes a number of anti-corruption activities based on the thesis that underdevelopment itself breeds corruption. It focuses particularly on actions in partnership with the private sector and actions that strengthen customs services in their fight against corruption. It recently completed political/economic analyses of corruption in Benin, Bolivia, Morocco, Pakistan and the Philippines.

• The members of the **Export Credit Group** agreed to continue the transparency exercise of mapping the implementation of the Convention into Members’ export credit systems, and will further consider implementation proposals and the formulation of an action statement for public dissemination.

• The Trade Directorate has undertaken a review of how WTO rules might contribute to anti-corruption efforts [TD/TC(2000)3/REV2]. The review showed that the underlying principles of the WTO system and their enforcement by Members are likely to have a preventative effect on bribery and corruption by reducing the motivations and opportunities for proposing, requesting and accepting bribes. The use of the WTO disciplines in the fight against corruption is seen as complementary to the international instruments specifically designed to combat bribery and corruption, such as the OECD Convention. A number of proposals to negotiate more explicit references to the problem of bribery and corruption in the framework of the WTO are highly controversial among WTO Members.
Annex II

DCD/DAC(96)11/FINAL

ANTI-CORRUPTION PROPOSALS FOR BILATERAL AID PROCUREMENT
RECOMMENDATION ENDORSED BY THE DEVELOPMENT ASSISTANCE COMMITTEE AT
ITS HIGH LEVEL MEETING, 6-7 MAY 1996

1. DAC Members share a concern with corruption:
   - It undermines good governance.
   - It wastes scarce resources for development, whether from aid or from other public or private sources, with far-reaching effects throughout the economy.
   - It undermines the credibility of, and public support for, development co-operation and devalues the reputation and efforts of all who work to support sustainable development.
   - It compromises open and transparent competition on the basis of price and quality.

2. The DAC, therefore, firmly endorses the need to combat corruption through effective prohibition, co-ordinated in a multilateral framework to ensure harmonised implementation. Other meaningful and concrete measures are also required to ensure transparency, accountability and probity in the use of public resources in DAC Members’ own systems and those of partner countries, who themselves are increasingly concerned with this problem.

3. In its efforts to curb corruption, the DAC recognises that opportunities may exist for corrupt practices in aid-funded procurement. Together with other efforts to deal with corruption, the DAC hereby expresses its firm intention to work to eliminate corruption in aid procurement.

4. The DAC, therefore, recommends that Members introduce or require anti-corruption provisions governing bilateral aid-funded procurement. This work should be carried out in co-ordination with other work being undertaken in the OECD and elsewhere to eliminate corruption, and in collaboration with recipient countries. The DAC also recommends that its Members work to ensure the proper implementation of their anti-corruption provisions and that they draw to the attention of the international development institutions to which they belong, the importance of proper implementation of the anti-corruption provisions envisaged in their rules of operation.

5. The DAC will follow up on the effect given to this Recommendation within one year.

6. DAC Members will work closely with development partners to combat corruption in all development co-operation efforts.