CONSOLIDATING INTEGRITY GUIDELINES FOR DEVELOPMENT CO-OPERATION FOR THE ANTI-CORRUPTION TASK TEAM

GOVNET Meeting, 3 November 2014

This document is submitted for DISCUSSION under item III for the ACTT Agenda [DCD/DAC/GOVNET/A(2014)1]. This Concept Note is prepared by OECD and explains the reasoning behind the need for a common integrity framework for bilateral development agencies and other development actors. It proposes such a framework for bilateral development co-operation agencies and other actors involved in development cooperation on how to manage such risks. Finally, it proposes Terms of Reference for a consultant to produce a report analysing lessons gathered in the area of anti-corruption among different stakeholders and produce a set of guidelines on integrity for development cooperation actors.

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Consolidating Integrity Guidelines for Development Co-operation

Room Document 4 - For discussion

Anti-Corruption Task Team meeting
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CONSOLIDATING INTEGRITY GUIDELINES FOR DEVELOPMENT CO-OPERATION

FINAL CONCEPT NOTE & TERMS OF REFERENCE

SUMMARY

Donors implement projects in environments with high corruption levels. Addressing the risks of corruption and fraud in the use of aid is crucial to ensure that funds reach their intended goal. In doing so, consistent and systematically applied guidelines to protect aid allocations from donor agencies are key. There have been limited attempts to consolidate good practices into a shared instrument that provides common framework for bilateral donors on how to tackle corruption. This concept note proposes a framework for bilateral development co-operation agencies and other actors involved in development cooperation on how to manage such risks.

CONTEXT

Corruption is damaging to societies and institutions. It erodes public trust in government, leads to sub-standard services and wastes scarce public resources. The impact of corruption is particularly damaging for developing countries. Weak institutions and sub-standard services result in poor development outcomes. Poverty reduction and sustainable human development efforts are severely hindered by corruption. In many cases corruption contributes to conflict and state fragility.

Actors operating in developing countries –from both the public and the private sector -- face high risks of corruption\(^1\) given the vulnerabilities of accountability systems in such environments. Besides financial losses, involvement in corrupt activities can lead to significant reputational damage for those involved and, in some cases, criminal prosecution as a result of governments’ adherence to international agreements and their transposition into domestic law. Most countries’ governments are bound to implement anti-corruption efforts by the United Nations Convention Against Corruption (UNCAC), which is the broadest and most comprehensive international framework to combat corruption.\(^2\) All government agencies of countries Parties to the Convention are subject to its standards. OECD member states and a few non-OECD countries (such as Brazil, Russia and South Africa) are also bound to fight bribery payment to comply with the OECD Convention on Combating Bribery of Public Officials. They also follow the 2009 OECD Recommendation on Further Combating Bribery of Foreign Public Officials in International Business Transactions

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1 This concept note understands corruption in its broader sense, including practices beyond payment of bribes in the public and private sectors, such as those indicated in chapter III of the UN Convention Against Corruption (embezzlement, misappropriation or diversion of property by a public official, trading in influence, abuse of functions, illicit enrichment, embezzlement of property in the private sector, laundering the proceeds of such crimes and concealing them). It also encompasses the concept of fraud, understood as an act of deliberate deception or false representation for personal gain or for causing damage to another party.

2 171 countries are States Parties to the UNCAC (http://www.unodc.org/unodc/fr/treaties/CAC/signatories.html)
Moreover, the following instruments were established within the framework of the OECD and apply to its member countries’ aid mechanisms:

- Principles for Donor Action on Anti-Corruption [DCD/DAC(2006)40/REV1],
- the 1996 DAC Recommendation on Anti-Corruption Proposals for Bilateral Aid Procurement [DCD/DAC(96)11/FINAL],

Beyond such binding agreements, some bilateral development agencies also abide by voluntary initiatives such as the International Aid Transparency Initiative (IATI).

Private sector actors are also subject to specific aspects of international obligations. These have given rise to domestic legal frameworks binding multinational enterprises in a commitment to implement mechanisms to prevent their staff from engaging in bribe payment or other obligations upon the threat of heavy sanctions for non-compliance (i.e. USA Foreign Corrupt Practices Act (FCPA) and the Dodd Frank Act and the UK Bribery Act). Other initiatives such as the UN Global Compact, the OECD Guidelines for Multinational Enterprises and the Extractive Industries Transparency Initiative are voluntary and complement regulatory regimes.

These actors, therefore, realise the importance of having in place operational mechanisms to support staff in reducing the likelihood of corruption. From multinational enterprises to development

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3 The 2007 DAC Principles for Donor Action on Anti-Corruption require bilateral donors to ‘Collectively foster, follow and fit into the local vision’, ‘Acknowledge and respond to the supply side of corruption’ and ‘Marshal knowledge and lessons systematically and measure progress’. The document does not give any directions in terms of how to make these principles operational in practice, leaving the decision to donor agencies. See http://www.oecd.org/dac/governance-development/principlesfordonoractiononanti-corruption.htm

4 See the text of the recommendation at http://www.oecd.org/development/governance-development/28321276.pdf


6 More information about IATI at http://www.aidtransparency.net/. Although not directly targeting corruption and fraud, the initiative seeks to improve the transparency of aid, which should help increase oversight over disbursed aid.

agencies, stakeholders have developed varied systems to ensure risks are managed and that their staff and associates do not engage in malpractice; to ensure adequate preventative structures are in place, and that corrective and dissuasive measures are applied in cases of actual abuse.

The responses, particularly from multinational corporations and publicly traded companies, led to the development of a flourishing compliance industry. It includes measures directed at internal staff (i.e. establishment of compliance departments inside companies and training for staff on relevant regulations and standards) and at external partners (i.e. conducting due diligence on suppliers before entering into a joint venture or business partnership). More than 30 years of FCPA application and almost 20 years of the OECD Anti-Bribery Convention – as well as notorious scandals involving multinationals -- have given the private sector a body of knowledge and experience in compliance in the area of anti-bribery regulation and other areas such as curbing money laundering (see annex for a visual depiction summarising several mechanisms implemented by both bilateral development agencies and private sector enterprises to control for risks of corruption and fraud).

The jargon of ‘compliance’ has yet to reach the public sector, but public agencies have also developed internal policies to deal with corruption risks. Bilateral development agencies in particular have been concerned about corruption for a series of reasons:

- the bulk of their operations are in developing countries,
- the topic of corruption has acquired a less sensitive connotation in bilateral relationships and
- budget constraints have been imposed by financial crisis and conservative governments.

Donor agencies have put in place a wide range of mechanisms focusing both on internal staff and on third parties (i.e. developing countries’ governments or implementing partners). For example, they may apply pre-grant awarding audits on beneficiaries before disbursement of funds; they implement codes of conduct to guide staff in identifying conflicts of interest and provide hotlines to receive denunciations of corruption. Going further, some donor agencies have produced encompassing anti-corruption strategies for their development operations requiring not only internal controls but also support to anti-corruption initiatives undertaken by partner countries – an effort to ensure that aid funds are better protected once they are inside partner countries’ systems.8

Where strategies and systems are in place, evidence is mixed on the impact of these instruments and on the consistency of their application. For example, ITAD & LDP (2011) investigated the impact of support provided by 5 donor countries to partner countries’ efforts to address corruption. One chapter of their report covers the extent to which this engagement is followed up by the internal anti-corruption policies of the respective bilateral development agencies. IDD and Associates (2006) reviewed the impact of ten years of application of General Budget Support. Betts and Wedgwood (2011) compiled the results of several reviews and assessments in the area of support to governance in developing countries. This, however, does not cover donors’ internal anti-corruption and anti-fraud measures.

However, at least in the case of bilateral development agencies, the main audience of this concept note, comprehensive policies to prevent aid misuse are not yet widely developed (ITAD and LDP, 2011) nor is there a large body of evidence to assess existing experiences with internal controls.

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8 See in annex a non-exhaustive summary of instruments put in place by bilateral development agencies as well as multinationals to address risks of corruption and fraud.
Evaluations and stocktaking exercises to date have largely focused on the impact of agencies’ support to partner countries’ anti-corruption efforts or to the risks entailed once aid is within countries’ systems.

Multilateral development bodies have attempted to harmonise some of their approaches to corruption. In this case, they have made efforts to learn from the practice of debarment (OSD, 2014). However, even in the case of this study, there is no clear assessment of whether the existence of such systems increased recovery of aid funds or reduced the level of corruption affecting these agencies.

OBJECTIVE OF THIS CONCEPT NOTE

This concept note explains the reasoning behind the need for a common integrity framework for bilateral development agencies and other development actors. The goal is to develop practical guidelines, allowing different agencies to benefit from the experiences of peers and other actors. With the majority of studies conducted to date focussing on the impact of anti-corruption interventions on partner countries’ systems, little analysis exists of systems designed to strengthen donors’ internal procedures. One of the reasons for such sparse attention may be the piecemeal approach taken by agencies in constructing their systems to protect aid. With no common reference to align to, individual efforts may not reflect collective knowledge acquired in this area. Another possible reason for the absence of studies analysing effectiveness of internal systems to protect aid from corruption and fraud may be the non-existence of a shared framework (beyond the Principles for Donor Action on Anti-Corruption mentioned above).

On this basis, the DAC suggests to conduct an exercise to assess current experience – learning from bilateral and multilateral development agencies but also from other actors such as the private sector in its operations in developing countries. This should, then, inform the development of a common framework for bilateral development agencies and other development actors, synthesizing and analysing current experience with practical guidance for developing or reforming internal anti-corruption systems.

This discussion is undertaken recognizing that efforts to safeguard donor funds cannot ignore the need to strengthen national/partner systems as part of a comprehensive proactive approach. However, this concept note focuses on establishing guidelines for bilateral donors and other development actors, through the identification of a set of good practices from different stakeholders operating in

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9 This has taken place through a process of developing a common list of companies and individuals debarred from participating in aid financed procurement processes when these actors have been convicted for involvement in corruption and fraud. See the 2006 Uniform Framework for Preventing and Combating Fraud and Corruption bringing together all multilateral development banks into a common framework in this area: [http://www.afdb.org/fileadmin/uploads/afdb/Documents/Generie-Dokumente/30716700-EN-UNIFORM-FRAMEWORK-FOR-COMBATTING-FRAUD-V6.PDF](http://www.afdb.org/fileadmin/uploads/afdb/Documents/Generie-Dokumente/30716700-EN-UNIFORM-FRAMEWORK-FOR-COMBATTING-FRAUD-V6.PDF). In 2010, furthering their shared approach, the same institutions agreed on applying common sanctions (mutual debarment) to firms and individuals involved in corruption when providing services for one of the partners under the Uniform Framework.

10 One exception is the effort carried out by the six bilateral development agencies members of the U4 Anti-Corruption Resource Centre. Through U4, the six member agencies engaged in an exercise to examine their internal practices to increase integrity and reduce corruption risks. A summary of the results can be found at [http://www.u4.no/publications/donor-anti-corruption-strategies-learning-from-implementation/](http://www.u4.no/publications/donor-anti-corruption-strategies-learning-from-implementation/). Johnson et al. (2012) produced another U4 study collecting the available evidence on the impact of donor’s actions to reducing corruption – this focuses however mostly on support to partner countries efforts and not on internal policies within the agencies.
developing countries (see figures in annex for a visual depiction of the specific step in the different processes of control for corruption risks that is the focus of this concept note).

**Benefits of a Common Guidance Framework for Bilateral Development Agencies**

- Analysis of experiences in the area of control of corruption risks which can be used by different stakeholders providing development support.
- Provision of clear practical guidance (taking into consideration the need to adapt guidelines to agencies particular realities as they differ in size, focus and methods of work).
- Development of a common framework can pre-empt criticism that donors are wasting tax payers’ money without a safeguarding system.
- Development of a common framework within the DAC allows members to shape it to better reflect the needs of their staff.
- A shared common framework across the DAC may help to influence other development actors to strive for effective practices in these areas.

**PROCESS TO THE DEVELOPMENT OF THE GUIDELINE**

In 2013, OECD Development Co-operation Directorate commissioned a survey to evaluate the implementation of the 1996 DAC Recommendation on Anti-Corruption Proposals for Bilateral Aid Procurement. The survey found that the initial impact of the 1996 Recommendation has been large and many countries implemented laws to comply with the recommendation. However, almost twenty years after its inception, its sole focus on procurement channels has become too narrow to account for the whole set of aid disbursement modalities.

Therefore, a next step in this process should be to gather the existence of policies, guidelines and practices inside bilateral donor agencies, which focus on protecting aid disbursed through other channels than procurement. This could be achieved through building on prior initiatives which assessed these practices within a small group of development co-operation agencies (such as an exercise conducted by the U4 anti-corruption resource centre).

The experiences of other actors operating and disbursing funds in developing countries should also be assessed. As mentioned, multinationals in the private sector have a long experience in complying with legislation in the area of anti-corruption, particularly when operating abroad. Beyond the private sector, foundations and philanthropic institutions may also have valuable lessons in this area.

This would then be followed by establishing a set of shared guidelines based on the existing good practices to manage corruption risks – not only in procurement.\(^\text{12}\)

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\[^{12}\] This suggestion does not imply necessarily that the existing standards mentioned here would cease to be applied, given their different focus (i.e. the Principles for Donor Action on Anti-Corruption devote attention to the relationship of donors *vis à vis* partner countries, while the proposed guidelines would focus on the internal processes within the agencies).
**Audience of the guideline**

Given the rapidly changing aid landscape with new institutions entering, the process would benefit from being as open and inclusive as possible. The new guidelines should be open and applicable to all actors whose objective is to promote socio-economic progress and reduce poverty. Application of the guidelines will be initially voluntary and its initial audience will be the members of the DAC. Upon experience and assessment of the DAC membership, it may be proposed as a recommendation to the OECD council in the future to replace the current 1996 DAC Recommendation on Anti-Corruption Proposals for Bilateral Aid Procurement. Outreach efforts will also be made to extend the reach of the application of the framework to other development actors. The aforementioned 1996 recommendation remains valid and applied in the context of different OECD review mechanisms, following current practice, until a decision is taken otherwise by the DAC.

**Tentative calendar**

- Presentation of this concept note to the DAC: May 13, 2014

- Commission of a review of good practices across bilateral development agencies and a sample of other actors including private sector, donors beyond the DAC and NGOs and foundations: 4th quarter 2014

- Presentation of the review of good practices and suggested common framework, based on the good practices, to the Anti-Corruption Task Team: 3rd/4th quarter 2015

- Finalisation of the common guidelines and presentation to the DAC: 1st quarter 2016
REFERENCES


Johnson et al. (2012), Mapping evidence gaps in anti-corruption: Assessing the state of operationally relevant evidence on donor’s actions and approaches to reducing corruption, *U4 Issue Paper No 7*


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TERMS of REFERENCE

CONSULTANT

To produce a report analysing lessons gathered in the area of anti-corruption among different stakeholders and produce a set of guidelines on integrity for development cooperation actors

Background

Donors implement projects in environments with high corruption levels. Addressing the risks of corruption and fraud in the use of aid is crucial to ensure that funds reach their intended purpose. In doing so, consistent and systematically applied guidelines to protect aid allocations from donor agencies are key. There have been limited attempts to consolidate good practices into a shared instrument that provides common framework for bilateral donors on how to tackle corruption as discussed below. The concept note that accompanies this Terms of Reference (ToR) proposes an effort to begin the process towards a framework for bilateral development co-operation agencies and other actors involved in development cooperation on how to manage corruption risks.

This ToR guides the recruitment of a consultant who will deliver the outputs necessary to the development of the framework for bilateral development co-operation agencies and other development actors on how to manage corruption risks. It describes the requirements and responsibilities of the consultant. It also proposes a methodology and timetable for the development of the work. It should be read in tandem with the concept note.

Proposed methodology

The following procedures will be undertaken to gather the experiences of different actors in the area of implementing anti-corruption and anti-fraud controls and to assess good and bad experiences and to propose the guidelines:

1. Identification of a relevant set of actors (including bilateral development agencies, multilateral agencies, private sector, NGOs and foundations) as a sample to the study, including identification of their disbursement channels used;

2. Review of existing literature in this area, particularly through the collection and analysis of internal policies and documents describing the procedures and practices in place across a different set of actors to control for corruption risks;

3. Development of a questionnaire for phone interviews with relevant stakeholders (field visits will be possible pending funding arrangements);

4. Assessment of the experience collected on the basis of effectiveness of the measures. This will be measured at the level of output (the existence of the policy) and, when possible, at the level of
outcome (whether the policy has resulted in reduction of funds mismanagement or increased recovery of funds upon investigation\(^{13}\));

5. Organisation of a workshop to present the initial findings of the lessons gathering exercise and the initial guidelines proposed;

6. Finalisation of the guidelines and presentation to the DAC.

Final outputs

1. A draft report incorporating the items indicated under ‘responsibilities of the consultant’

2. A final report, in English, incorporating comments received from OECD and other stakeholders.

Responsibilities of the consultant

- The consultant is responsible for conducting a review of relevant literature. This should include previous reviews and evaluations of anti-corruption mechanisms inside bilateral and multilateral development agencies, other development actors and private sector;
- The consultant is responsible, in consultation with OECD, for selecting a sample of stakeholders including not only bilateral development agencies, but also private sector, foundations and NGOs for field visits (pending funding) or phone interviews;
- The consultant is responsible for preparing an interview protocol and questionnaires to be approved by OECD;
- The consultant is responsible for preparing a report comprising:
  - A review of the experiences of bilateral and multilateral development cooperation agencies; other development actors and private sector with systems to manage risks of corruption.
  - An analysis of the effectiveness of the existing systems (following item 4 in the proposed methodology) and the lessons learned with their implementation.
  - A proposition of a set of practical guidelines on the minimum elements bilateral development agencies and other development actors should consider having in place to manage corruption risks.

This report should be presented in draft format and, after passing through a peer review process, incorporate comments and changes into a final version of both the report and the guidelines.

Requirements for the consultant

- Substantial knowledge in the area of anti-corruption and safe-guarding systems;
- Understanding of bilateral and multilateral donors’ development operations as well as their internal anti-corruption and anti-fraud systems;

\(^{13}\) The possibility of assessing effectiveness of policies at the level of outcomes will be defined throughout the study, based on the existence of monitoring and evaluation reports produced by those actors implementing such anti-corruption and anti-fraud policies. Alternatively, outcome effectiveness can be gauged through the opinion and perception of interviewees. That is however a second best option, given that samples may not be representative of the whole spectrum of actors targeted by this study.
- Knowledge of the experiences of the private sector in the area of compliance with anti-corruption regulations a plus;
- Experience with producing practical guidelines/‘how to’ guidance for development actors;
- Experience with structuring and conducting survey and interviews as well as data analysis;

**Timetable**

OECD is still identifying funds for this work to be conducted. Timetable will be decided when funding is secured.
ANNEX

Donors may be exposed to risks of corruption & fraud through:

Their own staff and how they handle funds

Staff of recipients of aid (implementers or partner govs and NGOs) and how they handle funds they receive from donors

Applicable legislation: i.e. domestic legislation, international conventions, voluntary agreements etc.

Grey area/difficult to demarcate where internal control of donors finish and partner systems start:
- Donor management units inside partner agencies,
- Corruption clauses in MoUs
- Strengthening capacity inside recipients,
- Civil society monitoring (EITI, UN Global Compact, social audits...)

Object of this guideline

Systems to protect funds against risks of corruption and fraud

Under direct control of donors:
- Fiduciary risk assessments
- Pre-award audits
- Customer due diligence
- Codes of conduct/Conflict of interest policy
- Choice of aid delivery mechanism
- Staff rotation
- Aid transparency policy
- Explicit internal AC policy
- Training of staff
- Internal communication on follow up of cases
- Provision of advice on ethics for staff
- Hotlines/Whistleblowing lines
- Warning/dismissal policy
- Conduction of ex-post audits/evaluations
- Blacklists (companies, providers...)
- Witholding aid/reimbursement
- Collective responses

Not under the control of donors:
- Internal govt audits and external audits
- Civil servant job rotation
- Asset declarations of public officials
- Ethics training for civil servants
- PFM laws
- AC law/work of AC agencies
- AML laws
- Sanctioning mechanisms

Prevention & Awareness raising
Enforcement
Private sector may be exposed to risks of corruption & fraud through:

- Their own staff
- Third party (non-controlled affiliates, joint ventures, distributors and dealers)

Systems to protect funds in the private sector against risks of corruption and fraud:

- Designating a senior employee to be responsible for the organisation’s work against fraud & corruption
- Possess a counter fraud/corruption strategy which considers prevention, awareness raising and sanctioning (includes existence of a compliance department with certified staff)
- Conduct regular fraud/corruption evaluations (benchmarking its anti-corruption control environment and compliance programs against public companies with similar industry, revenue and geographic risk profile)
- Conduct due diligence on customers and counterparts
- Implement trainings for staff to raise awareness and to build the capacity of specialised counter fraud/corruption specialists
- Provide independent whistleblowing for employees
- Engage with the police and other investigative authorities when cooperation is requested in investigations
- Pursue criminal and civil sanctions against fraudsters
- Pursue financial redress in cases of fraud
- Audit and monitor of third parties, controlled subsidiaries, affiliates and joint ventures