DAC Network on Governance

THE 21ST DAC NETWORK ON GOVERNANCE PLENARY MEETING - RD 7

Room Document 7:
Draft recommendation of the council on internal integrity Guidelines for development cooperation actors.

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The complete document is only available in PDF format.

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Rationale for revising the 1996 Recommendation on Anti-Corruption Proposals for Bilateral Aid Procurement and proposing a new OECD Council Recommendation on Internal Integrity for Development Cooperation Actors

1. In 2013, the OECD Development Assistance Committee (hereafter “DAC”) agreed to update the 1996 DAC Recommendation on Anti-Corruption Proposals for Bilateral Aid Procurement [DCD/DAC(96)11/FINAL] (hereafter the “1996 Recommendation”).

2. Almost 20 years after its adoption, the sole focus of the 1996 Recommendation on procurement channels has become too narrow to account for the whole set of aid disbursement modalities.

3. Over the years, development cooperation agencies have also come to recognise that corruption risk is not easily “managed,” that mitigation of these risks is not only a short-term or technical undertaking – indeed, that corruption is for most development activities an ongoing and tenacious operating condition, requiring re-thinking of how development activities are conceived, designed, implemented and monitored. The range of issues involved in assuring integrity in development aid has grown. Procurement integrity, along with avoidance of bribery and efforts to co-ordinate donor responses are now accompanied by ethics regimes, contextual risk analysis, due diligence on potential aid recipients, complaint hotlines, and numerous other initiatives that add up to an integrity regime.

4. Taking into account this experience, the 1996 Recommendation currently does not respond to the needs of members and needs to be revised to remain relevant to Members and non-Members having adhered to it (hereafter the “Adherents”).

5. In order to proceed with this update, the OECD has carried out an analysis of the policies and mechanisms inside DAC member agencies and of some observers such as multilateral development banks to take stock of how they respond to threats that corruption poses to development cooperation activities. This analysis consolidates learning in the 2015 publication Building Donors’ Integrity Systems: Background Study on Development Practice¹ and was conceived as a foundational step toward an OECD Council recommendation on integrity for development co-operation actors.

6. The publication notes the existence of a wide range of tools in DAC member agencies: code of ethics, whistleblowing channels, financial control and monitoring as well as sanctions. It also looks into corruption risk management, an area where DAC members noted advice is still needed. Coordination regarding how to respond to corruption cases and how to communicate with domestic constituencies (tax payers and parliaments) on the management of risk levels has also been pointed to as an area in need of improvement.

7. The findings of the publication were presented to the DAC in June 2015. Given the relevance of the topic, DAC members agreed that work towards a common guidance for development actors should be pursued. They also agreed that this work should be discussed with the relevant subsidiary and technical bodies (i.e. the DAC Network on Governance and its Anti-Corruption Task Team) [DCD/DAC/M(2015)5/FINAL]. A final proposal should be subsequently presented to the DAC.

Rationale for replacing the 1996 Recommendation by a Recommendation of the OECD Council

8. Considering the outlined above and the close link with the work undertaken throughout the Organisation by other Committees, it is proposed that the 1996 Recommendation be abrogated and replaced by a Recommendation of the Council on Integrity Guidelines for Development Cooperation Actors (hereafter the “Recommendation”).

9. It is proposed that the Recommendation build on the existing work of the DAC as well as other relevant committees, such as the Working Group on Bribery (hereafter the “WGB”) and the Public Governance Committee (hereafter the “PGC”), which has developed the 2015 Recommendation of the Council on Public Procurement [C(2015)2]. This horizontal and comprehensive approach calls for replacing the 1996 Recommendation, which was initially adopted as a DAC Recommendation, by a Recommendation of the OECD Council.

10. Recommendations of the Council are non-legally binding legal instrument of the Organisation. Practice accords them great moral force as representing the political will of the Adherents. Implementation of the Recommendation could be monitored as appropriate if approved by the DAC. A regular evaluation of the relevance of the Recommendation could ensure that challenges faced in implementation are addressed and the recommendation remains up-to-date.

11. Following the presentation of the Building Donors’ Integrity Systems report in the DAC Anti-Corruption Task Team and the Working Group on Bribery in October 2015, OECD Members expressed great interest in actively contributing to the development of this draft Recommendation. Given that the 1996 Recommendation has been a reference for the WGB and a new recommendation would be used as a tool for its reviews, it is therefore proposed that the draft Recommendation be developed in close co-operation with the WGB. It could also benefit from comments from other OECD committees such as the PGC in an effort to ensure consistency across OECD Recommendations and to avoid overlapping instruments.

Scope of the draft Recommendation

12. The scope of the Recommendation needs to be clearly defined, in particular which agencies and organisations should be covered; which issues should be included and in which level of detail, and the diversity of tools that could be used to implement it.

13. In terms of agencies for which this Recommendation would be useful, public international development agencies in OECD Members are the main interested bodies. However, the broader community of development organisations facing risks of misuse of funds and other forms of corruption may find it helpful and would be encouraged to implement this Recommendation.

14. Different elements of the Recommendation would be differently applicable to various organisations, depending on their role, laws and regulations. A ministry of foreign affairs (MFAs), for example, may make broad strategic choices about aid allocation but have little role in implementation of cooperation programmes, while MFAs in other countries would also disburse funds. Other agencies may have greater degrees of budget independence, while others operate as

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2 According to article 7 of the convention establishing the OECD, “a Council composed of all the Members shall be the body from which all acts of the Organisation derive. The Council may meet in sessions of Ministers or of Permanent Representatives” (http://www.oecd.org/general/conventionontheorganisationforeconomicco-operationanddevelopment.htm). The Council meets regularly at the level of permanent representatives to OECD and decisions are taken by consensus. These meetings are chaired by the OECD Secretary-General. The Council also meets at ministerial level once a year to discuss key issues and set priorities for OECD work. The work mandated by the Council is carried out by the OECD Secretariat (http://www.oecd.org/about/whodoeswhat/)
semi-private companies. Therefore, flexibility is essential, allowing each agency to implement the Recommendation as its legislation and context requires. Conflict and humanitarian relief present additional challenges and further variation may be required in these contexts.

15. One of the most important reasons for proposing this Recommendation is to ensure consistency with other international standards. The Recommendation makes reference to and takes into account other international legal frameworks that already apply to OECD Members. This is to avoid duplicating frameworks that provide in depth guidance in specific technical areas.

16. The Recommendation would provide a reference against which development agencies interested in improving or reforming their corruption risk management system could benchmark themselves. It would also help when anti-corruption and integrity considerations conflict with other mandates or priorities of the agency. To the degree that the draft Recommendation could lead to harmonisation of agencies’ policies and practices, it could reduce the burden of implementers in responding to multiple integrity requirements from different funders.

Next steps

17. Following up on the meeting of the Anti-Corruption Task Team of the DAC Network on Governance (GOVNET) on 8 October 2015, where the Building Donors’ Integrity Systems report was presented, the present cover note has been drafted and is sent to you to explain the rationale for this proposed Recommendation. In light of the above, delegates are now invited to consider and respond to the following questions:

a) Considering the elements described above, would you agree that the 1996 DAC Recommendation be revised in the form of the Recommendation in Annex (this agreement in principle does not preclude that changes to the content of the recommendation in annex still take place to reflect written comments submitted by your agency and other relevant OECD committees)?

b) Does the draft Recommendation in Annex cover all the necessary issues (please provide comments in written with your agency’s suggestions)?

c) In addition to providing written comments; would your agency be interested in participating in the process of developing of a “companion document” to the Recommendation? The purpose of such a companion is to document practical examples of instruments agencies already have to manage corruption risks. The details of this companion and how data will be collected, during 2016, would be decided in collaboration with the agencies volunteering to contribute to it. The information provided by your agency – if you agree to participate -- will form part of this companion document.

18. The draft Recommendation will be open for written comments until December 8th, 2015. Based on your input, the draft Recommendation will be revised to be presented to the DAC and other relevant committees in spring 2016. Comments received at that stage from the DAC, WGB and PGC would then be incorporated in a final draft that will be submitted to the OECD Council in late 2016.
DRAFT RECOMMENDATION OF THE COUNCIL ON INTERNAL INTEGRITY GUIDELINES FOR DEVELOPMENT COOPERATION ACTORS

THE COUNCIL,

HAVING REGARD to Article 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

HAVING REGARD to DAC Recommendation on Anti-Corruption Proposals for Bilateral Aid Procurement [DCD/DAC(96)11/FINAL], which this Recommendation replaces;


RECOGNISING the important work done on anti-corruption developed within the framework of the United Nations, the European Union or other regional groups;

RECOGNISING the process of the UN Sustainable Development Goals, in particular goal 16 and its concern with the fight against corruption;

RECOGNISING corruption poses serious threats to development goals and international development agencies and donors have a common interest in managing and reducing, to the extent possible, the risks to which aid activities are exposed to, in order to obtain effective use of resources;

RECOGNISING that aid donors have developed an array of policies and practices to address the associated risks as documented through the 2015 OECD study “Building Donors’ Integrity Systems: Background Study on Development Practice”;

CONSIDERING that corruption can be an ongoing and tenacious condition of the operating context for development activities and that corruption risks are not easily “managed” with short-term or technical approaches, but rather require comprehensive and ongoing integrity and risk management approaches;

RECOGNISING that the staff employed by a bilateral development agency (civil servants or contractual) is the first line of defence in preventing corruption and managing corruption risks, but many other actors are also involved;

RECOGNISING that there are a number of good practices among donor agencies and standards already developed by the OECD, on which this Recommendation seeks to build, including the Recommendation of the Council on Public Procurement [C(2015)2];

On the proposal of the Development Assistance Committee:
AGREES that, for the purpose of the present Recommendation, the following definitions are used:
**Corruption** in the context of development cooperation refers to misuse of entrusted authority for private gain and may apply to the actions of development agency staff, grantees, contractors receiving aid funds, and/or officials of host or other governments. It may involve the direct misuse of funds or activities for private gain (such as directing aid activities to particular constituencies that are not in line with the goals of the programme);

**Corruption risk management** refers to the elements of an institution (public or private) policy and practice that identify, assess, and seek to mitigate the risks of corruption represented by the institutional, political, economic, and social context in which its activities are carried out.

**International development agency** refers to government line ministries or other agencies, public or private, entrusted with the responsibility of disbursement public funds that are accounted for as Official Development Assistance (ODA);

**Internal integrity** refers to those elements of an agency’s ethics, control, and risk management regimes that relate to corruption risk, including both prevention and enforcement elements;

**Partner government** refers to a government’s line ministries or other agencies of countries which are partners of OECD member states’ international development agencies and are recipient of aid funds.

I. **RECOMMENDS** that Members and non-Members adhering to this Recommendation (hereafter the “Adherents”) set up a robust internal integrity system, applicable to them, their agreement partners or suppliers of goods or services for which they are financially responsible. Such an integrity system should include:

i. Internal ethics, including codes of conduct/ethics, ethics or anti-corruption assistance/advisory services, training and awareness raising and corruption reporting, as appropriate;

ii. Control and monitoring functions, including procurement integrity, auditing and investigation, sanctions and information sharing, as appropriate;

iii. Corruption risk management, including risk analysis and risk management/mitigation, as appropriate;

iv. Joint responses to corruption.

II. **RECOMMENDS** that Adherents revise, as appropriate, in line with the current Recommendation the integrity standards they have already introduced within their national legal frameworks.

III. **RECOMMENDS** that Adherents articulate a Code of Ethics applicable to all staff engaged in any aspect of development cooperation work and the management of aid funds. Such Code of Ethics should:

i. Be decided on and endorsed by the highest authority within the organisation;
ii. Clearly establish what practices should be avoided and embraced with regard to corruption and anti-corruption, using specific examples of corrupt practices to reduce possible differences in understanding across social and cultural settings;

iii. Take account of the multiple cultural, political and socio-economic settings in which development work takes place and address the particular challenges that these conditions may present;

iv. Be disseminated to all staff and communicated on an ongoing basis.

IV. RECOMMENDS that Adherents provide sufficient advice, guidance and support for staff with regard to different elements of the ethics and anti-corruption regime. To that effect, the Adherents should:

i. Provide opportunities for staff to discuss sensitive matters in a safe and non-threatening environment in order to build a strong, shared understanding of acceptable and unacceptable behaviours, how to respond to evidence or suspicions of corruption, and related issues;

ii. When there are multiple reporting lines or resources for different elements of an agency’s anti-corruption work, provide clear guidance and information to staff regarding where support and advice can be sought;

iii. Assure sufficient human resources are available to provide ethics and anti-corruption advice, guidance and support to staff in an independent manner;

iv. Take steps to build trust between staff responsible to providing advice in terms of ethics and anti-corruption with the rest of personnel, in particular when reporting channels are also responsible for investigation. Each Adherent must seek balance between these two goals following the legal frameworks that apply to each OECD member state.

V. RECOMMENDS that Adherents assure sufficient training to maintain a high level of internal ethics arrangements and anti-corruption risk management. To this end, the Adherents should:

i. Make available ethics and anti-corruption training, including to locally-engaged staff in partner countries. Opportunities for interactive training, including discussions of scenarios and exploration of possible responses, should be put in place for making codes of ethics and other anti-corruption rules practically applicable and meaningful across different social, cultural, and institutional settings;

ii. Clarify the roles and responsibilities of different staff members and tailor the extent and specialization of training according to the exposure to corruption of each role, particularly in face of resource constraints;

iii. For all staff involved in programme design, management, procurement and oversight, assure that training goes beyond the internal ethics and reporting regime, to include corruption risk identification, assessment and mitigation approaches appropriate to the contexts in which they work;
VIII. RECOMMENDS that Adherents assure availability of a reporting/whistle-blowing mechanism for all interested parties. To this end, Adherents should:

i. Assure broad accessibility of reporting mechanisms, beyond agency staff to include contractors and grant recipients to the extent possible given financial constraints;

ii. Communicate clearly about how reports can be made, especially to reduce confusion if different reporting channels exist for different stakeholders;

iii. Provide alternatives to the normal chain of management for corruption reporting or advice such as independent advisors/ombudsperson;

iv. Ensure effective protections for whistle-blowers;

v. Following up on reported incidents of suspected corruption in a timely manner;

vi. Communicate clearly and frequently about the processes and outcomes of corruption reporting, to build trust and reduce any perception of opacity around corruption reports and investigations.

IX. RECOMMENDS that Adherents uphold a high level of internal auditing and investigation in order to ensure a proper use of resources and minimise corruption risks. To this end, Adherents should assure that the following functions are provided for internal auditing:

i. Detailed standards for internal auditors are available through the Institute of Internal Auditors International Standards for the Professional Practice of Internal Auditing.

ii. Independent financial audit of the agency itself and of the projects/activities it funds;

iii. Access to investigatory capacity, within or outside the agency, to respond to negative audit findings in a timely manner;

iv. Follow-up of audit findings to assure that weaknesses have been addressed;

v. Strategic communication about audit and investigation processes and outcomes to build trust and reduce perceptions of opacity.

X. RECOMMENDS that Adherents assure a sanctioning regime that responds to all cases of corruption, but allows a flexible and proportional approach so that the measures taken correspond to severity of the offense and other considerations. To this end, Adherents should:

i. Endorse flexibility and proportionality in sanctioning, within the context of a firm commitment to addressing all cases of corruption;

ii. Ensure clear processes and criteria for sanctioning, with checks and balances in decision making to reduce the possibility of bias;
iii. To the degree possible, given confidentiality requirements and/or other legal provisions, share information on corruption events, investigations, findings and/or sanctions to help other organisations identify and manage corruption risks.

XI. RECOMMENDS that Adherents **actively assess and manage their corruption risks** in an ongoing way and at multiple levels of decision making. To this end, Adherents should:

i. Integrate corruption risk assessment into programme planning and management cycles in formalized ways that assure analysis and review of corruption risk throughout the project cycle and not as a stand-alone exercise at the project design phase;

ii. Provide guidance or frameworks appropriate for different levels of corruption risk analysis. Guidance should help programme managers identify how corruption might directly affect the desired outcomes of the activity, including more detailed assessment than a broad political economy analysis, such as a careful examination of assumptions regarding incentives and disincentives for anti-corruption and identifying potential mitigation measures;

iii. Use tools like risk registers or matrices at the outset of a development intervention, and update it regularly throughout implementation, with necessary adjustments to mitigation measures;

iv. Explore ways to strengthen integration between agency control functions, including auditors and controllers, and programme management functions for the purposes of more effective corruption risk assessment and management;

v. Build an evidence base for corruption risk management by sharing experience internally and among other international agencies about the content and form of corruption risk assessments and management tools, ways that risk management is built into the project cycle, and the impact of these processes.

XII. RECOMMENDS Adherents to **enhance the effectiveness of anti-corruption efforts** through joint responses, including:

i. Prepare in advance for responses, with joint, shared and regular analysis in line with the OECD study Working Towards More Effective Donor Responses to Corruption and agreeing in advance on a graduated response to be implemented proportionally and progressively if performance stagnates or deteriorates;

ii. Follow the partner government lead where this exists and promote accountability and donor coordination where this lead is absent;

iii. Act predictably; encourage other donors to respond collectively to the extent possible, but allow flexibility for individual donors and make use of comparative advantage;

iv. Maintain dialogue at different levels, use comparative advantage, and focus on long-term development objectives;
v. Foster accountability and transparency domestically and internationally, including publicising the rationale for, and nature of responses;

vi. Act internationally but support partners and field staff to link international action to anti-corruption actions in partner countries.

XIII. RECOMMENDS Adherents to act responsibly in relation to corruption risks faced by aid beneficiaries in partner countries:

i. Recognise that some corruption risks are outside the direct control of international development agencies relating to systems put in place by aid recipients and grantees;

ii. Recognise that aid may result in the creation of opportunities for rent-seeking;

iii. Work collaboratively with recipients and grantees to improve their own corruption risk management systems;

iv. Work collaboratively with recipients and grantees to reduce risks of aid acting as a driver of corruption within the wider context.

XIV. INVITES the Secretary-General to disseminate this Recommendation.

XVI. INVITES Adherents to disseminate this Recommendation broadly inside the relevant agencies and to relevant government partners, contractors and grantees.

XVI. INVITES non-Adherents to take account of and adhere to this Recommendation.

XVII. INSTRUCTS the Development Assistance Committee to monitor the implementation of this Recommendation and to report thereon to the Council no later than three years following its adoption and regularly thereafter.