

DEVELOPMENT CO-OPERATION DIRECTORATE
DEVELOPMENT ASSISTANCE COMMITTEEDCD/DAC(2008)36/FINAL
Unclassified

REVISED TEXT OF THE DAC RECOMMENDATION ON UNTYING ODA

The earlier version of this document, DCD/DAC(2008)36, was circulated to DAC for approval under the written procedure. Only factual/stylistic comments, with no operational significance, were made, which are now incorporated in this final version. For transparency purposes, these changes are:

- (i) Para. 16 -- the expression in the second sentence, "for example", has been deleted. Preceded by a conditional verb (could), it is redundant.*
- (ii) Para 21, last bullet -- the expression "may, after that date, retie its ODA to a non-LDC HIPC" has been amended to read, "may, after that date, use tied aid as part of its ODA to a non-LDC HIPC", as this is factually the more correct way of stating what Members may do.*
- (iii) Annex II (list of non-LDC HIPCs) -- the Kyrgyz Republic has been removed from the list as per the argument already made in document DCD/DAC(2007)41/REV1, page 6, footnote 2, as that country has formally stated it does not wish to participate in the HIPC initiative.*

This note is transmitted to the DAC for INFORMATION.

Contacts:

William Nicol - Tel: +33 (0)1 45 24 91 37 - E-mail: William.Nicol@oecd.org

Frans Lammersen - Tel: +33 (0)1 45 24 89 88 - E-mail: Frans.Lammersen@oecd.org

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**DAC RECOMMENDATION ON UNTYING OFFICIAL DEVELOPMENT ASSISTANCE TO
THE LEAST DEVELOPED COUNTRIES AND HIGHLY INDEBTED POOR COUNTRIES**

25 April 2001 – DCD/DAC(2001)12/FINAL

amended on

15 March 2006 – DCD/DAC(2006)25 & DCD/DAC/M(2006)3

25 July 2008 – DCD/DAC(2007)41/REV1 & DCD/DAC/M(2008)5

I. Objectives and Principles

1. Members of the OECD's Development Assistance Committee (DAC) agree to the objective of untying their bilateral official development assistance (ODA) to the Least Developed Countries (LDCs) and Highly Indebted Poor Countries (HIPCs) as a means to:

- foster co-ordinated, efficient and effective partnerships with developing countries;
- strengthen the ownership and responsibility of partner countries in the development process;
- demonstrate responsiveness to the requests from partner countries and others to increase the use of untied aid in order to promote aid effectiveness; and
- contribute to broader efforts with partner countries to promote their integration into the global economy.

2. This Recommendation reflects the results of discussions in the DAC to respond to the Mandate provided at its 1998 High Level Meeting (see Annex III), and the decision in principle by the DAC of 21 May 2008 to extend the coverage of this Recommendation to include the non-LDC HIPCs, to introduce provisions inviting non-DAC donors to untie their aid in parallel with DAC Members and inviting those responsible for procurement to promote respect for internationally agreed principles of corporate social and environmental responsibility. The shared intentions of DAC Members are to:

- untie their ODA to the LDCs and HIPCs to the greatest extent possible;
- promote and sustain adequate flows of ODA in terms of quality, volume and direction, in particular to the LDCs and HIPCs and ensure that ODA to these countries will not decline over time as a result of the implementation of this Recommendation;
- achieve balanced efforts among DAC Members.

3. The report "Shaping the 21st Century: the Contribution of Development Co-operation", set out the relative dependence of LDCs on aid and their relative need for accelerated progress towards the International Development Goals. However, HIPCs not part of the LDC group are also aid dependent and

need to make progress towards these same goals. Therefore, this initiative aims to capture, for all these countries, the benefits of open procurement markets.

4. In promoting the above objectives, DAC Members consider that reinforcing partner country responsibility for procurement, with appropriate guarantees for effectiveness, accountability, probity and transparency is intrinsic to this initiative. Similarly, promoting local and regional procurement in partner countries is a shared goal. DAC Members will work with partner countries to identify needs and to support efforts in both areas.

5. This Recommendation does not restrict the prerogative of DAC Members to untie ODA to a greater extent than set out herein. DAC Members are invited to continue to provide untied ODA in areas not covered by the Recommendation when they already do so, and to study the possibilities of extending untied aid in such areas. Neither does this Recommendation pre-empt positions that DAC Members may take in discussions on related issues in other fora.

6. Promoting effort-sharing among Members is an integral part of this Recommendation. Variations in the structures and geographical orientations of Members' aid programmes, together with the coverage provisions of this Recommendation, can result in sizeable differences in the extent to which their ODA to the LDCs and HIPC is presently untied, and in respect of their aid performance in these countries more generally.

7. This Recommendation sets out objectives, principles and procedures for DAC Members untying aid in order to increase the effectiveness of that aid. In a global market for procuring aid funded goods, services and works, these good practices have a broader applicability and interest beyond DAC Members and have reference for all other countries providing aid to the developing countries. Accordingly, non-DAC donors are also invited to consider the provisions concerning untied aid set out in this Recommendation and to take them into the fullest account possible in their aid relations with developing countries.

II. Implementation

a) Coverage

8. Untying is a complex process. Different approaches are required for different categories of ODA, and actions by Members to implement the Recommendation will vary in coverage and timing. Bearing this in mind, DAC Members will untie their ODA to the LDCs and HIPC to the greatest extent possible and in accordance with the criteria and procedures set out in this Recommendation:

- i) DAC Members agree to untie, ODA -- to the Least Developed Countries by 1 January 2002, and to non-LDC Highly Indebted Poor Countries by 1 October 2008 -- in the following areas: balance of payments and structural adjustment support; debt forgiveness; sector and multi-sector programme assistance; investment project aid; import and commodity support; commercial services contracts, and ODA to Non-Governmental Organisations for procurement related activities.
- ii) In respect of investment-related technical co-operation and free standing technical co-operation, it is recognised that DAC Members' policies may be guided by the importance of maintaining a basic sense of national involvement in donor countries alongside the objective of calling upon partner countries' expertise, bearing in mind the objectives and principles of this Recommendation. Free-standing technical co-operation is excluded from the coverage of the Recommendation.

- iii) In respect of food aid, it is recognised that DAC Members' policies may be guided by the discussions and agreements in other international fora governing the provision of food aid, bearing in mind the objectives and principles of this Recommendation.

b) *Effort-Sharing*

9. Promoting a more balanced effort-sharing among Members is a necessary process. Pursuant to paragraphs 2, 5, and 6 of this Recommendation, Members agree to undertake their best endeavours to identify and implement supplementary effort-sharing actions in accordance with the mechanism set out below.

Mechanism

10. To this end, Members should apply the following reference indicators matrix and procedures:

- Reference indicators matrix

11. The situations of Members and their evolution over time with respect to initial positions and reference points will be set out in a reference indicators matrix (see Annex I). The elements of this matrix will be used in conjunction with Member performance profiles (see below) to monitor and assess the progress made by DAC Members towards more balanced effort-sharing.

- Member performance profiles

12. Members will prepare annual country profiles setting out their positions in respect of the reference indicators matrix and, on that basis, identify initial and medium term supplementary actions to promote effort-sharing. Peer review of these profiles by the DAC will be used to help Members identify and undertake supplementary actions in furtherance of a more balanced effort sharing in respect of the reference indicators matrix.

13. The implementation of this part of the Recommendation will be assessed as part of the annual reports covering all aspects of this Recommendation. These reports will be considered by the DAC High Level Meeting, which may recommend further actions, as well as in the peer reviews of individual Member's development co-operation policies. An overall review of the effort sharing mechanism and procedures will be conducted in 2009. On the basis of the DAC's assessment of the progress of Members towards a more balanced effort-sharing, this part of the Recommendation will be open to review with the objective of improving Members' performance towards a more balanced effort-sharing.

c) *Procurement regime*

14. The procurement of goods and services covered by this Recommendation should follow the DAC's Good Procurement Practices.

15. In conducting procurement of aid-supported goods and services, and in partnership with developing countries, DAC Members should apply relevant commitments and guidance such as:

- The 1996 DAC Recommendation on Anti-Corruption Proposals for Aid-Funded Procurement;
- The 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

16. Those responsible for procurement should promote respect from suppliers with agreed international standards of corporate social and environmental behaviour. This could be done through reference to environmental and social considerations in tendering procedures.

d) Transparency

17. For untied aid offers covered by this Recommendation, DAC Members should, and in collaboration with developing country partners as appropriate, provide or ensure *ex ante* notification. This provision does not apply to activities with a value of less than SDR 700,000 (SDR 130,000 in case of investment related technical co-operation).

18. DAC Members should respond promptly and fully to requests by other Members for further information on, or clarification concerning untied aid offers covered by this Recommendation.

19. DAC Members should ensure that the DAC will be provided with information on contract awards pertaining to the untied aid offers covered by this Recommendation.

e) Derogation

20. For individual aid offers, DAC Members may, in exceptional circumstances, take measures inconsistent with the terms of this Recommendation, in situations where they believe it to be justified on the basis of overriding, non-trade related, development interests. Derogations are to be justified in a letter to the Secretary-General of the OECD and to the DAC Chair and will be followed up in review procedures.

f) Monitoring and evaluation

21. The DAC will monitor all aspects of this Recommendation through a combination of different mechanisms:

- Annual reports covering all aspects of the Recommendation, as well as the experience in delivering its objectives. These reports, which will be reviewed by the DAC in time for its annual High Level Meeting, will, *inter alia*:
 - assess the impact of the Recommendation on the volume, quality and directions of ODA flows;
 - set out Members' policies in respect of investment-related technical co-operation and food aid;
 - review the implementation of this Recommendation with respect to promoting effort-sharing among Members in accordance with the mechanism set out in section IIb above;
 - review DAC Members' procurement practices and patterns for untied aid offers;
 - assess progress towards strengthening partner countries' local procurement capacities and improving the access of partner countries' enterprises to aid funded procurement;
 - address, in addition to the provisions for bilateral consultations set out above, specific concerns that may be raised by individual DAC Members in respect of the Recommendation.
- The annual reports will also provide input for the peer reviews of individual DAC Member's development co-operation programmes.

- A comprehensive evaluation of its implementation and impact will be carried out by the High Level Meeting in 2009. This evaluation will also pay particular attention to the implementation of this Recommendation with respect to achieving a balance of efforts among DAC Members and promoting and sustaining ODA flows to the LDCs and HIPCs.
- A review of the extension of the coverage of the Recommendation to non-LDC HIPCs will be undertaken before 1 October 2013. A DAC Member may decide, after that date, to use tied aid as part of its ODA to a non-LDC HIPC, in which case it is required to notify the country/ies concerned and the DAC Chair of its decision to do so.

22. DAC Members will work with stakeholders, particularly developing country partners, to ensure the Recommendation delivers its objectives.

ANNEX I

OPERATIONAL PROCEDURES AND UNDERSTANDINGS

1. This Annex forms an integral part of the Recommendation on untying ODA to the Least Developed Countries and Heavily Indebted Poor Countries. It details, where necessary, provisions concerning operational procedures and understandings related to the coverage and implementation of this Recommendation.

I. Definitions and coverage

2. Untied ODA refers to loans or grants which are freely and fully available to finance procurement from substantially all aid recipient countries and from OECD countries. Members which have rules of origin, or minimum national content rules, should take any steps necessary to ensure that ODA untied in accordance with this Recommendation is both *de jure* and *de facto* untied.

3. This Recommendation applies to DAC Members' bilateral ODA to the LDCs and HIPC. The list of these countries (as may be periodically modified respectively by the United Nations and the World Bank and IMF) is set out in Annex II.

4. Definitions of the ODA categories addressed in this Recommendation are as set out in the DAC's Statistical Reporting Directives [DCD/DAC(2007)34]. Further work will be undertaken as a matter of priority to operationalise the definitions of investment-related technical co-operation (including its component activities) and food aid to ensure an effective implementation of the Recommendation.

Commercial services contracts

5. For the purposes of this Recommendation, commercial services contracts are defined as contracts let on a commercial basis to a company for the running or management of a utility or distribution network.

ODA provided for NGO

6. ODA provided for NGO activities is covered by this Recommendation only to the extent that NGOs are involved in procurement-related activities included in its coverage. Grants for the core support of development NGOs or their programmes are excluded.

Management services arrangements

7. Management services arrangements (*i.e.* "technical co-operation" provided by donors primarily for the purpose of carrying out the administration of their own aid projects and programmes) are excluded from the coverage of this Recommendation.

II. Transparency

8. DAC Members recognise that efforts to promote partner country responsibility for procurement are intrinsic to this untying initiative. In situations where partner countries have responsibility for conducting procurement, some of the information requirements set out below may be available in the first instance from partner countries or their procurement agents. Members should report in a timely manner the

information required by the following provisions, or should work effectively with partner countries to do so.

i) Ex ante notification

9. Untied aid offers covered by this Recommendation which are above SDR 700,000 or SDR 130,000 in case of investment related technical co-operation, are to be notified *ex ante*. These notifications should include the following information:

- Notifying Member, agency and contact point;
- Recipient country;
- Project description;
- Sector/activity and DAC purpose code;
- Project value (in donor currency and SDR);
- Bidding period (start and closing dates);
- Procurement regime (if not International Competitive Bidding, state regime and justification);
- Details of agency responsible for procurement and from which further information or details (e.g. bidding periods, procurement regime, bidding documentation) can be requested,

and all other information that the Member deems appropriate.

10. Notifications should be made to the Secretariat not less than 30 calendar days prior to the opening of the bidding period.

11. Bidding periods should ensure sufficient time to all suppliers to prepare and submit bids, while taking account of the circumstances of the procurement agent. Bearing this in mind, bidding periods should normally be not less than 45 calendar days, except for large projects (with a value of, or exceeding, SDR 50 million), where bidding periods should normally be not less than 90 calendar days.

12. Notifications should be made available to DAC Members and to potential suppliers through the DAC's Internet bulletin board. DAC Members may also, in addition, wish to use their own facilities to publicise the aid offers contained in notifications.

ii) Exchange of information procedures

13. DAC Members which have received an enquiry from another Member concerning individual untied aid offers covered by this Recommendation should respond promptly (*i.e.* within 14 calendar days) and fully, providing all information relevant to the request, including information concerning donor financing of services related to the design and implementation of the notified project. Such enquiries and responses should use electronic means of communication. The DAC Members concerned should, together, take all possible steps to clarify or resolve issues arising.

14. Where that latter is not possible, a DAC Member may, if it so wishes, broaden the initial bilateral exchange of information to other DAC Members, in order to solicit views on issues pertaining to the implementation of the Recommendation.

15. The periodic reviews of the implementation of the Recommendation will also address experience with these procedures.

iii) Information on contract awards

16. DAC Members should provide the Secretariat with information on contract awards pertaining to individual *ex ante* notifications. This information should include the name, address and country of incorporation of the firm awarded the contract (or the prime contractor, where a syndicate of firms is concerned). The above information should be provided on an annual basis and be reviewed in the context of the overall review procedures.

17. For activities with a value of less than SDR 7000,000 or SDR 130,000 in case of investment related technical co-operation DAC Members should provide the Secretariat with annual aggregated overviews of the number and value of contract awards in their country, in other OECD Member countries, in developing countries and in least developed countries.

III. Reference Indicators Matrix

	<u>Members' positions (1)</u>	<u>Reference point</u>	<u>Index (2)</u>
I.	Bilateral LDC/HIPC ODA untying ratio	0.60	
II.	Effort-sharing composite indicator (3)	0.04	

(1). 5-year average.

(2). Members' positions as ratios of reference points.

(3). Calculated according to standing DAC practices, pending future work on the definition of multilateral ODA and its tying status, as follows: (bilateral LDC - HIPC ODA/GNP times bilateral LDC - HIPC's untying ratio) + LDC - HIPC's ODA/GNP. The presentation of the composite indicator, and the reference indicators matrix more generally, will set out in full their component elements.

ANNEX II

Least Developed Countries (as at 1 January 2008)

Afghanistan; Angola; Bangladesh; Benin; Bhutan; Burkina Faso; Burundi; Cambodia; Central African Republic; Chad; Comoros; Congo, Dem. Rep.; Djibouti; Equatorial Guinea; Eritrea; Ethiopia; Gambia; Guinea; Guinea-Bissau; Haiti; Kiribati; Laos; Lesotho; Liberia; Madagascar; Malawi; Maldives; Mali; Mauritania; Mozambique; Myanmar; Nepal; Niger; Rwanda; Samoa; Sao Tome and Principe; Senegal; Sierra Leone; Solomon Islands; Somalia; Sudan; Tanzania; Timor Leste; Togo; Tuvalu; Uganda; Vanuatu; Yemen; Zambia.

Non LDC, Highly Indebted Poor Countries (as of 1 January 2008)

Bolivia; Cameroon; Cote d'Ivoire; Ghana; Guyana; Honduras; Nicaragua; Republic of Congo.

ANNEX III

AID PROCUREMENT LIBERALISATION: 1998 DAC HLM MANDATE

1. HLM participants mandate the Working Party on Financial Aspects to work on a Recommendation on untying ODA to the Least Developed Countries (LDCs), including the relevant implementation issues, with a view to presenting a proposed text to the HLM in 1999. A status report should be presented to the Senior Level meeting (SLM) of the DAC in December 1998.

2. Participants recognised that in order to arrive at an agreed text, the following issues, in particular, will have to be satisfactorily addressed:

- The need for effective donor co-ordination and partnerships with developing countries that reflect responsiveness, efficiency and effectiveness of development co-operation.
- Assessment of potential effects on the quality, volume and direction of ODA flows.
- Helping develop the capacities of the private sector and procurement systems in partner countries.
- The importance of maintaining a basic sense of national involvement in donor countries (especially in certain forms of technical co-operation) alongside the objective of calling upon partner countries' expertise.
- The need to take into account differences in the structures and starting points of Members' programmes with respect to volume, ODA/GNP ratio, distribution and existing untying of aid.
- Initiatives to enlist the understanding and involvement of the business community in Member countries and promote wide public information and support.
- The impact of further procurement liberalisation on regional arrangements such as the Lomé Convention.
- Thorough examination of the modalities involved in the untying initiative, including:
 - ⇒ appropriate procurement modalities (including safeguards against corruption);
 - ⇒ manageable thresholds, coverage and exclusions (including with respect to technical co-operation and promotion of procurement from local and regional sources in developing partner countries);
 - ⇒ definitions and reporting arrangements on the tying status of ODA;
 - ⇒ mechanisms for confidence building and transparency, including provision of relevant statistical information;
 - ⇒ monitoring and peer review.