

### **Short WORKSHOP REPORT FORM**

**Number and title of workshop:** Special Session – Innovations on the Anti-corruption Front by MDBs: Cross Debarment among other anti-corruption initiatives

**Coordinator:** Steve Zimmermann, Director of Operations at the World Bank

**Date and time of workshop:** Thursday 11<sup>th</sup> November, 15:00-17:00

**Moderator:** Paul Lachel Roberts, Advisor to the Director General European Anti-fraud Office (OLAF) European Commission

**Rapporteur:** Suzanne Mulcahy, Transparency International

#### **Panellists:**

**Steve Zimmermann**, Director of Operations, Integrity Vice Presidency, World Bank

**Enerly Quinones**, Chief Compliance Officer, European Bank for Reconstruction and Development

**Brigitta Benitez**, Chief, Office of Institutional Integrity, Inter-American Development Bank Group

**Clare Wee**, Director, Office of Anti-corruption and Integrity Asian Development bank

**Vinay Sharma**, Director, Procurement and Fiduciary Services, African Development Bank Group

**Duncan Smith**, Senior Investigator, Fraud Investigations Unit EIB

#### **Main Issues Covered**

Multilateral Development Banks (MDBs) disburse millions of dollars in development loans annually and are therefore greatly exposed to corruption risks. In April 2010, the banks stepped up their activities in corruption control and deterrence by signing a Cross-Debarment Agreement. The special session brought together leaders of the integrity units in each of the banks to discuss the new cross-debarment initiative, in particular the potential impact it can have for mitigating corruption risks in development projects.

**Steve Zimmermann** gave a brief history of the initiative, explaining how the harmonisation of definitions of 'sanctionable practices' came about. He explained that the effort towards cross debarment began a number of years ago. In 2003/2004 dialogue increased between MDB integrity offices and in 2006 a uniform framework was adopted, which committed the banks to developing a harmonised approach towards integrity. At the centre of that was an agreement on a definition of *sanctionable practices*, namely fraud, corruption, collusion and coercion. There also needed to be agreement on investigative processes – some discussion of the possibility of cross-debarment was had at that point but the political capital was not there to go that far. Zimmermann explained that in order to agree on cross-debarment, a level of trust

between the MDBs had to be established and this explains the lengthy process that took place before agreement was reached. In 2009, the conversation on the steps toward cross-debarment began in earnest. The agreement was finally signed by five banks on April 9, 2010, representing the first global enforcement mechanism of sanctions. Zimmermann noted that, debarments as result of settlements or 'negotiated resolutions' would also be subject to cross-debarment.

**Clare Wee** explained the process of cross-debarment in more detail. She described the criteria for cross-debarment:

- Debarment has to be public/published
- It has to exceed one year
- Based on independent finding
- Needs to be a sanctionable practice committed within the previous 10 years

She also explained the standards for participation in the initiative.

- Harmonised definitions and investigative guidelines
- Notice and opportunity to be heard
- Standards of proof are identical
- Proportionality of sanctions
- Independent decision maker

The cross-debarment initiative has forced the banks themselves to revise their own debarment policies. For the Asian Development Bank, this has meant making some changes to bring their own policies in line with the new agreement.

**Enery Quinones'** presentation focused on the impact on the private sector. She posed the question of how MDBs can help these companies to become more transparent. She explained that the EBRD now requires all clients seeking funding to disclose if they are using consultants, who they are, what services they are providing and how they are being remunerated. She explained the potential for cross-debarment to force companies to tighten up their internal records and be more vigilant about contracts with third-party agents. They will need to look at their whole compliance programme at the top and at the level of their subsidiaries. She explained that the goal of the initiative is to achieve a change in the corporate culture of companies that do business with the MDBs. The idea is to make the cost of sanctions and the cost of reputational damage too high a price to pay for companies.

**Brigitta Benitez** focused on the value of cross-debarment as a weapon in the toolkit to fight corruption. Crucially, the coordination of the banks leverages deterrence. It also enforces the anti-corruption policies of the institutions and increases the impact of sanctions on firms engaging in fraud and corruption. It allows debarred parties to be treated more consistently. Finally, and perhaps most importantly, it strengthens impact of development projects.

In order to come in line with the standards required for participation in the initiative, the IDB has had to conduct an external review of all of the bank's anti-corruption policies. Benitez explained that this has led to some changes, particularly in ensuring the independence of the sanctioning process.

**Vinay Sharma** emphasised the likely impact of the cross-debarment regime. The economic impact should be substantial. Secondly, he sees the initiative as a driver for positive change in corporate behaviour. As cross-debarment becomes well-known and if it is perceived to be fair and transparent, the hope is that many other institutions will take note and use the list of firms sanctioned by the MDBs for their own projects. That would mean a multiplier effect for companies seeking to do business in the development sector. Sharma explained that the African Development Bank has not yet operationalised cross-debarment because of internal

processes that need to be finalised. The independence of the sanctioning process is an issue that is currently being addressed. The expectation is that it will come into effect early next year.

**Duncan Smith** explained why the European Investment Bank has not signed up to the cross-debarment initiative. EIB is a signatory to the unified agreement and recognises the agreed definitions, however:

- EIB does not have a debarment process yet. It is currently being finalised but it will not fit the standards required for participation in the cross-debarment initiative
- EIB does not have the immunities and privileges enjoyed by the other institutions. It is subject to European Law as applied by the ECJ. It is important to the EIB to minimise the risk of litigation that comes with any debarment.
- The sanctioning process being adopted by the EIB is in line with the European Commission's process, which does not include a public list of debarred firms. EIB will have a non-public list of excluded entities – at least initially. This prevents the EIB from being part of the cross-debarment initiative.

Smith emphasised that the EIB is committed to the highest standards of integrity in the projects it finances.

Other integrity initiatives undertaken by the EIB include:

- Proactive integrity reviews – EIB conducts risk-based assessment of all projects to establish those which are at highest risk but which have not yet featured in reports on allegations on fraud and corruption
- Training and outreach exercises for operations staff – EIB engaged consultants to assist in establishing a fraud awareness training programme for bank staff
- EIB keen to work cooperatively with our colleagues from other banks and converge on issues such as audit processes etc

During the discussion, a number of important points were raised from the floor. These included a need for awareness-raising to spread knowledge of the initiative; the issue of engaging with the national authorities on corruption cases and clarifying how settlements or negotiated resolutions will fit in with the cross-debarment initiative. Concerns were raised about the appeal and review process for companies accused of sanctionable practices and the intersection of the cross-debarment initiative with national criminal justice systems. All of the MDBs were keen to point out that debarment is an administrative sanction applied to companies found to be engaged in activities which are explicitly prohibited in contracts signed by the firms involved. They all agreed that this breach of contract gives the banks the right to decide to no longer do business with the companies involved. Notwithstanding this, the MDB representatives emphasized that there are safeguards in place to ensure that the decisions made with regard to debarment are fair, transparent and proportional. There were some concerns from the civil society side on the continued lack of transparency in the European debarment system. Duncan Smith responded that this is continually under review but that, for now, the list of debarred companies will not be published by the European institutions.

## **Main Outcomes**

The cross-debarment initiative of the MDBs was broadly welcomed by both government representatives and civil society actors attending the workshop. All of the MDBs emphasised that the initiative is new and in many ways is yet to be tested. However, the general consensus was that this initiative represents a very significant step forward in deterring corruption and thereby potentially strengthening the impact of development projects. Steve Zimmermann of the World Bank aptly noted that while the multi-lateral banks do compete on

many levels, they 'should not compete on integrity'.

### **Recommendations, Follow-up Actions**

Some points of concern which could be addressed by the MDBs include the need for awareness-raising to spread knowledge of the initiative and drawing out the potential synergies of MDBs engaging with the national authorities both on criminally prosecuted corruption cases and on sharing information on debarred companies. There were some concerns on the absence of the EIB from the initiative, although a recognition that this does not imply that the EIB is not committed to combating fraud and corruption.

### **Workshop Highlights (including interesting quotes)**

Several participants publicly praised the initiative and welcomed it, both from government and civil society perspectives.

Enerly Quinones, Chief Compliance Officer with the EBRD, noted that the cross-debarment initiative 'makes the cost of corruption instantly much more expensive for companies'.

There were strong concerns raised from the floor about the cross-debarment initiative 'bypassing the criminal justice system'. All of the MDB representatives strongly refuted this claim, emphasizing that this is an administrative procedure and not a criminal prosecution. As Steve Zimmermann noted 'the criminal justice system imprisons people - we just say we won't do business with you. We cooperate with the criminal justice system; we do not by-pass them'.