

UNECE PPPs Draft Standard on a Zero Tolerance Approach to Corruption in ‘People-First’ PPP Procurement

Public Review

Log of comments and observations (8 December 2016)

This paper sets out comments received in response to the formal review of the draft standard issued to UNECE on 21 October 2016.

Nr	Date (dd/mm/yyyy)	Originator	Comment	Response
1	04.11.2016	T.M. Blaiklock	[line 49] I would not confine the Guidelines to just “PPP”. The term “PPP” has just so many interpretations around the World these days. The Guidelines should, - and could easily, - cover the general procurement from the private sector of any public service contract [incl. the construction of assets]. PPP is, after all, just a commercial/funding structure.	
2	04.11.2016	T.M. Blaiklock	[line 128-] Corruption is not just about money changing hands. Institutional corruption is just as bad and even more insidious. The Guidelines do not cover this aspect.	
3	04.11.2016	T.M. Blaiklock	[line 392] “Conflicts of Interest” need to be more closely defined. Conflicts of interest represent a direct, or indirect, contractual advantage or benefit, which otherwise would not exist, as perceived by a third party.	
4	04.11.2016	T.M. Blaiklock	[line 620-] I agree that during the bidding process, bidder data should be kept confidential. However, post-bid and after award, there is much to be said, in terms of transparency and accountability, that the basic details (i.e. terms and conditions) of any public service contract with the private sector are placed in the public domain.	
5	04.11.2016	T.M. Blaiklock	[line 636] [Unsolicited bids]: Why not follow the “Swiss Challenge” procedure? [Being Geneva-based, UNECE should know all about it!]	
6	04.11.2016	T.M. Blaiklock	No comment has been made as to sanctions for miscreants,..... or are Swiss goals already full, e.g. with FIFA executives, etc.?? Guidelines have limited impact unless possible sanctions are clearly identified. Further, sanction standards need to be set, or, at least, suggested.	

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7	04.11.2016	T.M. Blaiklock	No comment is made in the Guidelines as to the funding for projects, where the contracted party is responsible for arranging finance. Such funding should be transparent and avoid the use to tax-havens, which are not sanctioned by the OECD/EU as fit for business. The latter should not only cover taxation issues, but also disclosure of beneficial ownership of companies.		
8	05.11.2016	John VAN RUTTEN	a. [line 510] <i>“and of”</i> . Is this correct? Has been intended <i>“and/or”</i> ? b. [line 545] TOR (see line 112 as well) c. [line 558] TOR (see line 112 as well) d. [line 561] VFM	a. - b. Please, replace by ToR c. Please, replace by ToR d. Please, replace by VfM integrate in the Terms (line 103) under line 112	
9	08.11.2016	Gagik Khachatryan	[line 242] It’s prudent to use road maps approach for launching PPP contracts for the process planning and fairness. Proposed changes: After the words “well-designed” add “based on road maps approach”		
10	08.11.2016	Gagik Khachatryan	[line 255] The public entity’s effort has to be directed to identifying the possible risks as well. Proposed changes: After the word “needs,” add “possible risks,”		
11	08.11.2016	Gagik Khachatryan	[line 258] It’s important to ensure awareness by Public and Private Sectors of each other’s problems and risks as well as priorities, especially before launching PPP contracts. Proposed changes: At the end of “Stage 1” paragraph add “Ensure awareness by Public and Private Sectors of each other’s problems and preferences.”		

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12	08.11.2016	Gagik Khachatryan	[line 282] Corruption can also occur because of the lack of regulation. Proposed changes: After the word “weakest” add “or unregulated”	
13	08.11.2016	Gagik Khachatryan	[line 334] The ability to design performance indicators is also very important requirement as indicators are risk allocation between public and private sectors, so there must be applicable tools for their evaluation which will allow to avoid inappropriate negotiations between parties later. Proposed changes: At the end of section “Corruption in PPP procurement” add new paragraph “ <ul style="list-style-type: none"> • When there aren’t clear and applicable methodologies for calculation of performance indicators, reliable base year data for evaluation of the progress of performance and appropriate monitoring system of the PPP process.” 	
14	08.11.2016	Gagik Khachatryan	[line 762] For objective and transparent evaluation of participants’ proposals there’s need to have an applicable evaluation system. Proposed changes: At the end of “Tender Notices and Bidding Documents” add paragraph “ <ul style="list-style-type: none"> • Develop evaluation criteria, evaluation methodology and evaluation matrix (for detailed evaluation).” 	
15	08.11.2016	Gagik Khachatryan	[line 764] Establishing comprehensive dispute/conflict resolution mechanism will allow to manage the risks during implementation of PPP projects. Proposed changes: At the end of “Tender Notices and Bidding Documents” add paragraph “	

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			<ul style="list-style-type: none"> Establish comprehensive dispute/conflict resolution mechanisms. Foresee that the arbitration is administered by independent arbitration and that independent auditors help resolve all disputes between parties.” 	
16	08.11.2016	Gagik Khachatryan	<p>[line 783] Increasing awareness of civil movement organizations will decrease risk of corruption.</p> <p>Proposed changes: At the end point 52 add paragraph “Government has to ensure involvement of civil movement organizations into PPP process.”</p>	
17	08.11.2016	Gagik Khachatryan	<p>[line 807] For increasing awareness of civil movement organizations.</p> <p>Proposed changes: In the section “Tender Evaluation Committee, Action Notes” and of bullet 1 add paragraph “The representatives of NGOs also can be member (involve) of the Evaluation committee.”</p>	
18	08.11.2016	Gagik Khachatryan	<p>[line 825] Preparing comprehensive bidding package and qualified evaluation of proposals needs specific capacity.</p> <p>Proposed changes: In the section “Tender Evaluation Committee, Action Notes” at the end add paragraph “Preparing comprehensive bidding package and qualified evaluation of proposals needs specific capacity. It’s prudent to involve the professional transaction agent/evaluator”</p>	
19	08.11.2016	Gagik Khachatryan	<p>[line 953] Involving independent auditors for the monitoring, review of the utilities’ performances and to help resolve all disputes between parties is crucial.</p> <p>Proposed changes: In the section Probity and Fairness Mechanisms Fairness Auditor at the end of point 72 add paragraph</p>	

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			“Auditors have to monitor, review the utilities’ performances and calculate penalties (if any).”	
20	06.12.2016	Benjamin Odame	<p>[line 124] The word “mobilized” as used in the paragraph means to converging or bringing together resources(something), therefore the impossibility of an action to be taken should not include the word mobilized</p> <p>Proposed changes: Mobilized should be changed to “Achieved” or “attained”</p>	
21	06.12.2016	Benjamin Odame	<p>[line 154/156] There is an unclear full meaning of the sentence. The sheer impact as used in the sentence preceding phrase of sheer impact was giving / or gave reference and captured corruption at all levels but singling out the level of corruption at project stages complicates the full understanding and meaning of the sentence.</p> <p>Proposed changes: Concerning should be replaced with “worrysome” which indicates that the issues is problematic or troubling. Example. Apart from the sheer scale of its impact, corruption at the level of projects is also deeply “worrying” or worrysome”</p>	
22	06.12.2016	Benjamin Odame	<p>[line 174/175] There should be .It is not surprising that the UN SDs .this is because it is an official document and as such short cuts to language speaking must be scrapped or made total unavailable.</p> <p>Proposed changes: Not surprising should be preceded by “It is” to make a complete sentence</p>	
23	06.12.2016	Benjamin Odame	<p>[line 189] The objectives have two diverging points, the first parts talks about suggestion and</p>	

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			recommendations while the last three points talk more about factors that sound like the authors are part of the PPP process which splits the objectives points into two. One part makes suggestion about how the standards will be while the other part does not	
24	06.12.2016	Benjamin Odame	<p>[line 196] This is because the Author of this paper is a third party to the PPP reformation who only makes or recommend positive solutions to combating corruption in PPP through objectives of the standard. So since the Author is not directly involved in the government PPP policy process. You cannot integrate new technologies into the process but only suggest policies in the paper.</p> <p>Proposed changes: Suggest policies to help integrate new technologies for.....</p>	
25	06.12.2016	Benjamin Odame	<p>[line 235] I think since although there are some similarities for both the traditional public contracts and PPP, there was too shallow explanations what really the concept or core values of the traditional Public Contracts are. So that policy makers who have little knowledge about the two will have full understanding of them. There was much for the comparism and similarity scenarios about the two but the full meaning of the later was never mentioned.</p> <p>Proposed changes: Explain briefly the meaning or definition of traditional public contracts</p>	
26	06.12.2016	Benjamin Odame	<p>[line 291] The full sentence before the word "but" talks about positive things to help PPP invariably linking the second point with "But" deviates the main idea that the statement wants to carry or send across. More often than not the linking word but of "BUT" follows with a negative statement against the first or previous sentence.</p> <p>Proposed changes: Therefore</p>	

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27	06.12.2016	Benjamin Odame	<p>[line 297] The word “risk” which is used to mean “ways” or “circumstances” in which corruption occurs should be replaced with "means", "factors", "route" or any word to "the causing agent or reason for corruption to happen in PPP procurement" . "Risk" means effect or consequences of the aftermath of corruption in the Procurement.</p> <p>Proposed changes: Means or factors or route</p>	
28	06.12.2016	Benjamin Odame	<p>[line 298-326] All the points that explains the opportunities of corruption to happen in Procurement starts with the positive important measure to implement PPP procurement but the subtitle which lead to the further subdivisions only spoke about negative of PPP.</p> <p>Proposed changes: I suggest the main point in line 297 should be reframed to contain or depict both important actions to be taken to help PPP and likely effects of such action.</p>	
29	06.12.2016	Benjamin Odame	<p>[line 382] The sentence should be reframed properly by eliminating the word "existing" since there is the word "exist" at the ending part of the first phrase/sentence.</p> <p>Proposed changes: If anti-corruption laws exist, review, revise or extend in anticipation of PPP activity... or If there are an existing anti-corruption laws, regulations, and codes.....</p>	
30	06.12.2016	Benjamin Odame	<p>[line 579] This should be the second point since consultants and experts will need to be selected before they can be included in the public record associated with the project</p> <p>Proposed changes: Replace 577 with 579 and vice versa</p>	

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31	06.12.2016	Benjamin Odame	<p>[line 905] There should be "the" between consider and use of Probity Officers</p> <p>Proposed changes: The</p>	
32	06.12.2016	Benjamin Odame	<p>[line 953] There should be coma (,) in between officer and require OR "In" should be eliminated to make the sentence complete. Also since the Probity officer is a third person singular verb, "(S)" must be added to require to make it "requires"</p> <p>Proposed changes: Comma (,) or "In" in the first part of the sentence should be deleted. And also the word "require" should be changed to "requires"</p>	
33	06.12.2016	Benjamin Odame	<p>[line 955] Also the "require" after Fairness Officer since it is a singular verb should be "requires"</p> <p>Proposed changes: "Require" should be "requires"</p>	
34	06.12.2016	Predrag Cvetkovic	<p>[line 289-293] However, the thorough decision about PPP (Stage 1) shall include the criteria which are hard to be misused and conversely provides genuine competitiveness of the procurement process (e. g. criteria of "technological neutrality" complemented with the "output based" criteria for the best bidder).</p> <p>Proposed changes: "However, the PPP procurement process is characterized by the genuine linkages between all three stages of procurement: therefore holistic approach to the procurement is justified by the existence of those linkages."</p>	

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35	06.12.2016	Predrag Cvetkovic	<p>[line 358-361] It is necessary to promote the NGOs as the relevant stakeholder in the PPP procurement from the very inception of the project: in this way the higher level of transparency is achieved.</p> <p>Proposed changes: Next to the line 361: "The Governments shall support and promote the role of non-governmental sector from the very inception of the project"</p>	
36	06.12.2016	Predrag Cvetkovic	<p>[line 379] The enforceability of the code of ethics is complex question. "Ethical" sanctions, as opposed to the legal ones could include the prohibition to the party in "breach of ethics" to participate in the future projects in the host country. However, "ethical" suitability should not be the "protectionism in disguise". Therefore the clear rules of procedure and criteria should be establish in order to determine if and to what extent the accused party breached ethical principles.</p> <p>Proposed changes: Next to the line 379: The relevant code of ethics shall define the transparent rules of procedure and criteria establishing the breach of ethical principles, as well the clear and proportional consequences of such breach for the party in breach.</p>	
37	06.12.2016	Predrag Cvetkovic	<p>[line 431-433] The importance of international models is restricted by the existence of the cultural differences as well the differences of "political quality" among countries , e. g: - the family ties and public sector intersect in the Arab countries more relevant in comparison with the EU Countries; - the countries with underdeveloped political systems , such as Turkophony states- Uzbekistan, Turkmenistan, Kazakhstan, Tajikistan, Kyrgyzstan.</p> <p>Proposed changes: Next to the line 433: "The expected incorporation of international models in the sense of previous sentence should be carried in accordance with the cultural and political</p>	

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			particularities of the country in question. shall not mean that countries.	
38	13.12.2016	Marina Epifanceva	[line 1-1057] The draft should be proofread and revised by a native English speaker Proposed changes: Proofread and revise the draft by a native English speaker	
39	13.12.2016	Marina Epifanceva	[line 154] The results of the Corruption Perception Index (CPI) 2015 conducted by the Transparency International could be mentioned and discussed in the Introduction section (http://www.transparency.org/cpi2015#results-table) Proposed changes: Highlight the CPI 2015 results in the Introduction section	
40	13.12.2016	Marina Epifanceva	[line 155-156] The sentence needs to be revised Proposed changes: “Apart from the sheer scale of its impact, the impact of corruption at the level of projects is also deeply concerning because it:”	
41	13.12.2016	Marina Epifanceva	[line 157] Corruption in procurement can distort market mechanisms, impede country’s economic development, reduce competitiveness, trade and foreign direct investments Proposed changes: Add an additional bullet point	
42	13.12.2016	Marina Epifanceva	[line 445] Check for the presence of the conflict of interest at all three stages of PPP procurement process Proposed changes: Add an additional bullet point	
43	13.12.2016	Marina Epifanceva	[line 445] In case the conflict of interests cannot be eliminated or mitigated, such individuals should be retrieved from the PPP project Proposed changes:	

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			Add an additional bullet point	
44	13.12.2016	Marina Epifanceva	[line 493] Governments should develop online platforms that disclose to participants and to general public information on all stages of PPP procurement process in a timely manner Proposed changes: Add an additional bullet point	
45	13.12.2016	Marina Epifanceva	[line 587-588] Minimization of costs used only for minimization can cause worsening of quality. Aspects like political situation, financial markets, availability of procured goods, etc. can affect costs and technologies progress Proposed changes: cost breakdowns in the tender so that costs can be monitored according to cost/quality ratio and up-to-date costs and technologies	
46	13.12.2016	Marina Epifanceva	[line 688] Word "sufficient" should be clarified in quantative and descriptive details Proposed changes: Require unsolicited proposals to provide information and details according to established framework	
47	13.12.2016	Marina Epifanceva	[line 714] Word "sufficient" should be clarified in quantative and descriptive details Proposed changes: give detailed information for any potential bidder	
48	13.12.2016	Marina Epifanceva	[line 714] Word "sufficient" should be clarified in quantative and descriptive details Proposed changes: Publish tender notices and bidding documents for a fixed amount of time	
49	13.12.2016	Marina Epifanceva	[line 825-826] Word "sufficient" should be clarified in quantative and descriptive details Proposed changes: bidders with sufficient information to allow the candidates to evaluate their interest for	

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			the project	
50	13.12.2016	Marina Epifanceva	[line 863-864] Word "sufficient" should be clarified in quantative and descriptive details Proposed changes: Governments should use dialogue-based PPP procurement when the contracting authority does not have sufficient expertise to set up technical specifications	
51	13.12.2016	Marina Epifanceva	[line 911-914] Word "sufficient" should be clarified in quantative and descriptive details Proposed changes: Governments should accept framework of professional capacity and skills for application by Probity Officers. Probity Officers should have independence, from all public and private parties involved in the PPP.	
52	13.12.2016	Marina Epifanceva	[line 981-983] Word "sufficient" should be clarified in quantative and descriptive details or eliminated Proposed changes: Governments should incorporate whistle-blower rules and framework, and ensure that it be easy to initiate by a whistle-blower, and provides confidentiality of the information	
53	13.12.2016	Marina Epifanceva	[line 1061] The OECD report "Bribery in Public Procurement: Methods, Actors and Counter-measures" could be considered and added to the reference list http://www.oecd.org/investment/anti-bribery/anti-briberyconvention/44956834.pdf Proposed changes: Add the report to the reference list	
54	15.12.2016	Laurent Félix	ISO has developed a new standard to help organizations fight bribery and promote an ethical business culture. ISO 37001 on Anti-bribery management systems, specifies a series of measures to help organizations prevent, detect and address bribery. These include adopting an anti-bribery policy, appointing a person to oversee anti-bribery compliance, training, risk assessments and due diligence on projects and business associates, implementing financial and commercial controls, and instituting reporting and	

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			<p>investigation procedures.</p> <p>The measures required by ISO 37001 are designed to be integrated with existing management processes and controls. ISO 37001 can be used by any organization, large or small, whether it be in the public, private or voluntary sector, and in any country. It is a flexible tool, which can be adapted according to the size and nature of the organization and the bribery risk it faces.</p> <p>A well-managed organization is expected to have a compliance policy supported by appropriate management systems to assist it in complying with its legal obligations and commitment to integrity. An anti-bribery policy is a component of an overall compliance policy. Therefore, EIC/ FIEC urge UNECE to review the entire "zero tolerance" document in view of the newly published ISO 37001 on Anti-bribery management systems and also use it as a source and reference. EIC / FIEC stresses that not only suppliers and contractors should adopt the principles of the Anti Bribery Management System, ISO37001. This is just as important also for Procuring entities and Public Contract management organizations such as Road and Railway authorities and similar organizations.</p> <p>Last but not least, EIC/ FIEC encourage major public sector and private sector procurement bodies to make it a pre-qualification requirement in the same way as ISO 9001. Or, at least to offer additional positive evaluation points for proven compliance with this international standard.</p>	
55	15.12.2016	Laurent Félix	<p>[line 133/4] Considering that there are no reliable figures on corruption, the text should not indicate specific figures as if they were proven facts. In the case of citations, the fact that a statement has been made or published does not make the contents of a statement a fact.</p> <p>The reference is not exact (anymore), today the date on the website is "November 28, 2016".</p> <p>Proposed changes: "The World Bank recently highlighted claimed ..." correct date and add: "http://www.worldbank.org/en/topic/governance/brief/anti-corruption"</p>	

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56	15.12.2016	Laurent Félix	<p>[line 145-7] Each citation should indicate the source exactly, so that the interested reader can find it easily.</p> <p>Searching the European Commission citation given in these lines, we only found this text in the CoST "PRESS RELEASE Embargoed until 09.30, 22 October 2012". This includes even the missing inverted commas at the end.</p> <p>http://www.constructiontransparency.org/documentdownload.axd?documentresourceid=8), which, in turn, is cited in the "OECD Public Governance Reviews Integrity Framework for Public Investment" published 29/2/2016.</p> <p>Proposed changes: Check that all citations throughout the entire text do have the correct reference, if possible with the URL allowing to see the citation in its context. Citations without reference should be deleted or reformulated in order not to appear as citations.</p>	
57	15.12.2016	Laurent Félix	<p>[line 385] EIC/ FIEC encourage the adoption of a code of ethics by governments, its publication, as well as, its endorsement by “the various public entities involved in the process, and by bidders, and both public and private affiliates, contractors and subcontracts participating in the bidding process (...)”. Concerning the content of such a code, EIC/ FIEC make some additional proposals and ask to kindly refer to §8.7 of the ISO 37001.</p> <p>Proposed changes: the Government’s code of ethics should clearly prohibit solicitation and acceptance of bribes by the government’s personnel and anyone working on behalf of the government</p>	
58	15.12.2016	Laurent Félix	<p>[line 438] EIC/ FIEC fully support the establishment of a conflict of interest system that incorporates international models and includes procedures for identification as formulated by the UNECE draft. However, EIC/ FIEC propose to add two additional bullet points that might help a Government to identify situations where personnel may facilitate or fail to prevent or report bribery.</p> <p>Proposed changes:</p>	

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			<ul style="list-style-type: none"> • The Government should clearly inform all personnel of their duty to report any actual or potential conflict of interest such as family, financial or other connection directly or indirectly related to their line of work. • The Government should preferably keep a record of any circumstances of actual or potential conflicts of interest and whether actions were taken to mitigate the conflict. • The Government may also implement audit procedures to identify ways personnel may exploit existing control weaknesses for personal gain. Example procedures could refer to § 8.4.4 of ISO 37001 on Anti-bribery management systems 	
59	15.12.2016	Laurent Félix	<p>[line 744] EIC/ FIEC advocate for fair and reasonable tender processes and bidding documents.</p> <p>Proposed changes: Contracts should be awarded, where possible and reasonable, only after a fair and, where appropriate, transparent international competitive tender process between at least three competitors has taken place;</p>	
60	15.12.2016	Laurent Félix	<p>[line 795] EIC/ FIEC are generally supportive of the creation of a Tender Evaluation Committee and make the additional proposals:</p> <p>Proposed changes:</p> <ul style="list-style-type: none"> • requiring at least two persons to evaluate the tenders and approve the award of a contract; • implementing a separation of duties, so that the same person cannot both initiate and approve a payment and/or the award of the contract; • requiring the signatures of at least two persons on contracts, and on documents which change the contract terms or which approve work undertaken or supplies provided under the contract; • placing a higher level of management oversight on potentially high bribery risk transactions; • protecting the integrity of tenders and other price-sensitive information by restricting access to appropriate people; 	

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61	15.12.2016	Laurent Félix	<p>[line 913a] Checking the conformity of the Procurement’s procedures with the applicable anti-corruption laws and regulations, including PPP complex and innovating projects, is a need. However, FIEC and EIC question the relevance of the mechanism proposed in this draft. Indeed, while it might be relevant to rely on consultancies and/or qualified individual or specialized firms to assess part of the procurement compliance with the applicable laws and regulations, the draft proposal shall also encourage low or medium income countries to develop their own governmental entities for the fight against fraud and corruption. The creation of such agencies, national or eventually regional, would allow the promotion and the effective diffusion of appropriate codes of conduct, ethic procedures as well as good governance principles. Finally, the creation of such agencies could be supported by Multilateral Development Banks and/or Development Financial Institutions’ financial and technical assistance.</p> <p>Proposed changes: Governments shall create a national agency for the fight against corruption. The agency shall use appropriate rules and procedures, including for PPP projects. The agency shall be staffed with trained personnel with, when necessary, the support of Multilateral Development Banks and/or Development Finance Institutions.</p>	
62	15.12.2016	Laurent Félix	<p>[line 922a] EIC and FIEC outline that the appointment of a Fairness Auditor shall not be limited to the cases of corruption. EIC and FIEC support that the Fairness Auditor shall be able to address all types of misprocurement, i. e. non-compliance with deadlines, restrictive clauses, Abnormally Low Tenders, partial offer etc. Furthermore, EIC and FIEC think that such tasks can be best achieved through the establishment of national or regional agencies for the fight against fraud and corruption and not by single individual. Therefore, FIEC and EIC support the appointment of a Fairness Auditor only in the cases where competent national entities or competent court for the fight against fraud and corruption are not provided. If such entities are provided, FIEC and EIC sustain that any case of misprocurement shall fall under the responsibility of the competent national entity for the treatment of misprocurement. This entity may, where appropriate, rely on the relevant national or regional agency for the fight against fraud and corruption.</p>	

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			<p>Proposed changes: At the request of the interested party, any case of misprocurement, i. e. for fraud or corruption shall be allocated, whenever possible, to the relevant Court of justice or to the competent national entity that will be able to support the case, where appropriate, with the expertise of the National Agency for the fight against fraud and corruption.</p>	
63	15.12.2016	Laurent Félix	<p>[line 986] EIC/ FIEC acknowledge that governments may wish to establish whistle-blowing rules and procedural framework in order to enable and encourage proactive disclosure of conflicts, corruptive manoeuvres and other fraudulent practices. In this context, governments’ employees shall be well informed about their rights and obligations in such a whistle-blowing framework.</p> <p>Proposed changes:</p> <ul style="list-style-type: none"> • training materials should reinforce the prohibition on soliciting and accepting bribes and include the framework on whistle-blowing rules. • the publication on the Government’s website of the Government’s whistle-blowing rules and procedural framework and of details of how to report bribery helps to set expectations with business associates, so as to decrease the likelihood that business associates will offer, or the Government’s personnel will solicit or accept, a bribe. 	
64	16.12.2016	J. M. Moss	<p>We have several general comments on the general ‘tone’ of this paper as follows: Viewing the document as a whole, we are concerned that it portrays a somewhat negative view of PPPs. The objective of the Standards is to promote PPPs as a useful tool. The TOS PPP should therefore avoid giving the impression that PPPs are too complicated, difficult or risky. This does not mean that the standard should avoid the real issues, many of which are raised in the document.</p> <p>The concept of creating a true and lasting partnership between the parties needs to come out more strongly. Creating and maintaining a fair and equitable balance between the contracting parties (and their advisors) is essential to a successful outcome. The way the procurement process is conducted is crucial to creating these conditions. The way the document is drafted seems to miss this.</p> <p>Creating a deep sense of understanding of partnership is always challenging during a</p>	

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			<p>competitive bidding process. More emphasis has to be placed on working together to achieve lasting value in the outcome, even if the competitive procurement process has a natural tendency towards being conflictual.</p> <p>The document also seems to take a stance predicated on the idea that the private sector is inherently unethical, which in most cases is not correct. This does not help in the promotion of PPP.</p> <p>We hope these points can be addressed in a further draft.</p>	
65	16.12.2016	J. M. Moss	<p>[line 118-124] This is a negatively worded opening, which is likely to discourage people interested in PPP from the beginning. It needs to be redrafted in a positive tone. See suggestion</p> <p>Proposed changes: The United Nations 2030 Vision for Sustainable Development and the associated Sustainable Development Goals (SDGs) represent a very substantial approach to overcoming a wide range of unsustainable activities and behaviours. Meeting the goals will bring huge benefits of great value. In the long term, this will outweigh the considerable costs estimated to be needed to achieve them. Recent reports have estimated that global infrastructure will need USD 3.3 trillion of investment per year just to keep pace with projected growth. This massive sum will need to be mobilized from many sources, including from the private sector. In order for Governments to scale up investment and infrastructure development to this magnitude, they need to make strong commitments to transparency and integrity, and to fight corruption.</p>	
66	16.12.2016	J. M. Moss	<p>[line 126-127] Again this heading presents a very negative profile.</p> <p>Proposed changes: The benefits of overcoming corruption</p>	
67	16.12.2016	J. M. Moss	<p>[line 132-153] Do you need all 5 of these, couldn't the information be reduced to produce more impact?</p> <p>Proposed changes:</p>	

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68	16.12.2016	J. M. Moss	<p>[line 148-153] We think it might make more sense to make this the first bullet point of the list.</p> <p>Proposed changes:</p>	
69	16.12.2016	J. M. Moss	<p>[line 155-156] See proposed modification in next column</p> <p>Proposed changes: Apart from its sheer scale, the impact of corruption at the level of projects is also deeply concerning. Corruption:</p>	
70	16.12.2016	J. M. Moss	<p>[line 165] Make “Encourages rent seeking” a new bullet point</p> <p>Proposed changes:</p>	
71	16.12.2016	J. M. Moss	<p>[line 190] As this is the first time the word “standard” is mentioned we believe it would require definition. We believe it is also necessary for the TOS PPP to be very clear what this standard does that the existing UN and OECD guidelines and principles do not do? Having to follow a very large number of standards can be a real hindrance to both parties that might be trying to develop a PPP. The job of the TOS PPP is surely to make the process easier not to complicate it.</p> <p>Proposed changes:</p>	
72	16.12.2016	J. M. Moss	<p>[line 191] We think that at the beginning of this list you should add two additional bullet points as proposed in the next column:</p> <p>Proposed changes:</p> <ul style="list-style-type: none"> • To improve the opportunities to use PPPs in ways that mobilise their potential and reduce the risk and complexity of establishing and operating them. • Assist all parties to enter into and to operate PPPs that are of high quality and not compromised by defects caused by the lack of integrity or corrupt practices of any persons involved. 	

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73	16.12.2016	J. M. Moss	<p>[line 209-211] We believe it would be better to couch these ideas in a positive context, otherwise you are destroying PPPs before you start.</p> <p>Proposed changes: Part 1 discusses the three (3) stages of PPP procurement, and the ways PPPs may be vulnerable to corruption, and the moments in the procurement process where special care is needed to avoid the risks of corruption.</p>	
74	16.12.2016	J. M. Moss	<p>[line 212] We believe it would be better to couch these ideas in a positive context, otherwise you are destroying PPPs before you start.</p> <p>Proposed changes: Part 2 elaborates further the core areas where there is a risk that corruption in the procurement process may occur. It sets out in detail several recommendations to address these specific issues and adds some action points for the implementation of the same.</p>	
75	16.12.2016	J. M. Moss	<p>[line 227] Think again about a more positive formulation of this heading.</p> <p>Proposed changes: Protecting PPPs at all stages of Project Procurement</p>	
76	16.12.2016	J. M. Moss	<p>[line 235] Delete the words “somewhat novel and”</p> <p>Proposed changes:</p>	
77	16.12.2016	J. M. Moss	<p>[line 238] What do you mean by “go beyond the traditional role of the Treasury”? This requires clarification.</p> <p>Proposed changes:</p>	
78	16.12.2016	J. M. Moss	<p>[line 235] Add additional wording as proposed in next column.</p> <p>Proposed changes: . The most important is that they require to bring together the public sector and private sector in a true and lasting partnership and not in a short term “deal”. There are a number</p>	

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			of other features that...	
79	16.12.2016	J. M. Moss	<p>[line 238] Add additional wording as proposed in next column.</p> <p>Proposed changes: . The success of a PPP depends on both the public authority and the private operator respecting and performing their contractual commitments and therefore require new longer term...</p>	
80	16.12.2016	J. M. Moss	<p>[line 258]</p> <p>Proposed changes: Add “, thus” before “subjecting”</p>	
81	16.12.2016	J. M. Moss	<p>[line 259]</p> <p>Proposed changes: Add “evaluating and” before “awarding the contract”</p>	
82	16.12.2016	J. M. Moss	<p>[line 261]</p> <p>Proposed changes: Add “and evaluate offers” before “can be very high”</p>	
83	16.12.2016	J. M. Moss	<p>[line 267]</p> <p>Proposed changes: Add “it judges” before “proposes”</p>	
84	16.12.2016	J. M. Moss	<p>[line 268]</p> <p>You should also highlight the ‘contract finalization’ stage that occurs between bid award and contract start. There is usually a need for a period to finalize and agree the terms of the contract and then to fulfil the ‘conditions precedent’ before the contract can actually come into force.</p> <p>Proposed changes:</p>	
85	16.12.2016	J. M. Moss	<p>[line 268]</p> <p>In this context, you need also to address the challenge posed by variant or additional offers. These can add considerable value to the final outcome, but can cause difficulties in evaluation and suspicion from other parties. A clear procedure to deal with them in a way that respects both the need to recognise competitive advantage and demonstrate</p>	

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			transparency is needed. Proposed changes:	
86	16.12.2016	J. M. Moss	[line 270] Proposed changes: Delete “bidder” and replace with “two parties”	
87	16.12.2016	J. M. Moss	[line 272] In this phase there is the challenge of dealing with changes in circumstances and additions or variations. In long-term contracts conditions and circumstances will inevitably change and both clients and contractors need to have the means to adapt to them. The Standard needs to clearly recognise this challenge and provide a procedure. Proposed changes:	
88	16.12.2016	J. M. Moss	[line 283] Proposed changes: Add “where extortion,” before “bribes”	
89	16.12.2016	J. M. Moss	[line 284] Proposed changes: Add “, it is” before “frequently”	
90	16.12.2016	J. M. Moss	[line 284] Proposed changes: Delete “companies” and replace with “one of the parties is”	
91	16.12.2016	J. M. Moss	[line 285] Proposed changes: Replace “adjusting” with “adjustment”	
92	16.12.2016	J. M. Moss	[line 285] Proposed changes: Add “distorting regulatory procedures or reporting,” before “or padding”	
93	16.12.2016	J. M. Moss	[line 287-289] We do not understand this sentence. Can you consider redrafting? Proposed changes:	

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95	16.12.2016	J. M. Moss	[line 298-301] This is very confusing drafting that requires review. Proposed changes:	
95	16.12.2016	J. M. Moss	[line 302] Proposed changes: Add “concept” after “PPP”	
96	16.12.2016	J. M. Moss	[line 302] Proposed changes: Add “with the market prior to a bidding process” after “tested”	
97	16.12.2016	J. M. Moss	[line 304] Proposed changes: Add “potentially” before “opens”	
98	16.12.2016	J. M. Moss	[line 311-331] Taken together, these four bullet points do a very good job of undermining the rationale for PPPs in the first place. If our objective is to promote PPP, then surely, we need to take a different and more promotional approach. In addition, the issues can be taken the other way round so these characteristics are also advantages. Proposed changes:	
99	16.12.2016	J. M. Moss	[line 356] Proposed changes: Add “clean” before “conduct”	
100	16.12.2016	J. M. Moss	[line 360] Proposed changes: Add an “s” to the word “strengthen”	
101	16.12.2016	J. M. Moss	[line 379] Proposed changes: Add “and enforced” after “enforceable”	

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102	16.12.2016	J. M. Moss	<p>[line 379] We would suggest you add additional points to this list as follows: Proposed changes: 10. Ideally, governments should have an independent anticorruption agency. 11. Private sector companies bidding for PPPs should have their own published code of ethics and internal anticorruption procedures that can be audited by independent parties.</p>	
103	16.12.2016	J. M. Moss	<p>[line 399] The way you use the words "are challenged" here is ambiguous. Do you mean "that they find it difficult" or are you "challenging them to do something"? Proposed changes:</p>	
104	16.12.2016	J. M. Moss	<p>[line 403] Proposed changes: Replace the text in the box with the following “Conflicts of interest are ‘red flags’ indicating the risk of corruption and a general threat to the integrity of the process. Because conflicts can be identified they are important tools for an anti-corruption system that attempts to uncover conduct that is purposefully hidden.”</p>	
105	16.12.2016	J. M. Moss	<p>[line 405] Proposed changes: Replace “competing” with “compete”</p>	
106	16.12.2016	J. M. Moss	<p>[line 405] Proposed changes: Add “that arise from” after “obligations”</p>	
107	16.12.2016	J. M. Moss	<p>[line 409] Proposed changes: Replace “although” with “while”</p>	
108	16.12.2016	J. M. Moss	<p>[line 411] Proposed changes: Add “also” after “should”</p>	

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109	16.12.2016	J. M. Moss	[line 448] The way you use the words "are challenged" here is ambiguous. Do you mean "that they find it difficult" or are you "challenging them to do something"? Proposed changes:	
110	16.12.2016	J. M. Moss	[line 453] Proposed changes: Replace "critical" with "essential"	
111	16.12.2016	J. M. Moss	[line 500-531] The whole of this section very unclear. It needs careful reconsideration and more precise drafting. Proposed changes:	
112	16.12.2016	J. M. Moss	[line 509] "Separate" it is not clear what they should separate them from. The current drafting can be read in several different ways. Proposed changes:	
113	16.12.2016	J. M. Moss	[line 514] It is not clear what "these entities" relates to Proposed changes:	
114	16.12.2016	J. M. Moss	[line 514-520] This whole paragraph is unintelligible and requires redrafting. Proposed changes:	
115	16.12.2016	J. M. Moss	[line 521-522] This whole paragraph is unintelligible and requires redrafting. Proposed changes:	
116	16.12.2016	J. M. Moss	[line 538] The way you use the words "are challenged" here is ambiguous. Do you mean "that they find it difficult" or are you "challenging them to do something"? Proposed changes:	

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117	16.12.2016	J. M. Moss	[line 539] Here and throughout this section you are using the word “retention” in an unorthodox way which could lead to confusion. Better word might be “engagement” Proposed changes:	
118	16.12.2016	J. M. Moss	[line 547-548] We may have misunderstood this, but it does not seem necessary that all experts should be capable of covering all stages in a project. What is important is that they are fully competent to deal with the matters on which they are expected to provide expertise. Proposed changes:	
119	16.12.2016	J. M. Moss	[line 554] Proposed changes: Delete “free from” and replace with “have no”	
120	16.12.2016	J. M. Moss	[line 562] Proposed changes: Replace “balancing” with “to balance”	
121	16.12.2016	J. M. Moss	[line 562] What is the “retention budget”? This probably needs defining. Proposed changes:	
122	16.12.2016	J. M. Moss	[line 579] Reconsider the word “Post”. It appears odd here. Do you mean “advertise, publicise, make calls for tender to” or something similar? In addition, it seems inappropriate and impractical to expect calls for tender for multiple different tasks to be made simultaneously. In practice they are often required sequentially, some depending on the outcome of others. Proposed changes:	
123	16.12.2016	J. M. Moss	[line 585] Proposed changes: Replace the word “State” with “Define”	

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124	16.12.2016	J. M. Moss	[line 606] The way you use the words "are challenged" here is ambiguous. Do you mean "that they find it difficult" or are you "challenging them to do something"? Proposed changes:	
125	16.12.2016	J. M. Moss	[line 607] Proposed changes: Replace the word "the" at the end of the line with "its"	
126	16.12.2016	J. M. Moss	[line 636] You should consider adding a whole section prior to this one that would deal with variations and variant bids. Proposed changes:	
127	16.12.2016	J. M. Moss	[line 638] The way you use the words "are challenged" here is ambiguous. Do you mean "that they find it difficult" or are you "challenging them to do something"? Proposed changes:	
128	16.12.2016	J. M. Moss	[line 642] Proposed changes: Replace "seek to" with "may be intended to"	
129	16.12.2016	J. M. Moss	[line 660] The box on unsolicited proposals is unduly negative. A good unsolicited proposal can add enormous value but of course needs to be managed very carefully. Proposed changes:	
130	16.12.2016	J. M. Moss	[line 679-681] Suggest you reword this section as shown in the next column. Proposed changes: 44. Governments should allow potentially responsive bidders and other interested stakeholders the opportunity to challenge an unsolicited proposal prior to a contract being awarded. They need to pay special attention to avoiding pursuing challenges that are not based on substantial grounds.	

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131	16.12.2016	J. M. Moss	[line 689] Proposed changes: Replace “it is” with “they are”	
132	16.12.2016	J. M. Moss	[line 689] Proposed changes: Replace “fits” with “fit”	
133	16.12.2016	J. M. Moss	[line 710] In the text box Proposed changes: Replace “to skewing” with “that can be used to skew”	
134	16.12.2016	J. M. Moss	[line 714] Proposed changes: Replace “for” with “to permit”	
135	16.12.2016	J. M. Moss	[line 722] In this context, you need to deal with the issues raised by queries and clarifications related to the tendering information and documents. It is also necessary to deal with the situations that arise when incomplete information or inaccurate data comes to light at any stage in both the procurement and operation phases of a PPP contract. Proposed changes:	
136	16.12.2016	J. M. Moss	[line 759] The way you use the words "are challenged" here is ambiguous. Do you mean "that they find it difficult" or are you "challenging them to do something"? Proposed changes:	
137	16.12.2016	J. M. Moss	[line 760] Proposed changes: Add: "and their bids" after “bidders”	
138	16.12.2016	J. M. Moss	[line 761] Proposed changes: Replace “a proposal” with “their proposal”	

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139	16.12.2016	J. M. Moss	[line 762] Proposed changes: Replace “prevailed in the competition” with “was judged to have submitted the best offer”	
140	16.12.2016	J. M. Moss	[line 767] Proposed changes: Delete the word “and” after “method”	
141	16.12.2016	J. M. Moss	[line 768] Proposed changes: Delete the word “permitting” from the end of the line	
142	16.12.2016	J. M. Moss	[line 773-774] Proposed changes: Replace these lines with “code of ethics and require that they have no conflicts of interest.”	
143	16.12.2016	J. M. Moss	[line 796- 799] These bullet points require clarification. As they stand they are unintelligible. Proposed changes:	
144	16.12.2016	J. M. Moss	[line 816] The way you use the words "are challenged" here is ambiguous. Do you mean "that they find it difficult" or are you "challenging them to do something"? Proposed changes:	
145	16.12.2016	J. M. Moss	[line 826] Proposed changes: Replace “for the project “ with “in the project, be informed”	
146	16.12.2016	J. M. Moss	[line 835-837] The meaning of this bullet point is not clear. It requires clarification and redrafting. Proposed changes:	
147	16.12.2016	J. M. Moss	[line 844] Proposed changes: Replace “and after” with “up to and including”	

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148	16.12.2016	J. M. Moss	[line 854] The way you use the words "are challenged" here is ambiguous. Do you mean "that they find it difficult" or are you "challenging them to do something"? Proposed changes:	
149	16.12.2016	J. M. Moss	[line 860] Proposed changes: In the text box, delete the word “put” from the second line	
150	16.12.2016	J. M. Moss	[line 882] Proposed changes: Replace the words after “confidentiality” with “in any dialogue involving”	
151	16.12.2016	J. M. Moss	[line 890] Proposed changes: Replace the word “of” after the word “system” with “for”	
152	16.12.2016	J. M. Moss	[line 896] The way you use the words "are challenged" here is ambiguous. Do you mean "that they find it difficult" or are you "challenging them to do something"? Proposed changes:	
153	16.12.2016	J. M. Moss	[line 913] Proposed changes: Replace “independence” with “be fully independent of”	
154	16.12.2016	J. M. Moss	[line 953] Proposed changes: Replace “of a Probity Officer require” with “ where a Probity Officer requires”	
155	16.12.2016	J. M. Moss	[line 953-954] This sentence appears to be incomplete. Proposed changes:	
156	16.12.2016	J. M. Moss	[line 981] Proposed changes: Add an “S” to the word “framework”	

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157	16.12.2016	J. M. Moss	[line 982] Proposed changes: Replace the word “be” with “is”	
158	16.12.2016	David Maté Sanz	[line 233] Bring to the Guidelines that PPP contracts imply a better value for money thanks to Private Participation as is commented in Public-Private Partnerships and the 2030 Agenda for Sustainable Development- Proposed changes: Include in the text: procurement contracts with the goal of achieve better value for money and minimize fiscal risk when mobilizing private capital and know-how to complement public resources and enable new investment in public infrastructure and facilities.	
159	16.12.2016	David Maté Sanz	[line 291] Bring to the Guidelines the finding of AAAA that confirms the need for private and public partners to be thoughtful in the design and implementation of PPPs to prevent pitfalls from the past, especially in light of the challenges related to the implementation of the ambitious 2030 Agenda for Sustainable Development. Proposed changes: In order to be justifiable, a PPP must provide value for money (VfM). Unfortunately, It found cases of deceptive techniques of assessing value for money (VfM) and manipulations of risk transfer. On the other hand, analyses by both the IMF and World Bank have expressed concerns regarding perverse incentives on the part of governments to treat PPP contingent liabilities as “off balance sheet”, which in turn undermines sound fiscal management.	
160	16.12.2016	David Maté Sanz	[line 157] Suggest that corruption does not allow selection and monitoring of projects ensuring value for money, minimizing contingent fiscal risk and improving accountability objectives or any technical measure of direct benefits on citizens' lives and sustainable development goals Proposed changes:	

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			Add new bullets points: - Diverts the transparency in explaining the selection criteria of PPP projects followed ensuring value for money, minimizing contingent fiscal risk - Diverts identify, measure and monitor achievement of declared direct benefits on citizens' lives and on sustainable development goals	
161	16.12.2016	David Maté Sanz	[line 256] Enforce in stage 1 of PPP procurement the act of identify, measure and monitor with standardize tools the achievement of declared direct benefits on citizens' lives and on sustainable development goals as a way of transparency and zero tolerance approach to corruption control system Proposed changes: Include in the text:Solutions in the market, measure impacts and benefits with standardize tools as ex-ante value for money solutions evaluation and prioritization (ex-ante evaluation), identification of the future budgetary liabilities generated by solutions due to the allocation of risks or rights and obligations of the Parties, and finally.....	
162	16.12.2016	David Maté Sanz	[line 268] Enforce in stage 2 of PPP procurement the act of Review and confirm achievement of declared direct benefits on citizens' lives and on sustainable development goals as a way of transparency and zero tolerance approach to corruption control system Proposed changes: Include in the text: Approach and cost after review and confirm Achievement of declared benefits on citizens' lives and on sustainable development goals updating standardize tools mentioned before and risk allocation among parties.	
163	16.12.2016	David Maté Sanz	[line 272] Enforce in stage 3 of PPP procurement the act of Review and confirm achievement of declared benefits and impacts after at the beginning of operation phase of PPP contract as a way of transparency and zero tolerance approach to corruption control system Proposed changes: Include in the text:	

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			Is in this Stage when many United Nations members review and identify variations on expected declared benefits on citizens' lives and on sustainable development goals through an ex-post evaluation updating standardize tools mentioned before and risk allocation among parties.	
164	16.12.2016	David Maté Sanz	<p>[line 466] Propose a standard definition of conflict of interest chair for the European Union regarding PPP contracts (see article 35 of Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts)</p> <p>Proposed changes: The concept of conflicts of interest shall at least cover any situation where staff members of the contracting authority or entity who are involved in the conduct of the concession award procedure or may influence the outcome of that procedure have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the PPP award procedure.</p>	
165	16.12.2016	David Maté Sanz	<p>[line 466] Include in Disclosure of Information transparency rules regarding the need to “share risks and reward fairly, include clear accountability mechanisms and meet social and environmental standards”.</p> <p>Proposed changes: Entirely of the project. It would necessary be further stress-es the need to disclosure of information which include risk sharing between parties, clear accountability mechanisms and how have been meet social and environmental standards”. This might cover different PPP procurement information as regards planning, contract negotiation, management, ex-ante and ex-post value for money evaluation, accounting and budgeting for contingent liabilities”</p>	
166	16.12.2016	David Maté Sanz	<p>[line 546] Highlight that AAAAA encourage knowledge sharing and the promotion of cooperation and partnerships between stakeholders, including between Governments. In addition, preset an efficient European Union Instrument or case to do so.</p> <p>Proposed changes:</p>	

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			<p>Include in the 25 bullet: AAAAA encourage knowledge-sharing and the promotion of cooperation and partnerships between stakeholders, including between Governments, firms, academia and civil society, in sectors contributing to the achievement of the sustainable development goals. In this point, UNECO like to highlight the case of Twinning projects. It is a European Union instrument for institutional cooperation between Public Administrations of EU Member States and of beneficiary or partner countries. Twinning projects bring together public sector expertise from EU Member States and beneficiary countries with the aim of achieving concrete mandatory operational results through peer to peer activities.</p>	
167	16.12.2016	David Maté Sanz	<p>[line 663] Include the Addis Ababa Action paragraph 48 of the Agenda (AAAA) as a required milestone to approve any unsolicited proposals with special stress on the need to include clear accountability mechanisms and meet social and environmental standards”. Proposed changes: allow selection and monitoring of projects ensuring value for money, minimizing contingent fiscal risk and improving accountability objectives or any technical measure of direct benefits on citizens' lives and sustainable development goals</p>	
168	16.12.2016	David Maté Sanz	<p>[line 466] Suggest, as the European Union made as mandatory (see article 34 of Directive 2014/23/EU of the European, Contracting authorities shall offer by electronic means unrestricted and full direct access free of charge to the concession documents Parliament and of the Council of 26 February 2014 on the award of concession contracts) Proposed changes: Always that it could be possible, ccontracting authorities and contracting entities shall offer by electronic means unrestricted and full direct access free of charge to the PPP documents from the date of publication of a concession tender notice. The text of the PPP tender notice or of these invitations shall specify the internet address at which the PPP documents are accessible.</p>	

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¹ Types of comments: ge = general; te = technical; le = legal; ed = editorial