



# Recommendation of the Council on Bribery and Officially Supported Export Credits

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## Background Information

The Recommendation on Bribery and Officially Supported Export Credits was adopted by the OECD Council on 14 December 2006 on the proposal of the Working Party on Export Credits and Credit Guarantees (ECG). The Recommendation converts the 2006 Action Statement on Bribery and Officially Supported Export Credits (that replaced the 2000 Action Statement) into an OECD Recommendation. The Action Statement was agreed by the Members of the OECD's Working Party on ECG in order to reinforce the Anti-Bribery Convention's objective to take action to deter and sanction bribery of foreign public officials in international business. The aim of having a Recommendation is to enhance the visibility of Adherents' anti-bribery measures, to ensure that these measures represent the view of whole government and to include these measures in the OECD anticorruption acquis. The Recommendation was abrogated on 13 March 2019.

## Implementation

Following the adoption of the Recommendation in 2006, the OECD Working Party on Export Credits and Credit Guarantees (ECG) agreed, also in 2006, a Survey on measures taken to combat bribery in officially supported export credits to provide for the ongoing monitoring and review of anti-bribery measures in official export credits systems.

As agreed by the ECG in 2008, the Survey responses are made publicly available and stakeholders are invited to provide comments on the measures taken to combat bribery in their provision of officially supported export credits: such comments are included within the Secretariat's annual Review of Adherents' Survey responses.

The Survey responses and annual Reviews are available at the following address: <http://www.oecd.org/tad/xcred/anti-bribery-survey.htm>.

## THE COUNCIL

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

**HAVING REGARD** to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (hereafter the "Anti-Bribery Convention") and to the 1997 Revised Recommendation of the Council on Combating Bribery in International Business Transactions [C(97)123] (hereafter the 1997 Recommendation);

**HAVING REGARD** to the 2006 Action Statement on Bribery and Officially Supported Export Credits;

**CONSIDERING** that combating bribery in international business transactions is a priority issue and that the Working Party on Export Credits and Credit Guarantees is the appropriate forum to ensure the implementation of the Anti-Bribery Convention and the 1997 Recommendation in respect of international business transactions benefiting from official export credit support;

**NOTING** that the application by Members of the measures set out in Paragraph 2 in no way mitigates the responsibility of the exporter and other parties in transactions benefiting from official support to: (i) comply with all applicable laws and regulations, including national provisions for combating bribery of foreign public officials in international business transactions, or (ii) provide the proper description of the transaction for which support is sought, including all relevant payments;

**On the proposal of the Working Party on Export Credits and Credit Guarantees (hereafter the ECG):**

**I. RECOMMENDS** that Members take appropriate measures to deter bribery<sup>1</sup> in international business transactions benefiting from official export credit support, in accordance with the legal system of each Member country and the character of the export credit<sup>2</sup> and not prejudicial to the rights of any parties not responsible for the illegal payments, including:

- a) Informing exporters and, where appropriate, applicants, requesting support about the legal consequences of bribery in international business transactions under its national legal system including its national laws prohibiting such bribery and encouraging them to develop, apply and document appropriate management control systems that combat bribery;
- b) Requiring exporters and, where appropriate, applicants, to provide an undertaking/declaration that neither they, nor anyone acting on their behalf, such as agents, have been engaged or will engage in bribery in the transaction;
- c) Verifying and noting whether exporters and, where appropriate, applicants, are listed on the publicly available debarment lists of the following international financial institutions: the World Bank Group, the African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development and the Inter-American Development Bank<sup>3</sup>;
- d) Requiring exporters and, where appropriate, applicants, to disclose whether they or anyone acting on their behalf in connection with the transaction are currently under charge in a national court or, within a five-year period preceding the application, have been convicted in a national court or been subject to equivalent national administrative measures for violation of laws against bribery of foreign public officials of any country;
- e) Requiring that exporters and, where appropriate, applicants, disclose, upon demand: (i) the identity of persons acting on their behalf in connection with the transaction, and (ii) the amount and purpose of commissions and fees paid, or agreed to be paid, to such persons;
- f) Undertaking enhanced due diligence if: (i) the exporters and, where appropriate, applicants, appear on the publicly available debarment lists of one of the international financial institutions referred to in c) above; or (ii) the Member becomes aware that exporters and, where appropriate, applicants or anyone acting on their behalf in connection with the transaction, are currently under charge in a national court, or, within a five-year period

preceding the application, has been convicted in a national court or been subject to equivalent national administrative measures for violation of laws against bribery of foreign public officials of any country; or (iii) the Member has reason to believe that bribery may be involved in the transaction;

- g) In case of a conviction in a national court or equivalent national administrative measures for violation of laws against bribery of foreign public officials of any country within a five-year period, verifying whether appropriate internal corrective and preventive measures<sup>4</sup> have been taken, maintained and documented;
- h) Developing and implementing procedures to disclose to their law enforcement authorities instances of credible evidence<sup>5</sup> of bribery in the case that such procedures do not already exist;
- i) If there is credible evidence at any time that bribery was involved in the award or execution of the export contract, informing their law enforcement authorities promptly;
- j) If, before credit, cover or other support has been approved, there is credible evidence that bribery was involved in the award or execution of the export contract, suspending approval of the application during the enhanced due diligence process. If the enhanced due diligence concludes that bribery was involved in the transaction, the Member shall refuse to approve credit, cover or other support;
- k) If, after credit, cover or other support has been approved bribery has been proven, taking appropriate action, such as denial of payment, indemnification, or refund of sums provided.

**II. INSTRUCTS** the ECG to continue to:

- a) Exchange information on how the Anti-Bribery Convention and 1997 Recommendation are being taken into account in national official export credit systems;
- b) Collate and map the information exchanged with a view to considering further steps to combat bribery in respect of officially supported export credits;
- c) Exchange views with appropriate stakeholders.

**III. INVITES** the Parties to the Anti-Bribery Convention which are not OECD Members to adhere to this Recommendation.

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<sup>1</sup> As defined in the Anti-Bribery Convention.

<sup>2</sup> It is recognised that not all export credit products are conducive to a uniform implementation of the Recommendation. For example, on short-term whole-turnover and multi-buyer export credit insurance policies, Members may, where appropriate, implement the Recommendation on an export credit policy basis rather than on a transaction basis.

<sup>3</sup> The implementation of paragraph 1 c) may take the form of a self-declaration from exporters and, where appropriate, applicants, as to whether they are listed on the publicly available IFI debarment lists.

<sup>4</sup> Such measures could include: replacing individuals that have been involved in bribery, adopting an appropriate anti-bribery management control system, submitting to an audit and making the results of such periodic audits available.

<sup>5</sup> For the purpose of this Recommendation, credible evidence is evidence of a quality which, after critical analysis, a court would find to be reasonable and sufficient grounds upon which to base a decision on the issue if no contrary evidence were submitted.

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- **Decisions:** OECD legal instruments which are legally binding on all Members except those which abstain at the time of adoption. While they are not international treaties, they entail the same kind of legal obligations. Adherents are obliged to implement Decisions and must take the measures necessary for such implementation.
- **Recommendations:** OECD legal instruments which are not legally binding but practice accords them great moral force as representing the political will of Adherents. There is an expectation that Adherents will do their utmost to fully implement a Recommendation. Thus, Members which do not intend to do so usually abstain when a Recommendation is adopted, although this is not required in legal terms.
- **Declarations:** OECD legal instruments which are prepared within the Organisation, generally within a subsidiary body, and are not legally binding. They usually set general principles or long-term goals, have a solemn character and are usually adopted at Ministerial meetings of the Council or of committees of the Organisation.
- **International Agreements:** OECD legal instruments negotiated and concluded within the framework of the Organisation. They are legally binding on the Parties.
- **Arrangement, Understanding and Others:** several ad hoc substantive legal instruments have been developed within the OECD framework over time, such as the Arrangement on Officially Supported Export Credits, the International Understanding on Maritime Transport Principles and the Development Assistance Committee (DAC) Recommendations.