

**TRADE AND AGRICULTURE DIRECTORATE
TRADE COMMITTEE**

Working Party on Export Credits and Credit Guarantees

**RECOMMENDATION OF THE COUNCIL ON BRIBERY AND OFFICIALLY
SUPPORTED EXPORT CREDITS**

This document contains the text of the Recommendation of the Council on Bribery and Officially Supported Export Credits (OECD/LEGAL/0447), as adopted by the OECD Council on Wednesday 13 March 2019.

Xcred Secretariat, Export Credits Division, Trade and Agriculture Directorate, OECD
Tel.: +33 (0)1 45 24 89 10; e-mail: export-credits@oecd.org

JT03444535

RECOMMENDATION OF THE COUNCIL ON BRIBERY AND OFFICIALLY SUPPORTED EXPORT CREDITS

As adopted by the OECD Council on 13 March 2019

THE COUNCIL

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

HAVING REGARD to the OECD Guidelines for Multinational Enterprises [C(76)99/FINAL, as amended] (hereafter the “MNE Guidelines”) (in particular, Chapter VII on Combating Bribery, Bribe Solicitation and Extortion), the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (hereafter the “Anti-Bribery Convention”), the Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions [C(2009)159/REV1/FINAL as amended] (hereafter the “2009 Recommendation”) (including its Annex II: Good Practice Guidance on Internal Controls, Ethics & Compliance, which is an integral part of the 2009 Recommendation), the Recommendation of the Council on Public Procurement [C(2015)2] and the Recommendation of the Council for Development Co-operation Actors on Managing the Risk of Corruption [C(2016)156];

RECOGNISING that the Anti-Bribery Convention and the United Nations Convention against Corruption (UNCAC) are mutually supporting and complementary, and that ratification and implementation of the UNCAC supports a comprehensive approach to combating bribery in international business transactions;

NOTING that the present Recommendation builds upon Adherents' experience in implementing the 2006 Recommendation of the Council on Bribery and Officially Supported Export Credits [C(2006)163], which this Recommendation replaces, and the 2006 Action Statement on Bribery and Officially Supported Export Credits;

CONSIDERING that combating bribery in international business transactions is a priority issue, as demonstrated by the importance placed on the fight against corruption in international fora including the G20, and that the Working Party on Export Credits and Credit Guarantees is the appropriate forum to ensure the implementation of OECD anti-bribery instruments in respect of international business transactions benefiting from official export credit support;

NOTING that the implementation of this Recommendation by Members and non-Members having adhered to it (hereafter the “Adherents”) in no way mitigates the responsibility of the exporter and other parties in transactions benefiting from official support to: (i) comply with all relevant laws and regulations, including those for combating bribery 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:

I. RECOMMENDS that Adherents take appropriate measures to deter bribery in international business transactions benefiting from official export credit support, in accordance with the Anti-Bribery Convention, the UNCAC, the legal system of each Adherent and the character of the export credit, without causing prejudice to the rights of any parties not responsible for bribery.

II. AGREES that this Recommendation applies to transactions benefitting from all types of official export credit support, while recognising that not all export credit products are conducive to a uniform implementation of the Recommendation. For example, on short-term whole-turnover, multi-buyer and letter-of-credit export credit insurance policies, Adherents may, where appropriate, implement this Recommendation on an export credit policy basis rather than on a transaction basis.

III. AGREES that, for the purposes of this Recommendation:

- The term “equivalent measures” includes, for example, resolutions of bribery violations using deferred prosecution agreements (DPAs) or non-prosecution agreements (NPAs), as well as those resulting from any formal admission or voluntary self-reporting, where such measures exist. The terms of any equivalent measures agreed to with the relevant legal authority may be taken into consideration by an Adherent when considering subsequent actions.
- “Multilateral Financial Institutions” are the African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank and the World Bank Group.
- The term “relevant parties” may refer to the applicant, buyer, borrower and any party with which an Adherent has or intends to have a contractual relationship. In this context, “party with which an Adherent has or intends to have a contractual relationship” refers to any party in an export credit transaction with which the Export Credit Agency (ECA) has or intends to have a direct contractual relationship arising from a written contract or similar binding declaration in which there is a manifestation of mutual assent of the Adherent and the party to enter into a loan, guarantee and/or insurance relationship not including reinsurance, co-financing or counterguarantee partners.

General measures to deter bribery

IV. RECOMMENDS that each Adherent:

1. Inform exporters and, where appropriate, other relevant parties about the legal consequences of bribery in international business transactions under its legal system, including national laws prohibiting bribery of foreign and domestic public officials and, where applicable, national laws prohibiting bribery in the private sector.
2. Encourage exporters, and, where appropriate, other relevant parties to develop, apply and document appropriate management control systems that prevent and detect bribery.
3. Raise awareness that parties involved in international business transactions should also comply with all relevant laws and regulations prohibiting bribery in the country or jurisdiction where they are conducting business.

4. Promote responsible business conduct among parties involved in applications for official export credit support.
5. Develop, apply and document appropriate management control systems within its export credit system that seek to deter bribery in international business transactions and that are supported by adequate training for staff, reporting mechanisms and internal audit procedures.
6. Develop and implement policies and procedures, in accordance with national laws on such disclosure, for disclosing credible allegations or evidence that bribery was involved in the award or execution of the export contract to law enforcement authorities, where such policies and procedures do not already exist.

Screening

V. RECOMMENDS that Adherents screen and undertake due diligence on all applications for official export credit support covered by this Recommendation with the aim of identifying which applications should be subject to enhanced due diligence for risks associated with bribery. To this end, Adherents should:

1. Start the screening as early as possible in the risk assessment process.
2. Require that, where necessary, the parties involved in an application provide all information necessary to undertake the screening and, if relevant, any subsequent enhanced due diligence.
3. Require exporters and, where appropriate, other relevant parties to provide a declaration that, in the transaction neither they, nor any natural or legal person acting on their behalf in connection with the transaction, such as agents, have been engaged or will engage in bribery:
 - a) For exporters and relevant parties conducting business in the Adherent's country or under its jurisdiction, such a declaration should cover bribery of foreign and domestic public officials and, where prohibited under the Adherent's national laws, bribery in the private sector.
 - b) For any other relevant parties, such a declaration should cover bribery of foreign and domestic public officials.
4. Require exporters and, where appropriate, other relevant parties to declare whether they or any natural or legal person acting on their behalf in connection with the transaction, such as agents:
 - a) are currently under charge in any court or, to the best of their knowledge, are formally under investigation by public prosecutors for violation of laws against bribery of any country; and/or
 - b) within a five-year period preceding the application, have been convicted in any court for violation of laws against bribery of any country, been subject to equivalent measures, or been found as part of a publicly-available arbitral award to have engaged in bribery.
5. Verify or require a declaration that exporters and, where appropriate, other relevant parties, and any natural or legal person acting on their behalf in connection with the transaction, such as agents, are not listed on the publicly-available debarment lists of one of the Multilateral Financial Institutions (MFIs).

6. Require exporters and, where appropriate, other relevant parties to declare that the commissions and fees paid, or agreed to be paid, to any natural or legal person acting on their behalf in connection with the transaction, such as agents, is, or will be, for legitimate services only.

7. Require, upon demand, the disclosure of: (i) the identity of any natural or legal person, such as agents, acting on behalf of the exporter and, where appropriate, other relevant parties in connection with the transaction; (ii) the amount and purpose of commissions and fees paid, or agreed to be paid, to such persons; and (iii) the country or jurisdiction in which the commissions and fees have been paid, or agreed to be paid.

Where necessary for a particular export credit transaction, the declarations required in accordance with this paragraph of the Recommendation may be obtained *via* other parties involved in the transaction where, due to the nature of the export credit product, the ECA does not have a contractual relationship with the exporter or relevant party.

Enhanced due diligence

VI. RECOMMENDS that Adherents:

1. Evaluate the information provided in the application form, the declarations provided in accordance with paragraph V of this Recommendation and any due diligence undertaken with such information and/or declarations with a view to undertaking enhanced due diligence of a transaction or a party involved in a transaction if, for example, there is an increased risk of bribery, the Adherent has reason to believe that bribery may be involved in the transaction, the Adherent requires additional information to allay any suspicions of bribery, etc.

2. Decide what enhanced due diligence measures to undertake, including, for example:

- a) If one of the parties involved in the transaction has been convicted of violation of laws against bribery, been subject to equivalent measures, or been found as part of a publicly-available arbitral award to have engaged in bribery within a five-year period preceding the application, verifying that the party concerned has taken, maintained and documented appropriate internal corrective and preventative measures, such as, where appropriate, replacing individuals that have been involved in bribery, adopting appropriate anti-bribery management control systems, submitting to an audit, making the results of such periodic audits available, etc.
- b) Verifying and noting whether additional parties involved in a transaction are listed on the publicly available debarment lists of one of the MFIs.
- c) Where such information has not already been demanded during application screening and due diligence, requiring, upon demand, the disclosure of: (i) the identity of any natural or legal person, such as agents, acting on behalf of the exporter and, where appropriate, other relevant parties in connection with the transaction; (ii) the amount and purpose of commissions and fees paid, or agreed to be paid, to such persons; and (iii) the country or jurisdiction in which the commissions and fees have been paid, or agreed to be paid.
- d) Verifying whether the level of commissions and fees paid, or agreed to be paid, the purpose of such commissions and fees, and the location of such payments, appear appropriate and for legitimate services only.

- e) Extending due diligence to other parties involved in a transaction, including, for example, joint ventures and consortia partners, and requesting information about the beneficial ownership and financial condition of any of the transaction parties.
- f) Considering any statements or reports made publicly available by an Adherent's National Contact Point (NCP) at the conclusion of a specific instance in accordance with the procedure under the MNE Guidelines.

Evaluation and decision

VII. RECOMMENDS that Adherents evaluate the information resulting from the screening, due diligence and/or enhanced due diligence of a transaction or of a party involved in a transaction, and decide whether to request further information, decline official support or provide official support. In this regard, Adherents should:

1. Inform their law enforcement authorities promptly if, before official export credit support has been provided, they become aware of a credible allegation or evidence that bribery was involved in the award or execution of the export contract.
2. Refuse to provide official export credit support if the screening, due diligence and/or the enhanced due diligence concludes that bribery was involved in the transaction and/or if the declarations required in accordance with paragraph V of this Recommendation are not provided.
3. Decide, in the event that support is to be provided, whether this should involve conditions to fulfil prior to, or after, the final commitment for official support, including, for example:
 - a) warranties, in appropriate documentation, that the Adherent will be informed of any material changes to the declarations provided in accordance with paragraph V of this Recommendation;
 - b) warranties, in appropriate documentation, that exporters and, where appropriate, other relevant parties and any natural or legal person acting on their behalf in connection with the transaction, such as agents, have complied and will comply with all relevant laws and regulations prohibiting bribery in the country or jurisdiction where they are conducting business; and
 - c) rights to audit or review a party's management control systems, the transaction for which support is provided, including all relevant payments, etc.

Post-final commitment

VIII. RECOMMENDS that, after official export credit support has been provided, Adherents take the following measures, where applicable:

1. Inform their law enforcement authorities promptly if they become aware of a credible allegation or evidence that bribery was involved in the award or execution of the export contract.

2. Take appropriate action, consistent with their national laws and without causing prejudice to the rights of any parties not responsible for bribery, such as enhanced due diligence, denial of payment, indemnification, or refund of sums provided, if, in relation to the transaction, one of the parties involved is convicted of violation of laws against bribery, subjected to equivalent measures, or found as part of a publicly-available arbitral award to have engaged in bribery.

3. Undertake further due diligence if they become aware of reasons to believe that bribery may be involved in the transaction (*e.g.* press reports from a reputable source, information provided by parties involved in the transaction, whistle-blower information, etc.).

Reporting and monitoring

IX. RECOMMENDS that Adherents:

1. Publish national ECA bribery and other related policy statements or principles relevant to the implementation of this Recommendation.

2. Monitor and evaluate, over time, the experience with this Recommendation at a national level, and share experiences and good practices with the other Adherents.

3. Continue to enhance and improve procedures at a national level to deter and combat bribery in international business transactions, and to encourage their ECAs to allocate appropriate resources for this purpose.

4. Report to the ECG *ex post* information concerning any transactions where bribery was involved in the award or execution of an export contract resulting in a conviction for violation of laws against bribery or equivalent measures against one of the parties involved in the transaction or where one of these parties was found as part of a publicly-available arbitral award to have engaged in bribery, including the party concerned and the appropriate action(s) taken by the Adherent, consistent with its national laws on such disclosures.

5. Build a body of experience on the application of this Recommendation through regular reporting and exchanges of information on actions taken by Adherents to combat both bribery of foreign and domestic public officials and bribery in the private sector, in respect of international business transactions benefiting from official export credit support, with the aim of improving common practices, developing guidance, and promoting a uniform implementation of this Recommendation.

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

XI. INVITES Adherents to disseminate this Recommendation at all levels of Government.

XII. INVITES non-Adherents to take account of and to adhere to this Recommendation, subject to a review by the Working Party on Export Credits and Credit Guarantees.

XIII. INSTRUCTS the Working Party on Export Credits and Credit Guarantees to:

1. Serve as a forum for exchanging information on international anti-bribery activities, involving relevant stakeholders, including the Working Group on Bribery in International Business Transactions, on how the Anti-Bribery Convention and the 2009 Recommendation are being taken into account in national official export credit systems;

2. Monitor international anti-bribery activities and emerging trends that may impact international business transactions benefitting from official export credit support;
3. Collate and map the information exchanged and continue to build a body of experience on the practical application of this Recommendation, with a view to considering further steps to deter and combat both bribery of foreign and domestic public officials and bribery in the private sector, in respect of international business transactions benefitting from official export credit support; and
4. Monitor the implementation of this Recommendation and to report thereon to Council no later than five years following its adoption and regularly thereafter, notably to review its relevance and applicability, and whether it requires amendments in the light of experience gained by Adherents.