

EXIM BANCA ROMANEASCA POLICY ON COMBATING BRIBERY ACTS IN OFFICIALLY SUPPORTED EXPORT CREDITS

I. GENERAL PRINCIPLES

Exim Banca Romaneasca, acting in its capacity as Romanian institution that officially supports the export credits according to the provisions of the *OECD Arrangement on officially supported export credits* and of the *Recommendation of the Council on Bribery and Officially Supported Export Credits*¹, adopted a set of measures aiming at preventing and combating bribery in the officially supported export credits in the name and on the account of the state.

The *OECD Arrangement* promotes establishing a level playing field for international transactions for the member states so that the competition between exporters is based on products prices and quality and not on the financial support from the member states for export credits.

The *OECD Arrangement* has been entirely transposed in the European Community legislation through the *Regulation (EU) no. 1233/2011 of the European Parliament and of the Council on the application of certain guidelines in the field of officially supported export credits*, of which annex II is the *Arrangement*.

According to the *Regulation (EU) no. 1233/2011*, the principles and guidelines provisioned in the *OECD Arrangement* are applicable in the European Union so that the member states that implement export credits support programs observe the conditions established by the participants to the *Arrangement*.

To the same extent, OECD has concluded the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (1997) and issued *Recommendations* regarding the measures to be implemented by member and non-member states of the *Arrangement* for execution of an export contract that involved or involves bribery acts (*Recommendations of the Council regarding bribery acts and the officially supported export credits*). Sanctions related to the mentioned acts are provisioned by the national laws.

Conventions and Recommendations that substantiate this Policy are:

- *Recommendation of the Council on Bribery and Officially Supported Export Credits* (OECD/LEGAL/0447), adopted by the OECD Council on March, 13, 2019
- *Law no. 202/2023 regarding Romanian adherence to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, adopted in Paris on November 21, 1997;
- *Convention on the Organisation for Economic Co-operation and Development* of December 14, 1960 (Article 5, b)
- *OECD Guidelines for Multinational Enterprises*, [C(76)99/FINAL, as amended], especially Chapter VII regarding combating bribery and bribery demands and extortion;
- *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (hereinafter "*Convention against bribery acts*")
- *Anti-Bribery Convention and The United Nations Convention against Corruption (UNCAC)*, that supports and complements the ratification and implementation of UNCAC for a comprehensive approach on combating bribery in international commercial transactions.

¹ adopted by the OECD Council on 13 March 2019

Considering these regulations and OECD recommendations for combating bribery acts in export credits activity the Policy hereby establishes the principles observed by Exim Banca Romaneasca in supporting export credits in the name and on the account of the state.

The Policy uses the following definitions:

- *Export credit* – represents the financial facility which allows a foreign buyer of Romanian exported goods/services to defer payment over a certain term after delivery (deferred payment). Export credits may take the form of a buyer credit or supplier credit.
- *Credible evidence*² is defined as the fact of a quality which might be considered a reasonable suspicion to base a decision on the issue if no contrary evidence is submitted.
- *Official support for export credits*³ represents the financial support provided by the state for supporting export contracts of goods, services or financial leasing. Official support may be provided in different forms: buyer credit, mechanisms for interest rate support, export credit guarantee/insurance against risks associated to the buyer or its country.
- *Multilateral financial institutions (MFI)* 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
- *Equivalent measures* represent resolutions regarding bribery using deferred prosecution agreements or non-prosecution agreements 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 Exim Banca Romaneasca when considering subsequent actions.
- *Relevant party* - the applicant, buyer, borrower and any party with which Exim Banca Romaneasca has or intends to have a contractual relationship. In this context, “party with which Exim Banca Romaneasca has or intends to have a contractual relationship” refers to any party in an export credit transaction with which Exim Banca Romaneasca 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 Exim Banca Romaneasca and the party to enter into a loan, guarantee and/or insurance relationship not including reinsurance, co-financing or counter guarantee partners.
- *foreign public official* – means any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected; any person exercising a public function for a foreign country, including for a public agency or public enterprise; and any official or agent of a public international organization; jurors of foreign courts.
- *Romanian public official* -as per the criminal law (Law no. 286/2009 regarding Criminal Code of Conduct, with further amendments) public official is the person that, permanently or temporarily, with or without compensations:
 - a) Exercise functions and responsibilities established under the law for implementing the executive, legislative or judicial powers;
 - b) Exercise a function of public dignity or any type of public function whatsoever;
 - c) Exercise alone or together with other persons in a self-governing authority, other type of economic agent or legal person entirely state owned or controlled by the state, functions related to its scope of activity

Also, *public official* according to the law is the person exercising public service invested by public authorities or subjected to their control or supervision regarding the fulfilment of the respective public service;

² Art.1 letter h from OECD Recommendation on Bribery AD/ECG(2017)7

³ According to art. 5 chapter. I for OECD Arrangement as incorporated into Regulation (UE) nr. 1233/2011

- *foreign country* – includes all levels and subdivisions of government from national to local of any other country than Romania.
- *bribery* - consists in pledging, or giving money or any other undue benefits, either directly or via intermediaries to a foreign public official or a third party for fulfilling, speed up or delaying fulfilling an official duty provisioned by its function or performing a duty against the function. The same provisions apply accordingly to the acts of persons or involving persons that exercise permanently or temporarily, with or without compensations a duty of any nature for an individual as provisioned by Article 175 alin. (2) of Criminal Code of Conduct or for a legal person.

According to Annex 1 to the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, bribery to public officials is defined as to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.

II. ACTIONS AND SPECIFIC MEASURES

Transposing the principles from *OECD Recommendations* in the activity of supporting the export credits consists in the following:

- Exim Banca Romaneasca informs exporters and, where appropriate, other relevant parties about the legal consequences of bribery in international business transactions under Romanian legal system, including national laws prohibiting bribery of foreign and domestic public officials and, where applicable, national laws prohibiting bribery in the private sector
- Exim Banca Romaneasca encourages exporters, and, where appropriate, other relevant parties to develop, apply and document appropriate management control systems that prevent and detect bribery.
- Exim Banca Romaneasca encourages exporters to raise awareness that parties involved in international business transactions should also comply with and abide by all the relevant laws and regulations prohibiting bribery in the country or jurisdiction where they are conducting business and in the country or jurisdiction where the project is or will be implemented.
- Exim Banca Romaneasca encourages exporters to promote responsible business conduct among all parties involved in applications for official export credit support.
- Exim Banca Romaneasca develops, applies and documents 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.
- According to the national laws Exim Banca Romaneasca develops procedures for disclosing credible allegations or evidence that bribery was involved in the award or execution of the export contract to law enforcement authorities.

During the underwriting process of the applications for financing/guarantees/insurance for export credit for short term, medium and long term Exim Banca Romaneasca will consider any information

received from any party involved in the application in order to identify possible risks associated to bribery related to the awarding or execution of the export contract.

The assessment of these risks is gradual according to the information received during the underwriting.

II.1. Initial due diligence

Application for the financing, guarantees and insurance of short term and medium and long term export credits will be assessed by Exim Banca Romaneasca in order to identify the risks associated with bribery acts and acting accordingly in order to diminish these risks. To this end, in relation with the exporters, involved parties or relevant parties to the transaction, Exim Banca Romaneasca will:

- Require to the involved parties in the application for a certain product to provide all the necessary information for the initial due diligence and where the case for the enhanced due diligence since the filing of the application.
- 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 with foreign and Romanian public officials and private companies.
- 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 are:
 - currently under charge or to their knowledge are prosecuted for breaches in legislation that regulates bribery acts in any country and / or
 - within a five-year period preceding the application, has/has not been convicted in any courts for breaching in legislation that regulates bribery acts or been subject to equivalent measures or has been mentioned / found as involved in bribery acts in a public sentence of an arbitral court.
- Verify and 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 with individuals/legal persons sanctioned for bribery acts of one of the Multilateral Financial Institutions (MFIs).
- 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.
- 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.

The above-mentioned declarations may be acquired through other parties involved in the export transaction when because of the product' features Exim Banca Romaneasca does not have a contractual relation with the exporter or relevant party.

II.2 Enhanced due diligence /Additional measures

When Exim Banca Romaneasca identifies risks associated with bribery acts or has reasons to believe that the transaction might have involved bribery acts or in view of eliminating any suspicion related to such, it evaluates the information comprised in the documentation related to the application and in the declarations mentioned at Chapter II.1 in order to apply additional measures such as:

- 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.
- Verifying whether additional parties involved in a transaction are listed on the publicly available debarment lists with individuals/legal persons sanctioned for bribery acts of one of the MFIs.
- 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.
- Additional measures may be extended 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;
- Any reports made publicly available by the OECD National Contact Point (NCP) at the conclusion of a specific case in accordance with the procedure under the MNE Guidelines may be taken into consideration.

II.3 Final evaluation and decision

Following the evaluation of the information received during due diligence and/or application of additional measures regarding the transaction or one party involved in the transaction, Exim Banca Romaneasca may require additional information, may refuse to grant the product or may continue the underwriting process in order to grant the product.

Exim Banca Romaneasca will inform promptly the competent bodies able to investigate corruption acts according to the Romanian criminal code of conduct and criminal procedure code if, before official export credit support has been provided, it becomes aware of a credible allegation or evidence that bribery was involved in the award or execution of the export contract.

Exim Banca Romaneasca will refuse to grant the requested product if the due diligence and/or the enhanced due diligence concludes that bribery was involved in the transaction and/or if the declarations required are not provided.

In the situation when Exim Banca Romaneasca decides upon granting the product, it may establish prior or after the commitment conditions for contracts signing such as but not limited to:

- warranties that Exim Banca Romaneasca will be informed of any material changes to the declarations provided.
- warranties 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.

- rights to audit or review a party's management control systems, the transaction for which support is provided, including all relevant payments, etc.

II.4 Measures applicable post-approval of the product

After providing the official support for export credits, based on the information available, Exim Banca Romaneasca may apply the following measures:

- In the situation when it becomes aware of a credible allegation or evidence that bribery was involved in the award or execution of the export contract, Exim Banca Romaneasca will promptly inform the competent authorities in regard to the investigation, criminal prosecution and legal instrumenting of corruption acts.
- In the situation when for a certain transaction Exim Banca Romaneasca becomes aware that 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, the bank will identify and take the appropriate measures according to the Romanian applicable law 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
- In the situation when Exim Banca Romaneasca has reasons to believe that the transaction involved bribery (e.g. press reports from a reputable source, information provided by parties involved in the transaction, whistle-blower information, etc) the bank will apply further additional measures.

III. REPORTING AND MONITORING. TRANSPARENCY

Exim Banca Romaneasca will inform the OECD Working Party on Export Credits and Guarantees about the 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 bank, consistent with its national laws on such disclosures.

To the extent that the applicable Romanian laws permit, Exim Banca Romaneasca will provide the information regarding the respective party and the actions taken.

Exim Banca Romaneasca will publish on its website the OECD regulatory framework regarding combating the bribery acts in international commercial transactions as well as the national laws provisions regarding the bribery acts consequences.

At the same time, Exim Banca Romaneasca will promote the principles provisioned in the OECD Council Recommendation in relation with clients/potential clients underlining the need for common efforts for identifying, preventing and combating the corruption acts in international commercial transactions.

In order to establish a common approach to implementing the provisions of OECD Recommendations Exim Banca Romaneasca's participation in the meetings of the OECD Working Party on Export Credits and Guarantees and to the Participants to the OECD Arrangement meetings will ensure the needed expertise for connecting the undertakings of international bodies and other

ECAs in the context of the information exchange about best practices and trends of action in this field.

IV. FINAL PROVISIONS

Exim Banca Romaneasca promotes ethical principles, moral integrity and professional and transparent behavior through the general procedure *N1.PG31 Ethical Code of Exim Banca Romaneasca*, the awareness regarding legal consequences of bribery acts, instruments of recognizing it and reporting obligations as well as identification and administration of the conflict of interests according to the *Policy regarding the administration of the conflict of interests in the bank (PO-18)*.

At the same time, Exim Banca Romaneasca applies measures related to know your customer procedures in view of reducing the possibility of reputational loss by negotiating or granting products that support transactions based on corruption acts.

Provisions of the hereby Policy are completed by the Recommendations and any other official documents of European Union and OECD issued for their applicability.

In order to apply the principles in the Policy Exim Banca Romaneasca in the name and on the account of the state collaborates with other institutions of the state involved in this process in order to reach a common approach regarding the measures to identify, prevent and combat the bribery acts in the officially supported export credits.