

**EXIMBANK POLICY  
COMBATING BRIBERY ACTS IN  
OFFICIALLY SUPPORTED EXPORT  
CREDITS**

**Revision 2020**

## I. General Principles

In its capacity as Romanian State entity officially supporting export credits and in compliance with the provisions of the *OECD Arrangement on Officially Supported Export Credits* and the *OECD Council Recommendation on Bribery and Officially Supported Export Credits*<sup>1</sup>, EximBank has implemented a set of measures meant to prevent and combat bribery acts in international business transactions which are officially supported by EximBank in the name of and on the account of the State.

The *OECD Arrangement* aims at promoting equal conditions of official support on behalf of member states in international transactions so that competition between exporters would base on quality and price of exported products and services rather than on the most favorable officially supported financial terms and conditions.

The *OECD Arrangement* has been adopted in whole in the EU 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* with further amendments, the *Arrangement* representing Annex II of the Regulation.

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

To the same end, the OCDE ratified the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*<sup>2</sup> (1997) and issued Recommendations on the measures that the Participants and non-Participants to the OECD Arrangement should take before granting official support for an export contract which may have involved or involves bribery (*Council Recommendation regarding bribery acts and the officially supported export credits*). Sanctions regarding these acts will be the ones provisioned by the national jurisdiction.

The Conventions and Recommendations observed in the present policy are:

- *Convention on the Organization for Economic Cooperation and Development*, December 14, 1960 (art.5, par.(b))
- *OECD Guidelines for Multinational Enterprises* [C(76)99/FINAL, with modifications], especially chapter VII regarding combating bribery and bribe solicitations and extortion;
- *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (hereinafter called the *Convention against bribery*)
- *OECD Council Recommendation regarding bribery acts of Foreign Public Officials in International Business Transactions* [C (2009) 159 / REV1/FINAL with modifications] hereinafter called the *2009 Recommendation* including Annex II, *Guidelines of best practices regarding internal controls, ethics and compliance* that is part of the *2009 Recommendation*;
- *Recommendation of the Council for Development Co-operation Actors on Managing the Risk of Corruption* [C(2016)156]

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<sup>1</sup> Adopted by OECD Council on March 13, 2019

<sup>2</sup> *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* C (97)123

- *Anti-corruption Convention and United Nations Convention against Corruption (UNCAC)* that support and mutually complete the ratification and implementation of UNCAC for a comprehensive approach in combating corruption in the international business transactions.

In respect of these regulations and the OECD recommendations regarding combating bribery acts in exports credit, the Policy establishes the set of principles applied by EximBank when providing official support for export credits in the name of and on the account of the State.

With respect to the actual Policy, the relevant terms are defined as follows:

- *export credit* - represents a financial facility that allows a foreign buyer to purchase goods/services from a Romanian exporter and pay them within a certain period from delivery (deferred payment). The export credit may be supplier credit or buyer credit.

- *credible evidence*<sup>3</sup> - that factual element that might be considered as reasonable suspicion so that to base a decision on the issue if no contrary evidence were submitted;

- *officially support for export credits*<sup>4</sup> - the financial support granted by the state for supporting export contracts for goods, services, or financial leasing, having a term of two years or longer. Official support may vary as buyer credit financing, interest rate support mechanism, guarantee/insurance against the nonpayment risks associated with the buyer or its country;

- *multilateral financial institutions (MFI)* are African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank and the World Bank Group;

- *equivalent measures* - resolutions regarding bribery through agreements that delay the prosecution or declining the prosecution as well as those deriving from any formal admission or voluntary self-reporting where the case. EximBank may consider the conditions of any equivalent measures agreed with the legal relevant authority when it analyses the opportunity of taking actions in this regard;

- *relevant parties* – applicant, buyer, borrower and any party that EximBank intends to have a contractual relationships with. In the spirit of this procedure “the party that EximBank has or has the intention to have a contractual relationship with” means any party in an export credit transaction that EximBank has or has the intention to have a direct contractual relationship with deriving from a written contract or any other similar agreement where there is mutual consent from EximBank and the contractual party to enter a borrowing, guarantee and / or insurance relationship (partners of re-insurance, co-financing and counter-guaranteeing are not included);

- *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 from foreign courts.

- *Romanian public official* – according to the criminal law (Law 268/2009 regarding the Criminal Code with further modifications and amendments), the public official is the person that, either permanently or temporarily, with or without remuneration;

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<sup>3</sup> As per art.1 h) from *OECD Recommendation regarding corruption and export credits AD/ECG(2017)7*

<sup>4</sup> According to Art. 5, chapter I, from OECD Arrangement adopted through EU Regulation 1233/2011

- a) exercise duties and responsibilities established by law in view of exercising legislative, executive or judicial powers;
- b) exercise a function of public dignity or holds a public office of any nature;
- c) exercise individually or in a group, in an autonomous administration, other economic operator or legal person entirely or in majority held by the state, duties that lead to implementing their scope of action.

In addition, public officer, in the sense of the criminal law, means any person that has been invested by public authorities or is subject of their control or supervision regarding the fulfilment of the respective public service.

- *foreign country* - any governmental structure, national or local of any other country except Romania.

- *bribery* - consists in pledging, offering or giving money or any other undue benefits, either directly or via intermediaries to a foreign public officer so that the respective public officer or a third party acts accordingly, refrains from fulfilling, speeds –up or delays an action that falls under the respective official duties or in connection with an action that contravenes to these. Same provisions apply accordingly to the deeds of or in connection with persons that exercise either permanently or temporarily, with or without remuneration a duty of any nature for a physical person named at art.175, alin.2 of the Criminal Code or for any legal person.

According to the Annex 1 to the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, bribery acts on public officials consists in pledging, offering or giving money or any other undue benefits, either directly or via intermediaries to a foreign public officer so that the respective public officer or a third party acts accordingly or refrains from fulfilling the respective official duties thus facilitating conclusion of a transaction or receiving of any other undue benefit related to international business transactions.

## *II. Specific Actions and Measures*

The principles established in the *Council Recommendation regarding bribery acts and the officially supported export credits* are included into EximBank activity of supporting export credits as per the following:

- ❖ EximBank informs exporters and where the case other relevant parties about the legal consequences of bribery in international business transactions under the Romanian law in force, including the provisions regarding the bribery acts of foreign and Romanian public officials as well as bribery acts in private sector.
- ❖ EximBank encourages exporters and where the case other relevant parties to develop, implement and document appropriate control systems that prevent and identify bribery acts;
- ❖ EximBank encourages the exporters to increase awareness on the fact that the relevant 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.

- ❖ EximBank promotes responsible business conduct among all parties involved in applications for official export credit support.
- ❖ EximBank develops, implements and documents appropriate control systems for the officially supported export credit activity that aim at discouraging bribery acts in international business transactions and that are supported by appropriate training of staff, reporting mechanisms and internal audit procedures.
- ❖ According to the national laws, EximBank establishes procedures regarding supplying of information/credible evidence to the prosecution entities showing that awarding or execution of the export contract involved bribery acts.

During the underwriting process of applications for financing/guarantees/insurance for export credits on medium and long term, EximBank will take into consideration any information received from any party involved in the transaction in order to identify potential risks associated to bribery acts, related to conclusion and/ or execution of the export contract.

Evaluation of these risks will be gradually, according to the information obtained during underwriting process.

## **II.1. Initial due diligence**

Applications for financing, guarantees, insurance products for export credits on medium and long term will be subject to EximBank evaluation process in order to identify risks associated to bribery acts and acting appropriately in order to mitigate them. In this respect, in relation with exporters, parties involved in the transaction or relevant parties, EximBank will:

- Request to parties involved in application for a product to supply all the information needed for the initial due diligence and where the case for enhanced due diligence in the filling of documents stage;
- Request to exporters and where the case to other relevant parties to declare that neither them or any other physical or legal person that act on their behalf in relation to the export transactions (e.g. agents) have not been involved or will not be involved in bribery acts to foreign and Romanian public officials or to companies in the private sector;
- Request to exporters and where the case to other relevant parties to declare that neither them or any other physical or legal person that acts on their behalf in relation to the export transactions (e.g. 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.
- Request to exporters and where the case to other relevant parties as well as any physical or legal persons acting on their behalf in the transaction (e.g. agents) to declare whether they are included on MFI lists with physical or legal persons sanctioned for bribery acts and verifies the respective declaration;
- Request to exporters and where the case to other relevant parties to declare whether taxes and fees paid or convened upon to be paid to any physical or legal persons acting on their behalf in the transaction (e.g. agents) are related or will be related to legally legitimate and reasonable services;

- Request to exporters and where the case to other relevant parties that in the situation of an express request of EximBank to provide information on:
  - Identity of any physical or legal person such as agents that act on behalf of the exporters and where the case other relevant parties in the transaction;
  - Value and scope of fees and taxes paid or convened to be paid to such persons as well as
  - Country and jurisdiction where these fees and taxes have been paid or convened to be paid.

The afore-mentioned declarations may be obtained through other parties involved in the export transaction when, due to product features EximBank does not have a contractual relationship with the exporter or relevant party.

## **II. 2 Enhanced due diligence/Additional measures**

When EximBank identifies risks associated with bribery acts or has reasons to believe that the export transaction might have involved bribery acts or in order to avoid any suspicion related to such acts, EximBank will analyse the information from the documents related to the application and from the declarations at chapter II.1 above in order to apply additional measures such as:

- In the situation when within a five-year period preceding the application, one of the involved parties has been convicted in any courts for breaching in legislation that regulates bribery acts or has been subject to equivalent measures or has been mentioned / found as involved in bribery acts in a public sentence of an arbitral court, the bank will check whether the respective party has taken, maintained and documented internal appropriate correction and prevention measures such as, where the case replacing of the persons involved in bribery acts or has adopted appropriate control measures, their auditing and has offered the results of these periodical audits.
- The bank will check whether other parties involved in the export transaction are included on the MFI lists with physical or legal persons sanctioned for bribery acts;
- The bank verifies whether the level of fees and taxes paid or convened to be paid, their object and place of payment seem appropriate to the transaction and whether they seem to relate to legally justified services;
- Additional measures may extend to other parties involved in the transaction including for instance to mixt companies and consortium partners by requesting additional information regarding the real beneficiary and the financial situation of any party involved in the transaction;
- Reports available on the OECD National Contact Point may be taken into consideration at case closure according to the procedure provisioned in the Guidelines regarding the multinational enterprises.

## **II.3 Final evaluation and decision**

Based on the analysis of the information gathered during initial due diligence and / or application of additional measures regarding the transaction or a party involved in the transaction, EximBank may request additional information, may reject application or may continue the due diligence process for granting the product.

The prosecution entities able to investigate the bribery acts according to the criminal laws and criminal procedures will be expeditiously notified by EximBank in the situation when before granting official support for export credits, allegations/ credible evidence are known that awarding or execution of the export contract involved bribery acts.

EximBank will deny granting the product when the initial due diligence and / or additional measures lead to the conclusion that the transaction involved bribery acts and/or the aforementioned declarations are not provided.

When deciding to grant the product, EximBank may establish precedent or subsequent conditions such as but not limited to:

- Duties to inform EximBank regarding any significant changes of the provided declarations;
- Duties for the exporter and where the case other relevant parties and any physical or legal person acting on its behalf in the transaction such as agents, have observed and will observe the laws and relevant regulations forbidding bribery acts in the country or jurisdiction where they conduct their business.
- The right to audit or verify the control systems of a party involved, of transaction for which the official support is granted, including all relevant parties.

#### **II.4 Measures applicable after granting the product**

After granting the official support for export credits, according to the information available, EximBank may take the following measures:

- In the situation when it possess information/credible evidence that conclusion or execution of the export contract involved bribery acts, EximBank will promptly inform the competent authorities with responsibilities in investigating, prosecuting and legal instrumentation of bribery acts;
- In the situation when one of the parties involved in respect with a certain transaction is sentenced for breaching the legislation against bribery acts as part of an arbitral agreement publicly available, EximBank will identify and apply appropriate measures, as per the Romanian applicable legislation notwithstanding the rights of every party that is not responsible for bribery such as: additional measures, deny payment of indemnification/guarantee, reimbursement of disposed amounts;
- In the situation when EximBank has reasons to believe that the transaction involved bribery acts (e.g. press information from credible sources, information provided by parties involved in the transaction) it will apply additional measures (e.g. press reports from well-known sources, information provided by the parties involved in transaction, whistle-blower information).

### ***III. Reports and monitoring. Transparency***

EximBank will provide the Working Party on Export Credit of OECD (ECG) information related to the transactions where conclusion or execution of an export contract involved bribery acts and that led to sentence for breaching the laws against bribery acts or to equivalent measures against one of

the parties involved in the transaction or in the situation when one of the involved parties has been mentioned/found as involved in bribery acts in a public sentence of an arbitral court.

To the extent that Romanian applicable legislation permits, EximBank will provide also the information regarding the respective party and the appropriate actions taken.

EximBank will publish on its website the regulation framework of OCDE regarding bribery acts in international business transaction as well as the national legal provisions regarding the consequences of bribery acts.

At the same time, in its relationships with clients/ potential clients EximBank will promote the principles provisioned in the OECD Council Recommendation, underlining the need for common efforts for identifying, preventing and combating bribery acts in international business transactions.

In order to establish a common approach regarding the implementation of the OECD Recommendation provisions, the EximBank attendance to the meetings of the Working Party on Export Credits of OECD and to the meetings of the Participants to the *OECD Arrangement on officially supported export credits* will contribute to the expertise building needed for correlating the endeavors of international bodies with similar ECAs, in the context of sharing best practices information and lines of action in this field.

### *III. Final Provisions*

EximBank promotes the business ethics, integrity principles and transparent and professional behavior in its activity by implementing standards for its employees related to compliance with the Code of Ethics for EximBank employees, awareness regarding the legal consequences of bribery acts, identification and reporting duties, conflict of interests identification and management in line with the *Policy regarding the Conflict of Interests*.

At the same time, EximBank implements *know your customer* measures aiming at reducing the potential reputational losses related to negotiating and granting products that support export transactions based on bribery acts.

Provisions of the present Policy are completed by the *Recommendations* and any other EU/OECD official document issued in respect of their implementation.

In order to bring these principles to practice, EximBank in the name of and on the account of the state cooperates with other State entities involved in this process for implementing the provisions of the present Policy in order to reach a common approach regarding the actions and measures for identification, preventing and combating bribery acts of foreign public officials involved in officially supported export transactions.