

ORGANISATION FOR ECONOMIC  
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COUNCIL

RECOMMENDATION OF THE COUNCIL

on Bribery in International Business Transactions

(adopted by the Council at its 829th Session on 27 May 1994)

015191

THE COUNCIL,

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

Having regard to the OECD Guidelines for Multinational Enterprises which exhort enterprises to refrain from bribery of public servants and holders of public office in their operations;

Considering that bribery is a widespread phenomenon in international business transactions, including trade and investment, raising serious moral and political concerns and distorting international competitive conditions;

Considering further that all countries share a responsibility to combat bribery in international business transactions, however their nationals might be involved;

Recognising that all OECD Member countries have legislation that makes the bribing of their public officials and the taking of bribes by these officials a criminal offence while only a few Member countries have specific laws making the bribing of foreign officials a punishable offence;

Convinced that further action is needed on both the national and international level to dissuade both enterprises and public officials from resorting to bribery when negotiating international business transactions and that an OECD initiative in this area could act as a catalyst for global action;

Considering that such action should take fully into account the differences that exist in the jurisdictional and other legal principles and practices in this area;

Considering that a review mechanism would assist Member countries in implementing this Recommendation and in evaluating the steps taken and the results achieved;

On the proposal of the Committee on International Investment and Multinational Enterprises;

General

I. RECOMMENDS that Member countries take effective measures to deter, prevent and combat the bribery of foreign public officials in connection with international business transactions.

II. CONSIDERS that, for the purposes of this Recommendation, bribery can involve the direct or indirect offer or provision of any undue pecuniary or other advantage to or for a foreign public official, in violation of the official's legal duties, in order to obtain or retain business (1).

Domestic Action

III. RECOMMENDS that each Member country examine the following areas and, in conformity with its jurisdictional and other basic legal principles, take concrete and meaningful steps to meet this goal. These steps may include:

- i) criminal laws, or their application, in respect of the bribery of foreign public officials;
- ii) civil, commercial, administrative laws and regulations so that bribery would be illegal;
- iii) tax legislation, regulations and practices, insofar as they may indirectly favour bribery;
- iv) company and business accounting requirements and practices in order to secure adequate recording of relevant payments;
- v) banking, financial and other relevant provisions so that adequate records would be kept and made available for inspection or investigation; and
- vi) laws and regulations relating to public subsidies, licences, government procurement contracts, or other public advantages so that advantages could be denied as a sanction for bribery in appropriate cases.

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1. The notion of bribery in some countries also includes advantages to or for members of a law-making body, candidates for a law-making body or public office and officials of political parties.

#### International Co-operation

IV. RECOMMENDS that Member countries in order to combat bribery in international business transactions, in conformity with their jurisdictional and other basic legal principles, take the following actions:

- i) consult and otherwise co-operate with appropriate authorities in other countries in investigations and other legal proceedings concerning specific cases of such bribery through such means as sharing of information (spontaneous or "upon request"), provision of evidence, and extradition;
- ii) make full use of existing agreements and arrangements for mutual international legal assistance and where necessary, enter into new agreements or arrangements for this purpose;
- iii) ensure that their national laws afford an adequate basis for this co-operation.

#### Relations with Non-Members and International Organisations

V. APPEALS to non-Member countries to join with OECD Members in combating bribery in international business transactions and to take full account of the terms of this Recommendation.

VI. REQUESTS the Secretariat to consult with international organisations and international financial institutions on effective means to combat bribery as an aid to promote the policy of good governance.

VII. INVITES Member countries to promote anti-corruption policies within and beyond the OECD area and, in their dealings with non-Member countries, to encourage them to join in the effort to combat such bribery in accordance with this Recommendation.

#### Follow-up Procedures

VIII. INSTRUMENTS the Committee on International Investment and Multinational Enterprises to monitor implementation and follow-up of this Recommendation. For this purpose, the Committee is invited to establish a Working Group on Bribery in International Business Transactions and in particular:

- i) to carry out regular reviews of steps taken by Member countries to implement this Recommendation, and to make proposals as appropriate to assist Member countries in its implementation;
- ii) to examine specific issues relating to bribery in international business transactions;
- iii) to provide a forum for consultations;
- iv) to explore the possibility of associating non-Members with this work; and

v) in close co-operation with the Committee on Fiscal Affairs, to examine the fiscal treatment of bribery, including the issue of tax deductibility of bribes.

IX. INSTRUCTS the Committee to report to the Council after the first regular review and as appropriate thereafter, and to review this Recommendation within three years after its adoption.