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TRADE AND AGRICULTURE DIRECTORATE  
TRADE COMMITTEE

### Working Party on Export Credits and Credit Guarantees

#### **EXPORT CREDITS AND BRIBERY: 2011 REVIEW OF MEMBERS' RESPONSES TO THE 2006 SURVEY ON MEASURES TAKEN TO COMBAT BRIBERY IN OFFICIALLY SUPPORTED EXPORT CREDITS**

*This document contains the final 2011 Review of Members' responses to the 2006 Survey on Measures Taken to Combat Bribery in Officially Supported Export Credits concerning their implementation of the 2006 OECD Recommendation on Bribery and Officially Supported Export Credits.*

*This document has been declassified and made publicly available on the OECD website, together with Members' responses.*

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## EXECUTIVE SUMMARY

This document comprises the 2011 Review of Members' responses to the 2006 *Survey on Measures Taken to Combat Bribery in Officially Supported Export Credits* in respect of the 2006 *OECD Recommendation on Bribery and Officially Supported Export Credits*.

The Survey is maintained on an on-going basis and, accordingly, Members of the OECD Working Party on Export Credits and Credit Guarantees (ECG) are invited to provide updates of their responses to the Survey to the Secretariat, at a minimum on an annual basis, to reflect any changes in their policies and practices: in this context, updated responses in 2011 were received from Australia, Austria, Canada, Czech Republic (EGAP), Denmark, Finland, Israel (a new Member of the ECG), Norway, Poland, Switzerland, United Kingdom and United States (EXIM) which have been included in the Review.

The analysis in this Review aims to illustrate how well Members adhere to the undertakings in the Recommendation and to inform their further work in this area: in this context, the majority of Members appear to fulfil their obligations under the Recommendation [*c.f.* Chart 1].

This Review also includes a Section on ECG co-operation on anti-bribery issues within the OECD to promote policy coherence: in this context, at the 129<sup>th</sup> ECG Meeting in April 2012, there was an update on Phase III reviews pertaining to export credits conducted by the OECD Working Group on Bribery under the Anti-Bribery Convention and a presentation by OECD Deputy Secretary-General Boucher on a new OECD anti-corruption initiative entitled CleanGovBiz.

This document has been declassified and made publicly available on the OECD, together with Members' actual responses to the 2006 Survey .

**EXPORT CREDITS AND BRIBERY: 2011 REVIEW OF MEMBERS' RESPONSES TO THE  
2006 SURVEY ON MEASURES TAKEN TO COMBAT BRIBERY IN  
OFFICIALLY SUPPORTED EXPORT CREDITS**

**I. Introduction**

1. This document provides a fifth Review of Members' responses to the *2006 Survey on Measures Taken to Combat Bribery in Officially Supported Export Credits* (the "Survey") [TD/ECG(2006)17/FINAL] that reflects the *2006 OECD Recommendation on Bribery and Officially Supported Export Credits* (the "Recommendation") [TD/ECG(2006)24] adopted by OECD Council in December 2006. The previous comprehensive review [TAD/ECG(2010)13/FINAL] was issued on 29 March 2011.

2. The responses to the Survey cover the 32 Members of the OECD Working Party on Export Credits and Credit Guarantees (ECG) that have official export credit programmes<sup>1</sup>: 24 Members in respect of their official export credit system as a whole (*i.e.* one response *per country*<sup>2</sup>) and ten responses from five countries (the Czech Republic, Hungary, Japan, Korea and the United States<sup>3</sup>) that each provide officially supported export credits through two export credit agencies (ECAs). In total, therefore, responses have been received from 34 Members/ECAs. Any questions concerning actual responses should be directed to the Member/ECA concerned.

3. Under the provisions of the ECG Peer Review [TAD/ECG(2008)23], Members are invited to ensure that their responses to the Survey are up-to-date on an on-going basis and at a minimum on an annual basis, to reflect any changes in their policies and practices. These responses then form the basis of a provisional annual review by the Secretariat concerning Members' implementation of the Recommendation, which is examined and discussed by all ECG Members. Members' up-to-date responses are usually also made available to relevant Civil Society Organisations (CSO) to enable their comments on Members' implementation of the Recommendation to be included in the Secretariat's provision review; however, due to on-going work on export credits and the environment in 2011-12, including relevant CSO consultations, CSO comments were not sought on the most recent updated responses. However, as usual, this final version of the review has been declassified and is made publicly available on the OECD website<sup>4</sup> together with Members' actual responses.

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<sup>1</sup> Of the 34 Members of the OECD, as of 30 September 2012, all but two countries (Chile and Iceland) are ECG Members; of the 32 ECG Members, for the purpose of this 2011 Review, Estonia, Ireland and Slovenia are not included in the data because Ireland has no official export credit programmes and Estonia and Slovenia only became Members of the OECD and the ECG in 2011.

<sup>2</sup> For example, the responses from Norway were jointly provided by GIEK and EKSPORTFINANS.

<sup>3</sup> The United States provided responses from its ECA, US EXIM, and from the United States Department of Agriculture ("USDA"), which also provides official export credit support for agricultural products.

<sup>4</sup> <http://www.oecd.org/trade/exportcredits/briberyandexportcredits/>.

4. This Review comprises the following Sections:

- Section II: Situation for 2011 Review
- Section III: The 2006 Survey
- Section IV: Comments from Civil Society Organisations (CSOs)
- Section V: ECG co-operation on anti-bribery issues within the OECD
- Section VI: Conclusions
- Section VII: Next steps

## **II. Situation for 2011 Review**

5. At their 126<sup>th</sup> Meeting in June 2011, ECG Members were invited to review and, if necessary, update their responses to the Survey by end-July 2011. As a result, Canada revised its comments in relation to Questions 17 and 18, and Israel, as a new Member of the OECD and of the ECG, submitted responses for the first time<sup>5</sup>.

6. A provisional version of this Review was subsequently presented for examination and discussion at the 129<sup>th</sup> ECG Meeting held in April 2012. As a result, nine Members (Australia, Austria, Canada, Denmark, Finland, Norway, Poland, Switzerland and the United Kingdom) requested certain changes to their Survey responses and to the Review: Austria and Switzerland provided significant changes to many of their Survey responses; Australia, Denmark, Norway and Poland provided clarifications to their responses to Question 13; Canada updated its response to Question 23; Finland amended its comments for Question 18; and the United Kingdom amended its comments for Questions 1 (b), 2 (b), 5 and 22. As a result of these updated responses and comments, the Review was re-issued for agreement by Members by written procedure *via* OLIS over the summer, as a result of which further updated responses and comments were received from Australia, the Czech Republic (EGAP) and the United States (USEXIM); Australia revised some responses based on the renewed anti-bribery procedures implemented in July 2012; Czech Republic updated its response to Question 23; and the United States (USEXIM) provided many changes to its Survey responses to align them with current US Ex-Im policy and practice.

7. All Members' responses to the Survey, as at 30 September 2012 are currently available on the OECD website and any questions concerning these responses should be directed to the Members concerned. As before, the results of this Survey will also inform the work of the OECD Working Group on Bribery in International Business Transactions in connection with their ongoing review of the implementation of the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*.

## **III. The 2006 Survey**

8. Questions 1-16 cover each obligation itemised in the Recommendation, as well as additional information on the policies and practices of Members/ECAs, and Questions 17-23 seek information on past experiences, on application of the terms used in the Recommendation, and on any further measures that are being contemplated. Many of the questions in the Survey have detailed sub-questions with multiple options

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<sup>5</sup> In this context, Israel's responses to Questions 9-15 of the Survey indicated that its enhanced due diligence process was being updated in July 2011: this will be verified and reported on in the 2012 Review.

to facilitate the provision of unambiguous answers; however, other questions in the Survey provide Members with opportunities for free responses, which are not so conducive for analysis. In some cases, however, the free response comments have helped in the interpretation of Members'/ECAs' actual policies and practices.

**(a) Methodology used to assess responses**

9. In this Review, summaries of responses have been provided in respect of each Survey question. In addition, the Secretariat has attempted, where appropriate, to assess Members'/ECAs' responses against the undertakings of the Recommendation in terms of whether their policies and practices meet or exceed each obligation. Lastly, this Review includes additional information provided by Members/ECAs as examples of policies implemented or particular measures undertaken in certain situations.

**(b) Summary and assessment of Members' responses**

***Question 1 - Do you inform exporters and, where appropriate, applicants, requesting official export credit support about the legal consequences of the bribery in international business transactions under your national legal system including your national laws prohibiting such bribery? If yes:***

***(a) Please indicate the method(s) by which this is accomplished.***

***(b) Please provide the text used to describe the legal consequences of the bribery in international business transactions under your national legal system including your national laws prohibiting such bribery.***

10. As required under Article 1 a) of the Recommendation, all 34 Members/ECAs responded that they always inform exporters and, where appropriate, applicants requesting official export credit support about the legal consequences of bribery in international business transactions under their national legal system, including their national laws prohibiting such bribery.

11. With respect to how Members/ECAs meet the first obligation in Article 1 a) of the Recommendation, the Survey invites Members to indicate the method(s) by which they inform exporters and, where appropriate, applicants of the legal consequences of bribery. In this context, the first five set responses to Question 1 a) in the Survey (text in the application form, a stand-alone document provided to applicants, text included in a stand-alone document submitted by applicants, text in the general conditions of cover, and text in the credit agreement) are considered to be 'sure' methods of communications, as they involve text in project-specific documentation. Of these five options, the first three are considered to be the best methods of communication, as they relate to documentation provided at the earliest stage possible in the life of a potential officially supported export credit, *i.e.* during the application process rather than the underwriting process, when any problem cases might be quickly identified.

12. The remaining two set responses to Question 1 (a) (information posted on the organisation's website and customer publications, *e.g.* brochures and handbooks) are not considered to be 'sure' methods of communication, as there is no guarantee that an exporter and/or applicant will refer to these on a transaction-by-transaction basis.

13. As a result, therefore, 32 Members/ECAs, including Israel this year, meet the first obligation in Article 1 a) by using one of the five 'sure' methods of communication involving text in project-specific documentation; all of these 32 Members/ECAs use one of the first three options for informing exporter and/or applicants at the earliest stage possible. In addition, the United States (EXIM) reported that it includes information concerning the legal consequences of bribery in its exporter's certificates<sup>6</sup>: given that

<sup>6</sup> In addition, the United States (EXIM) also reported that its application forms include information on the laws, including those relating to corrupt practices, that must be complied with.

this is a 'sure' project-specific method of communication, the United States (EXIM) is also considered to meet the first obligation in Article 1 a) .

14. The remaining Member/ECA, Mexico, also meets the minimum obligation in Article 1 a), but by using a non-'sure' method, as it informs exporters and, where appropriate, applicants of the legal consequences of bribery *via* its website, which exporters and/or applicants may not necessarily consult, or through personal contacts.

15. In addition, 28 Members/ECAs exceed the minimum obligation by informing exporters and/or applicants of the legal consequences of bribery using more than one method of communication. Of these, 12 Members/ECAs reported using application documentation, text in the official support documentation, and their websites to meet this obligation.

16. The texts used by Members/ECAs to inform exporters and, where appropriate, applicants are available on the OECD website.

***Question 2 - Do you encourage exporters and, where appropriate, applicants, requesting official export credit support to develop, apply and document appropriate management control systems that combat bribery? If yes:***

***(a) Please indicate how this is accomplished.***

***(b) Please provide the text used to encourage exporters and, where appropriate, applicants, requesting official export credit support to develop, apply and document appropriate management control systems that combat bribery.***

17. In respect of the second obligation in Article 1 a) of the Recommendation, all 34 Members/ECAs responded that they always encourage exporters and, where appropriate, applicants, to develop, apply and document appropriate management control systems that combat bribery.

18. With respect to how Members/ECAs meet the second obligation in Article 1 a) of the Recommendation, the Survey invites Members to indicate the method(s) by which they encourage exporters and, where appropriate, applicants to develop, apply and document appropriate management control systems. In this context, the first four set responses to Question 2 (a) in the Survey (text in the application form, a stand-alone document provided to applicants, text in the general conditions of cover, and text in the credit agreement) are considered to be 'sure' methods of communications as they involve text in project-specific documentation; of these, the first two are considered to be the best methods of communication, as they relate to documentation provided at the earliest stage possible in the life of a potential officially supported export credit.

19. The remaining two set responses to Question 2 (a) (information posted on the organisation's website and customer publications, *e.g.* brochures and handbooks) are not considered to be 'sure' methods of communication, as there is no guarantee that an exporter and/or applicant will refer to these on a transaction-by-transaction basis.

20. Looking then at the methods chosen by Members/ECAs for fulfilling the second obligation in Article 1 a) of the Recommendation, these appear to be less 'sure' than in respect of the first obligation, with more reliance being placed on websites and customer publications than on project-specific documentation. In this context, 21 Members/ECAs meet the second obligation of Article 1 a) by encouraging exporters and/or applicants to develop, apply and document management control systems by using one of the four 'sure' methods of communication involving text in project-specific documentation. Of these, 20 Members/ECAs, including Israel this year, encourage the exporters and, where appropriate, applicants at the earliest stage possible.

21. The remaining Members/ECAs<sup>7</sup> also meet the second obligation in Article 1 a) of the Recommendation, but by using non-‘sure’ methods: of these, eight Members/ECAs encourage exporters and, where appropriate, applicants, to develop, apply and document appropriate management control systems *via* their websites or in customer publications, and one Member/ECA, Japan (JBIC), relies on oral communication.

22. In addition, 25 Members/ECAs exceed the minimum obligation by encouraging exporters and, where appropriate, applicants to develop, apply and document appropriate management control systems using more than one method of communication, both ‘sure’ and non-‘sure’. Of these, one Member/ECA, France, reported using application documentation, text in the official support documentation, and their websites to meet this obligation

23. Last, some Members/ECAs reported additional measures undertaken in relating to management control systems, such as asking exporters and/or applicants about their Codes of Conduct, and informing exporters and/or applicants about the OECD Guidelines for Multinational Enterprises.

24. The texts used by Members/ECAs to encourage exporter and/or applicants to develop, apply and document appropriate management systems are available on the OECD website.

***Question 3 - Do you require exporters and, where appropriate, applicants, requesting official export credit support 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? If yes:***

***(a) The requirement is communicated to exporters/applicants via.***

***(b) The undertaking/declaration is obtained from exporters/applicants through.***

***(c) Please provide the text of the requirement and/or the undertaking/declaration provided by exporters/applicants.***

25. With respect to the obligation in Article 1 b) of the Recommendation, all 34 Members/ECAs always require exporters and/or 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.

26. The Survey invites Members to indicate the method(s) by which the requirement for an undertaking/declaration is communicated to exporters and/or applicants. In this context, the first four set responses to Question 3 a) in the Survey (text in the application form, a stand-alone document provided to applicants, text in the general conditions of cover, and text in the credit agreement) are considered to be ‘sure’ methods of communications as they involve text in project-specific document; of these, the first two are considered to be the best methods of communication, as they relate to documentation provided at the earliest stage possible in the life of a potential officially supported export credit.

27. The remaining two set responses to Question 3 (a) (information posted on the organisation’s website and customer publications, *e.g.* brochures and handbooks) are not considered to be ‘sure’ methods of communication, as there is no guarantee that an exporter and/or applicant will refer to these on a transaction-by-transaction basis.

28. All 34 Members/ECAs meet the requirement as they communicate effectively to the exporters and/or applicants the requirement for an anti-bribery undertaking/declaration using one of the four ‘sure’ methods of communication involving text in project-specific documentation. Of these, 33 Members/ECAs meet the expected standard at the earliest possible stage, with only Mexico relying on text in the credit

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<sup>7</sup> Australia, Austria, Belgium, Canada, Czech Republic (EGAP), Germany, Japan (JBIC and NEXI), Luxembourg, Mexico, Poland and the United States (EXIM and USDA)

agreement and information posted on the website to communicate to exporters and/or applicants that an undertaking/declaration will be required.

29. In addition, 28 Members/ECAs exceed the standard expectation by using multiple channels of communication.

30. In relation to how the undertaking/declaration is actually obtained from exporters and/or applicants, 33 Members/ECAs reported that it is obtained through application forms (24 Members/ECAs) and/or through stand-alone documents submitted by the exporter and/or applicant (19 Members/ECAs), *i.e.* 10 Members/ECAs obtain the undertaking/declaration through both methods. Mexico reported obtaining the undertaking/declaration through text in the credit agreement: in this context, a number of other Members/ECAs also reported that their transaction documentation contains the necessary undertaking/declaration. In addition, three Members/ECAs, including Israel, reported that they obtain the required undertaking/declaration both at the time of application and before support is provided: this might be a useful practice particularly with processing applications for complex projects, which may take many months, or when there are lengthy delays in processing other applications.

31. The full text of each Member's/ECA's undertaking/declaration is available on the OECD website.

***Question 4 - Do you verify and note whether exporters, and where appropriate, applicants, are listed on the publicly available debarment lists of the following international financial institutions (IFIs): World Bank Group, African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development and the Inter-American Development Bank? If yes:***

- (a) Which actors associated with the transaction are subject to verification?***
- (b) Please indicate how the verification is achieved.***

32. Pursuant to Article 1 c) of the Recommendation, the standard expectation with regard to Question 4 is that Members/ECAs will always verify and note whether exporters and/or applicants are listed on the publicly available debarment lists of certain named IFIs. In this context, the IFIs signed an *Agreement for Mutual Enforcement of Debarment Decisions*, in April 2010 under which they agreed to cross-debar firms and individuals found to have engaged in wrong-doing in financed projects by enforcing debarment decisions made by other participating IFIs. All the IFIs have now implemented this Agreement and made their debarment lists publicly available: links to these lists are provided on the OECD intranet to facilitate Members'/ECAs' due diligence processes.

33. Almost all Members/ECAs always verify and note whether exporters and/or applicants are listed on the publicly-available IFI debarment lists: only Mexico and the United States (USDA) responded that they do not always do so. Mexico commented that it checks IFI debarment list when loans are funded by the relevant multilateral organisation, and the United States (USDA) explained that it implements a verification procedure against the US Government's debarment list. Therefore, 32 Members/ECAs, including Israel, meet the requirement of Article 1 c) of the Recommendation by consulting the IFI debarment lists: of these, all 32 Members/ECAs verify and note whether exporters are listed on the debarment lists and all but two Members/ECAs verify and note whether applicants are listed on the debarment lists. In addition, of these 32 Members/ECAs, 11 go beyond the requirements of the Recommendation by verifying also whether other parties involved in the export transaction, such as banks, agents and intermediaries, are listed on the debarment lists.

34. With regard to the timing of verifying the IFI debarment lists for exporters, Table 1 provides information on Members/ECAs practices. In this context, eight Members/ECAs reported that verification of the IFI debarment lists takes place both at the time of application and before support is provided: this

might be a useful practice particularly with processing applications for complex projects, which may take many months, or when there are lengthy delays in processing other applications.

**Table 1 – The timing of verifying the IFI debarment list by Members/ECAs**

Members/ECAs	Applicant		Exporter(s)		Other parties involved in the transaction	
	At the time of Application	Before support is provided	At the time of Application	Before support is provided	At the time of Application	Before support is provided
Australia		X		X		X
Austria	X		X			
Belgium	X	X	X	X	X	X
Canada	X	X	X	X	X	X
Czech Republic (EGAP)	X	X	X	X	X	X
Czech Republic (CEB)	X		X			
Denmark		X		X		X
Finland		X		X	X (not specified)	
France	X	X	X	X		
Germany	X		X			
Greece	X		X			
Hungary (MEHIB)	X		X			
Hungary (Eximbank)	X		X			
Israel	X	X	X	X		
Italy	X		X			
Japan (JBIC)	X		X			
Japan (NEXI)		X		X		
Korea (Eximbank)	X		X			
Korea (K-sure)	X		X			
Luxembourg	X		X			
Mexico			X (not specified)		X (not specified)	
Netherlands			X		X	
New Zealand	X	X	X	X		
Norway	X		X	X		
Poland	X	X	X	X		
Portugal	X	X	X	X		X
Slovak Republic	X		X			
Spain		X		X		
Sweden	X		X			
Switzerland	X		X		X	
Turkey				X		
United Kingdom	X		X		X	
United States (EXIM)		X		X		X
United States (USDA)	X	X				

35. With regard to how to undertake the verification as set in Question 4 (b), footnote 3 of the Recommendation states that implementation may take the form of a self-declaration from exporters and/or applicants: in this context, of the 32 Members/ECAs that always undertake the verification, seven Members/ECAs rely on self-declaration submitted by the exporter and/or applicant, nine Members/ECAs rely on checks carried out by their staff, and 18 Members/ECAs require both

self declarations by exporters and/or applicants and staff checks. In some cases, Members/ECAs reported that the self-declarations were included in the text of the undertaking/declaration referred to in Question 3.

***Question 5 - Do you require 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? If yes:***

***(a) Please indicate how requirement is met.***

36. Question 5 relates to Article 1 d) of the Recommendation, under which Members/ECAs are expected to require exporters and/or applicants to disclose whether they or anyone acting on their behalf in connection with the transaction are currently under charge in a national court<sup>8</sup> 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.

37. Almost all Members/ECAs fulfil the obligation of Article 1 d) of the Recommendation: only Mexico and the United States (USDA) indicated that they do not require such disclosure. In meeting this obligation, Members/ECAs rely on self-declarations signed and submitted by the exporter and/or applicant that are included in the application form (14 Members/ECAs), a stand-alone document (12 Members/ECAs) or both documents (six Members/ECAs).

38. In addition, two Members, France and Israel, reported requiring disclosure both at the time of the application and before support is provided: again, this might be a useful practice when processing applications for complex projects, which may take many months, or when there are lengthy delays in processing other applications.

***Question 6 - Are agents' commissions (included in the export contract) eligible for official support? If yes:***

***(a) Do you apply a ceiling to agents' commissions for which official support is provided? If yes:***

***(b) Please provide details on the ceiling(s) applied.***

***(c) What is the rationale for imposing a ceiling on agents' commissions?***

39. Question 6 is not directly related to obligations under the Recommendation: it concerns Members'/ECAs' general policies and practices with regard to supporting agents' commissions. In response to the Question, 20 Members/ECAs always allow for official support to be provided for agents' commissions (included in the export contract), another eight Members/ECAs<sup>9</sup> sometimes provide support, and six Members/ECAs do not usually provide support for agents' commissions - Belgium, France, Greece, Mexico<sup>10</sup>, Turkey and United States (USDA).

40. With respect to whether a ceiling is applied to agents' commissions for which official support is provided, seven Members/ECAs<sup>11</sup> always apply a ceiling, three Members/ECAs<sup>12</sup> sometimes set a ceiling and 18 Members/ECAs reported that they applied no fixed ceiling. In this context, some Members/ECAs provided numerical details in respect of their ceiling, for example: the Netherlands applies a ceiling of

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<sup>8</sup> Question 21 contains additional information on Members' interpretation of the term "national court".

<sup>9</sup> Denmark, Germany, Israel, Luxembourg, Netherlands, Norway, Poland and United States (EXIM).

<sup>10</sup> Mexico has been included in this list as it is not common practice for Bancomext to support agents' fees.

<sup>11</sup> Denmark, Italy, Netherlands, Norway, Portugal, the Slovak Republic and Spain.

<sup>12</sup> Israel, Luxembourg and United States (EXIM).

5% of the contract amount or EUR 4.5 million (whichever is the lowest); and Spain maintains a limit of 5% of the total value of exported goods and services. The rationale provided for applying a ceiling to agents' commissions is that a high commission, either as a percentage or in absolute volume, in excess of standard business practice and without an adequate explanation of the purpose of the commission, might be an indication that these funds are being used to channel illicit payments.

41. Where a fixed ceiling is not always applied to agents' commissions, Members/ECAs, including Israel this year, reported that they review the level or amount of agents' commissions on a case-by-case basis, in accordance with common business standards: this would appear to be a pragmatic approach to examining agents' commissions given the variations in market practices for agents' commissions by transaction, industry sector and project country.

**Question 7 - Do you require that details be provided in respect of agents' commissions associated with the transaction? If yes:**

- (a) **Do you require the amounts of commissions to be disclosed?**
- (b) **Do you assess whether the level of commissions is consistent with standard business practice?**
- (c) **Do you require the purpose of commissions to be clearly identified?**
- (d) **Do you require that details (e.g. name, company, address) be provided in respect of the agent(s) to whom commissions are paid?**

42. Question 7 is related to Article 1 e) of the Recommendation, under which Members should require exporters and/or applicants to disclose upon demand (i) the identity of persons action on behalf of the exporter and/or applicant in connection with the transaction, and (ii) the amount and purpose of commissions and fees paid, or agreed to be paid, to such persons. In this context, those Members/ECAs that answered "Yes, always" or "Yes, sometimes" are deemed to meet the obligations of Article 1 e).

**Table 2 – Requirement/Assessment of the details in respect of agents' commissions**

	Yes, always	Yes, sometimes	No
Do you require that details be provided in respect of agents' commissions associated with the transaction?	16	15	3
(a) Do you require the amounts of commissions to be disclosed?	19	12	0
(b) Do you assess whether the level of commissions is consistent with standard business practice?	10	18	3
(c) Do you require the purpose of commissions to be clearly identified?	12	18	1
(d) Do you require that details (e.g. name, company, address) be provided in respect of the agent(s) to whom commissions are paid?	14	17	0

Note: Where Members/ECAs answered "no" to Question 7, their other answers provided for sub-Questions 7 (a) through 7 (d) are not counted in this Table 2.

43. In this context, 31 Members/ECAs, including Israel this year, reported that they require the details in respect of agents' commissions associated with transactions either "always" (16 Members/ECAs) or "sometimes" (15 Members/ECAs). The remaining three Members/ECAs, i.e. Belgium, Mexico and United States (USDA), are among those Members/ECAs that do not provide support for agents' commissions (Question 6 refers) and do not, therefore, require the details of agents' commissions to be provided; however, Belgium responded that it is considering the possible impact of examining commission details on the obligation to provide cover for such payments.

44. As shown in Table 2 above, among those 31 Members/ECAs that may require exporters and/or applicants to disclose the details of agents and agents' commissions:

- (a) 31 Members/ECAs may also require the amount of commissions to be disclosed.
- (b) 28 Members/ECAs may assess whether the level of commissions is consistent with standard business practice (except for Greece, Japan/JBIC and Japan/NEXI).
- (c) 30 Members/ECAs may require the purpose of commissions to be clearly identified (except for Greece).
- (d) 31 Members/ECAs may require that details (*e.g.* name, company and address) be provided in respect of the agent(s) to whom commissions are paid.

45. With regard to the timing of when information on agent's commissions is collected, most Members/ECAs reported that they require this information either at the time of application or before a final decision to provide support is made, either systematically or on a case-by-case basis as part of an enhanced due diligence process or when deemed necessary: for example, if the Member/ECA has reason to believe that the level of the commission is inconsistent with standard business practice, it may request additional information on the purpose of the commissions. The only exception to this is Luxembourg, which will usually review agents' commissions only before a claim is indemnified<sup>13</sup>: in this context, eight other Members/ECAs (Austria, Canada, France, Germany, Italy, Portugal, Switzerland and Turkey) also reported that they would undertake further assessments of agents' commissions prior to paying claims. Lastly, Australia, Turkey and the United States (EXIM) noted in their responses that they refer to the exporter's certificates for details of all payments made prior to approval of drawdowns. Table 3 below shows the overall pattern of when information on agent's commissions is collected.

**Table 3 – Time when details in respect of agent's commissions is required/assessed**

	At the time of application	Before the final decision to provide support is made	Before a claim is indemnified	Other
Require the amounts of commissions to be disclosed	14	15	7	5
Assess whether the level of commissions is consistent with standard business practice	10	17	6	4
Require the purpose of commissions to be clearly identified?	10	15	8	7
Require that details be provided in respect of the agent(s) to whom commissions are paid	11	15	8	5

Note: Multiple choices from Members are all equally treated (not mutually exclusive) and "other" responses usually signify a case-by-case approach

***Question 8 - Have you developed and implemented procedures to disclose to your law enforcement authorities instances of credible evidence<sup>14</sup> of bribery? If yes, please provide a short description of your policies and procedures.***

46. Question 8 relates to Article 1 h) of the Recommendation. With the exception of Mexico, all other 33 Members/ECAs have developed and implemented procedures to disclose instances of credible evidence of bribery to law enforcement authorities.

<sup>13</sup> Unless bribery is suspected during the application process, in which case further assessment is undertaken.

<sup>14</sup> As defined in the OECD Council Recommendation on Bribery and Officially Supported Export Credits.

47. In their responses, Members/ECAs provided a comprehensive description of their policies and procedures, including how instances of credible evidence of bribery are reported internally *via* legal departments, senior management, compliance committees/management boards, and/or guardian authorities for disclosure to law enforcement authorities: these details are available on the OECD website.

48. In addition, Hungary (MEHIB and Eximbank) both noted in their responses that they are required to disclose to national law enforcement authorities if applicants/exporters 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.

***Question 9 - If, before credit, cover or other support has been approved, you become aware that an exporter and, where appropriate, applicant (or anyone acting on their behalf in connection with the transaction) are listed on any of debarment lists that you verify, what action(s) are taken? If enhanced due diligence is undertaken:***

***(a) Does the enhanced due diligence process include, inter alia, verification that the exporter/applicant has in place appropriate management control systems that combat bribery?***

***(b) Does the enhanced due diligence process include, inter alia, verification that the exporter/applicant has taken appropriate internal corrective and preventative measures after having been debarred?***

***(c) How is the application treated?***

49. In accordance with Article 1 f) of the Recommendation, Members/ECAs are expected to undertake enhanced due diligence if they become aware that an exporter and/or applicant is listed on one of the publicly available IFI debarment lists. Although the Recommendation provides no specific guidance on what should be included in the enhanced due diligence process, Questions 9 (a) and 9 (b), and subsequent questions, address measures that might reasonably be expected to be part of a Member's enhanced due diligence procedures.

50. All Members/ECAs, except Mexico, which did not answer this question, reported that they would always undertake enhanced due diligence if, before the credit, cover or other support has been approved, they become aware that an exporter and/or applicant is listed on one of the publicly available IFI debarment lists. In addition, Australia<sup>15</sup> and Greece noted that, in such a situation, they might refuse to provide cover.

51. Of the 33 Members/ECAs that responded to Questions 9 (a) and 9 (b), 30 Members/ECAs would always verify that the exporter and/or applicant had in place appropriate management control systems that combat bribery when undertaking enhanced due diligence; France and Israel would sometimes undertake this verification; and only Greece would not include this measure in its enhanced due diligence process.

52. With regard to verifying that the exporter and/or applicant had taken appropriate internal corrective and preventative measures after having been debarred, 32 Members/ECAs would always undertake this verification and France would sometimes include this measure in its enhanced due diligence process.

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<sup>15</sup> In this context, Australia commented “ The underwriter reports the matter, including the outcome of the enhanced due diligence, to EFIC’s Executive team who will determine, on a case by case basis, the necessary action to be taken in relation to the Exporter and where appropriate, the applicant, and the proposed application. The action may include refusing to provide the credit.”

53. With regard to how the application is treated, all 33 Members/ECAs that responded to Questions 9 (a) and 9 (b) reported that they would suspend the approval of the application pending the outcome of the enhanced due diligence process. In addition, France, New Zealand and Sweden noted in their responses that additional measures might be taken depending on the information received from the exporter and/or applicant or on the outcome of the due diligence process.

***Question 10 - If, before credit, cover or other support has been approved, you become aware that an exporter and, where appropriate, applicant (or anyone acting on their behalf in connection with the transaction) is currently under charge in a national court for violation of laws against bribery of foreign public officials of any country, what action(s) are taken? If enhanced due diligence is undertaken:***

***(a) Does the enhanced due diligence process include, inter alia, verification that the exporter/applicant has in place appropriate management control systems that combat bribery?***

***(b) How is the application treated?***

54. In accordance with Article 1 f) of the Recommendation, Members/ECAs are expected to undertake enhanced due diligence if they become aware that an exporter and/or applicant (or anyone acting on their behalf in connection with the transaction) is currently under charge in a national court for violation of laws against bribery of foreign public officials of any country. Question 10, therefore, addresses the action(s) Members/ECAs might take in such circumstances.

55. In response to this question, 32 Members/ECAs reported that they would always undertake enhanced due diligence if, before the credit, cover or other support has been approved, they become aware that an exporter and/or applicant (or anyone acting on their behalf in connection with the transaction) is currently under charge in a national court for violation of laws against bribery of foreign public officials of any country. Greece reported that, rather than undertaken enhanced due diligence, it would await the outcome of the legal proceeding before making a final decision on whether to provide support, and Mexico reported that, if an exporter and/or applicant (or anyone acting on their behalf in connection with the transaction) were under charge, then it would consider the application for support null and void.

56. Among the 32 Members/ECAs that undertake enhanced due diligence, 29 Members/ECAs would always verify that the exporter and/or applicant has in place appropriate management control systems that combat bribery; France, Israel and the United States (USDA) reported that they would sometimes undertake this verification as part of their due diligence.

57. With regard to how the application for cover is treated, all Members/ECAs would always suspend approval of the application pending the outcome of the enhanced due diligence process, except for Mexico, which, as already noted, would consider the application null and void. In addition, Australia, France and New Zealand noted that they might take additional measures, including possible refusal of cover, depending on the outcomes of the enhanced due diligence.

***Question 11 - If, before credit, cover or other support has been approved, you become aware that an exporter/applicant (or anyone acting on their behalf in connection with the transaction) has been convicted in a national court or has been subject to equivalent national administrative measures for violation of laws against bribery of foreign public officials of any country within a five-year period, what actions are taken? If enhanced due diligence is undertaken:***

***(a) Does the enhanced due diligence process include, inter alia, verification that the exporter/applicant has in place appropriate management control systems that combat bribery?***

***(b) Does the enhanced due diligence process include, inter alia, verification that the exporter/applicant has taken appropriate internal corrective and preventative measures after having been convicted?***

***(c) How is the application treated?***

58. In accordance with Article 1 f) of the Recommendation, Members/ECAs are expected to undertake enhanced due diligence if they become aware that an exporter and/or applicant (or anyone acting on their behalf in connection with the transaction) has been convicted in a national court or has been subject to equivalent national administrative measures for violation of laws against bribery of foreign public officials of any country within a five-year period. Question 11, therefore, addresses the action(s) Members/ECAs might take in such circumstances.

59. In response to this question, 33 Members/ECAs reported that they would always undertake enhanced due diligence if, before the credit, cover or other support has been approved, they become aware that an exporter and/or applicant (or anyone acting on their behalf in connection with the transaction) has been convicted in a national court or has been subject to equivalent national administrative measures for violation of laws against bribery of foreign public officials of any country within a five-year period. The exception is Mexico, which reported that if it becomes aware that an exporter and/or applicant has been convicted in a national court, then it would consider the application for support null and void. Similarly, the United States (USDA) reported that, although it would normally undertake enhanced due diligence, the application might nevertheless be disqualified under national rules relating to the debarment of firms from contracting with or participating in any programmes administered by government agencies in certain circumstances.

60. Of the 33 Members/ECAs that would undertake enhanced due diligence, 32 Members/ECAs would always verify that the exporter and/or applicant had in place appropriate management control systems that combat bribery when undertaking enhanced due diligence and Israel reported that it would always include this verification in its enhanced due diligence process as of July 2011.

61. With regard to verifying that the exporter and/or applicant had taken appropriate internal corrective and preventative measures after having been debarred, 32 Members/ECAs would always undertake this verification and the United States (USDA) would sometimes include this measure in its enhanced due diligence process.

62. With regard to how the application is treated under Question 11 (c), all 33 Members/ECAs that would undertake enhanced due diligence would always suspend the approval of the application pending the outcome of the enhanced due diligence process. In addition, Australia, France, Hungary (MEHIB and Eximbank) noted in their responses that their relevant management boards/committees might also decide on additional measures that might be taken. In this context, the United States (USDA) provided additional information, which is available on the OECD website, on the process for placing a party on its suspension or debarment list.

***Question 12 - If, before credit, cover or other support has been approved, you have reason to believe that bribery may be involved in the transaction (e.g. press reports from a reputable source, information provided by participants in the transaction) related to the award of the export contract, what action(s) are taken? If enhanced due diligence is undertaken:***

- (a) Does the enhanced due diligence process include, inter alia, verification that the exporter/applicant has in place appropriate management control systems that combat bribery?***
- (b) How is the application treated?***

63. In accordance with Article 1 f) of the Recommendation, Members/ECAs are always expected to undertake enhanced due diligence if they have reason to believe that bribery may be involved in the transaction. Question 12, therefore, addresses the action(s) Members/ECAs might take in such circumstances.

64. In response to this question, 33 Members/ECAs reported that they would always undertake enhanced due diligence if, before the credit, cover or other support has been approved, they had reason to

believe that bribery may be involved in the transaction. As for Questions 10-11, Mexico reported that, in such circumstances, it would consider the application for support null and void.

65. Of the 33 Members/ECAs that would undertake enhanced due diligence, 29 Members/ECAs responded that they always verify whether the exporter and/or applicant has in place appropriate management control systems that combat bribery and four Members/ECAs (France, Israel<sup>16</sup>, Portugal and United States (USDA)) reported that they would sometimes undertake such a verification.

66. With regard to how the application is treated under Question 12 (b), all 33 Members/ECAs that would undertake enhanced due diligence would always suspend the approval of the application pending the outcome of the enhanced due diligence process. In addition, a number of Members/ECAs noted that they would seek additional information during the due diligence process concerning allegations received from third parties after which they (*i.e.* their relevant management boards/committees) would take a decision on whether to take additional measures. Lastly, Italy noted as part of its response that the circumstances might lead to investigative authorities being informed, and Korea (K-sure) noted that it did not have the mandate to investigate allegations from third parties and would instead pass such allegations to the appropriate authorities.

**Question 13 - If, before credit, cover or other support has been approved, you become aware of credible evidence that bribery was involved in the award of the export contract for the transaction, what action(s) are taken? If enhanced due diligence is undertaken:**

**(a) Does the enhanced due diligence process include, *inter alia*, verification that the exporter/applicant has in place appropriate management control systems that combat bribery?**

**(b) How is the application treated?**

**If investigative authorities are informed:**

**(c) How is the application treated?**

67. Taken together, Articles 1 i) and 1 j) of the Recommendation require that Members/ECAs inform law enforcement authorities and suspend the approval of an application pending the outcome of the enhanced due diligence process when there is credible evidence that bribery was involved in the award of the export contract. In addition, Members/ECAs should not provide cover or other support for a transaction if the result of any enhanced due diligence process undertaken concludes that bribery was involved in the transaction. Question 13, therefore, addresses the action(s) Members/ECAs might take when there is credible evidence that bribery was involved in the award of the export contract. The set responses to the question are: law enforcement authorities are informed, enhanced due diligence is undertaken, and support is not provided for the transactions.

68. As shown in the Table 4, 32 Members/ECAs reported that they would always inform law enforcement authorities if, before the credit, cover or other support has been approved, they had reason to believe that bribery may be involved in the transaction. Of these:

- 23 Members/ECAs would also always undertake their own enhanced due diligence, which would, in most cases<sup>17</sup>, always include, *inter alia*, verification the exporter/applicant has in place

<sup>16</sup> Israel reported that it would always include this verification in its enhanced due diligence process as of July 2011.

<sup>17</sup> In this context, Australia commented that “The enhanced due diligence to be undertaken would depend on the circumstances of the allegation. In some cases it would not be appropriate to contact the exporter/applicant to assess the management control systems to combat bribery (for example where the law enforcement agency investigating the matter has requested that the matter be kept strictly confidential to allow the investigation to proceed.)”

appropriate management control systems that combat bribery, and would suspend approval of the application pending the outcome of both their enhanced due diligence and clearance from the law enforcement authorities; and

- Nine Members/ECAs, *i.e.* Austria, Canada, Germany, Italy, Luxembourg, Mexico, Netherlands, Spain and Switzerland, would either not provide support or would suspend approval pending clearance from the law enforcement authorities.

**Table 4 – Actions when there is credible evidence of bribery before the decision to provide support has been made**

Member/ECA	Informs LEA?	If so, action undertaken:	Undertakes enhanced due diligence?	If so, actions undertaken:		Support not provided at all
		Approval suspended pending clearance by LEA		Verification of management control systems	Approval suspended pending outcome of EDD	
Australia	Always	Always	Always	Sometimes	Always	
Austria	Always	Always	No	-	-	Always
Belgium	Always	Always	Always	Always	Always	
Canada	Always	Always	No	-	-	Always
Czech Republic (EGAP)	Always	Always	Always	Always	Always	
Czech Republic (CEB)	Always	Always	Always	Always	Always	Always
Denmark	Always	Always	Always	Always	Always	Always
Finland	Always	Always	Always	Always	Always	Sometimes
France	Always	Always	Always	Always	Always	Sometimes
Germany	Always	Always	No	-	-	Always
Greece	Always	Always	Always	Always	Always	
Hungary (MEHIB)	Always	Always	Always	Always	Always	
Hungary (Eximbank)	Always	Always	Always	Always	Always	
Israel	Sometimes	Sometimes	Sometimes	Sometimes	Sometimes	Sometimes
Italy	Always	Always	No	-	-	
Japan (JBIC)	Always	Always	Always	Always	Always	
Japan (NEXI)	Always	Always	Always	Always	Always	
Korea (Eximbank)	Always	Always	Always	Always	Always	
Korea (K-sure)	Always	Always	Always	Always	Always	
Luxembourg	Always	Always	No	-	-	Always
Mexico	Always		No	-	-	Always
Netherlands	Always		No	-	-	Always
New Zealand	Always	Always	Always	Always	Always	
Norway	Always	Always	Always	Always	Always	Always
Poland	Always	Always	Always	Always	Always	
Portugal	Always	Always	Always	Always	Always	
Slovak Republic	Always	Always	Always	Always	Always	Always
Spain	Always	Always	No	-	-	
Sweden	Always	Always	Always	Always	Always	
Switzerland	Always	Always	-	-	-	Always
Turkey	Always	Always	Always	Always	Always	
United Kingdom	Always	Always	Always	Always	Always	
United States (EXIM)	Always	Always	Always	Always	Always	Always
United States (USDA)	Sometimes	Always	Always	Sometimes	Always	Sometimes

69. The remaining two Members/ECAs, *i.e.* Israel and the United States (USDA) do not always inform investigative authorities if there is credible evidence that bribery was involved in the export contract; however, in this context, Israel noted that its ECA would update its internal bribery procedures so

that, as of July 2011, it would always undertake enhanced due diligence and inform investigative authorities if it becomes aware of credible evidence that bribery was involved in the award of the export contract, and the United States (USDA) would always undertake enhanced due diligence and suspend approval of the application pending the outcome of such enhanced due diligence.

***Question 14 - If, after credit, cover or other support has been approved, you have reason to believe that bribery may be involved in the transaction (e.g. press reports from a reputable source, information provided by participants in the transaction) related to the award of the export contract, what action(s) are taken?***

70. In accordance with Article 1 f) of the Recommendation, Members/ECAs are expected to undertake enhanced due diligence if there is reason to believe that bribery may be involved in the transaction. In this context, Question 14 asks about Members'/ECAs' actions in such a situation; however, in contrast to Question 12, this time it addresses Members'/ECAs' actions after the credit, cover or other support has been approved.

71. In response, 25 Members/ECAs reported that enhanced due diligence would be undertaken in such cases, with some Members/ECAs noting that others measures might depend on the information received and on the outcomes of deliberations by legal departments, senior management, guardian authorities, etc.; for example, of these 25 Members/ECAs, 17 would also, either always or sometimes (depending on the outcomes of the enhanced due diligence), inform law enforcement authorities. The remaining eight Members/ECAs would directly inform law enforcement authorities, if they have reason to believe that bribery may be involved in a transaction and allow such authorities to undertake whatever investigation might be necessary. Therefore, all 34 Members/ECAs meet the requirements of the Recommendation by taking appropriate action if, after credit, cover or other support has been approved, they have reason to believe that bribery may be involved in the transaction.

72. In addition, Australia, Mexico, Norway, Turkey and the United Kingdom also commented that, as other measures, they might withdraw or cancel their support for the transaction, including suspending disbursements, accelerating repayments, reclaiming compensation paid, seeking recourse against the exporter, etc.; Canada noted that it might deny further support, either for the related transaction or otherwise, until it was satisfied that bribery was not involved or that satisfactory systems had been put in place to deter further bribery; and the United States (EXIM) reported that its Office of the Inspector General has law enforcement agents trained to handle investigations when enhanced due diligence determines that allegations of bribery are credible.

***Question 15 - If, after credit, cover or other support has been approved, you become aware of credible evidence that bribery was involved in the award of the export contract for a transaction, what action(s) are taken?***

73. In accordance with Article 1 i) of the Recommendation, Members/ECAs are expected to inform law enforcement authorities if there is credible evidence at any time that bribery was involved in the award or execution of the export contract. All 34 Members/ECAs reported that they would inform law enforcement authorities when they are aware of credible evidence of bribery after the official support has been approved; of these, 31 Members/ECAs reported that they would “*always*” take this action. Of the remaining three Members/ECAs, Belgium and Portugal advised that any decisions to inform investigative authorities would depend on the decisions made by their management and/or the outcomes of an enhanced due diligence process, and Israel commented that, as of July 2011, enhanced due diligence would always be undertaken in such circumstances and that law enforcement authorities might be informed as a result of the enhanced due diligence process.

74. In addition, some Members/ECAs reported other actions that they might take, for example: Canada would deny further support until it was satisfied that bribery was not involved or that satisfactory systems had been put in place to deter further bribery; Greece would undertake its own enhanced due diligence; Mexico would suspend disbursements and/or seek repayments if a crime had been committed; Spain and Turkey would suspend cover until the official investigation has been completed; and the United States (USDA) would suspend approval of any outstanding applications depending on the outcome of the investigative process.

**Question 16 - If, after credit, cover or other support has been approved, it is proven that bribery was involved in the award of the export contract for a transaction, what action(s) are taken?**

75. In accordance with Article 1 k) of the Recommendation, Members/ECAs are expected to take “appropriate actions” if, after credit, cover or other support has been approved, bribery has been proven. Such actions are not specified in the Recommendation and may differ depending on the type of support that has been provided, *i.e.* financing or insurance/guarantees; however, examples are given in the Recommendation, such as denial of payment, indemnification or refund of sums provided. In addition, in accordance with Article 1 i) of the Recommendation, Members are expected to inform law enforcement authorities at any time (*i.e.* before or after support is provided) if there is credible evidence of bribery, so it is reasonable to expect that this action should be undertaken if a Member/ECA becomes aware that bribery has been proven outside the Member’s country.

76. Question 16, therefore, seeks information on the actions Members/ECAs will take if, after credit, cover or other support has been approved, it is proven that bribery was involved in the award of the export contract: in this context, Members are asked to respond whether the following actions are always, sometimes or never undertaken: law enforcement authorities informed, loan disbursement are interrupted, cover is invalidated, claims are not indemnified, recourse is sought for amounts disbursed, recourse is sought for claims that have already been paid, access to official support is denied for a specified period of time, or other (to be explained).

77. As shown in Table 5, all Members/ECAs take appropriate actions in accordance with Article 1 k) of the Recommendation. In addition, 32 Members/ECAs also always inform law enforcement authorities in accordance with Article 1 i): France reported that it sometimes informs law enforcement authorities and Belgium indicated that it is “currently examining the possibility to include in its standard procedure the automatic warning of the law enforcement authorities in case bribery has occurred in the award of an export contract”.

78. In addition, Australia noted, *inter alia*, that it would have to ensure that any action taken would not be prejudicial to the rights of any other parties involved in the transaction that were not responsible for the bribery. This is potentially the same for all Members/ECAs providing insurance and guarantee support: if the exporter were to be convicted of bribery, it might be prejudicial of the Member/ECAs to cancel the cover provided to the lending bank; however, recourse for any losses might be sought from the exporter. Also, the United Kingdom noted that an admission of corrupt activity, as well as proven bribery, would result in appropriate actions being taken.

79. Lastly, with regard to denying access to future public support as a sanction for bribery, which is one area considered in the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions<sup>18</sup>, 17 Members/ECAs noted that this was an action that they might always or sometimes take; however, regardless of whether Members/ECAs operate their own ECA or government-wide debarment lists, under the provisions of Article 1 f) of the Recommendation,

<sup>18</sup> <http://www.oecd.org/investment/briberyininternationalbusiness/anti-briberyconvention/44176910.pdf>.

all Members/ECAs would be expected to undertake enhanced due diligence before providing future support to an exporter and/or applicant or anyone acting on their behalf in connection with the transaction, that has been previously convicted of bribery.

**Table 5 – Measures taken when bribery involvement is proven**

	Law enforcement authorities are informed (only in relation to a conviction outside the Member's country).		Loan disbursements are interrupted.		Cover is invalidated (for export credit insurance and guarantees).		Claims are not indemnified (for export credit insurance and guarantees).		Recourse is sought for amounts disbursed.		Recourse is sought for claims that have already been paid (for export credit insurance and guarantees).		Access to official support is denied for a specified period of time.		Other	
	always	sometimes	always	sometimes	always	sometimes	always	sometimes	always	sometimes	always	sometimes	always	sometimes	always	sometimes
Australia	X			X		X		X				X		X		X
Austria	X				X		X				X					
Belgium	not specified				X		X				X		X			
Canada	X			X		X		X		X		X	X			
Czech Republic (EGAP)	X						X				X					
Czech Republic (CEB)	X		X						X							
Denmark	X			X		X		X			X					
Finland	X		X				X		X		X					
France		X	X		X		X				X					
Germany	X		X				X				X		X			
Greece	X				X		X				X		X			
Hungary (MEHIB)	X				X		X				X			X		
Hungary (Eximbank)	X		X		X		X		X		X			X		
Israel	X			X		X		X	X		X			X		
Italy	X				X		X				X					
Japan (JBIC)	X		X							X						
Japan (NEXI)	X				X		X				X					
Korea (Eximbank)	X		X		X		X		X							
Korea (K-sure)	X				X		X									
Luxembourg	X				X		X				X					
Mexico	X		X						X				X		X	
Netherlands	X		X		X		X		X		X					
New Zealand	X			X		X		X		X		X		X		
Norway	X					X		X				X				
Poland	X							X				X				
Portugal	X				X		X				X		X			
Slovak Republic	X		X				X				X					
Spain	X				X		X				X					
Sweden	X			X		X		X		X		X		X		
Switzerland	X				X		X				X			X		
Turkey	X		X		X		X		X		X		X			
United Kingdom	X					X		X				X		X		
United States (EXIM)	X			X						X		X		X		
United States (USDA)	X					X		X		X		X		X		

**Question 17 - Please indicate by marking the appropriate boxes if you have had any experience with the following scenarios related to the time before credit, cover or other support has been approved.**

80. Questions 17 and 18 seek information on Members'/ECAs' past experiences with bribery scenarios and the measures taken in response to such scenarios.

81. In respect of Question 17, ten Members/ECAs (*i.e.* Belgium, Canada, Denmark, Germany, Israel, Netherlands, Switzerland, the United Kingdom and the United States (EXIM and USDA)) have reported experiences with the given bribery scenarios before the approval of official support.

82. Table 6 provides information on the scenarios and the resulting actions taken in the particular cases: for information, the shaded boxes are those relating to the expected measures under the scenarios in accordance with the provisions of the Recommendation; however, other appropriate actions may be taken depending on the specific circumstances of each case.

**Table 6 – Past experience before the approval of official support**

	You became aware that an exporter/ applicant was on one of the debarment lists that you verify, and...	You became aware that an exporter/ applicant was under charge in a national court for bribery, and...	You became aware that an exporter/ applicant had been convicted in a national court or had been subject to equivalent national administrative measures for bribery, and...	You have reason to believe that bribery may be involved in the transaction ( <i>e.g.</i> press reports from a reputable source, information provided by participants in the transaction), and...	You became aware of credible evidence that bribery was involved in the award of the export contract for a transaction, and...
You notified law enforcement authorities.				Netherlands, UK	
You undertook enhanced due diligence.	Canada, USEXIM, USDA	Canada, Denmark, Germany, Switzerland, USEXIM,	Canada, Germany, Switzerland, USEXIM,	Belgium, Canada, Germany, Switzerland, UK, USEXIM,	Canada
You decided not to provide support for the transaction.	USEXIM, USDA			Israel	
You suspended approval of the application pending the outcome of the enhanced due diligence process.	Canada, USEXIM, USDA	Canada, Germany, Switzerland	Canada, Germany, Switzerland, USEXIM,	Canada, Germany, Israel, Switzerland, UK, USEXIM,	Canada
You suspended approval of the application pending the outcome of the legal process.				Israel	
[Other]					

83. With regard to comments provided:

- Belgium noted that its experience related to a mother company located abroad that had been accused of bribery and that, in consequence, the Belgium subsidiary had been asked to explain its management control systems.
- Denmark commented that its experience related to a board member/shareholder under charge for offering a New Year's present to a public official and that, as a result, it sought a local legal opinion to ensure, *inter alia*, that there was no connection between the court case and the export transaction.

**Question 18 - Please indicate by marking the appropriate boxes if you have had any experience with the following scenarios related to the time after credit, cover or other support has been approved.**

84. In respect of Question 18, six Members/ECAs, (*i.e.* Australia, Canada, Finland, Switzerland, the United Kingdom and the United States (EXIM)) have reported experiences with the given bribery scenarios after the credit, cover or other support has been approved.

85. Table 7 provides information on the scenarios and the resulting actions taken in the particular cases: for information, the shaded boxes are those relating to the expected measures under the scenarios in accordance with the provisions of the Recommendation; however, other appropriate actions may be taken depending on the specific circumstances of each case.

**Table 7 – Past experience after the approval of official support**

	You became aware that an exporter/ applicant was under charge in a national court for bribery, and....	You became aware that an exporter/ applicant had been convicted in a national court or had been subject to equivalent national administrative measures for bribery, and...	You have reason to believe that bribery may be involved in the transaction ( <i>e.g.</i> press reports from a reputable source, information provided by participants in the transaction), and...	You became aware of credible evidence that bribery was involved in the award of the export contract for a transaction, and...	It was proven that bribery was involved in the award of the export contract for a transaction, and...
You notified law enforcement authorities.			Finland, UK, USEXIM	UK, USEXIM	
You interrupted loan disbursements.					
You invalidated export credit cover.					
You did not indemnify a claim.					
You sought recourse for disbursed loan amounts.			USEXIM	USEXIM	
You sought recourse for claims that had already been paid.			USEXIM	USEXIM	
Denied access to official support for a specified period of time.	Canada	Canada		Canada	Canada,
[Other] undertook due diligence on the exporter			Australia, Finland, Switzerland		

86. With regard to comments provided:

- Canada noted that it denies access to official support until such time as EDC is satisfied that systems have been implemented to detect and deter further bribery and that corrective measures have been taken by the relevant company.
- Finland reported that press and television reports gave it reason to believe that bribery might be involved in a mixed credit transaction and that, as a result, the Ministry for Foreign Affairs informed the Finnish investigative authorities and the latter requested executive assistance from the host country authorities; enhanced due diligence with the exporter has been undertaken and the relevant company has undertaken corrective measures.

- Switzerland reported two cases where it became aware that a sister company of an exporter was under charge for bribery and convicted/subject to equivalent administrative measures. In both cases, Switzerland undertook enhanced due diligence, which found no proof of credible evidence concerning any of the exporter's transactions supported by its ECA.

87. Taking the outcome of Questions 17 and 18 together, those Members/ECAs that reported experience with possible bribery scenarios appear to have had in place appropriate policies and practices to combat bribery and to have taken the necessary steps that are compliant with the obligations of the Recommendation.

***Question 19 - Please provide a detailed description of your Enhanced Due Diligence Procedures, addressing, inter alia: whether they comprise verification that the exporter/applicant has in place appropriate management control systems that combat bribery; whether the procedures seek to verify whether an exporter/applicant that has been debarred by an IFI (or any other entity checked under your procedures) or convicted of bribery has taken appropriate internal corrective and preventative measures after having been debarred or convicted; the treatment of agents' commissions under the procedures.***

88. The Recommendation does not provide specific requirements in respect of enhanced due diligence; however, the three measures mentioned in Question 19 might be expected to be part of Members'/ECAs' enhanced due diligence processes. In this context, Table 8 was compiled by interpreting the detailed descriptions of enhanced due diligence processes provided by Members/ECAs.

**Table 8 – Content of enhanced due diligence**

	Verification that appropriate management control systems that combat bribery are in place	Verification that appropriate internal corrective and preventative measures have been taken	Treatment of agents' commission	Meets standard expectation?
Australia	X	X	X	Meet
Austria	X	X	X	Meet
Belgium	?	X	-	-
Canada	X	X	X	Meet
Czech Republic (EGAP)	X	X	X	Meet
Czech Republic (CEB)	X	X	X	Meet
Denmark	X	X	X	Meet
Finland	X	X	X	Meet
France	X	X	X	Meet
Germany	X	X	X	Meet
Greece	X	X	X	Meet
Hungary (MEHIB)	X	X	X	Meet
Hungary (Eximbank)	X	X	X	Meet
Israel	X (as of July 2011)	X	-	-
Italy	X	X	X	Meet
Japan (JBIC)	X	X	X	Meet
Japan (NEXI)	X	X	X	Meet
Korea (Eximbank)	X	X	X	Meet
Korea (K-sure)	X	X	X	Meet
Luxembourg	X	X	X	Meet
Mexico	-	-	-	-
Netherlands	X	X	X	Meet
New Zealand	X	X	X	Meet
Norway	X	X	X	Meet
Poland	X	X	X	Meet
Portugal	X	X	X	Meet

	Verification that appropriate management control systems that combat bribery are in place	Verification that appropriate internal corrective and preventative measures have been taken	Treatment of agents' commission	Meets standard expectation?
Slovak Republic	X	X	X	Meet
Spain	X	X	X	Meet
Sweden	X	X	X	Meet
Switzerland	X	X	X	Meet
Turkey	X	X	X	Meet
United Kingdom	X	X	X	Meet
United States (EXIM)	X	X	X	Meet
United States (USDA)	X	X	X	Meet

89. On this basis, 31 Members/ECAs include all three items mentioned in Question 19 in their enhanced due diligence processes. With regard to the three remaining Members/ECAs: Belgium has still not clarified whether it verifies that management control systems are in place and how it treats the agents' commissions under the procedures; Israel did not clearly mentioned whether it verifies the treatment of agents' commissions during enhanced due diligence; and Mexico has not provided a response to this question.

90. Information on Members'/ECAs' enhanced due diligence procedures, together with their related comments, are available on the OECD website.

***Question 20 - Please describe how the term Credible Evidence is applied in practice under your system (e.g. who makes the assessment). Any Member who has adopted a definition which is broader (i.e. that sets a lower threshold) than the definition provided in footnote 5 of the OECD Council Recommendation on Bribery and Officially Supported Export Credits should provide its definition.***

91. Footnote No. 5 of the Recommendation states "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". Question 20, therefore, asks Members/ECAs for further information on how this term is applied in practice and whether any Member/ECA has adopted a broader definition.

92. With regard to who is responsible for assessing whether evidence of bribery is credible, many Members/ECAs responded that an initial assessment would be undertaken by members of the underwriting and/or legal departments, after which the allegations might be forwarded to senior management and/or guardian authorities for a final decision on the nature of the allegations and on the actions to be undertaken, including, if appropriate, informing law enforcement authorities; other Members/ECAs reported that allegations would be forwarded directly to senior management for a decision. In addition, Canada noted that criminal lawyers or the Department of Justice might be consulted, and Australia and New Zealand commented that they would likely request external legal advice to assist in their deliberations.

93. With regard to the definition of "credible evidence", 18 Members/ECAs specifically noted that they use the definition provided in the Recommendation. In addition, Denmark commented that the term refers to very strong evidence, not merely suspicions; Hungary (MEHIB and Eximbank) responded that, while they have no legally defined formal definition of the term, in practice, under their regulations, credible evidence occurs when a "criminal process is initiated against any representative (leading officer or employee) of the client in connection with the act of bribery" and the ECA is aware of this, *via* a client declaration, press article or other means; and Mexico responded that the term "credible evidence" was equivalent to fulfilling the conditions established in the Federal Criminal Code used to determine that bribery has been committed.

***Question 21 - Please describe how the term national court is applied under your system (i.e. does it apply to any national court, or is it limited to certain national courts such as your own and/or the national courts of the buyer/borrower country)***

94. The term “national court” is not defined in the Recommendation and this question, therefore, sets out to examine how Members/ECAs interpret the term for their own policies and procedures.

95. The majority of Members/ECAs apply a broad interpretation of the term “national court” to include any national court in any country, not just those in the exporting country or buyer/borrower country. In this context, seven Members/ECAs, *i.e.* Denmark, Finland, Netherlands, New Zealand, Slovak Republic, Sweden and Switzerland, emphasised that this should mean a national court of a country with a legal system that is generally and legally acceptable and/or that the court should have jurisdiction over the entire respective country and not be just a regional court that is not accepted by the government of that state.

96. Three Members/ECAs, *i.e.* Czech Republic (EGAP and CEB) and Korea (Eximbank), noted that they interpret the term “national courts” to be those of their own country and of the buyer/borrower country; and five Members/ECAs, *i.e.* Japan (JBIC and NEXI), Korea (K-sure), Mexico and the United Kingdom, responded that they interpret the term to be courts in their own country only.

***Question 22 - Are you considering any further general measures to deter bribery and/or changes to your policies and practices described in the survey?***

97. In response to this question, 16 Members/ECAs reported that they are considering further general measures to deter bribery and/or changes to their policies and practices as described in the Survey. The majority of comments provided indicate that the further measures being considering are additional training for both internal staff and customers, and that any further changes to policies and practices would be based on international developments and experience of existing policies and practices. However, as noted elsewhere in this review, Israel was in the process of amending certain of its measures for deterring and detecting bribery and hoped to have those in place with effect from July 2011: Israel’s responses to the Survey for the 2012 Review will be reviewed to assess progress in this regard.

98. The remaining 17 Members/ECAs reported that they have no plans to consider further measures and/or changes to their policies and practices at this time.

***Question 23 - Would you be prepared to exchange information with other ECG Members about suspected and/or proven instances of bribery related to specific officially supported export credit transactions?***

99. In response to this question, 34 Members/ECAs responded that they would be prepared to exchange information with other ECG Members on instances of bribery related to specific officially supported export credit transactions: in this context, many Members/ECAs noted that this would have to be on a case-by-case basis and subject to reciprocity and usual banking/commercial confidentiality rules; in addition, six Members/ECAs (Australia, Belgium, Canada, Denmark, Switzerland and the United Kingdom) indicated that they would only be able to exchange information for proven instances of bribery, for example, where these are a matter of public record.

***(c) Section VII - Additional comments***

100. No additional comments were received this year.

#### IV. Comments from Civil Society Organisations (CSOs)

101. Under the provisions of the ECG Peer Review [TAD/ECG(2008)23], Members' up-to-date responses are to be made available to relevant Civil Society Organisations<sup>19</sup> to enable their comments on Members' implementation of the Recommendation to be included in this annual review; however, due to on-going work on export credits and the environment in 2011-12, including relevant CSO consultations, comments were not sought on Members' updated responses to the Survey. Even so, as usual, the declassified version of this review, together with Members' actual responses, will be made publicly available on the OECD website once this Review has been finalised.

102. The issue of export credits and bribery was, however, also an item of discussion at the 2011 CSO consultation meeting, held in November 2011, when Transparency International provided a submission reiterating its proposals for strengthening the Recommendation and introducing its 2011 Global Corruption Report on Climate Change.

#### V. ECG cooperation on anti-bribery issues within the OECD

103. In order to promote policy coherence at the OECD, the ECG receives regular presentations on recent developments of interest from the OECD Anti-Corruption Division (ACD) on the work of the OECD Working Group on Bribery (WGB). In addition, Members' up-to-date responses to the Survey and the annual Reviews of these responses are used to inform the work of the WGB in connection with their ongoing reviews of the implementation of the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*. The results of the WGB peer reviews are shared with the ECG for examination and discussion: in this context, in 2011, the ACD presented the extracts of the Phase III country monitoring reports relating to export credits, including commentaries and recommendations made by the WGB, for Bulgaria, Canada, Finland, Germany, Iceland and the United States. The country monitoring reports on the implementation of the OECD Anti-Bribery Convention are all publicly available on the OECD website<sup>20</sup>.

104. Also in 2011, the OECD, in cooperation with other anti-corruption organisations, started work on a new initiative, CleanGovBiz<sup>21</sup>, to provide a toolkit for policy makers offering practical guidance, including policy measures and examples of good practice, on how corruption might be tackled within multiple policy areas. The Secretariat therefore produced a draft chapter on deterring and detecting bribery in export credits, drawing on the provisions of the Recommendation and on Members' practices, as described in their Survey responses and analysed in this Review. The CleanGovBiz initiative, including the draft export credits chapter, was presented to the ECG at the 129<sup>th</sup> ECG Meeting in April 2012, on which occasion Members had the opportunity to comment on the draft export credits toolkit. A final CleanGovBiz handbook has now been issued and is available on the OECD website.

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<sup>19</sup> The Business and Industry Advisory Committee to the OECD (BIAC), the ECA Watch network of non-governmental organisations, the European Banking Federation (EBF), Trade Union Advisory Committee to the OECD (TUAC), and Transparency International (TI).

<sup>20</sup> <http://www.oecd.org/investment/briberyininternationalbusiness/anti-briberyconvention/countryreportsontheimplementationoftheoecdanti-briberyconvention.htm>.

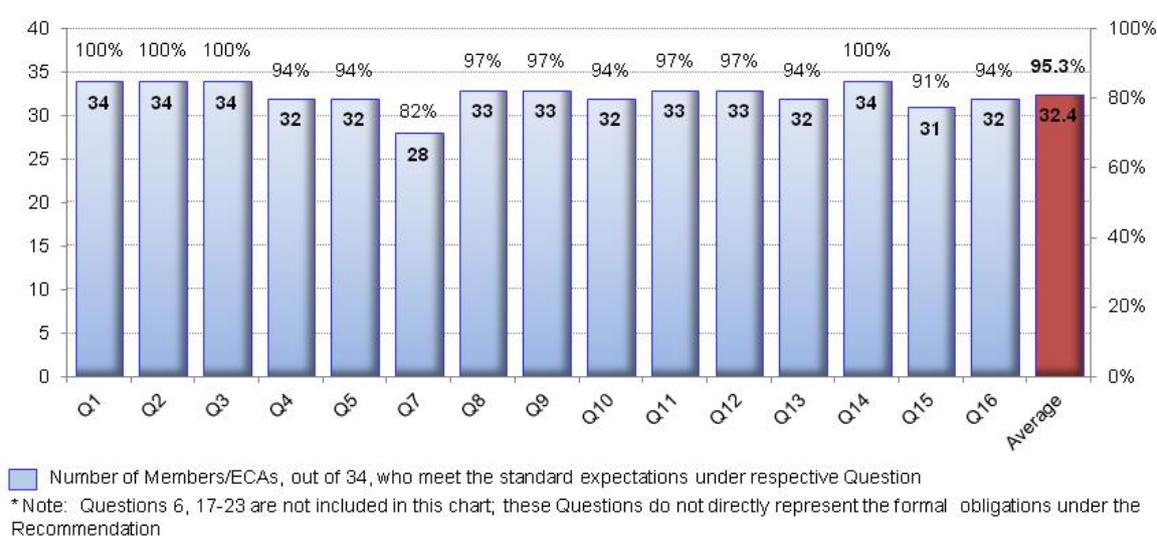
<sup>21</sup> For more information: <http://www.oecd.org/cleangovbiz/>.

## VII. Conclusions

105. This Review of Members' responses to the 2006 Survey shows that Members are have, overall, put in place the necessary procedures, policies and systems to meet the obligations of the Recommendation: in this context, many of the differences observed in Members' approaches to tackling bribery are due to the different types of support provided and the different legal systems in which Members operate.

106. Chart 1 provides the latest overall assessment of the extent to which Members, including Israel for the first time, are meeting the core obligations of the Recommendation: in this context, out of a total of 34 Members/ECAs, the average number whose policies and practices are compliant with the Recommendation is now 32.4 (95.3%).

**Chart 1 – Overview of implementation of the Recommendation**



## VII. Next steps

107. This 2011 Review has now been finalised and issued as a declassified document: it is made publicly available on the OECD website, together with Members' actual responses.

108. Members are reminded that they should provide updates to their Survey responses on an on-going basis and, at a minimum, on an annual basis. With regard to the 2012 Review, Members will be invited to ensure by end-February 2013 that their Survey responses are up-to-date, so that these may be made publicly available for CSO comments in the spring and that a provisional 2012 Review might be drafted in time for the June 2013 ECG Meeting.