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4 of 1288 DOCUMENTS

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HEADLINE: B. OECD Members Agree to Prevent Bribery in Export-Credit Transactions

BODY:

On December 6, 2000, the Organization of Economic Cooperation and Development's (OECD) Export Credit Group, a group of 28 countries that manages a "Gentleman's Agreement" among countries covering the use of subsidized export

financing, agreed that national export credit-related financing should never be offered to international business deals where bribes have been paid and will act to ensure to prevent and combat export-related financed transactions in which bribes were paid. (fn. 1)

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(fn. 1)For background see OECD Countries Agree Not to Subsidize Bribery-Tainted International Transactions , Daily Rep. for Exec ., Dec. 7, 2000, at A-3; www.oecd.org.

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In a statement announcing the agreement the OECD, said the action underscores the "desire to ensure coherence between existing export credit arrangements and a new multilateral treaty outlawing bribery in international business deals."

During a meeting on November 13-17, 2000, OECD members adopted the Action Statement as its members met to discuss export credit-related issues at the OECD in Paris. The Statement requires OECD members to take the 1997 Convention on Combating Bribery of Foreign Public Officials in International Business Transactions into account when they provide officially supported export credits. In practice, national legislation conferring eligibility for attribution of officially supported export credits varies widely across the OECD. Because of lack of coordinating laws on transnational bribery and export-credit financing, some OECD member countries have not effectively eliminated transnational bribery from international trade and investment.

The OECD, after an analysis of its members' export credit systems, have recommended measures on implementing the OECD Anti-Bribery Convention. Among such measures to prevent bribery from its officially-supported export

B. OECD Members Agree to Prevent Bribery in Export-Credit Transactions International Enforcement Law Reporter
January, 2001

credits, the OECD suggests that its members: inform all applicants about the adverse legal consequences of bribery in international business transaction; invite applicants to declare in writing that neither they, nor any agents on their behalf, have been engaged in or will engage in bribery; refuse to provide support, deny payment of claims and demand refunds of any claims determined to have been connected to bribery; and refer all evidence in connection with bribery to appropriate national authorities.

The Action Statement indicates an example of an initiative to link comparative and international criminal law with international business law. In particular, governments participating in an international organization are acting to extend an important new international obligation into an adjacent area of international law. Still another area in which anti-bribery principles have been extended is international procurement and lending by international organizations, particularly international financial institutions, such as the World Bank Group. The efforts of international organizations to make and apply international criminal law on anti-bribery have had significant implications for the private sector, since businesses and their agents must develop due diligence and prevention plans to avoid or mitigate the consequences of engaging in transnational bribery. (fn. 2) These developments show the growing interaction between public and private international law and between criminal and civil law.

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(fn. 2)For discussions of transnational corruption sponsored by international organizations, see *Combating Corruption: A Comparative Review of Selected Legal Aspects of State Practice and on Major International Initiatives* (w. Patti Ofosu-Amaah, Raj Soopramanien, and Kishor Uprety, eds.) (Int'l Bank for Reconstruction 1999); *Corruption and Integrity Initiatives in Developing Countries* (UNDP 1998).

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