

**National Interest Analysis [2018] ATNIA 2
With attachment on consultation**

**Framework Agreement
Between Australia, of the one part
and the European Union
and its Member States, of the other part**

(Manila, 7 August 2017)

[2017] ATNIF 24

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

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Nature and timing of proposed treaty action

1. The proposed treaty action is to bring into force the *Framework Agreement between Australia, of the one part, and the European Union and its Member States, of the other part*, done at Manila on 7 August 2017 ('the proposed Agreement').
2. Pursuant to its Article 61(1), the proposed Agreement will enter into force thirty days after the date on which the Parties have notified each other of the completion of the procedures necessary for that purpose. This will require conclusion of the domestic processes of all the Parties, namely Australia, the EU and the 28 EU member states.
3. Notwithstanding, Australia and the European Union (EU) have agreed, under Article 61(2), to provisionally apply mutually determined provisions of the proposed Agreement pending its entry into force. Provisional application would only commence thirty days after the date on which both Australia and the EU have notified each other of the completion of their respective internal procedures necessary for such provisional application. For Australia, this would occur following completion of domestic treaty-making requirements, including consideration of the proposed Agreement by the Joint Standing Committee on Treaties (JSCOT).

Overview and national interest summary

4. Enhanced cooperation with the EU is consistent with the ambition of the Foreign Policy White Paper (2017) to protect and promote a rules-based international order. The proposed Agreement establishes Australia's relationship with the EU on the same basis as for most of its other non-EU G20 partners.
5. The proposed Agreement will establish a legally-binding framework for cooperation on a broad range of issues of mutual interest, including economic and trade matters, research and innovation, counter-terrorism, development, non-proliferation, human rights, democracy promotion, climate change and environment, education, information society, digital economy, culture, and justice. The proposed Agreement will formalise a range of bilateral cooperation and dialogue processes.

Reasons for Australia to take the proposed treaty action

6. The proposed Agreement positions the Australia-EU bilateral relationship for a deeper and stronger partnership to pursue international peace and to promote shared democratic values. It provides for joint action in areas such as foreign and security policy, development cooperation, trade and investment, climate change and environment, research, science, innovation and education.
7. A major focus for Australia is to ensure the EU continues to engage constructively in the Indo-Pacific region. The EU's role is significant in the context of the changing strategic landscape in the region and Australia has an interest in working with the EU to enhance security, stability and good governance, and to improve the coordination of development cooperation.
8. The proposed Agreement will contribute to strengthening our international economic cooperation with the EU. Australia and the EU have shared interests in ensuring an effective rules-based international trading system. Australia and the EU have begun work toward the goal of a bilateral Free Trade Agreement (FTA) and Australia is advocating for the launch of negotiations in 2018. The proposed Agreement would complement a future FTA.
9. The proposed Agreement would be separate from the FTA, which will have its own ratification process. Article 15(5) of the proposed Agreement makes clear that 'the Agreement neither requires nor precludes the negotiation and conclusion of an FTA between the Parties in the future to complement and extend the economic provisions in this Agreement'.
10. As the EU is a significant provider of development assistance in our region, strengthened cooperation, including on jointly-funded projects, will also help to maximise the long-term development impact of our aid investments. The EU is the world's fourth-largest donor, providing USD 15.7 billion in net Official Development Assistance.
11. The EU is a world leader in research and innovation, responsible for 21 per cent of world expenditure on research and 35 per cent of the world's scientific publications. The evolving global research environment provides opportunities for deeper forms of collaboration between Australian and European research institutions. Australia is already the EU's fourth highest non-EU collaborator in research and innovation.
12. Europe is a preferred destination for Australia's international students with 31 per cent of Australian students choosing Europe as their preferred destination for their international education experience, second only to Asia at 41 per cent. Deeper research links will provide opportunities for new forms of collaboration between Australian and European research institutions.
13. People-level connections with the EU are strong and the proposed Agreement will ensure that trend continues. In relation to tourism, more than 17 per cent of all short-term visitors to Australia were from the EU (September 2017) and Australia has working holiday or work and holiday visa arrangements with 19 EU member states.

Obligations

14. As Article 1 of the proposed Agreement sets out, the purpose of the Framework Agreement is threefold:
 - to establish a strengthened partnership between the Parties
 - to provide a framework to facilitate and promote cooperation across a broad range of areas of mutual interest; and
 - to enhance cooperation in order to develop solutions to regional and global challenges.

15. The proposed Agreement covers:
 - **Title II** - Political Dialogue and Cooperation on Foreign Policy and Security Matters – (*Articles 3-11*)
 - **Title III** – Cooperation on Global Development and Humanitarian Aid – (*Articles 12-13*)
 - **Title IV** – Cooperation on Economic and Trade Matters – (*Articles 14-31*)
 - **Title V** – Cooperation on Justice, Freedom and Security – (*Articles 32-40*)
 - **Title VI** – Cooperation in the Areas of Research, Innovation and the Information Society – (*Articles 41-42*)
 - **Title VII** – Cooperation in the Area of Education and Culture – (*Articles 43-44*)
 - **Title VIII** – Cooperation in the Area of Sustainable Development, Energy and Transport – (*Articles 45-54*)

Title II - Political Dialogue and Cooperation on Foreign Policy and Security Matters

16. This section of the proposed Agreement is to enhance regular political dialogue between leaders, ministers and the Parliament of Australia and the European Parliament to continue to promote the development of the bilateral relationship and strengthen the Parties' understanding and cooperation on regional and global challenges and issues. It includes a commitment to regular consultation between senior officials (Article 3). This section requires Parties to promote democratic, human rights and rule of law principles (Article 4).

17. Australia and the EU have established a number of sectoral senior officials' dialogues, including on strategic security issues; counter-terrorism; development assistance; economic policy; trade and investment; sanitary and phytosanitary measures; migration; asylum and diversity; consular; health; fisheries and maritime; environment and climate change.

18. The proposed Agreement reiterates commitments to democratic principles, human rights and the rule of law. Australia and the EU work closely together to protect and promote human rights globally including in the areas of LGBTI rights, freedom of religion or belief, gender equality, sexual and reproductive rights, protection of the family, protection of civil society and human rights defenders, the link between human rights and sustainable development, protecting human rights while countering terrorism, and trafficking in persons.

19. Article 5 of the proposed Agreement reaffirms Parties commitment to promoting peace and stability and requires exploration of possibilities to coordinate crisis management operations. This will build on existing cooperation and requires Parties to work to

implement the *Agreement between Australia and the European Union Establishing a Framework for the Participation of Australia in European Union Crisis Management Operations*.

20. The proposed Agreement requires Parties to fully implement existing obligations under disarmament, non-proliferation and other relevant treaties and cooperate to counter the proliferation of WMD including taking all necessary steps to sign, ratify or accede to, as appropriate, all relevant international instruments, and maintaining an effective system of export controls (Article 6). It also requires Parties to implement their existing obligations dealing with small arms and light weapons (Article 7), and to cooperate in promoting the aims and objectives of the Rome Statute (Article 8).
21. The proposed Agreement reaffirms the importance of countering terrorism and requires the Parties to cooperate bilaterally and internationally in the fight against terrorists. Australia and the EU have a continuing dialogue on counter-terrorism which focuses on identifying areas of potential cooperation with an emphasis on foreign fighters (Article 9).
22. Article 10 of the proposed Agreement commits Parties to cooperate in regional and international organisations. Australia and the EU cooperate in the Asia-Europe Meeting (ASEM). Australia formally joined ASEM at the 8th ASEM Summit in Brussels in October 2010 and is represented at the ASEM Summit and Foreign Ministers' Meeting (both held biennially in alternate years).
23. Australia and the EU cooperate on regional issues, particularly as members of the ASEAN Regional Forum (ARF) and in the Pacific through our engagement in the Pacific Islands Forum (PIF) and the Pacific Community (SPC). The ARF is an important forum for security dialogue and cooperation in the Indo-Pacific region and Australia and the EU have a substantial track record of working together in this forum.

Title III - Cooperation on Global Development and Humanitarian Aid

24. The proposed Agreement provides commitments to strengthen coordination on development assistance to ensure that development activities have greater impact, reach and influence, requiring regular policy dialogue on development cooperation and exchange of views and information (Article 12).
25. The EU is a significant, like-minded development partner in the Pacific, with a wide regional footprint spanning work on regional economic integration, gender equality, environmental sustainability and inclusive governance. In the Pacific, the EU is the sixth-largest donor, behind Australia (USD 852m), New Zealand, the United States, France and Japan.

Title IV - Cooperation on Economic and Trade Matters

26. This section contains commitments on trade-related provisions of a general nature, including our shared commitment to an effective multilateral trading system, including working together in the WTO. It contains, amongst other things, a requirement for dialogue including an annual trade policy dialogue at officials' level complemented by ministerial meetings on trade when determined by the Parties; a commitment to promoting a positive environment for bilateral trade and investment; and a requirement

to inform each other where possible of regulatory issues with a potential impact on trade and investment (Article 15). This section also contains a number of obligations in respect of cooperation, dialogue and/or information sharing on specific issues such as investment, competition policy, financial services, and sanitary, phytosanitary and animal welfare issues. It also contains agreement to promote business and private sector linkages (Article 29).

27. The Reserve Bank of Australia works cooperatively with the EU in a number of international bodies, such as the Financial Stability Board, Committee on Payments and Market Infrastructures, and the Basel Committee on Banking Supervision.
28. Cooperation between Australia and the EU in respect of markets and financial services regulation occurs at three levels and involves the Australian Securities and Investment Commission (ASIC) engaging with the European Commission (EC), EU agencies like the European Securities and Markets Authority (ESMA), and with individual EU member states through multilateral fora or on a bilateral basis.
29. Australia and EU member states regularly cooperate on taxation matters, including through the OECD and the Inclusive Framework on Base Erosion and Profit Shifting. This work includes initiatives aimed at eliminating harmful tax practices, preventing tax avoidance and enhancing tax system integrity more generally. In addition, cooperation on tax transparency continues through the G20 and through the Global Forum on Transparency and Exchange of Information for Tax Purposes.
30. The proposed Agreement will support Australia's commitment to working on joint initiatives with the European Commission in areas such as commitment to a digital economy, small parcel/mail item level reporting, and risk management and air cargo security. A priority is the sharing of information and best practice on the use of border technologies. The commitment to Mutual Recognition Agreements (MRAs) with EU member states will be advanced to support Australia's Trusted Trader Programme.

Title V - Cooperation on Justice, Freedom and Security

31. This section commits the Parties to strengthen commitment and cooperation on justice, freedom and security. It includes requirements to strengthen private international law and legal and judicial cooperation in civil and commercial matters, and enhance cooperation on mutual legal assistance in criminal matters (Article 32). It also requires cooperation on law enforcement, combating terrorism, transnational organised crime and corruption, combating illicit drugs, combating cybercrime, combating money laundering and the financing of terrorism, migration and asylum, and the protection of personal data.
32. In the context of commitment to preventing, detecting, investigating and prosecuting terrorist offences or serious transnational organised crime and corruption (Article 34), Australia and the EU have a Passenger Name Record Agreement (PNR) [2012] ATS 19, which facilitates the transfer of passenger name records from the EU to Australia. These records are critical to assist in identifying travellers as part of border protection efforts to counter terrorism and transnational organised crime. Ongoing priorities include further analysis of EU member states' current PNR capacity and arrangements under the EU PNR Directive. Engagement is focused on the sharing of lessons learned, and 'best

practice' case studies covering issues such as legal provision, privacy, data protection, profiling and targeting.

33. The proposed Agreement will support Australia's commitment to establishing broad and robust real-time information sharing mechanisms with Europol, the European Anti-Fraud Office (OLAF) and the European Border and Coast Guard Agency (Frontex), which will better position Australia to share intelligence, improve targeting, and undertake operational activity to deter, detect, and mitigate emerging threats from the European region.
34. The proposed Agreement strengthens cooperation on combating illicit drugs. Australia is committed to disrupting the supply of illicit drugs destined for Australia. Law and border enforcement cooperation with international counterparts like the EU is important to achieving this objective. Deepening strategic-level engagement and enhancing operational collaboration with international partners to combat transnational cybercrime supports the International Cyber Engagement Strategy's ambition to generate stronger cybercrime prevention, prosecution and cooperation.
35. Australia and the EU share interests in irregular migration, refugee and asylum seeker issues. The Agreement commits Parties to intensify dialogue and cooperation on migration, asylum and diversity issues, including exchanging information, and cooperation to prevent and control irregular migration (Article 38).
36. Australia's cooperation on these issues with the EU is already extensive. Australia's Joint Agency Task Force Operation Sovereign Borders (JATF OSB) supports operational cooperation with the EU on combatting maritime people smuggling, noting the unique geography in which JATF OSB operates. JATF hosts visits by EU counterparts and contributes to relevant EU forums.
37. More broadly, Australia engages at various levels with EU agencies on these issues. The proposed Agreement provides opportunities for Australia and the EU to complement comparative strengths, especially areas of geographic focus, and impetus for existing and new areas of cooperation, including: engagement with the European Reintegration Network, to learn from their experience of safely returning and reintegrating third-country nationals to their countries of origin; strengthening links between the Bali Process on People Smuggling, Human Trafficking and Related Transnational Crime (co-chaired by Australia and Indonesia) and the Budapest Process; sharing information on approaches to regional collaboration on migration issues; sharing lessons learned from our respective approaches to border protection and collaboration on the Global Compacts on Refugees and Migrants.
38. The proposed Agreement also obliges Australia to allow the diplomatic and consular authorities of any Member State to exercise consular protection in Australia on behalf of other Member States which do not have accessible permanent representation in Australia, and enables Australia to exercise consular protection on behalf of a third country and third countries to exercise consular protection on behalf of Australia in the Union where Australia or the third country do not have accessible permanent representation. It also requires engagement on consular matters (Article 39). The EU-Australia Consular Dialogue was inaugurated in September 2017. Australia and the EU will continue to exchange crisis planning materials, and explore opportunities for participation in consular training and crisis planning activities.

39. Australia and the EU signed the *Agreement between Australia and the European Union on the Security of Information* in 2010, [2011] ATS 20. The Agreement entered into force in 2011. The purpose of the Agreement is to ensure appropriate protection of classified information shared between Australia and the EU (but not its member states). Amendments to the Agreement are being negotiated arising from subsequent reforms to the Australian Government Security Classification, as well as from organisational changes within the EU and Australian systems.

Title VI - Cooperation in the Areas of Research, Innovation and the Information Society

40. Australia and the EU have a long record of productive research collaboration, underpinned by the treaty-level *Agreement on Scientific and Technical Co-operation between the European Community and Australia* [1999] ATS 29 (entered into force in 1994 and further amended in 1999).

41. The proposed Agreement requires Parties to enhance cooperation in the areas of science, research and innovation in support of, or complementary to, the treaty between the EC and Australia relating to scientific and technical cooperation. This includes seeking to address key shared societal challenges as agreed by the Joint Science and Technology Cooperation Committee, established under the Treaty (Article 41). This section also requires the Parties to exchange views on respective policies on information and communication technologies (Article 42). Australia and the EU conduct biennial joint science and technology committee meetings.

42. The proposed Agreement further supports Australia's Global Innovation Strategy (GIS), under the National Innovation and Science Agenda. There are currently a range of collaborative initiatives between the Parties that go beyond institution-to-institution or researcher-to-researcher-level links.

43. Australia collaborates with the EU through the EU's Framework Programme 8, known as Horizon 2020, the biggest multinational research programme in the world. Australia is the fourth most active third-country participant in the program, with Australian participants in 138 grants.

Title VII - Cooperation in the Area of Education and Culture

44. This section recognises that the Parties have a common interest in cooperating in education and commits Parties to continued dialogue and to support appropriate cooperative activities (Article 43). It also requires the promotion of closer cooperation between Parties in the cultural and creative sectors (Article 44). Education is an important component of Australia's overarching relationship with the EU. In 2016, Australia and the European Commission completed a report *Comparative Analysis of the Australian Qualifications Framework and the European Qualifications Framework for Lifelong Learning: Joint Technical Report* which will improve mobility between Australia and Europe by improving mutual understanding of the European and Australian qualifications frameworks.

45. Australia's engagement on education with the EU is guided by the Australian Government's National Strategy for International Education 2025 (the National

Strategy), released in April 2016. This section of the Agreement will enhance an already significant basis of cooperation.

Title VIII - Cooperation in the Area of Sustainable Development, Energy and Transport

46. This section requires the Parties to strengthen cooperation on the protection of the environment and mainstreaming environmental considerations in all sectors of cooperation (Article 45). It also requires enhanced cooperation in the field of climate change, and maintenance of regular dialogue and cooperation at political, policy and technical levels (Article 46). This section also contains cooperative obligations in respect of energy, transport, agriculture, sustainable forest management and employment and social affairs.
47. Australia and the EU regularly engage in multilateral fora and hold high-level dialogues on environment issues and climate change. Australia and the EU are working to establish a Strategic Partnership for the Implementation of the Paris Agreement. This involves closer bilateral cooperation on climate change policies and focused on implementing the Paris Agreement.
48. Australia and the EU hold regular informal meetings to discuss efforts to combat illegal logging and associated trade. Australia's *Illegal Logging Prohibition Act 2012* and the EU Timber Regulation have the shared objective of seeking to minimise the trade in illegally harvested wood and wood products. These discussions facilitate cooperation, information exchange and support efforts to manage future risks. Discussions also include broad forest trade policy matters and sustainable forest management policy, with these used to inform and support cooperation in international fora, including the Food and Agriculture Committee on Forests and the United Nations Forum on Forests.
49. The proposed Agreement requires Parties to strengthen dialogue and cooperation on issues of common interest relating to fisheries and maritime affairs, and to cooperate on specific issues and hold a regular periodic dialogue (Article 52). Australia and the EU hold a regular high-level fisheries and maritime affairs dialogue to facilitate cooperation and information exchange on respective domestic fisheries and maritime policies, global fisheries issues, including engagement in regional fisheries management organisations and arrangements, and integrated maritime policy and trade.
50. The proposed Agreement also requires Parties to encourage mutual cooperation, exchange of information and sharing of policy experiences in the fields of health and effective management of cross-border health problems (Article 54). The bilateral Mutual Recognition Agreement (MRA) enables Australia and the EU to recognise the outcomes of conformity assessment of medical devices and Good Manufacturing Practice (GMP) inspections.

Title IX - Joint Committee and Institutional Framework

51. The proposed Agreement obliges Australia and the EU to establish a Joint Committee under Article 56. The Joint Committee will consist of representatives of the Parties and be co-chaired by both Parties. It will facilitate the implementation and further the general aims of the proposed Agreement, as well as maintain overall coherence in Australia-EU relations, according to agreed rules of procedure. The Joint Committee

will operate by consensus. The Joint Committee can set up sub-committees and working groups to progress specific issues.

52. The institutional framework of the proposed Agreement is covered by Articles 55-57. Article 55 of the proposed Agreement establishes a process for the Parties to conclude complementary specific agreements or arrangements within any area falling within the proposed Framework Agreement's scope. In accordance with Article 55(2), other agreements between the Parties will not be affected or prejudiced by this proposed Agreement.
53. Article 57 establishes a dispute settlement process, including an obligation to consult as quickly as possible concerning matters of difference arising from the implementation of the proposed Agreement and referral mechanisms. This process does not replace or affect the dispute resolution processes under other agreements between the Parties, as set out in Article 55(2).

Title X - Provisional Application of Certain Articles

54. Article 61(2) provides that the Parties may provisionally apply mutually-determined provisions of the proposed Agreement prior to the entry into force of the entire Agreement.
55. As the ratification process required to bring the proposed Agreement into force for the 28 EU member states would likely take time, Australia and the EU agreed to provisionally apply a limited number of articles of the proposed Agreement.
56. Provisional application will only be undertaken by Australia and the EU, and not by EU member states, as the following Articles fall under the competence of the EU. The Articles to be provisionally applied are:
 - **Article 3 in its entirety** – under Title II – Political Dialogue and Cooperation on Foreign Policy and Security Matters - Political Dialogue
 - **Article 10 in its entirety** – under Title II – Political Dialogue and Cooperation on Foreign Policy and Security Matters – Cooperation in Regional and International Organisations
 - **Article 56** – under Title IX – Institutional Framework – Joint Committee – (with the exceptions of Articles 56 (3)(g) and 56 (3)(h)), and
 - **Article 58 – 62** – Title X – Final Provisions – of the proposed Agreement (Articles 58 to 62, with the exceptions of Articles 61(1) and 61(3)) be provisionally applied to the extent necessary for the purpose of ensuring the provisional application of the relevant parts of Articles 3, 10 and 56 of the proposed Agreement.

Implementation

57. No new Australian legislation or regulations would be required to implement the proposed Agreement. Any necessary technical, logistic or administrative arrangements required to implement the proposed Agreement will be concluded on a case-by-case basis between Australian and EU competent authorities.

Costs

58. The Office of Best Practice Regulation (OBPR) has been consulted and has confirmed that a Regulation Impact Statement (RIS) is not required.

Future treaty action

59. The proposed Agreement does not contain a specific provision in relation to its amendment. In the absence of specific procedures, the Parties may amend the Agreement by mutual agreement at any time in accordance with Article 39 of the *Vienna Convention on the Law of Treaties*.
60. Any amendments agreed to by the Parties would be subject to Australia's domestic treaty-making requirements, including tabling in Parliament and consideration by JSCOT.
61. As noted at paragraph 52 above, complementary agreements may be concluded in accordance with Article 55. Any treaty level agreements would also be subject to Australia's domestic treaty-making requirements.

Denunciation

62. Article 61(3) provides that either party may notify the other in writing of its intention to denounce this Agreement. The denunciation will take effect six months after the notification.
63. Additionally, Article 57 of the proposed Agreement provides for modalities for implementation and dispute settlement. Where there is a divergence of view between the Parties, matters may be referred to the Joint Committee. In a case of special urgency, matters shall be immediately referred to the Joint Committee. If disputes are unable to be resolved through the Joint Committee within a period of 15 days from the commencement of consultation and no later than 30 days from the date of the referral of the matter to the Joint Committee, the matter is then submitted to ministers for urgent consideration for a further period of 15 days.
64. If no mutually-agreed solution to a dispute has been found after 15 days from the commencement of consultations at the ministerial level and no later than 45 days from the date of the referral of the matter to the Joint Committee, either party may decide to take appropriate measures with regard to the proposed Agreement, including the suspension of its provisions or its termination. This decision shall be notified in writing to the other party.
65. Denunciation or termination of the proposed Agreement would be subject to Australia's domestic treaty-making requirements, including tabling in Parliament and consideration by JSCOT.

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ATTACHMENT ON CONSULTATION

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CONSULTATION

66. The State and Territory Governments have been consulted through the Commonwealth-State-Territory Standing Committee on Treaties (SCOT). Information on the negotiation of the proposed Agreement was provided to State and Territory representatives through the biannual SCOT meetings. No requests for further information or comments on the proposed Agreement have been received to date.