National Interest Analysis [2012] ATNIA 8

with attachment on consultation

Amendments to the
Agreement Establishing the European Bank for Reconstruction and Development

adopted at London on 30 September 2011

[2011] ATNIF 33

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

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Nature and timing of proposed treaty action

1. It is proposed that Australia accept amendments to Article 1 and Article 18 of the *Agreement Establishing the European Bank for Reconstruction and Development* ('the Agreement', [1991] ATS 15). The proposed amendments allow the European Bank for Reconstruction and Development (the Bank) to expand its geographic scope to the Southern and Eastern Mediterranean region and allow the use of Special Funds in potential recipient countries. The proposed amendments were approved by the Bank's Board of Governors on 30 September 2011 under Resolutions No. 137 and 138.

2. In accordance with Article 56 of the Agreement and Resolutions No. 137 and 138, the proposed amendments will enter into force seven days after the date of the Bank's formal communication confirming the requisite number of members have accepted them. The proposed amendment to Article 1 must be accepted by all members before it can enter into force. The proposed amendment to Article 18 requires the consent of not less than three-fourths of the Bank's members, having not less than four-fifths of total voting power.

3. It is proposed that Australia notify the Bank of its acceptance of the proposed amendments as soon as practicable after the Joint Standing Committee on Treaties has made a recommendation on binding treaty action.

Overview and national interest summary

4. It is in Australia's national interest to accept the proposed amendments to allow the Bank to extend its operations to eligible countries in the Southern and Eastern Mediterranean to support the transition to democracy in such countries. Egypt, Morocco, Jordan and Tunisia have taken steps so that they may potentially benefit from the Bank's expansion. The Bank is well-placed to support countries that are transitioning towards open and democratic market economies. Through its role in supporting private sector activity, the Bank can potentially add value to the work of other multilateral banks and donors operating in the region. The proposed amendments do not impose any obligatory costs on Australia; although Australia has already made a voluntary contribution to Cooperation Funds.

Reasons for Australia to Take the Proposed Treaty Action

Background

5. The Bank, established in 1991, has fostered the transition towards open market oriented economies and promoted private and entrepreneurial initiative in 29 countries of operation from central Europe to central Asia following the widespread collapse of communist regimes. The Bank is owned by 61 countries, the European Union and the European Investment Bank. Australia is a financing member of the Bank, which means that Australia contributed to the Bank's capital resources by purchasing shares. It reflects positively on Australia to be a member of a well functioning and useful organisation, such as the Bank.

6. In response to the events in the Middle East and North Africa in 2010 and 2011, the Bank was called upon by the international community to extend its geographic scope to support the transition of the Southern and Eastern Mediterranean countries to market economies.

7. In February 2011, G20 Finance Ministers, including Australia's Deputy Prime Minister and Treasurer, stated that they stood ready to support Egypt and Tunisia at the appropriate time with responses well-coordinated with international institutions and regional development banks. At their meeting on 10 September 2011, G8 Finance Ministers welcomed the Bank's proposal to extend the geographic mandate of the Bank to the region and called for a transitional facility to be implemented rapidly.

8. On 30 September 2011, in response to developments in the Middle East and North Africa, the Bank's Board of Governors, including Australia's Governor, voted unanimously to amend the Agreement to expand the scope of the Bank's operations to the Southern and Eastern Mediterranean.

9. This expansion is to occur in a three stage process.

- Stage 1 – Cooperation Funds (funded by voluntary member contributions) will be used to provide technical cooperation and project preparation. This stage has begun and Australia (alongside other donors) has voluntarily contributed.

- Stage 2 - 'Special Funds', resourced by the Bank from its capital funds and potentially additional voluntary contributions received from members, will be established to deliver a full range of the Bank's investment operations in the new region. This stage requires a sufficient number of member countries to accept the proposed amendments to Article 18. The proposed amendments to Article 18 clarify that Special Funds can be used in recipient countries and potential recipient countries.

- Stage 3 – The final stage requires the acceptance of the proposed amendments to Article 1 by all member countries. The proposed amendment to Article 1 expands the scope of the Agreement to include 'countries of the Southern and Eastern Mediterranean'. This will allow countries in the new region to become fully fledged countries of operation and recipients of the Bank's capital resources.

10. Potential countries of operation from the new region in the foreseeable future are Egypt, Morocco, Jordan and Tunisia. Egypt and Morocco have been members of the Bank

since 1991. However, as ‘non-operational’ countries (that is, outside the current scope of Article 1), they have not been eligible for the Bank’s lending. The Executive Director who represents Australia on the Bank’s Board of Directors also represents Egypt. Accordingly, Australia is sensitive to Egypt’s status at the Bank. Jordan and Tunisia became members of the Bank in December 2011.

Advantages of the proposed treaty action

11. Australia supports the expansion of the Bank’s activities to the Southern and Eastern Mediterranean region. By using its experience, the Bank is well placed to support countries that are transitioning towards open and democratic market economies. Through its role in supporting private sector activity, the Bank can potentially add value to the work of other multilateral banks and donors operating in the region. By allowing ‘Special Funds’ to be used in potential recipient countries (pursuant to the amendments to Article 18), the Bank will be able to respond rapidly to the needs of such countries, pending the completion of formalities required for them to become operational members of the Bank. This can occur prior to the acceptance of the amendments to Article 1 by all members of the Bank.

12. Acceptance of the proposed amendments to the Agreement would also be consistent with Australia’s G20 commitment to encourage Multilateral Development Banks (MDB) to play an enhanced role in addressing global financial challenges.

Effect if Australia does not take treaty action

13. In accordance with Article 56 of the Agreement, the proposed amendment to Article 1 will not come into force unless it is adopted by all members of the Bank. If Australia does not accept the proposed amendments, the countries of the Southern and Eastern Mediterranean will not be able to become countries of operations in the Bank.

14. The proposed amendment to Article 18 will only come into force when not less than three-fourths of the members (including at least two specified countries from Central and Eastern Europe), having not less than four fifths of the total voting power of members, have accepted the proposed amendment. Non-acceptance by Australia could delay entry into force of the proposed amendment to Article 18.

Additional information on the Bank

15. The Bank provides project financing for banks, industries and businesses (including publicly-owned companies) through new ventures and investments in existing companies. This can occur through loan and equity finance, guarantees, leasing facilities and/or trade finance.

16. To be eligible for Bank funding, a project must be located in one of the Bank’s countries of operation (as defined in Article 1 of the Agreement), have strong commercial prospects, involve significant equity contributions in cash or in kind from the project sponsor, benefit the local economy, help develop the private sector and satisfy banking and environmental standards. Projects are approved by the Bank’s Board of Directors before funds are disbursed.

17. Sectors supported by the Bank include: agribusiness; energy efficiency; financial institutions; manufacturing; municipal and environmental infrastructure; natural resources;

power and energy; property and tourism; telecommunications, information technology and media; and transport.

18. The Bank’s share capital is provided by its members. The subscribed capital base totals €30 billion (€6 billion paid-in and €24 billion callable).

Obligations

19. Australia will not incur any new obligations as a result of the proposed amendments to the Agreement. However, Australia may be called to vote on whether a country qualifies as a potential recipient country under Article 18(1)(i).

Implementation

20. The *European Bank for Reconstruction and Development Act 1990* (Cth) will need to be amended in order to give effect to the proposed amendments, as the Agreement is set out in Schedule 1 to the Act. Section 6 of the Act allows Schedule 1 to be amended by regulation.

Costs

21. The proposed amendments to the Agreement will not impose obligatory costs on the Australian Government, State and Territory governments, business or industry. The Bank may ask donors for an additional voluntary contribution to ‘Special Funds’; however, Australia will not be obliged to contribute.

Regulation Impact Statement

22. The Office of Best Practice Regulation has been consulted and confirms that a Regulation Impact Statement is not required.

Future Treaty Action

23. Article 56 of the Agreement provides that, in general, amendments approved by the Board of Governors need to be accepted by at least three-fourths of the Bank’s members having not less than four-fifths of the total voting power of the Members. However, in relation to amendment to the purpose of the Bank (as defined in Article 1), the acceptance of all members is required. Amendments generally enter into force 3 months after formal confirmation that the requisite number of acceptances has been received, unless the Board of Governors specifies a different date. In relation to these proposed amendments, the Board of Governors (in Resolution No 137 and 138) specified that the amendments would enter into force seven days after the date of the Bank’s formal confirmation that the requisite members have accepted the proposed amendments.

24. Any future treaty action would be subject to Australian domestic treaty process.

Withdrawal or Denunciation

25. The Agreement entered into force for Australia and generally on 28 March 1991. Article 37 of the Agreement provides that any member may withdraw from the Bank at any time by transmitting a notice in writing to the Bank at its principal office. The withdrawal

would become effective and membership would cease on the date specified in the written notice, but no less than six months after the date on which the notice is received.

26. Any decision to withdraw from the Agreement would be subject to Australia's domestic treaty process.

Contact details

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ATTACHMENT ON CONSULTATION

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CONSULTATION

27. The Department of Foreign Affairs and Trade and AusAID were consulted on the proposed amendments.

28. The proposed amendments will not have an impact on the States or Territories and do not require State or Territory cooperation for domestic implementation.

29. The Australian Government has not undertaken public consultations as the proposed amendments are minor and will not directly affect Australians.