

**National Interest Analysis [2018] ATNIA 14**

**with attachment on consultation**

**Agreement between the Government of Australia and the Government of the French Republic regarding the Provision of Mutual Logistics Support between the Australian Defence Force and the French Armed Forces**

(Sydney, 2 May 2018)

**[2018] ATNIF 32**

## NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

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#### Nature and timing of proposed treaty action

1. The proposed treaty action is to bring into force the *Agreement between the Government of Australia and the Government of the French Republic regarding the Provision of Mutual Logistics Support between the Australian Defence Force and the French Armed Forces* (the proposed Agreement). For the proposed Agreement to enter into force, the Parties must exchange diplomatic notes notifying each other of the completion of their necessary internal procedures (Article 10(1)).
2. The Agreement will remain in force for an initial period of ten years, after which it will continue in force for successive periods of ten years each (Article 10(1)). The Agreement may be terminated by mutual written agreement of the Parties, or by either Party following a 180 day notice period (Article 10(2)).
3. The exchange of notes by the Parties to bring the proposed Agreement into force would occur as soon as practicable after the tabling period and consideration by the Joint Standing Committee on Treaties (JSCOT).

#### Overview and national interest summary

4. The purpose of the proposed Agreement is to establish basic terms, conditions and procedures for the mutual provision of logistic supplies and services to the military forces of one Party by the other Party. The provision of logistic supplies and services of one Party to the other is undertaken in return for either cash payment or the reciprocal provision of logistic supplies and services to the military forces of the other Party.
5. Based on the principle of reciprocity, the proposed Agreement applies to such logistics cooperation between the military forces of Australia and France, wherever those forces may be in the world during combined exercises, training, operational deployments, unexpected events or other cooperative efforts.
6. The proposed Agreement also provides the basis for mutual logistics support between the Australian Defence Force and the French Armed Forces New Caledonia.
7. Importantly, the proposed Agreement provides for explicit exclusions relating to the exchange of weapons or weapons systems, major end items of equipment or missiles and guided munitions and the transfer by either Party of any items which would be prohibited by the

national laws and regulations of either Party and an explicit obligation to provide any logistics supplies and services under the proposed Agreement in accordance with international law obligations.

8. The proposed Agreement aligns with Australia's other military logistic support agreements and arrangements and offers Australia the opportunity to further enhance the quality of, and potential for, defence cooperation with France, and to broaden the interoperability between the two forces.
9. The proposed Agreement is uncontroversial, builds on Australia's existing relationship with France in relation to defence matters, and raises no international defence policy issues.

## **Obligations**

10. The proposed Agreement sets out the conditions and administrative framework under which logistics transfers will be effected and is designed to facilitate reciprocal provision of logistic supplies and services between the Australian Defence Force and the French Armed Forces, wherever those Forces may be in the world (Article 1).
11. Article 2(1) of the proposed Agreement lists the categories of supplies and services that may be provided by either Party. Article 3(5) also obliges the Parties to provide each other access to their military medical services, to the extent possible within the Supplying Party's existing resources, or to otherwise facilitate access to civilian military services at the Requesting Party's own expense.
12. Article 3(2) provides an obligation on each Party to only request logistics support if a Party is unable to obtain such support through its own military channels or from local resources. Article 3(3) further provides an obligation on the Parties to only place or accept orders through the personnel authorised to issue and accept such orders of the Australian Defence Force and the French Armed Forces respectively.
13. Emphasising the principle of reciprocity and mutual consent, the proposed Agreement provides that each Party make its best efforts under the terms of the proposed Agreement, and consistent with national priorities, to satisfy requests from the other for logistic supplies and services in accordance with: the terms and conditions of the proposed Agreement (including the Annexes) (Article 3(8)); the Orders made; and any applicable Written Supplementary Arrangements or Standard Operating Procedure issued under the Agreement (Article 3(9)).
14. Each Party further agrees that logistics supplies and services transferred will not be provided to a third party without the prior written approval of the Supplying Party (Article 3(4)).
15. Article 3(6) of the proposed Agreement explicitly excludes from transfer as logistic support under the Agreement any weapons or weapons systems, major end items of equipment (except the lease or loan of general purpose vehicles and other items of non-lethal military equipment) or missiles and guided munitions. Also excluded from any transfer by either Party under this Agreement are any items which are prohibited by its laws or regulations.

16. In providing supplies and services under the proposed Agreement, each Party must act in accordance with its national laws and regulations and consistent with the Parties' respective international obligations (Article 3(7)).
17. For any logistic supplies and services transactions, Article 5 of the proposed Agreement requires the Parties to negotiate for payment either in cash in the currency specified by the Supplying Party (a "reimbursable transaction"), payment in kind ("exchange in kind transaction"), or by providing logistic supplies and services that are agreed to be exchanged for equal monetary value (an "exchange for equal value transaction"). The manner of settlement in relation to the provision of supplies and services must be determined between the Parties prior to the procurement of the logistic support (Article 5(2)).
18. The Parties are further obligated to provide the other party access to documentation and information sufficient to verify pricing principles for the provision of logistic support (Article 5(7)).
19. Article 5(9) enables the Parties to loan equipment to each other under the proposed Agreement. Such loan of equipment is to be mutually determined in writing and rental fees may be charged. The supplying Party may also recover incidental costs for the equipment loaned, including transportation, packaging, loss, damage beyond fair wear and tear, repairs, laundering and any preparatory work required to adapt the equipment to the requirements of the borrowing Party and upon its return, to restore the equipment to its original condition.
20. Article 6(1) obligates a Party to assist the other Party with regard to customs and taxes and Article 6(2) provides that, to the extent permitted by their national laws, the Parties shall endeavour to ensure that charges for duties and taxes on the provision of supplies and services under the proposed Agreement are not imposed. Article 6(3) further obligates each Party to use its best efforts to ensure that customs duties, import and export taxes, and similar charges are administered in a manner favourable to the efficient and economical conduct of the logistics support carried out under the proposed Agreement or a Written Supplementary Arrangement or Standard Operating Procedure.
21. Where duties and taxes are applied, these are to be identified and included the Unit Price of the equipment and services supplied (Article 5(1)).
22. Disputes regarding the interpretation or application of the provisions under the proposed Agreement, any Written Supplementary Arrangements, Standard Operating Procedures or logistics transactions are to be resolved by the Parties through consultation or negotiations (Article 9). Article 7 provides the framework for the resolution of any claims arising under the proposed Agreement.
23. For any classified information and material provided or generated pursuant to the proposed Agreement, Written Supplementary Arrangement or Standard Operating Procedure, Article 8 provides that such information and material is to be used, stored, handled, transmitted and safeguarded in compliance with the *Agreement between the Government of Australia and the Government of the French Republic relating to the Exchange and Communication of Classified Information*, done at Paris, on 15 July 1985.

## **Implementation**

24. Australia's implementation of the Agreement will be led by the Department of Defence. Implementation of the Agreement does not require changes to Australian laws, regulations or policies. The proposed Agreement will not effect any change to the existing roles of the Commonwealth Government or the State and Territory Governments.

## **Costs**

25. There are no foreseeable financial costs to the Australian Government in the implementation of the proposed Agreement.
26. Where the transfer of logistic supplies and services occurs, Article 5(2) of the proposed Agreement provides that the Parties will mutually determine whether payment for the transfer will be made by cash or by supplying logistic supplies and services that are substantially identical or agreed to be of equal monetary value.
27. Article 6 also provides that, to the extent permitted by national laws and regulations, the Parties shall endeavour to ensure that charges for internal duties and taxes on the provision of supplies and services under the proposed Agreement are not imposed.

## **Regulation Impact Statement**

28. The Office of Best Practice Regulation, Department of the Prime Minister and Cabinet, has been consulted and confirms that a Regulation Impact Statement is not required.

## **Future treaty action**

29. The proposed Agreement does not require the negotiation of any future legally binding instruments. Written Supplementary Arrangements or Standard Operating Procedures, foreshadowed by Article 4 of the proposed Agreement, may be negotiated to specify procedures and details for the provision of specific logistics support pursuant to the proposed Agreement.
30. The proposed Agreement (including the Annexes) may be amended by written agreement between the Parties (Article 10(4)). Amendments to the proposed Agreement would be subject to Australia's domestic treaty-making requirements, including tabling in Parliament and consideration by JSCOT.

## **Withdrawal or denunciation**

31. Under paragraph 1 of Article 10, the proposed Agreement will remain in force for a period of ten years and will be automatically extended for subsequent periods of ten years.
32. Paragraph 2 of Article 10 provides the proposed Agreement may be terminated by the mutual written agreement of the Parties or alternatively by either Party at any time by providing the other one hundred and eighty (180) days written notice. Paragraph 2 of Article 10 further

provides that termination of the proposed Agreement will also automatically terminate any Written Supplementary Arrangements or Standard Operating Procedure made pursuant to it.

33. If the proposed Agreement is terminated, paragraph 3 of Article 10 provides that all provisions conferring rights or imposing obligations on the Parties concerning claims, the security of classified Information, settlement of disputes and the sale, supply, transfer and payment for provision of logistics support will remain in force with respect to supplies and services provided under the proposed Agreement.
34. Termination by Australia would be subject to Australia's domestic treaty-making requirements, including tabling in Parliament and consideration by JSCOT.

**Contact details:**

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## **ATTACHMENT ON CONSULTATION**

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#### **CONSULTATION**

35. The State and Territory Governments have been consulted through the Commonwealth-State-Territory Standing Committee on Treaties (SCOT). No requests for further information or comments on the proposed Agreement have been received to date from the State and Territory Governments.