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Amendments to the Agreement Establishing the European Bank for Reconstruction and Development, adopted at London on 30 September 2011

Introduction

7.1 On 28 February 2012, the *Amendments to the Agreement Establishing the European Bank for Reconstruction and Development, adopted at London on 30 September 2011* were tabled in the Commonwealth Parliament.

7.2 The proposed amendments to Article 1 and Article 18 of the *Agreement Establishing the European Bank for Reconstruction and Development* will 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.[1]

7.3 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 (that aims to include the designated Southern and Eastern Mediterranean countries) must be accepted by all members before it can enter into force. The proposed amendment to Article 18 requires the consent of not less

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1 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, (Hereafter referred to as 'NIA'), para 1.

than three-fourths of the Bank's members, having not less than four-fifths of total voting power.[2]

Background

7.4 The European Bank for Reconstruction and Development,[3] established in 1991, has fostered the transition towards open market oriented economies and promoted private and entrepreneurial initiatives 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.[4]

7.5 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.[5]

7.6 Unlike the lending of the International Monetary Fund (IMF), the Bank's lending is directed at private sector businesses rather then governments. The Treasury explained:

> ...the Bank is generally working with private sector entities rather than sovereigns. It has conditions around what sorts of countries it will operate in and looks at their democratic record, transparency and openness. It obviously has guidelines around procurement accountability and those sorts of things on its lending, but unlike the IMF, it is not lending to support sovereign programs; it is supporting private sector initiatives. Their conditions are basically on those companies, and they are around accountability and transparency rather than putting policy conditions on a country in exchange for lending into that country's sovereign operations.[6]

7.7 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).[7]

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2 NIA, para 2.

3 See 'European Bank for Reconstruction and Development' http://www.ebrd.com/pages/homepage.shtml, accessed 3 April 2012.

4 NIA, para 5.

5 NIA, para 15.

6 Mr Shaun Anthony, Manager, Development Banks Unit, International Finance and Development Division, Department of Treasury, *Committee Hansard*, 7 May 2012, p. 7.

7 NIA, para 18.

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.[8]

7.8 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.[9]

7.9 Australia's contribution to the Bank is relatively limited, and is part of the aid budget.[10] However, it is in Australia's interest to remain a shareholder. The Treasury explained:

> ...we only have a fairly small shareholding of 1.01 per cent of the Bank. Nevertheless, we try to use our influence to encourage the Bank to reflect on its role and strategic direction.[11]

Reason for and effect of amendments

7.10 In response to the events in the Middle East and North Africa in 2010 and 2011 – the so-called 'Arab Spring' – 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.[12]

7.11 In February 2011, G20 Finance Ministers stated that they stood ready to support Egypt and Tunisia with responses 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 and called for a transitional facility to be implemented rapidly.[13]

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8 NIA, para 16.

9 NIA, para 17.

10 Mr Patrick Colmer, General Manager, International Finance and Development Division, Department of Treasury, *Committee Hansard*, 7 May 2012, p. 7.

11 Mr Patrick Colmer, General Manager, International Finance and Development Division, Department of Treasury, *Committee Hansard*, 7 May 2012, p. 6.

12 NIA, para 6.

13 NIA, para 7.

7.12 On 30 September 2011, the Bank's Board of Governors voted unanimously to amend the Agreement to expand the scope of the Bank's operations to the Southern and Eastern Mediterranean.[14]

7.13 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 and other donors have 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.[15]

7.14 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. Jordan and Tunisia became members of the Bank in December 2011.[16]

Overview and national interest summary

7.15 The Government assesses that 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 and thus

14 NIA, para 8.

15 NIA, para 9.

16 NIA, para 10.

support their transition to democracy. 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.[17]

7.16 There is also a foreign policy imperative in supporting these amendments. The Treasury explained:

> ...full acceptance by all member countries will benefit those countries in the southern and eastern Mediterranean, which in turn will contribute to development and stability in an area of high geopolitical importance... I note that the expansion to the bank is strongly supported by a range of other members, including the US and Europe, and that those countries are vigorously pursuing its implementation.[18]

Reasons for Australia to take the proposed treaty action

Advantages of the proposed treaty action

7.17 Australia supports the expansion of the Bank's activities to the Southern and Eastern Mediterranean. It reflects positively on Australia to be a member of such a well functioning and useful organisation.[19] Acceptance of the proposed amendments would also be consistent with Australia's G20 commitment to encourage Multilateral Development Banks to play an enhanced role in addressing global financial challenges.[20]

Effect if Australia does not take treaty action

7.18 In accordance with Article 56, 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

17 NIA, para 4.

18 Mr Patrick Colmer, General Manager, International Finance and Development Division, Department of Treasury, *Committee Hansard*, 7 May 2012, p. 6.

19 NIA, para 5.

20 NIA, para 12.

Southern and Eastern Mediterranean will not be able to become countries of operations in the Bank.[21]

7.19 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.[22]

Obligations

7.20 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).[23] The Treasury explained the processes through which such a vote would take place:

> The issues that were looked at in terms of expanding the countries of the operation were particularly around whether the Bank would be able to add value working alongside other partners in those countries. The Bank would also be looking at whether those countries met the criteria of a country of operations. For the Bank to be putting that to a vote, they would be looking at whether there was a democratic transition occurring in that country and whether that country met the requirements that the Bank imposed in terms of democracy and private sector freedom before the bank would be willing to take them on as countries of operation. From Australia's point of view in advising the governor, we would be looking at whether we saw the Bank's particular expertise as adding value and supporting the transition of that economy to a more modern market based economy.[24]

Criteria for assistance

7.21 The Committee was concerned about the democratic status of some of the countries being considered by the Bank for assistance. There were concerns expressed that in countries like Egypt or Tunisia minority groups

21 NIA, para 13.

22 NIA, para 14.

23 NIA, para 19.

24 Mr Shaun Anthony, Manager, Development Banks Unit, International Finance and Development Division, Department of Treasury, *Committee Hansard*, 7 May 2012, p. 7.

were not being given their full expression of democratic rights and that there was a lack of freedom of the media.

7.22 In response to questions about the nature of the democracy being practiced in the recipient countries, i.e. if human rights, gender equality or respect for minorities was being recognised, Treasury responded:

> There aren't established criteria for the governor's vote on additional countries entering as countries of operation, but it is open to the governor to consider whatever factors they consider to be appropriate... It would be open to Australia's governor to take into account any factors they thought were relevant to whether Australia believed a country should be a country of operations.[25]

> Australia has a representative in the Bank who is either an executive director or an alternate executive director. That person works permanently in the Bank and does a lot of work with the bank and on providing advice back to us on individual issues involving the Bank... The situation is that we rely on our people on the ground and in the Bank headquarters—they are certainly aware of a lot more of the detail about how these decisions are made—but I think we get a reasonable service by providing advice back to the government through that process... The Bank has a range of ways of monitoring those sorts of issues.[26]

Implementation

7.23 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.[27]

Costs

7.24 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

25 Mr Shaun Anthony, Manager, Development Banks Unit, International Finance and Development Division, Department of Treasury, *Committee Hansard*, 7 May 2012, p. 8.

26 Mr Patrick Colmer, General Manager, International Finance and Development Division, Department of Treasury, *Committee Hansard*, 7 May 2012, p. 9.

27 NIA, para 20.

voluntary contribution to 'Special Funds'; however, Australia will not be obliged to contribute.[28] Treasury explained:

> At the moment, as I said, we have 1.01 per cent of the shares in the bank. The total value of that is around €237 million. Most of that is a contingent liability. We have only paid in €62.6 million, which is around $77 million, as at January. The bank has that capital. It has not required to make any further calls and is operating on the paid-in capital. We do not anticipate any further calls or funding requirements as a result of this extension.[29]

Conclusion

7.25 The Committee agrees that newly emerging democracies should be supported to help transform their economies. Acceptance of the proposed amendments are also consistent with Australia's G20 commitment to encourage Multilateral Development Banks to play an enhanced role in addressing global financial challenges and the Committee supports the amendments proposed here.

7.26 Australia's contribution is relatively modest, but does allow us to have some influence in this institution. This influence is to be welcomed and encouraged.

7.27 The Committee is, however, concerned about the democratic status of some of the countries being considered by the Bank for assistance. The Committee would expect that Australia, the European Union, United States and other shareholders of the Bank would work to ensure that countries which are granted assistance are in fact meeting international human rights standards before assistance is provided.

28 NIA, para 21.

29 Mr Patrick Colmer, General Manager, International Finance and Development Division, Department of Treasury, *Committee Hansard*, 7 May 2012, p. 7.

Recommendation 7

The Committee supports the *Amendments to the Agreement Establishing the European Bank for Reconstruction and Development, adopted at London on 30 September 2011* and recommends that binding treaty action be taken.