

National Interest Analysis [2011] ATNIA 18

with attachment on consultation

**Agreement for the Establishment of the International Anti-Corruption Academy
as an International Organization**

done at Vienna on 2 September 2010

[2010] ATNIF 54

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 ratification of the *Agreement for the Establishment of the International Anti-Corruption Academy as an International Organization* (the Agreement).
2. The Agreement was signed by Australia on 16 December 2010 and entered into force generally on 8 March 2011. As at 30 June 2011, 53 States and two international organisations are signatories to the Agreement. Eleven countries and international organisations have ratified or acceded to the Agreement and a further seven have indicated an intention to ratify or accede by the end of 2011. Pursuant to Article XVIII, the Agreement will enter into force for Australia 60 days after deposit of Australia's instrument of ratification.

Overview and national interest summary

3. The purpose of the Agreement is to establish the International Anti-Corruption Academy (the Academy) as an international non-profit and self-sustaining organisation, based in Laxenburg, Austria.
4. As a joint initiative of the United Nations Office on Drugs and Crime, the Republic of Austria and the European Anti-Fraud Office, the Academy is intended to promote effective and efficient efforts to prevent and combat corruption by providing anti-corruption education, professional training and technical assistance, undertaking academic research into corruption and fostering international cooperation and networking opportunities in the fight against corruption.
5. Australia plays a significant role in global and regional efforts to combat corruption, including through its work as a Party to the *United Nations Convention against Corruption* (UNCAC, [2006] ATS 2) and the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* ([1999] ATS 21), and as a member of both the G20 and APEC Anti-Corruption Working Groups.
6. Australia was actively involved in the development of the G20 Anti-Corruption Action Plan, which is directed at preventing and tackling corruption through establishing legal and policy frameworks that promote a clean business environment and assist developing countries in their efforts to combat corruption. As a member of the G20 Anti-Corruption Working Group, Australia actively contributes to the activities of the Group through implementation of the Action Plan.
7. As a member of the APEC Anti-Corruption Working Group, Australia has in recent years led a project to develop and implement a Code of Conduct for Business. The Code has been implemented in a number of countries (for example, Vietnam and Chile) and continues to attract interest.

8. Ratifying the Agreement would be a further opportunity for Australia to demonstrate our support for international efforts to combat corruption.

Reasons for Australia to take the proposed treaty action

9. Australia has taken a significant role in global and regional efforts to combat corruption, including through its work as a party to UNCAC; through forums such as APEC and the G20; and through various initiatives to assist our neighbours in the region in developing measures to prevent and combat corruption. Support for the Academy would reinforce Australia's commitment to international efforts against corruption.

10. As a Party to the Agreement, Australia would be able to participate in mechanisms to guide and support the Academy's work as an important international organisation. Under Article V, Australia would exercise a voting right at the meetings of the Assembly of Parties. This would enable Australia to contribute to the overall policy direction and institutional arrangements of the Academy. Australian anti-corruption practitioners and field specialists would also be able to take advantage of the training and educational services the Academy offers, thereby increasing expertise and links at the working level with international counterparts.

Obligations

11. The Agreement establishes the Academy as an international organisation, with full international legal personality, and provides that the Academy shall operate in accordance with the Agreement (Article I).

12. The purpose of the Academy, as prescribed by Article II, is to promote effective and efficient prevention and combating of corruption by: providing education and professional training; undertaking and facilitating research; providing other relevant technical assistance; and fostering international cooperation and networking.

13. The seat of the Academy is at Laxenburg, Austria, and the Academy may establish facilities in other locations as required (Article III).

14. The organisational structure of the Academy is set out in Article IV and consists of:

- an Assembly of Parties (comprising a representative from each Party to the Agreement);
- a Board of Governors;
- an International Senior Advisory Board;
- an International Academic Advisory Board; and
- a Dean.

Articles V-IX prescribe the role, appointment procedures and operating procedures of each organ.

15. The Academy is to strive to recruit and retain academic and administrative staff with the highest possible qualifications, and shall make appropriate staffing arrangements for part-time or visiting academic staff. The Academy is to encourage States, international organisations, universities and other institutions to consider supporting the staffing of the Academy, including by secondment of staff (Article X).

16. The Agreement provides that the long-term goal is for the Academy to be self-sustainable and that the Academy will be financed through means such as voluntary contributions from Parties or from the private sector, tuition and other fees and other service revenue. Parties to the Agreement are encouraged to engage in fund-raising activities for the Academy (Article XI).

17. Parties to the Agreement are to keep each other informed of and consult on matters of interest concerning their cooperation under the Agreement, in accordance with each Party's applicable rules concerning disclosure of information and subject to any arrangements concluded for that purpose (Article XII).

18. The Academy may establish cooperative relationships with States, international organisations and public or private entities where they can contribute to the Academy's work (Article XIII).

19. The Academy, the members of each of its organs, the staff and experts are to enjoy such privileges and immunities as agreed between the Academy and the Republic of Austria. The Academy may conclude agreements with other States in order to secure appropriate privileges and immunities (Article XIV).

20. Any disputes arising under the Agreement or any question affecting the Academy are to be settled by negotiation or another agreed mode of settlement, or failing that, referred to a tribunal of three arbitrators for final decision (Article XIX).

Implementation

21. No changes to Australian legislation are required to give effect to the Agreement.

Costs

22. The Agreement does not impose any direct financial obligations on the Parties to the Agreement. Article XV of the Agreement provides that Parties to the Agreement shall not be responsible, individually or collectively, for any debts, liabilities or other obligations of the Academy. Australia may consider making financial or in-kind contributions to the Academy. Any decision as to whether Australia will make a voluntary contribution to the Academy would be a matter for the Government to consider as part of the usual budget process.

Regulation Impact Statement

23. The Attorney-General's Department sought advice from the Office of Best Practice Regulation (OBPR), which advised that there would be no impact on Australian businesses or not-for-profit organisations arising from the Agreement, and that neither a Regulation Impact Statement nor a Business Cost Calculator report were required.

Future treaty action

24. Article XVI of the Agreement provides that the Agreement may be amended only with the consent of all of the Parties to the Agreement. Amendments will come into force

upon the Depositary receiving written notification of the consent of all of the Parties or on any other date agreed by the Parties.

25. Any amendment to the Agreement would be a treaty action and would be subject to Australia's usual domestic treaty process.

Withdrawal or denunciation

26. Any of the Parties to the Agreement may withdraw from the Agreement by giving written notification at any time (Article XX). Withdrawal from the Agreement becomes effective three months after the Depositary receives notification.

27. The Parties to the Agreement, acting unanimously, may terminate the Agreement at any time and wind up the Academy by giving written notification to the Depositary. Any assets of the Academy remaining after payment of its legal obligations are required to be disposed of in accordance with a unanimous decision of the Assembly of Parties (Article XXI).

28. Withdrawal from, or termination of, the Agreement would be considered a treaty action and would be subject to Australia's usual domestic treaty process.

Contact details

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ATTACHMENT ON CONSULTATION

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CONSULTATION

29. The States and Territories were notified of the proposed treaty action by email on 3 February 2011, and views on the proposed ratification of the Agreement were sought. Responses were received from New South Wales, the Northern Territory, Queensland, South Australia, Tasmania and Victoria. No objections were raised about the proposed ratification of the Agreement.