

**Political Aspects of the Mandate of the
European Bank for
Reconstruction and Development**



Introduction

The Agreement Establishing the European Bank for Reconstruction and Development includes a significant political element in that it specifies that the Bank may carry out its purpose in countries of operations that are proceeding in their transition towards market-oriented economies and are committed to and applying principles of multiparty democracy and pluralism.

Soon after the Bank became operational its Board of Directors approved procedures to implement the political aspects of the Bank's mandate in ways which recognise the critical link between the political and economic aspects of the Agreement. This procedures paper was updated in 2013.

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Procedures to Implement the Political Aspects of the Mandate of the European Bank for Reconstruction and Development

An important feature of the Agreement (the “Agreement”) Establishing the European Bank for Reconstruction and Development (the “Bank”) relates to the political aspects of the Bank’s activities. These procedures guide the Bank in the implementation of the political aspects of its mandate.

I Provisions of the Agreement

The concepts underlying the Bank’s mandate are found in the Preamble to the Agreement.¹ The Agreement then states the general principles which form the basis for the mandate. The principal relevant provisions are in Article 1, which sets out the Bank’s purpose, and Article 8, which deals with the use of the Bank’s resources.

Article 1 states:

In contributing to economic progress and reconstruction, the purpose of the Bank shall be to foster the transition towards open market-oriented economies and to promote private and entrepreneurial initiative in the Central and Eastern European countries committed to and applying the principles of multiparty democracy, pluralism and market economics.

The Bank’s recipient countries committed themselves to the purpose of the Bank, as well as to the other provisions of the Agreement. The other parties to the Agreement have accepted the commitment of those countries.

Paragraphs 1 and 2 of Article 8 state:

1. The resources and facilities of the Bank shall be used exclusively to implement the purpose and carry out the functions set forth, respectively, in Articles 1 and 2 of this Agreement.

2. The Bank may conduct its operations in countries from Central and Eastern Europe which are proceeding steadily in the transition towards market-oriented economies and the promotion of private and entrepreneurial initiative, and which apply, by concrete steps and otherwise, the principles as set forth in Article 1 of this Agreement.

The Agreement empowers the Bank to “provide technical advice and assistance which serve its purposes and come within its functions” (paragraph 1(vi) of Article 20) and to finance such

¹ Extract from the Preamble:

"The contracting parties,

Committed to the fundamental principles of multiparty democracy, the rule of law, respect for human rights and market economics;

Recalling the Final Act of the Helsinki Conference on Security and Cooperation in Europe, and in particular its Declaration on Principles;

Welcoming the intent of Central and Eastern European countries to further the practical implementation of multiparty democracy, strengthening democratic institutions, the rule of law and respect for human rights and their willingness to implement reforms in order to evolve towards market-oriented economies;

... Have agreed to establish hereby the European Bank for Reconstruction and Development"

technical assistance (paragraph (ii) of Article 13). It calls for a review at least annually by the Board of Directors of the Bank's operations and lending strategy in each Central and Eastern European country to ensure that the purpose of the Bank, including by implication the political aspects of its mandate, is fully served.² It also addresses the consequences of a country implementing policies inconsistent with the Bank's purpose.³

It is evident from the Preamble to the Agreement, as well as from the content and spirit of Article 1 of the Agreement, that the successful transition to a market-oriented economy is presumed to be closely linked to parallel progress towards democracy and the rule of law. Thus, the political aspects of the Bank's mandate extend to all elements of the Bank's purpose as set out in Article 1 and should be monitored and encouraged by the Bank as part of the process of assisting the transition of countries of operations to market economies.

II Reference Points and Sources

While the Bank's mandate is distinct from that of other international institutions, the body of international treaties, law, declarations, conventions and instruments provides useful guidance on the key dimensions of multiparty democracy and pluralism.

In addition, a number of international organisations produce regular reports on democratic governance in countries in the EBRD region of operations. In making its assessments, the Bank makes effective use of and cites various reference sources, giving emphasis to those with more universal membership. These include the UN and its agencies along with regional inter-governmental organisations such as the Council of Europe and the Organisation for Security and Cooperation in Europe (OSCE), which have most of the Bank's countries of operations and many of its other shareholders as members and which have relevant expertise in the conduct of democratic elections, the rule of law and human rights. To ensure consistent treatment across countries and over time, the political assessments cite selected reference points in all full country strategies, provided information covering the previous strategy period is available.

For EU member and candidate countries, prospective members and those under the European Neighbourhood Policy, assessments by EU agencies of harmonisation with EU democratic standards and laws are also key reference points. Other sources, such as from member country government agencies or national and international non-governmental organisations, are also used to inform judgements.

² The Agreement provides, in Article 11, paragraph 2(i) that:

"The Board of Directors shall review at least annually the Bank's operations and lending strategy in each recipient country to ensure that the purpose and the functions of the Bank, as set out in Articles 1 and 2 of this Agreement, are fully served. Any decision pursuant to such a review shall be taken by a majority of not less than two-thirds of the Directors, representing not less than three-fourths of the total voting power of the members."

³ Article 8, paragraph 3, of the Agreement provides:

"In cases where a member might be implementing policies which are inconsistent with Article 1 of this Agreement, or in exceptional circumstances, the Board of Directors shall consider whether access by a member to Bank resources should be suspended or otherwise modified and may make recommendations accordingly to the Board of Governors. Any decision on these matters shall be taken by the Board of Governors by a majority of not less than two-thirds of the Governors, representing not less than three-fourths of the total voting power of the members." See also Explanatory Note to Article 8 in Chairman's Report on the Agreement.

III Implementation

Objectives

Because of the link between the economic and political aspects of the Agreement, the decision on the methodology to assess the progress of countries of operations towards multiparty democracy, pluralism and market economics is vital to the Bank's successful fulfilment of its mandate. The specifically economic aspect of the Bank's mandate is outside the scope of these Procedures, but an assessment of economic as well as political factors will be fundamental to an overall view of the implementation of the Bank's purpose in the recipient and potential recipient countries.

Relevant political factors and benchmarks

In considering how to assess political progress, emphasis is often placed on human rights. References to human rights are in fact found in the Preamble, although not in the Agreement itself. This drafting choice was deliberate. It does not exclude human rights from the scope of the political aspects of the Bank's mandate, but it indicates that only those rights which, in accordance with international standards, are essential elements of multiparty democracy, pluralism and market economics, should be considered when evaluating a country's progress. Such a reading of the Agreement focuses primarily on civil and political rights. Other rights, including economic and social rights that advance multiparty democracy, pluralism and market economics could be taken into account and fostered by the Bank in connection with its normal operations.

The choice of relevant factors or benchmarks against which to assess political progress should be made deliberately and consistently. Only those rights that are considered essential elements of multiparty democracy and pluralism should be considered when evaluating a country's progress in respect of the political aspects of the Bank's purpose. Following a thorough analysis of the literature on democracy and democratic change, and extensive consultation with international governmental and non-governmental organisations as well as academic experts, these rights can be grouped into four broad categories:⁴

- Free Elections and Representative Government
- Civil Society, Media and Participation
- Rule of Law and Access to Justice
- Civil and Political Rights

The approach to conducting political assessments of recipient and potential recipient countries will make reference to progress on these factors, as follows:

Free Elections and Representative Government

1. *Free, fair and competitive elections*
2. *Separation of powers and effective checks and balances*

⁴ From time to time, the Board may consider other factors to be relevant to determining a country's compliance with Article 1 and may request an assessment from Management. On this basis, the Board may then decide to take a view.

3. *Effective power to govern of elected officials*

Civil Society, Media and Participation

4. *Scale and independence of civil society*
5. *Independent pluralistic media that operates without censorship*
6. *Multiple channels of civic and political participation*
7. *Freedom to form political parties and existence of organised opposition*

Rule of Law and Access to Justice

8. *Supremacy of the law*
9. *Independence of the judiciary*
10. *Government and citizens equally subject to the law*
11. *Effective policies and institutions to prevent corruption*

Civil and Political Rights

12. *Freedom of speech, information, religion, conscience, movement, association, assembly and private property*
13. *Political inclusiveness for women, ethnic and other minorities*
14. *Freedom from harassment, intimidation and torture*

These internationally recognised elements could also be fostered by the Bank in its operations in recipient and potential recipient countries, including technical cooperation, to promote the transition to market-oriented economies and otherwise satisfying the operating principles of the Bank, as described in Article 13. For example, the Bank could encourage public participation and consultation in the preparation of infrastructure or other projects, it could assist in designing policies of corporate social responsibility with its private or public sector clients and it could help with the establishment of consumer protection bodies as part of public sector projects.

Timing of political assessments

As Article 11.2(i) of the Agreement requires an annual review of the Bank's operations and lending strategy in each recipient country, it seems appropriate to assess the compliance of these countries with the political principles of Article 1 at the same time. Accordingly, political assessments are an integral part of the Bank's Country Strategies (triennially) and Country Strategy Updates (annually). The Bank does not make political assessments in connection with each individual operation. Nor does it assess the contribution or potential contribution of its investment projects, which are designed to assist in the transition to well-functioning markets, to the progress towards democratic and pluralistic societies.

While political assessments of recipient countries are regularly made in the context of Country Strategies and Country Strategy Updates, political developments, e.g., elections or adoption of key legislation, are monitored throughout the year and reported to the Board of Directors. This process enables the Board of Directors to determine, at any time, whether it should take action in accordance with Article 8.3 of the Agreement.

IV. Bank's Response to Potential Non-Compliance

The pace and direction of the Bank's operational engagement in its recipient countries responds to the evolving economic and political reform environment.

If the Board of Directors decides to express grave or serious concerns about a recipient country's compliance with the political aspects of the Bank's mandate, it will calibrate the Bank's unsigned operations based on the conditions prevailing in the country. The principle aim of calibration will be to limit the Bank's involvement with the state directly or with entities owned or controlled by the state, while remaining engaged and standing ready to support market reforms. The precise mix of operational priorities will depend crucially on progress in the country and will be set out in the Country Strategies or Country Strategy Updates.

If the formal assessment of implementation of the political aspects of the Bank's purpose indicates that a recipient country might be implementing policies that, to a greater or lesser degree, are inconsistent with the Bank's purpose, paragraph 3 of Article 8 provides the Bank's governing bodies, under the authority of the Board of Governors, substantial flexibility in formulating the Bank's response.

Such circumstances will be considered by the Board of Directors, in accordance with its usual procedures, whether in connection with a formal review of operations or otherwise as appropriate, for example through reports of fact-finding missions. If the Board of Directors decides to apply the provisions of paragraph 3 of Article 8, in particular where it finds a recipient country to be non-compliant with the political aspects of the Bank's mandate, it must submit the issue to the Board of Governors with recommendations. Action by the Board of Governors might include, according to the circumstances:

- suspension or termination of work on all unsigned operations; and/or
- suspension or cancellation of disbursements, subscriptions or guarantees in respect of signed sovereign operations; and/or
- suspension or cancellation of disbursements, subscriptions or guarantees in respect of signed non-sovereign operations in the public sector; and/or
- suspension or cancellation of disbursements, subscriptions or guarantees in respect of signed non-sovereign operations in the private sector.

Throughout its operations, the Bank will need to bear in mind the requirement in Article 13 that it apply sound banking principles to all of its operations. Thus it will need to consider carefully its own financial position as well as the legitimate financial interests of relevant third parties.