

*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 conduct its operations in countries of central and eastern Europe which not only are proceeding in their transition towards market-oriented economies, but also are 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. These procedures are set out in the attached memorandum.

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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.

This memorandum outlines suggested procedures that the Bank might adopt to implement 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 countries of the Bank’s operations which signed and ratified the Agreement committed themselves to the purpose of the Bank, as well as to the other provisions of the Agreement. Other members, by their signature and ratification, 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 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 history of the Agreement’s negotiation, that the successful transition of member countries to market-oriented economies is 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

Despite the novel character of the political aspects of the Bank's mandate, useful points of reference may be found in the experience of other international institutions. The experience of the Council of Europe is particularly relevant, in view of the Council's expertise in human rights and the rule of law.

In addition, the European Convention on Human Rights; the Declaration on Principles of the Final Act of the Helsinki Agreement, cited in the Preamble; the Document of the Copenhagen meeting of the Conference on the Human Dimension of the CSCE of June 1990 and the CSCE Charter of Paris for a New Europe of November 1990; and the work of the Commission on Human Rights, provide useful guidelines.

III Implementation

a) Objectives

Because of the critical link between the economic and political aspects of the Agreement, the decision on an appropriate way 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 this memorandum, 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 countries of operations.

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.

b) Procedures

Against that background, and that of the experience of other relevant institutions, it seems appropriate to assess political and economic progress together, annually, in the Bank's country strategy papers, rather than on a project by project basis.

The approach to the assessment might be to consider progress on factors relevant to the political aspects of the Bank's purpose, as set out in Article 1, drawn from the various reference points cited in Section II above, e.g.:

- free elections;
- representative government in which the executive is accountable to the elected legislature or the electorate;
- duty of the government and the public authorities to act in accordance with the constitution and law, and availability of redress against administrative decisions;
- separation between the State and political parties;
- independence of the judiciary;
- equal protection under the law, including for minorities;
- fair criminal procedure;
- freedom of speech, including the media, of association, and of peaceful assembly;
- freedom of conscience and religion;
- freedom of movement;
- the right to private property; and
- the right to form trade unions and to strike.

These internationally recognised elements⁴ could also be fostered by the Bank in its operations, 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 projects and could help with the establishment of consumer protection bodies as part of public sector projects.

The Bank will cooperate with other institutions and non-governmental organisations, particularly the Council of Europe, in making its assessment of a country's progress towards the political aspects of the Agreement. Admission to the Council of Europe and ratification of the European Convention on Human Rights would be positive indications of a country's continued commitment to the Bank's purpose.

If the formal assessment of implementation of the political aspects of the Bank's purpose indicates that a country is implementing policies that, to a greater or lesser degree, are inconsistent with that 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, it must submit the issue to the Board of Governors with recommendations. Action by the Board of Governors might include, according to the circumstances:

- recommendations;
- postponement of proposed operations;
- restrictions of operations pursuant to paragraph 4 of Article 8; and
- suspension of operations.

In formulating its response, the Bank might consider curtailing planned public sector projects before taking action on private operations. Within the public sector it might curtail state infrastructure projects before local ones and endeavour to continue with its technical cooperation activities as long as possible.

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.

References

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”

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 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.

4 *This list is only indicative and is not presented in order of importance nor intended to be exhaustive.*

