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(Legislative acts)

DECISIONS

DECISION No 1219/2011/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 16 November 2011****concerning the subscription by the European Union to additional shares in the capital of the European Bank for Reconstruction and Development (EBRD) as a result of the decision to increase this capital**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 212 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure ⁽¹⁾,

Whereas:

- (1) Pursuant to Article 4(3) of the Agreement establishing the European Bank for Reconstruction and Development ⁽²⁾ (EBRD), the Governors of the EBRD, at their annual meeting in Zagreb on 14 and 15 May 2010, decided in Resolutions 126 ⁽³⁾ and 128 ⁽⁴⁾ to increase by EUR 10 billion the authorised capital stock of the EBRD in order to maintain enough capital to sustain, over the medium term, a reasonable level of activity in the EBRD countries of operation within statutory limits.
- (2) Prior to those resolutions, the capital of the EBRD was fixed at EUR 20 billion, of which the Union subscribed to 60 000 shares, each share having a par value of EUR 10 000.
- (3) Pursuant to Resolution 126, the authorised capital stock of the EBRD is increased by 100 000 paid-in shares, and each member is issued a number of whole shares, rounded downwards, pro rata to their existing shareholding. The paid-in part of the capital increase is paid

through integration in the capital of part of the EBRD's unrestricted general reserves. This Decision thus has no direct impact on the budget of the Union. All EBRD shareholders automatically received paid-in shares in proportion of their existing shareholding, without any further procedural steps taken by the shareholders themselves. Accordingly, the Union has been issued with 3 031 new shares, each having a par value of EUR 10 000 increasing the number of paid-in shares of the Union to 63 031.

- (4) Pursuant to Resolution 128, the authorised capital stock of the EBRD should be increased by 900 000 callable shares, each share having a par value of EUR 10 000 which is subject to redemption. Each member should be entitled to subscribe, at par, to a number of whole callable shares up to, but not in excess of, 42,857 % of the number of shares owned by such member immediately prior to the effective date of the capital increase. The Union is thus entitled to subscribe to up to 27 013 callable shares by 31 December 2011.
- (5) Pursuant to Resolution 128, the use of EBRD's capital should be monitored pursuant to the fourth Capital Resources Review (CRR4) for the period 2011-2015 (CRR4 period). The EBRD Board of Governors could decide in 2015, within the framework of CRR4, that part of the unutilised callable capital could be redeemed under specific conditions to be agreed in 2015. Pursuant to Resolution 128, the EBRD Board of Governors resolved that such redemption of callable shares would be automatic and applicable to all EBRD members who have subscribed to the callable shares authorised by that Resolution. In such a situation, the Commission would take note of, and implement, the EBRD Governors' Resolution.

⁽¹⁾ Position of the European Parliament of 13 October 2011 (not yet published in the Official Journal) and Decision of the Council of 8 November 2011.

⁽²⁾ OJ L 372, 31.12.1990, p. 4.

⁽³⁾ Resolution 126, entitled 'Increase in authorised capital stock, issuance of paid-in shares, and payment through reallocation of net income'.

⁽⁴⁾ Resolution 128, entitled 'Increase in authorised capital stock, issuance and subscription of callable capital, and redemption'.

- (6) This Decision should enhance the capacity of the EBRD to increase its activities in its countries of operation, thus providing valuable assistance to the economies of those countries in difficult economic times. It is appropriate for the Union to subscribe to those additional shares in order to achieve the Union's objectives in the field of

economic external relations and preserve its relative voting power within the EBRD.

- (7) The increase in callable capital provided for in this Decision contributes to maintaining the EBRD's access to financial markets.
- (8) The Commission should present to the European Parliament and the Council, by the end of the CRR4 period, a report assessing the effectiveness of the existing system of European public financing institutions promoting investment in Europe and its neighbourhood. That report should include recommendations on the cooperation between the respective banks and the optimisation and coordination of their activities as called for by the European Parliament in its resolution of 25 March 2009 on the 2007 Annual Reports of the European Investment Bank and the European Bank for Reconstruction and Development ⁽¹⁾.
- (9) In the countries of common intervention outside the Union, the EBRD should be encouraged to develop its cooperation with the other European public financing institutions through agreements such as the tripartite 'Memorandum of Understanding between the European Commission, the European Investment Bank together with the European Investment Fund, and the European Bank for Reconstruction and Development in respect of cooperation outside the European Union', which allows the banks to act in a complementary way by relying on their respective comparative advantages.
- (10) The contingent liability related to the callable part of the subscribed capital is reflected in the budget of the Union in p.m. line 01 03 01 02: 'European Bank for Reconstruction and Development — Callable portion of subscribed capital'.
- (11) The representatives of the Union in the governing bodies of the EBRD should encourage the EBRD: to continue implementing the best prudential banking practices in order to further preserve its very strong capital position; to intervene in areas consistent with the key objectives of the Europe 2020 Strategy in order to enhance the overall coherence of the Union's external action policy; to further develop financial instruments, based on co-financing between the budgets of the Union and of the EBRD, contributing to the achievement of the Union's objectives, while taking into account that such cooperation should be accompanied by effective control over, and visibility of, the Union's public funds; and to provide, on its website, appropriate information about the beneficiaries, the impact of its financial intermediary operations and the evaluations of projects.
- (12) The Governor of the EBRD for the Union should report annually to the European Parliament on the promotion

of the Union's objectives with particular regard to the Union's external action as laid down in Article 21 of the Treaty on European Union, the Europe 2020 Strategy, and the significant increase of the transfer of renewable energy and energy-efficient technologies.

- (13) The representatives of the Union in the governing bodies of the EBRD should use their best endeavours to avoid any activity by the EBRD implemented in its countries of operation through a foreign non-cooperative jurisdiction characterised notably by no or nominal taxes, a lack of effective exchange of information with foreign tax authorities and a lack of transparency in legislative, legal or administrative provisions, or as identified by the Organisation for Economic Cooperation and Development or the Financial Action Task Force,

HAVE ADOPTED THIS DECISION:

Article 1

The Union shall subscribe to 27 013 additional callable shares of EUR 10 000 each in the EBRD pursuant to Resolution 128 of the Board of Governors, the text of which is set out in the Annex for informative purposes.

Article 2

The Governor of the EBRD for the Union shall deposit the requisite instrument of subscription on behalf of the Union.

Article 3

The Governor of the EBRD for the Union shall report annually to the European Parliament on the use of capital, on measures to ensure transparency of operations of the EBRD through financial intermediaries, on how the EBRD has contributed to the Union's objectives, on risk-taking and effectiveness in leveraging additional financing from the private sector, and on cooperation between the European Investment Bank and the EBRD outside the Union.

Article 4

This Decision shall enter into force on the third day following its publication in the *Official Journal of the European Union*.

Done at Strasbourg, 16 November 2011.

For the European Parliament
The President
J. BUZEK

For the Council
The President
W. SZCZUKA

⁽¹⁾ OJ C 117 E, 6.5.2010, p. 147.

ANNEX

RESOLUTION No 128**Increase in authorised capital stock, issuance and subscription of callable capital, and redemption**

THE BOARD OF GOVERNORS

Having received from the Board of Directors a Report on the Fourth Capital Resources Review (CRR4) for the period 2011-2015 (the CRR4 Period), which review was carried out in accordance with Article 5(3) of the Agreement Establishing the Bank (the Agreement);

Having considered such Report and fully endorsing its findings and recommendations, including its strategic objectives, the proposed EUR 9 billion annual business volume envelope for 2011 and 2012 decreasing to EUR 8,5 billion for the remainder of the CRR4 Period, and capital requirements analysis;

Having concluded that it is desirable and appropriate to increase the authorised capital stock by EUR 9 billion of callable shares and to issue such shares, on terms that anticipate their redemption and the cancellation of the shares redeemed, to all members wishing to subscribe for them pro rata to their existing shareholding;

Agreeing with the observation in the Report that, having regard to the need of the Bank to preserve sufficient capital to support the projected operational activity over the next five years, it is envisaged that over such period any and all income of any year will be allocated to surplus, with the exception of potential allocations for the purpose of replenishing the EBRD Shareholder Special Fund; and

Exercising its powers under Article 24(1) of the Agreement, including to the extent necessary its power to exercise authority over any matter delegated or assigned to the Board of Directors under Article 24(2) of the Agreement;

RESOLVES THAT:

The authorised capital stock of the Bank be increased and the shares of capital stock so increased be made available for subscription on the following terms and conditions:

1. Increase in Authorised Capital Stock

- (a) The authorised capital stock of the Bank shall, on the Effective Date as defined in paragraph 4(a) of this Resolution, be increased by 900 000 callable shares, each share having a par value of EUR 10 000, which shall be subject to redemption in accordance with paragraph 3.
- (b) Of the shares authorised by this Resolution, the number of whole callable shares, rounded downwards, up to, but not in excess of, 42,857 % ⁽¹⁾ of the shares subscribed to by each member immediately prior to the Effective Date shall be made available for subscription by such members in accordance with paragraph 2 of this Resolution.
- (c) The callable shares authorised by this Resolution which shall not have been subscribed to in accordance with paragraph 2 of this Resolution shall be reserved for initial subscriptions by new members and for special increases in the subscriptions of individual members, as may be determined by the Board of Governors pursuant to paragraphs 2 and 4 of Article 5 of the Agreement Establishing the Bank.

2. Subscriptions

- (a) Each member shall be entitled to subscribe, at par, a number of whole callable shares up to, but not in excess of, 42,857 % of the number of shares owned by such member immediately prior to the Effective Date. Each such subscription shall be on the terms and conditions set forth in this Resolution.
- (b) On or before 30 April 2011 or such subsequent date not later than 31 December 2011 as the Board of Directors may determine on or before 30 April 2011, each member wishing to subscribe pursuant to this Resolution shall deposit with the Bank the following documents in a form acceptable to the Bank:
 - (i) an instrument of subscription whereby the member subscribes to the number of callable shares specified in such instrument;

⁽¹⁾ Following the increase in paid-in capital, the Bank's authorised capital stock will be EUR 21 billion. The EUR 9 billion increase is a 42,857 % increase in the authorised capital; therefore, each shareholder will be entitled to subscribe to up to 42,857 % of their current shareholding at the time the increase is approved in order to maintain the shareholding composition.

- (ii) a representation that the member has duly taken all legislative and other internal action necessary to enable it to make such subscription; and
- (iii) an undertaking that the member will furnish such information as the Bank may request concerning such action.
- (c) Each instrument of subscription shall become effective and the subscription thereunder shall be deemed to have been made on the Effective Date, or on the date on which the Bank notifies the subscribing member that the documents deposited by such member pursuant to paragraph 2(b) of this Resolution are satisfactory to the Bank, whichever is the later.
- (d) If documents satisfactory to the Bank providing for subscriptions in the aggregate amount of shares specified in paragraph 4(a) of this Resolution shall not have been deposited by the Effective Date, then the Board of Directors may, at its option, declare that the instruments of subscription already deposited by members and the subscriptions thereunder shall become effective immediately notwithstanding any other provision in this Resolution, provided that such action is considered by the Board of Directors to be in the best operational interests of the Bank, and provided further that the aggregate of instruments of subscription already deposited and expected to be deposited in the foreseeable future is, in the judgement of the Board of Directors, sufficiently close to the aggregate amount of shares specified in the said paragraph 4(a).

3. Redemption

- (a) The callable shares authorised by this Resolution shall be redeemed by, and at no cost to, the Bank after the end of the CRR4 Period, subject to and as further provided for in the following provisions of this paragraph 3.
- (b) Subject to the remaining provisions of this paragraph 3, all or some of the callable shares shall be redeemed on the day immediately following the 2016 Annual Meeting with the number of the shares to be redeemed being calculated by applying an agreed formula (the Agreed Formula) based on the unutilised callable capital, if any, at the end of the CRR4 period relative to a statutory capital utilisation threshold of 87 % at the end of the CRR4 Period. For calculation purposes, such unutilised callable capital, if any, shall be equal to an amount which is the lesser of EUR 9 000 000 000 and $((87 \% \text{ of } A) - B)$, where:
 - (i) A is the aggregate amount of the Bank's unimpaired subscribed capital, reserves and surpluses at the end of the CRR4 Period; and
 - (ii) B is the aggregate amount of the Bank's operating assets at the end of the CRR4 Period.

The number of shares, if any, to be redeemed pursuant to the Agreed Formula shall be equal to that amount divided by the par value of the shares (EUR 10 000).⁽¹⁾

- (c) Any redemption of shares made in accordance with this Resolution shall be subject to the condition that, following any redemption, all relevant provisions of the Agreement continue to be complied with (e.g. the ratios prescribed in Article 12 are met; no callable shares have been called to meet the Bank's liabilities (Article 6(4) and Article 17 of the Agreement); and no decision to terminate the operations of the Bank has been made (Article 41 and Article 42(2) of the Agreement).
- (d) In the period immediately leading up to the 2015 Annual Meeting:
 - (i) on the basis of known data in relation to 2011-14 as well as reasonable projections for 2015, the Bank's Management shall prepare an assessment of the Bank's financial position, and economic conditions expected to prevail up to the end of the CRR4 period, including in particular developments in economic output, investment, domestic banking systems and international capital markets, and shall thereafter hold appropriate consultations with the Board of Directors;
 - (ii) the President shall submit to the Board of Directors a draft report to the Board of Governors along with two draft resolutions as described below;
 - (iii) the first resolution shall identify the number of callable shares to be redeemed and be as follows: (x) if there is no unutilised callable capital applying the Agreed Formula, the resolution shall be a resolution to take note that, applying the Agreed Formula, no shares shall be redeemed; (y) if there is unutilised callable capital applying the Agreed Formula and the assessment of the Bank's financial position and the prevailing economic conditions is such that the Agreed Formula can be applied without adjustment, the resolution shall be a resolution to take note that a specified number of shares, being the maximum number of shares that may

⁽¹⁾ According to the Agreed Formula, the amount of unutilised callable capital would be zero if the Bank's operating assets are equal to or in excess of 87 % of the unimpaired subscribed capital, reserves and surpluses.

be redeemed applying the Agreed Formula, shall be redeemed; or (z) if there is unutilised callable capital applying the Agreed Formula and the assessment of the Bank's financial position and the prevailing economic conditions is such that the Agreed Formula should not be applied, the resolution shall be a resolution to redeem a number of shares, which shall, be less than the maximum number of callable shares that may be redeemed applying the Agreed Formula and may be zero;

- (iv) the second resolution shall provide for a process for the redemption of the callable shares that have not been redeemed in accordance with paragraph 3(e) or (f) after the end of the CRR4 Period;
- (v) notwithstanding any provision of the Rules of Procedure of the Board of Governors, and without prejudice to the powers of the Board of Governors pursuant to Article 24 of the Agreement, the matter concerning the redemption of the callable shares shall be included as an item in the agenda of the 2015 Annual Meeting of the Board of Governors, the report shall be submitted for consideration and the resolutions for approval by the Board of Governors.
- (e) At the 2015 Annual Meeting, the Board of Governors shall decide on the first resolution by a majority of the total voting power of the members voting, provided that if such first resolution is not approved by such majority, the number of callable shares to be redeemed, if any, shall be the maximum number of shares that may be redeemed applying the Agreed Formula, subject in all cases to the provisions of paragraph 3(f) below.
- (f) If the Bank's actual financial position and the then prevailing economic conditions at the end of CRR4 Period are materially different from those expected on the basis the projections previously provided to the Board of Directors in 2015 by the Bank's Management, a new resolution shall be submitted promptly to the Board of Governors, following a similar process, for approval by the same majority at or before the 2016 Annual Meeting.
- (g) Upon the decision to redeem a specified number of callable shares becoming operative in accordance with paragraph 3(e) or 3(f) above, all members who have subscribed to the callable shares authorised by this Resolution shall surrender to the Bank part or all of their shares pro rata to their respective holdings of such shares and such redeemed callable shares shall be cancelled automatically and as of the date of the redemption, with the authorised capital of the Bank being reduced correspondingly without the need for a further resolution of the Board of Governors.
- (h) At the 2015 Annual Meeting, the Board of Governors shall decide on the second resolution by a majority of the total voting power of the members voting.

4. Effectiveness and Other Provisions

- (a) For the purposes of this Resolution, the Effective Date shall be the date on or before 30 April 2011, or such subsequent date not later than 31 December 2011 as may be determined by the Board of Directors, on which documents satisfactory to the Bank have been deposited pursuant to paragraph 2(b) of this Resolution providing for subscriptions in an aggregate amount of at least 450 000 ⁽¹⁾ callable shares.
- (b) Subject to the provisions of this Resolution, the provisions of the Agreement shall apply *mutatis mutandis* to the callable shares authorised by, and to the subscriptions made under, this Resolution as if such shares were part of the initial capital stock of the Bank and such subscriptions and payments were initial subscriptions to and payments for such stock.

(Adopted 14 May 2010)

⁽¹⁾ Being 50 % of the number of newly authorised callable shares.