

Counter

Challenging
Balance the European
Investment
Bank

Counter Balance Briefing for MEPs, January 2010

Some Implications of the Lisbon Treaty for the European Investment Bank

1. EIB's Role in Reducing and Eliminating Poverty

In 2008 the European Court of Justice found that "...the EIB is to contribute, under the terms laid down in its Statute, to the implementation of the measures necessary to further the objectives of the Community's development cooperation policy." Under the amended Treaty, the EIB's mandate outside the EU, congruent with EU cooperation policy: **"shall have as its primary objective the reduction and, in the long term, the eradication of poverty"** along with fostering *"the sustainable economic, social and environmental development of developing countries (...)"*, encouraging the *"integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade"* and helping to *"develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development (...)"*. These are the general goals of the EU's development policy under Art.21(2)(d) to (g) of the Treaty.

Under the Lisbon Treaty, application of development goals is wider than before as a result of Art. 212 (1) applying these goals to economic, financial and technical cooperation measures with non-EU countries other than developing countries so the distinction between developing countries and others is no longer as significant as it was.

2. EIB Must Disclose More Information to the Public

Although the EIB has had its own Public Disclosure Policy it has not been subject to Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents for other than environmental information matters. The Lisbon Treaty amends Article 255 of the EC Treaty, which is the legal basis of Regulation 1049/2001. Indeed, recital 3 of the Regulation's preamble provides:

"[T]he purpose of this Regulation is to give the fullest possible effect to the right of public access to documents and to lay down the general principles and limits on such access in accordance with Article 255(2) of the EC Treaty".

Article 255(2) provides that the Council shall adopt the general principles, limits and grounds governing the right of access to documents, which the Council did in adopting Regulation 1049/2001. Article 255(1) of the EC Treaty, which provides access to documents of the European parliament, Council and Commission, has been amended by Article 16A of the Lisbon Treaty **to grant access to ‘documents of the Union institutions, bodies, offices and agencies, whatever their medium’.**

The Lisbon Treaty extends the scope of Regulation 1049/2001 to all EC institutions, agencies and bodies and thus also to the EIB. **Thus the EIB is subject to Regulation 1049/2001 in all matters.** Therefore the EIB must now ensure that its own Public Disclosure Policy complies with the Regulation. For the citizens of the EU it means that they can request more transparency from the EU’s house bank. It also means that in each case, the EIB will have to weigh the different interests at stake and demonstrate that there is an overriding public interest justifying non-disclosure.

3. EIB Decisions May Be Challenged Before the European Court of Justice

Although, the EIB had been subject to judicial appeal before the Court of Justice on access to information matters prior to the Lisbon Treaty, Art. 263 now provides the conditions under which natural and legal persons may request the annulment of an act or a decision adopted by EC institutions. The new provision allows the review of acts of bodies, offices or agencies of the Union intended to have legal effects vis-à-vis third parties. The European Investment Bank as a “body” of the EU is therefore subject to the scrutiny of the Court.

It follows that individuals and NGOs, provided they are directly and individually concerned by an act of the EIB, will be able to institute proceedings before the Court to require the annulment of such an act or the annulment of a total or partial refusal of access to information, in addition to being able to make a complaint to the EIB's internal mechanism or before the Ombudsman. This has to be linked to Regulation 1367/2006 applying the provisions of the Aarhus Convention to EU institutions and bodies, which also allows NGOs to institute proceedings against acts and omissions of EU institutions and bodies in environmental matters in accordance with the relevant provisions of the Treaty.

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