



Transparency Concerns within the European Investment Bank - EIB v. ClientEarth

The European Investment Bank (EIB), the world's largest multilateral lender and most prominent provider of climate finance, is taken to court by ClientEarth over 'green' scrutiny.

The Case

The environmental NGO **ClientEarth** applied in front of the **EU General Court** (EUGC) for annulment of the decision of the **European Investment Bank** to decline a request for internally reviewing their decision to finance a **biomass power plant** in Spain, referred to as the Curtis project [1].

The Applicants

Anna Roggenbuck (Policy officer at CEE Bankwatch Network) and Anaïs Berthier (Senior Lawyer and Head of EU Affairs at ClientEarth) represented **ClientEarth** [1]. Client Earth is an **environmental charity** using the law to create change that protects life on Earth. Its mission is to **change the system** by informing, implementing and enforcing the law, advising decision-makers on policy, and training legal and judicial professionals [2].

The Defendant

The **EIB** is a financial arm of the EU and **provides funding for projects** that help achieve EU aims, both within and outside the EU. The Bank borrows money from capital markets and lends it on favourable terms to selected projects. The Board of Directors, who approved the financing of the biomass plant, comprises one director per EU country, plus one from the European Commission. The aims of the EIB include **boosting Europe's jobs & growth potential**, supporting action to **mitigate climate change** and **promoting EU policies** outside of the EU. The borrowing and lending decisions are made based on the merits of each project and the opportunities offered by financial markets [4].

The Accusation

The EIB was considering that the Curtis project would make a high contribution to EU policy by meeting three of the policy objectives [1]:

1. Contribution to the Spanish and European **energy security, renewable energy production and environmental objectives**.
2. Contribution to the **prevention of forest fires** and the **sustainability of the forest activity** in Galicia
3. Alignment with the EIB's **priority for renewable energy loans** and combating climate change

However, ClientEarth argued against these three objectives as follows [1]:

Objective 1:

- A significant oversupply within the Spanish electricity market resulted in **little economic value** for the general electricity system.
- There is a significant risk that **not all the wood** used as fuel in the biomass generator would **meet the sustainability standards**.
- The **electrical performance** of the project was **too low** to make a real contribution toward renewable energy production.


Objective 2:

- The true impact of the biomass generator on forest activity is misunderstood and could, in practice, lead to an **increase in the risk of fires** by favoring monoculture forestry.

Objective 3:

- The **electrical performance** of the Curtis project and the associated environmental advantages associated with the project in the analysis are **overestimated**.
- Certain significant **risks** that could **affect** the project's **viability**, the **time** necessary for its implementation, or its **impact** on the environment are underestimated (such as an increase in logging in Galicia).

Timeline

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- April 12, 2018:** EIB's Board of Directors approved the financing of a biomass power generation plant in Galicia (Spain) for over €60 million.
 - August 9, 2018:** Request of ClientEarth for an internal review of the resolution under Article 10 of the Aarhus Regulation and Decision 2008/50.
 - April 12, 2018:** EIB's Board of Directors approved the financing of a biomass power generation plant in Galicia (Spain).
 - October 30, 2018:** EIB rejected the request of ClientEarth as inadmissible.
 - January 8, 2019:** ClientEarth filed a suit in the EU General Court against the EIB.
 - January 27, 2021:** EU General Court issued its decision. [1]

The Aarhus Convention

The Aarhus Convention was created by the **UN Economic Commission for Europe** in 1998 and came into force in 2001 [5]. It is the first treaty that addresses *"the basic human right to live in an environment adequate to people's health and well-being"* [6]. The former Secretary-General of the UN emphasizes the importance of the Convention by stating that it is the *"most ambitious venture in the area of 'environmental democracy' so far undertaken under the auspices of the United Nations"* [5]. The main message of this treaty is **transparency and accountability** in environmental governance. This groundbreaking work aims to achieve environmental democracy by safeguarding its three pillars. The first pillar focuses on **access to environmental information** by providing and making it accessible for the citizens by, for example, establishing nationwide electronic databases that are uncomplicated to find and obtain. The second pillar concentrates on **public participation in environmental decision-making**. This point obliges governments to allow participation in the decision-making and promote it in the preparation phase to encourage the public, where the decision could have influenced the environment. These provisions should enable constructive dialogue between the public and the government [6]. The third pillar allows **access to justice** when environmental information has not been granted, when public participation has been denied, or lastly, when environmental law, in general, has been breached [7]. Additionally, the financial costs should be reduced by governments to access justice [6].

The Decision

The **General Court annuls the decision of the EIB**, rejecting as inadmissible the request for an internal review of the resolution of the EIB's Board of Directors approving the financing of a biomass power generation plant in Galicia, Spain by applying the provisions of the **Aarhus Convention** and **Commission Decision 2008/50/EC** from 2007. These provisions set out criteria for the entitlement at the Community level of non-governmental organizations to request an internal review of administrative acts per Article 10 [1][2].

ClientEarth environmental democracy lawyer
Sebastian Bechtel:

"Today's judgment sets a major precedent. As a public institution using taxpayers' money, the EIB must be accountable and ready to review its decisions if they break its internal rules or EU law meant to protect the environment. This is a groundbreaking ruling, as for the first time an NGO manages to break EIB's legal immunity in front of courts" [8].

What's next?

The main question after presenting this case is **how to make sure the environment is considered innately when approving funding decisions**. This case is the first of its kind against the world's biggest multilateral investor and marks a new precedent for more transparent decisions on environmental funding. It has shown the importance of **transparency, openness to criticism and judicial scrutiny**. It also clarified that the EIB must follow European Union law and review its funding decisions when a lawful request is made. The EU bank just released a statement that it plans to use 50% of its loans to support climate and environmental sustainability. However, biomass is included in the EIB's list of sustainable projects for power generation, as long as the sources are sustainable. While the true impact of biomass is to be determined, attention needs to be drawn to future investments [8].

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