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**Briefing on the External Lending Mandate of the EIB**

The Commission proposal for a new European Investment Bank (EIB) mandate to lend outside the European Union contains several improvements compared to the previous version and includes various points that were raised by NGOs in the past. However, it leaves many concrete aspects to further decisions and allows a broad interpretation of important obligations.

Counter Balance is pleased to see an increased emphasis on development objectives, promotion of human rights and environmental sustainability and improved EIB due diligence and monitoring processes in this proposal. Thus while the recognition of the above is very welcome, there is no sufficient indication of how the EIB will concretely apply these obligations in practice. With that in mind, we urge the European Parliament to press further in concretising this proposal and tying EIB lending as concretely as possible to legally enforceable criteria.

We also have major concern about some of the sectors invoked to justify increased EIB lending, notably energy, climate change and global loans, and ask the EP to secure major changes in the institutional culture and practice of the EIB before empowering it to extend its lending capacities. Indeed, we suggest that the scope and extent of lending operations outside the EU with the Community guarantee be progressively reduced and become more selective according to few and clear priorities, until such time as the EIB can demonstrate consistent fulfilment of its development obligations. Therefore, we further urge the Parliament to step up its position in ensuring the EIB delivers on its responsibilities.

1. **Ensuring the coherence of the ELM with EU development objectives**

The external lending mandate of the bank should focus on ensuring the achievement of the objectives set out in the Article 21 of the Lisbon treaty, support the cross-cutting EU development and human rights objectives and ensure positive development impacts on the ground. The European Parliament has been already quite active in trying to make the EIB lending outside the Union fully consistent with EU Development assistance framework and based on the implementation of key aid effectiveness priorities, including the recipient country ownership, alignment to recipient country developing strategies, as well as transparency requirements.

However the main concern regarding EIB lending outside of the EU remains the operationalization on the ground of the provisions set out in the ELM. In this regard, building a juridical mechanism of assessment of compliance with Article 21 of the TEU would be of prime importance to move the EIB to create and implement effective due diligence procedures in the screening of operations supported by the Bank with regard to their potential impact on human rights, poverty eradication and environment – as well as to improve the liability of EIB management concerning compliance with EU law. Following the reporting from the EIB, the Commission shall produce an annual review for the Parliament based on this information, including an evaluation regarding the EIB’s compliance with EU objectives and obligations.

In order to apply the above mentioned principles, the EIB should ensure a greater alignment with host countries national development plans and EC country strategies. The EIB should follow the EC strategic programming documents objectives, priorities and expected results while planning investments in specific countries. This would be done through developing Regional Operational Technical Guidelines, which aim
to strengthen the consistency of EIB external actions with the external policy objectives of the EU, and should therefore be an essential element of the new mandate. In addition, it is important to set the procedure and timeframe for regular updates and review of those guidelines on a bi-annual basis, and in line with EU priorities (as defined by the EP and EEAS) within the regions. Civil society organizations and local authorities in the beneficiary countries should also regularly be involved in a consultation process to provide feedback on priorities definitions. This is even more crucial as in neighborhood region the principle of “More for More” and subsequently the “Less for less” principle will be introduced. Therefore through the regional guidelines the EIB should be able to follow all policy changes identified by the Union and engage the countries towards more integration.

On operational level and in order to achieve the EU development cooperation objectives, it is crucial that development outcomes are the overriding criteria for project selection and evaluation, including by developing clear outcome indicators and a genuine pro-poor approach, and complying with highly responsible investment standards. The mandate should require the reinforcement of the Result measurement framework of the EIB – its tool to evaluate the development impact of its operations.

Another area of concern is the use of innovative financial instruments, and especially the blending of loans and grants. At the time being, such a blending would happen without clear development criteria detailing positive development outcomes expected. Indeed, if the EU aid is blended with loans and other forms of financial investments, it should be ensured that the EIB’s operation also ensure the same level of transparency and accountability as official aid, while not adding further debt burden to host countries. So far the EIB blending operation has not sufficiently demonstrated the development impact of blended finance. On the contrary, blending tends to rather support development of large scale investment projects with great potential to undermine the socio-ecological rights of affected people, while being questionable from a development and financial additionality point of view. Therefore, the accountability and transparency of blending mechanisms should be properly addressed in the new mandate. Meanwhile, there should be a clear demonstration of the added value of the grant element, and the EIB should be required to report on the additionality of this blending.

Finally, Counter Balance advocates for a modification of the geographical scope of the EIB mandate. In its impact assessment of the current ELM, the EC states that one objective of the future ELM for 2014-2020 is to ensure that the geographical scope of the mandate focuses “on less creditworthy beneficiaries where the use of the guarantee would display the highest added value”. Nevertheless, this objective is not operationalized in the EC proposal, since the list of eligible countries is still wide open to all middle-income countries which are not needing the most EIB loans. Therefore, we see as most important to focus on Least Developed Countries (LDCs) and the EU neighbourhood. Indeed, so far, when lending in Asia and Latin America, the EIB has mainly financed projects in Middle-income countries: Brazil, Mexico and Panama in Latin America, India and China and Asia. Re-focusing on LDCs, while diminishing the number of countries eligible, would help the EIB focusing on few regions, increasing its expertise and mobilizing resources around few key beneficiary countries priorities, while allocating its staff to countries where most help is needed.

2. Reinforcing the sustainability of EIB operations

We are welcoming EIB’s portfolio shift in favour of renewable energy sources in recent years and its recent decision to significantly restrict its lending to the coal sector. However, serious concerns with regards to EIB’s overall energy portfolio remain: the potential of energy efficiency remains largely unutilised, lending to fossil fuels still keeps increasing as well and regional imbalances in renewable energy lending remain huge.

The Bank, which was required by the current mandate to publish by the end of 2012 a “strategy on how to gradually and steadily increase the percentage of projects promoting the reduction of CO2 emissions and phase out financing projects detrimental to the achievement of EU’s climate objectives”, partly neglected
this requirement from EU policy-makers. Indeed, the document produced in December 2012 was not a strategy per se and largely ignored the calls from the European Parliament to phase out lending to fossil fuel lending, therefore only focusing on the “positive agenda” of the Bank’s climate portfolio. There was no public consultation on such key strategy what clearly violates the Aarhus Convention which the EU is a party to. In the past, the Bank and civil society had arguments about which projects are helping to mitigate climate change, with civil society not agreeing on the banks criteria. This should be addressed through a broader discussion before the new mandate gets into operation.

However, the introduction of a requirement to allow at least 25% of total EIB financing operations under the ELM to climate change mitigation and adaptation is hardly to be seen as a step forward for the EIB, since the Bank already reports using more than 20% of the EU guarantee under climate action. In addition, the main issue in this regard lies in the eligibility criteria used by the Bank for a project to qualify under climate action. The eligibility framework for Climate Action needs to be reassessed: we think the current eligibility criteria are too vague, and the European Parliament should take responsibility and not only leave the EIB developing such crucial selection mechanism.

Overall, the new mandate is an opportunity to ensure that high environmental and social standards are applied in all EIB operations, focusing more on quality than quantity and volumes of EIB operations. Strengthening public participation (of beneficiary countries, affected communities and civil society) and information disclosure requirements will be key in this regard.

3. Strengthening due diligence and transparency especially towards financial intermediaries

In order to reach small and medium sized enterprises the EIB has increasingly engaged in intermediated lending. This mechanism which requires financial intermediaries, mostly commercial banks, to on lend large so called ‘global loans’ in small portions to the ultimate beneficiaries comes with a number of challenges which may undermine a positive development impact and to present have not been addressed properly by the Bank.

A main critique echoed on many occasions by civil society, the European parliament and academics is the lack of transparency inherent to this type of lending. Information about the ultimate beneficiaries is not made public due to commercial confidentiality clauses in the contract with the financial intermediaries. This makes it impossible to assess the economic and social impact of the loans and prevents a targeted approach to certain sectors or types of SMEs. Indeed, investments need to be subject to detailed public review. They must first of all serve local needs and aspirations. Foreign support should support the scaling up of successful local initiatives and their replication elsewhere.

Additionally, by outsourcing part of its lending, the EIB outsources part of its responsibilities as well. Therefore the reliance on third parties for the carrying out of due diligence is a dangerous trend which can seriously undermine the quality and the positive outcome of the lending. The EIB should at all time remain responsible and provide more clarity on how these procedures are carried out in order to improve transparency and avoid misuse of funds.

Another problem lays in the nature of the financial intermediaries the EIB works with. They are mostly western commercial banks with little or no interest in development and often operational in tax havens. Since these intermediaries swallow part of the loan related benefits the EIB actively strengthens a type of financial sector which is not adapted to the needs of local economies. Counter Balance is especially concerned about the use of a specific type of financial intermediary, namely private equity funds. The EIB should not use private equity funds as financial intermediaries given their focus on high returns contradicting a pro poor approach.

Therefore, the ELM should require granting Community guarantee only for financial intermediaries not operating in offshore financial centres, which have substantial local ownership and are equipped to implement a pro-development approach supporting the specificity of SMEs in each country. We advise
the bank to exclusively work with locally embedded intermediaries that are focused on providing financial services to the poor in a responsible and transparent manner or supporting sustainable development more widely. The EIB shall not cooperate with financial intermediaries with negative track record in terms of transparency, fraud, corruption and environmental and social impacts. The loan to the Brazilian national development bank BNDES illustrates the lack of consideration given to the track record of the financial intermediaries the EIB is working with. Hence, a **stringent list of criteria** for selection of financial intermediaries shall be established by the EIB jointly with the Commission and be publicly available. As a major and opaque element of its lending, EIB’s portfolio of financial intermediaries needs to be thoroughly assessed in the bank’s annual reports to the Parliament and the Council.

### 4. Giving priority to the fight against tax evasion and stringent anti-fraud measures

A crucial role for the European Parliament is to tie the bank, via its external mandate, to stringent criteria regarding **tax heavens** and **anti-fraud** measures, at a key moment when the EIB is reviewing its anti-fraud policy. Asking for a thorough revision of the tax policy of the Bank would also be a major step forward.

Counter Balance proposes that, in order to be eligible for EIB financing and investment, all beneficiaries, whether corporations or financial intermediaries, that are incorporated in different jurisdictions have to disclose country level information about their sales, assets, employees, profits and tax payments in each country in which they operate in their audited annual reports. Beneficiaries must make contracts with host governments public and in particular disclose their fiscal regime in each country in which they operate. Such measure would be coherent with the most recent developments at EU level and the recent steps towards introducing such **country-by-country reporting** requirements. The European Parliament insisted earlier in 2013 that draft bank capital rules be expanded to include transparency on taxes, profits and subsidies. The EU has also agreed on similar rules for gas, oil and mining companies.

In addition, in its financial operations, the EIB must ensure that all companies and financial institutions involved in its transactions disclose information regarding **beneficial ownership** of any legal structure directly or indirectly related to the company, including trusts, foundations and bank accounts. This would be a key step forward for the Bank in order to ensure a high level of transparency in its operation, especially when operating through financial intermediaries.

Regarding **anti-fraud measures**, the mandate given to the Bank should ensure that the **EIB stops loan disbursements to projects under ongoing national or European corruption investigations**, such as in the case of Sostanj where the EIB disbursed the final tranche of its loan despite an ongoing OLAF investigation taking place. On this question, the EIB answer remained vague, and it is still unclear how EIB administrative Finally, where corruption is proven, the **EIB shall assist asset recovery efforts** by disclosing to the relevant authorities any assets held by the EIB that relate to such corruption or that derive from it.

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Counter Balance coalition includes members from: Central and Eastern Europe: CEE Bankwatch Network; France: les Amis de la Terre; Germany: Urgewald; Italy: Re: Common; Netherlands: BothEnds; United Kingdom: Bretton Woods Project.

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