

IN THE MATTER OF THE EUROPEAN INVESTMENT BANK

AND IN THE MATTER OF THE COMMUNITY GUARANTEE DECISION

09.02.09 **PROPOSAL for amendments to** the proposal for a decision of the European Parliament and of the Council granting a Community guarantee to the European Investment Bank against losses under loans and loan guarantees for projects outside the Community (COM(2008)0910 – C6-0025/2009 – 2008/0268(COD)) **and the** Committee on Budgets' draft Report and Draft European Parliament Legislative Resolution of 27 January 2009; and in order to comply with the applicable Community law as determined by the European Court of Justice in Case C-155/07 *Parliament v Council*, judgment of 6 November 2008, and in Title XX of the EC Treaty.

Proposer:

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EXPLANATORY STATEMENT

Introduction

This is a proposal by Counter Balance for amendments to the Decision dealing with the renewal of the Community budget guarantee to the EIB against losses under loans in third countries. Since the Court of Justice annulled the existing Decision 2006/1016/EC, and since the effects of this Decision are maintained only until 6 November 2009, the Commission has to come up with a new proposal in order for the Community guarantee to continue to be applicable.

The Commission came up with a draft proposal on 14 January 2009 (COM(2008)0910).

The Parliament's Committee on Budgets produced a draft Report proposing certain amendments, all of which Counter Balance supports and some of which are expressly adopted.

The purpose of this proposal is to ensure that Community policy in the field of development cooperation is adequately reflected in the Decision, as required by the additional legal basis pursuant to Article 179 EC and the European Court of Justice's judgment in Case C-155/07 *Parliament v Council*, of 6 November 2008.

Background of the Court Judgment

On 6 November 2008, the Court ruled in Case C-155/07 that:

- the existing Decision 2006/1016/EC is annulled
- its effects are maintained for a 12 months period
- the new decision should be adopted under a dual legal basis, namely Articles 179 and 181a, which includes the co-decision procedure.

However, the Court's ruling **was not purely technical**. The additional legal basis of Article 179 EC has real legal consequences for the new proposal and the conditions for the Community budget guarantee to the EIB.¹

In particular, Article 179 EC introduces the Community policy in the sphere of development cooperation under Title XX of the Treaty as an integral part of the Community budget guarantee to the EIB and therefore of any new Decision, at least as far as developing countries are concerned. Those criteria are contained in Article 177 EC as follows:

- the sustainable economic and social development of the developing countries, and more particularly the most disadvantaged among them
- the smooth and gradual integration of the developing countries into the world economy
- the campaign against poverty in the developing countries

¹ For a fuller description of the meaning and effect of the Court's judgment on the Decision, see the submissions made on behalf of the Bretton Woods Project to the Steering Committee, sitting in Brussels on 28 January 2009, a copy of which is at Annex 2 to this Proposal (talk delivered in the particular context of the Steering Committee's mandate).

- the general objective of developing and consolidating democracy and the rule of law
- the general objective of respecting human rights and fundamental freedoms
- compliance with and taking account of objectives approved by the Community in the context of the United Nations and other competent international organisations

This was held expressly by the Court, at paragraph 66 of its judgment in Case C-155/07, where it stated:

... the financial cooperation which the contested decision implements through the Community guarantee granted to the EIB also pursues, in so far as developing countries are concerned, the socio-economic objectives referred to in Article 177 EC, particularly the sustainable economic and social development of such countries.

That the European Investment Bank itself is to be bound by these Treaty obligations was further made clear by the Court at paragraph 40 of its judgment:

Article 179 EC, read in conjunction with Article 177 EC, lays down 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.

The new proposal

In comparison to annulled Decision 2006/1016/EC, the Commission's new proposal for a Decision differs on only a very limited number of points, essentially the purely technical reference to a dual legal basis under Articles 179 and 181a EC. The substance of the Decision is entirely unchanged.

One vital element is wholly absent from the Commission proposal.

This absent element is the legal necessity of introducing Community policy in the sphere of development cooperation under Title XX of the Treaty as an integral part of the new Decision.

Without this element the new Decision will not properly reflect its own legal basis, i.e. Article 179, and ultimately could be liable to further legal challenge before the European Court of Justice.

It is noteworthy in this context that in section 2 of the Commission's Explanatory Memorandum to its Proposal (COM(2008) 910 final – 2008/0268 (COD)), pp.4-5) there is no reference to any expertise used other than "financial and economic expertise" and no party has been consulted other than the EIB itself. This cannot be in conformity with the legal criteria of Title XX and the new additional legal basis of Article 179 EC.

Similarly, it is axiomatic that a new legal basis (*in casu* Article 179) cannot be added without some effect on the scope of the Decision. It follows that it cannot be right for the Commission merely to acknowledge the *technical* aspects of Article 179 (i.e. co-decision with the Parliament) but ignore the *substantive* aspects of Article 179 (being the Community policy in the sphere of development cooperation under Title XX of the Treaty).

The draft report of the Parliament's Budget Committee

The Parliamentary committee's draft report has gone some way to recognising and addressing this flaw in the Commission proposal and has added:

- A reference to the European Instrument for Democracy and Human Rights (EIDHR); which is endorsed and supported by Counter Balance.
- A reference in the recitals to the general objective of promoting and consolidating democracy and the rule of law, human rights and fundamental freedoms, and to the observance of international environmental agreements to which the Community or its Member States are parties; which is endorsed and supported by Counter Balance.
- A "fast-track" procedure and transitional aspects, which are supported by Counter Balance, albeit that they do not form a part of this proposal.

The Counter Balance proposal

The proposed amendments, additional to those in the draft Report of the Committee on Budgets of the European Parliament, are intended to reflect comprehensively the substantive legal obligations under the dual legal bases of the new Decision and to give effect to the ruling of the European Court of Justice in Case C-155/07.

In particular, for the purposes of the principles of transparency and effectiveness, it is important that the proper legal basis and obligations are evident on the face of the Decision and in its express wording.

PROPOSED AMENDMENTS

Amendments to the text

Proposed amended text is highlighted in ***bold italics***. Amendments that the draft Report of the Parliament's Committee on Budgets has already proposed, and which are supported, are highlighted in **bold**. There are no deletions proposed, only additions.

Amendment 1

Proposal for a decision

Recital 6

(6) The Community's external relations policies have been revised and broadened in recent years. This has notably been the case for the Pre-Accession Strategy, for the European Neighbourhood Policy, for the renewed partnerships with Latin America and South-East Asia and for the EU's Strategic Partnerships with Russia, Central Asia, China and India. ***This is further the case in relation to the Community's development policies, which have now been extended to include all developing countries. These development policies are one of the pillars of the Community's external relations, affording a solution tailored to the needs of developing countries.***²

Amendment 2

Proposal for a decision

Recital 7

(7) From 2007, the Community's external relations have also been supported by the new financial instruments, i.e. the IPA, the ENPI, the DCI, **the EIDHR**³ and by the Instrument for Stability.

² As per ECJ judgment; wording taken from: <http://europa.eu/scadplus/leg/en/s05030.htm>

³ Proposed Parliament amendment (draft Report)

Amendment 3

Proposal for a decision

Recital 8

(8) EIB Financing Operations should be consistent with and support the Community's external policies including specific regional objectives **and should contribute to the general objective of promoting and consolidating democracy and the rule of law, human rights and fundamental freedoms, and to the observance of international environmental agreements to which the Community or its Member States are parties.**⁴ *In relation to developing countries in particular, EIB Financing Operations shall foster sustainable economic and social development of these countries, more particularly in the most disadvantaged amongst them; their smooth and gradual integration into the world economy; the campaign against poverty; the general objective of developing and consolidating democracy and the rule of law; the general objective of respecting human rights and fundamental freedoms, as well as compliance with objectives approved by the Community in the context of the United Nations and other competent international organisations.*⁵ By ensuring overall coherence with Community actions, EIB financing should be complementary to corresponding Community assistance policies, programs and instruments in the different regions. Moreover, the protection of the environment and energy security of the Member States should form part of the EIB's financing objectives in all eligible regions. EIB Financing Operations should take place in countries complying with appropriate conditionality consistent with Community high level agreements on political and macro-economic aspects.

Amendment 4

Proposal for a decision

Recital 12

(12) EIB financing in the Asian and Latin American countries will be progressively aligned with the EU cooperation strategy in those regions and be complementary to instruments financed by Community budgetary resources. The EIB should endeavour to progressively expand its activities across a larger number of countries in those regions, including in the less prosperous countries. In support of Community objectives, EIB financing in the Asian and Latin American countries should focus on environmental sustainability (including climate change mitigation) and energy security projects, *the goals of*

⁴ see footnote 3 above

⁵ Taken from Article 177 EC.

*Community policy in the sphere of development cooperation*⁶ as well as the continued support of EU presence in Asia and Latin America through Foreign Direct Investment, and the transfer of technology and know how. Taking into account cost-efficiency, the EIB should be able to work also directly with local companies, in particular in the field of environmental sustainability and energy security. The mid-term review will re-examine the objectives of the EIB financing in Asia and Latin America.

Amendment 5

Proposal for a decision

Recital 13

(13) In Central Asia, the EIB should focus on major energy supply and energy transport projects which also serve Community energy interests and are consistent with and support the Community policy objectives of diversification of energy sources and the Kyoto requirements, *the goals of Community policy in the sphere of development cooperation*⁷ and of enhancement of environmental protection. EIB financing in Central Asia should be carried out in close cooperation with the EBRD, in particular according to the terms set out in a tripartite Memorandum of Understanding between the Commission, the EIB and the EBRD.

Amendment 6

Proposal for a decision

Recital 14

(14) To complement the EIB activities under the Cotonou Agreement for the ACP countries, in South Africa the EIB should focus on infrastructure projects of public interest (including municipal infrastructure, power and water supply) and private sector support, including SMEs, *as well as the goals of Community policy in the sphere of development cooperation*.⁸ The implementation of the provisions on economic cooperation under the EU-South Africa Trade and Development Cooperation Agreement will further promote EIB activities in this region.

Amendment 7

Proposal for a decision

Recital 15

(15) With a view to enhancing the coherence of overall Community support in the regions

⁶ As per ECJ judgment; text from Art. 177 EC.

⁷ See footnote 6 above

⁸ See footnote 6 above

concerned, opportunities should be sought to combine EIB financing with Community budgetary resources as appropriate, in the form of grant support, risk capital and interest rate subsidies, alongside technical assistance for project preparation, implementation or enhancement of the legal and regulatory framework *and project standards*, through the IPA, the ENPI, the Instrument for Stability, **the EIDHR**,⁹ *the EIR*,¹⁰ *the WCD*¹¹ and, for South Africa, the DCI.

Amendment 8

Proposal for a decision

Article 3

Article 3

Consistency with policies of the Community

1. The consistency of EIB external actions with the external policy objectives of the Community *including the Community policy in the sphere of development cooperation*¹² shall be strengthened with a view to maximising synergies of EIB financing and budgetary resources of the European Union, notably through regular and systematic dialogue and early consultation on:

- (a) strategic documents prepared by the Commission, such as country and regional strategy papers, action plans and pre-accession documents;
- (b) the EIB's strategic planning documents and project pipelines;
- (c) other policy and operational aspects.

2. The cooperation shall be carried out on a regionally differentiated basis, taking into consideration the EIB's role as well as the policies of the Community in each region. *The EIB is to contribute, under the terms laid down in its Statute, to the implementation of the*

⁹ See footnote 3 above

¹⁰ The Extractive Industries Review, see: <http://www.ifc.org/eir> (an objective approved by a "competent international organisation" within the meaning of Article 177(3) EC)

¹¹ The World Commission on Dams, see: <http://www.dams.org/> (an objective approved by a "competent international organisation" within the meaning of Article 177(3) EC)

¹² See footnote 6 above

*measures necessary to further the objectives of the Community's development cooperation policy.*¹³

3. An EIB Financing Operation will not be included under the cover of the Community guarantee in case the Commission delivers a negative opinion on such operation within the framework of the procedure provided for in Article 21 of the Statutes of the EIB.

4. The consistency of EIB Financing Operations with the external policy objectives of the Community *including the Community policy in the sphere of development cooperation*¹⁴ shall be monitored in accordance with Article 6.

Amendment 9

Proposal for a decision

Article 6

Article 6

Reporting and accounting

1. The Commission shall report annually to the European Parliament and the Council on the EIB Financing Operations carried out under this Decision. The report shall include an assessment of impact and effectiveness of EIB Financing Operations at project, sector, country and regional level as well as the contribution of the EIB Financing Operations to the fulfilment of the external policy objectives of the Community, *including the Community policy in the sphere of development cooperation*¹⁵, taking into account the operational objectives of the EIB. It shall also include an assessment of the extent of cooperation between the EIB and the Commission and between the EIB and other IFIs and bilateral donors.

2. For the purposes of paragraph 1, the EIB shall provide the Commission with yearly reports of EIB Financing Operations carried out under this Decision and of the fulfilment of the external policy objectives of the Community, *including the Community policy in the sphere of development cooperation*¹⁶, including cooperation with other IFIs.

3. The EIB shall provide the Commission with statistical, financial and accounting data on each of the EIB Financing Operations as necessary to fulfil its reporting duties or requests by the European Court of Auditors as well as with an auditor's certificate on the outstanding amounts of the EIB Financing Operations.

¹³ Wording taken from ECJ judgment, Case C-155/07, para. 40.

¹⁴ See footnote 6 above

¹⁵ See footnote 6 above

¹⁶ See footnote 6 above

4. For the purposes of the Commission's accounting and reporting of the risks covered by the Comprehensive Guarantee, the EIB shall provide the Commission with the EIB's risk assessment and grading information concerning EIB Financing Operations with borrowers or guaranteed obligors other than States.

5. The EIB shall provide the information referred to in paragraphs 2, 3 and 4 at its own expense.

Amendment 10

Proposal for a decision

Annex II (under heading "The framework of the evaluation", add to indent "b." as follows:)

The framework of the evaluation

It will include:

- a. an evaluation of the EIB's external financing activities. Parts of the evaluation will be conducted in cooperation with the EIB's and the Commission's evaluation departments;
- b. an assessment of the wider impact of the EIB's external lending on interaction with other IFIs and other sources of finance, *and of the wider impact of the EIB's external lending on the socio-economic objectives referred to in Article 177 EC in so far as developing countries are concerned.*¹⁷

Amendment 11

Proposal for a decision

Annex II (from heading "The scope of the evaluation")

The scope of the evaluation

The evaluation will cover the previous mandates (2000-2006) and the first years of the 2007-2013 mandate, up to the end of 2009. It will examine project financing volumes and disbursements by country as well as technical assistance and risk capital operations. Considering the effects at project, sector, regional and country level, the evaluation will base its conclusions on:

- a. the in-depth evaluation of the relevance, performance (effectiveness, efficiency and sustainability) of EIB operations against their specific regional objectives as originally set within the relevant Community external policies, *including the Community policy in the sphere of development cooperation,*¹⁸ as well as of their value-added (to be conducted in association with the EIB's evaluation unit and Commission services);
- b. the assessment of consistency with the relevant Community external policies *as*

¹⁷ Wording taken from ECJ judgment, Case C-155/07, para. 66.

¹⁸ See footnote 6 above

defined above and strategies and of the additionality and value-added of EIB operations in the first years of the 2007-2013 mandate in the framework of the specific regional objectives in the 2007-2013 mandate and of the corresponding performance indicators to be set by the EIB (to be conducted in association with the EIB's evaluation unit and Commission services).

In these assessments, value-added of EIB operations will be measured against three elements: support of Community policy objectives (*including the Community policy in the sphere of development cooperation*)¹⁹, the quality of the projects themselves and alternative sources of financing.

- a.²⁰ analysis of the financial needs of the beneficiaries, their absorption capacity and the availability of other sources of private or public financing for the relevant investments;
- b. the assessment of the cooperation and coherence of actions between EIB and the Commission;
- c. the assessment of the cooperation and synergies between the EIB and international and bilateral finance institutions and agencies.

¹⁹ See footnote 6 above

²⁰ It is pointed out that (independently of any policy arguments advanced in this paper) the context of the final indents, albeit identical to the original Decision, is somewhat uncertain and might benefit from redrafting.

Annex 1

Membership of Counter Balance

Counter Balance is a European-wide coalition of development and environmental non-governmental organisations, formed specifically to challenge the European Investment Bank. The groups involved have extensive experience working on development finance and the international financial institutions (IFIs) as well as campaigning to prevent negative impacts resulting from major infrastructure projects.

Counter Balance's mission is to make the EIB an open and progressive institution delivering on EU development goals and promoting sustainable development to empower people affected by its work.

Counter Balance includes as members:

Central and Eastern Europe:	CEE Bankwatch Network
France:	les Amis de la Terre
Germany:	urgewald and WEED
Italy:	Campagna per la Riforma della Banca Mondiale
Netherlands:	BothEnds
United Kingdom:	Bretton Woods Project

Annex 2

**The Bretton Woods Project's Submissions
to the Steering Committee established under Article 9 of Decision 2006/1016/EC
meeting at Brussels, 28 January 2009**

Brussels, 28 January 2009

**Mid-term review of EIB's 2007-2013 external mandate
Fact Finding Meeting of the Steering Committee**

European Investment Bank, Brussels
227, rue de la Loi, B-1040 Brussels

Session with civil society organisations, 11.00-12.45

**SUBMISSIONS ON BEHALF OF THE BRETTON WOODS PROJECT, UK
by Philip Moser, Barrister**

**“THE STEERING COMMITTEE’S MANDATE:
HUMAN RIGHTS AND EU DEVELOPMENT POLICY AS EIB OBLIGATIONS”**

Speaking Note

Introduction

1. These submissions are made on behalf of the Bretton Woods Project. My theme is the mandate of this Steering Committee from the perspective of EU law: the criteria this committee must apply in making its evaluation and reaching its conclusions for the purposes of the Mid-Term Report. Although this may seem somewhat presumptuous, I make these submissions with respect, and because it is sometimes useful to recall the underlying legal and jurisdictional basis of a wide-ranging enquiry such as the present one. I also do so, on behalf of all the NGOs here today, in order to put down a ‘marker’ as to what we say the obligations of this Committee are. We seek to be helpful, by setting this out at the very outset of this Committee’s work, rather than coming after the event and submitting a complaint about the finished report, based on an insufficiently wide review.
2. This Committee and its remit are created and defined by Article 9 and Annex II of Council Decision 2006/1016/EC of 19 December 2006 (“the Decision”).
3. In turn, the Treaty basis for the Decision is Article 181a EC.
4. I will shortly refer, first, to the policy objectives enshrined in Art. 181a, which inform and underlie the task of this Committee.
5. The second stage of my submissions however, and the real theme of this short talk, is the Committee’s further obligation, namely to have regard also to the EU’s Development Policy. The EIB’s Development Policy obligations and this Committee’s consequent obligations are established by the European Court of Justice (ECJ)’s recent judgment in Case C-155/07 *Parliament v Council* of 6 November 2008.

Democracy, rule of law, human rights, fundamental freedoms

6. The first line of the Decision refers to its current legal basis: Art. 181a EC, which is the only Article in Title XXI of the EC Treaty, being the Title that deals with “ECONOMIC, FINANCIAL AND TECHNICAL COOPERATION WITH THIRD COUNTRIES”, and which reads in relevant part:

Article 181a

*1. Without prejudice to the other provisions of this Treaty, and in particular those of Title XX, the Community shall carry out, within its spheres of competence, economic, financial and technical cooperation measures with third countries. Such measures shall be complementary to those carried out by the Member States and consistent with the development policy of the Community. **Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to the objective of respecting human rights and fundamental freedoms.** (emphasis added)*

7. Those, then, are the policy objectives the EIB is obliged to uphold when acting under the Community Guarantee set up by the Decision.
8. Coming next to the remit of this Committee, it is in Annex II of the Decision, and this Committee will be very familiar with it. It includes “*an evaluation of the EIB’s financing activities*”, the scope of which embraces all “*EIB operations*”, “*as originally set within the relevant EU external policies*”. Additionally, the “*value-added*” nature of the same to be measured against (*inter alia*) “*support of EU policy objectives*”.
9. It is clear from the above that these “*relevant EU external policies*” must already embrace “*the general objective of developing and consolidating democracy and the rule of law, and ... the objective of respecting human rights and fundamental freedoms*”, which are policies expressly contained in the legal basis for the Decision that has created the EIB Guarantee (and this Committee).
10. The same applies *a fortiori* in relation to the more general “*EU policy objectives*” against which “*value added*” aspects are to be assessed by this Committee.
11. Thus, even on the basis of the Decision as currently drafted, this Committee must have regard to:

- (1) developing and consolidating democracy and the rule of law, and
- (2) respecting human rights and fundamental freedoms

in carrying out the assessment of the EIB’s actions for the Mid-Term Review.

Development Policy

12. However, there are further relevant EU external policies and EU policy objectives that the EIB, and therefore this Committee, is bound by under the Community Guarantee. These are the Development Policies of the EU.

13. As all concerned will be aware, the Decision (including the sections that set up this Committee) was annulled by the ECJ in Case C-155/07 *Parliament v Council*. The effects of the Decision (including the continued existence of this Committee) have however been extended until the 8 November 2009, at the latest. By that time, a new decision must be taken, or the Decision, the Guarantee and the Steering Committee will all cease to exist. In the meantime, the Decision (and this Committee) exists in a form of “suspended animation”.
14. The purely “technical” aspects of Case C-155/07 were (a) a dispute over whether the Decision was to be taken purely as an “Economic, Financial & Technical” measure under Title XXI (Art. 181a) of the Treaty, or also as a “Development Measure” under Title XX (Arts. 177 to 179) of the Treaty; and, as a consequence, (b) whether it could be a Council measure alone, or whether it had to be passed by co-decision with the Parliament.
15. The ECJ held that the Community Guarantee is also a development measure (and that where there is a development measure, this will de facto take precedence over a purely economic measure, see: judgment, para. 47). Accordingly, the Decision should have been made with both Article 181a and Article 179 EC as its legal bases. Thus, the Decision will have to be re-made, this time by co-decision with the Parliament and on the correct, dual legal bases.
16. Those are the “technical” aspects. The practical consequence however is considerable. Once the Decision is redrafted, it is inevitable that the Development criteria of Title XX of the Treaty will form a part of the Decision, and thus part of the criteria the EIB (and this Committee) is legally obliged to have regard to.
17. The relevant Development criteria in Title XX (and to which Art. 179 refers) are as follows:

Article 177

1. Community policy in the sphere of development cooperation, which shall be complementary to the policies pursued by the Member States, shall foster:

— the sustainable economic and social development of the developing countries, and more particularly the most disadvantaged among them,

— the smooth and gradual integration of the developing countries into the world economy,

— the campaign against poverty in the developing countries.

2. Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms.

3. The Community and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations.

Article 178

The Community shall take account of the objectives referred to in Article 177 in the policies that it implements which are likely to affect developing countries.

18. However, not only will these criteria become relevant in the new decision, there is also a more immediate effect, which binds the EIB and this Committee now and whether in relation to past, present or future funding under Decision 2006/1016, even as stands, and regardless of whether or not it is eventually replaced.
19. This is because, according to the ECJ, the EIB by acting under the Decision is already pursuing Development Policies, insofar as developing countries are affected. This is clear from paragraph 66 of the judgment of the ECJ in case C-155/07, where the Court concludes that:

... the financial cooperation which the contested decision implements through the Community guarantee granted to the EIB also pursues, in so far as developing countries are concerned, the socio-economic objectives referred to in Article 177 EC, particularly the sustainable economic and social development of such countries. (emphasis added)

20. It follows from the above in our submission that, even as it stands, the “*relevant EU external policies*” (and the “*EU policy objectives*” for added value assessment) that inform this Committee’s evaluation under Annex II of the Decision must include the EU Development Policy in Articles 177 and 178 EC.
21. Thus, and again even on the basis of the Decision as currently drafted, in carrying out the assessment of the EIB’s actions for the Mid-Term Review this Committee must have regard to:

- (1) sustainable economic and social development,
- (2) the smooth and gradual integration of the developing countries into the world economy,
- (3) the campaign against poverty in the developing countries, and
- (4) the objectives of the UN and of other competent international organisations,

where these affect developing countries. These criteria are cumulative and they are in addition to the criteria of Article 177(2), of democracy, rule of law, human rights and fundamental freedoms, which mirror the policy objectives already enshrined in Article 181a, and which I have already set out to above.

22. I reiterate that these criteria are, by the ruling of the ECJ, already imported into the Community Guarantee Decision and therefore into the remit of this Committee.
23. The point is of particularly wide application because there is no fixed definition of “developing country” for this purpose. The ECJ says that it will decide on a case-by-case basis, but reference is made to the list of Official Development Assistance recipients adopted by the Development Assistance Committee of the OECD. That includes all of Africa and South America; the Caribbean apart from the Bahamas, Bermuda and Cayman Islands; the largest part of Asia; most of the Pacific except Australia and New Zealand; plus Albania, Armenia, Azerbaijan, Georgia, Gibraltar, Malta, Moldova, Turkey and the states of former Yugoslavia in Europe. This represents most of the world where the EIB is active outside the immediate European area. There will be few non-EU EIB decisions that do not impact on one or more of

these regions, and it is difficult (perhaps impossible) to imagine an EIB project of any significance in those regions that will not have some development effect.

Conclusion

24. The EIB's development obligations are recognised unambiguously by the ECJ in Case C-155/07; perhaps best summed up by the Court itself at para. 40 of its judgment:

Article 179 EC, read in conjunction with Article 177 EC, lays down 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.

25. The core of that sentence bears repetition: **the EIB is to contribute to the implementation of the measures necessary to further the objectives of the Community's development cooperation policy.** There can be no clearer statement that the EIB is bound into the criteria of Title XX of the Treaty. Indeed, by virtue of its place in the legislative scheme of Art. 179, the EIB may now be seen as one of the principal tools of EU development co-operation. The work of this Committee will therefore also have to have regard to the EU's Development Policy.
26. These submissions are intended to "set the scene" for the NGOs speaking after me. When they speak of "sustainable development" or "fighting poverty" or "human rights", these are not "soft" principles; they are the hard, Treaty basis for the whole Community Guarantee Decision itself, pursuant to Articles 181a and 177-179 EC. They are thus also the legal basis for the legislation that created this Committee and (importantly) constitute the relevant EU policies that this Committee is obliged by its mandate to apply. Therefore, when this Committee considers the development issues that are about to be raised, or the objectives of a competent international organisation (such as Amnesty), that is not a mere exercise of discretion; it is a Treaty-derived obligation.

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