

The League of Gentlemen

An investigative report on the legal and operational relationships tying
the European Investment Bank to the EU institutions

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Preface

Founded in 1958 under the Treaty of Rome, the European Investment Bank (EIB) is the official financing institution of the European Union (EU). Although the Bank was initially designed to foster the objectives of the EU by providing long-term project finance to Member States and acceding countries, in its almost 50 years of activity, the Bank's operations have expanded to include investments in many other regions around the world, notably Eastern Europe (since 1989), Africa (since 1975 – via the Lomé Convention), Latin America and Asia (since 1993). The EIB has therefore become, not only the world's largest public lender – with annual lending operations in the region of EUR 40 billion – but also a major financier for development projects around the world.

Despite this extraordinary financial power, the Bank has received, until recently, very little public scrutiny – in stark contrast with the experience of its sister EU institutions and many other International Financing institutions (IFIs).

The reason for this can be traced back to the EIB's ambiguous legal dual-status: that of both a legally independent financial institution and also a member of the family of EU institutions. On the one hand the Bank is legally bound to act within the limits of the European treaties, on the other hand it is accorded an autonomous legal personality in order for it to function successfully as a financial institution. The legal significance of this ambiguity has already been explored elsewhere (see *The European Investment Bank: A European Institution Subject to EU Policy?* by Amsterdam International Law Clinic, 2002) and therefore will not be developed further within this study. However, as this report unravels the legal and operational ties between the EIB and the EU institutions, it will become apparent just how substantially this ambiguity affects the accountability of the Bank.

The report identifies a number of avenues that could be followed in order to strengthen the Bank's accountability, especially as regards the European Commission, which, in recent years, has delegated an increasing amount of community budgetary resources to the EIB.

The report concludes by recommending that, in the long run, the Bank should be the subject of a thorough analysis on the part of the EU institutions, possibly with the European Commission becoming a shareholder of the Bank.

We hope that this report will prove useful in clarifying the current state of the affairs, both to members of the public as well as to EU officials.

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1. Objective and structure of this study

Objective – Due to the ambiguity within the legal framework that defines the relationship between the Bank and the EU institutions, continuing uncertainty remained about the nature of that relationship, even after preliminary analysis. The aim of this study, therefore, is to shed some light on the legal and operational ties between the EIB and the EU institutions, with a particular focus on the European Commission, which in recent years has increasingly delegated a number of programmes to the Bank.

Structure – The document begins by providing an overview of the political dialogue under way between the EIB and the various EU institutions. Given the particular and increasing cooperation between the EIB and the European Commission (hereafter referred to as ‘the Commission’), the document explores the two main areas of this cooperation: the inter-service consultation between the EIB and the Commission – as foreseen by Article 21 of the Bank’s Statute, and which concerns the evaluation of projects suitable for EIB lending; and the political influence of the Commission on specific policy areas which both the Commission and the Bank have a hand in (the Lisbon Strategy, the Cotonou Agreement, The Growth Initiative...).

Through a number of examples, the report explores and describes the various forms that such cooperation between the Commission and the EIB has assumed (eg: ‘Memoranda of Understanding’). The report concludes with a number of policy recommendations as to how this cooperation should be strengthened.

Methodology – Given the nature of this study, and the limited amount of literature available on the subject, information was collected mainly via in-depth interviews held in Brussels with 21 EU officials. Twelve of these were from the European Commission, in seven Directorates General: Development; Economic and Financial Affairs (Ecfm); Environment; Europa; Regional Policy (Regio); External Relations (Relex); and Research. Of the rest, two were from the European Parliament, three from the Economic and Social Committee, one from the Committee of the Regions, and three from the European Investment Bank. Officials were presented with a questionnaire (Annex A). All interviews remain confidential.

Officials within the EU were for the most part selected by DG Ecfm’s officials in Luxembourg, responsible for liaising between the European Commission and the European Investment Bank. DG Ecfm also arranged for interviews with EIB officials and representatives in Brussels, proving very cooperative.

2. The EIB and its *legal* relationship with the EU institutions

2.1. The European Investment Bank: a hybrid institution - Although within the EU Draft Treaty for a European Constitution (hereafter referred to as ‘the Treaty’) the EIB is not listed among the EU institutions entrusted with carrying out Community tasks (Article 18), its institutional status can be derived elsewhere in the Treaty. The rules governing the Bank’s general form and mandate can be found in Part III, Title VI, Chapter I of the Treaty under the heading ‘Provisions governing the institutions’, Section 3 of which is dedicated to the EIB (Articles III-393–III-394). Nevertheless, its status remains ambivalent in as much as the Bank is expected to work on a non-profit basis towards the promotion of a balanced and undisrupted development of the common market, whilst benefiting from an autonomous legal personality.

In this respect, the EIB is a unique institution within the European framework: on the one hand, it is characterised by independence in the management of its affairs, in particular in the sphere of financial operations, whilst on the other, it is expected to maintain a close link with the Community as regards its objectives. This ambivalent legal status is an impediment to determining, with precision, the extent to which policies¹ of the Community are applicable to the practices of the EIB: the tendency seems to be to treat the EIB as a European institution whilst refusing to codify its status.² This is exemplified by two areas in particular: environmental responsibility and transparency. The EIB’s Statute suggests that the bank is legally bound to integrate environmental requirements into its activities. However, the EIB can choose to prioritise its objectives, and environmental integration may become a marginal consideration, and thus ineffective.

Similarly, although the EU guarantees transparency, the EIB can sidestep this requirement by citing professional confidentiality and limit its use of European standards simply to being guidelines. These inconsistencies are a clear consequence of the EIB’s unique and dual legal status.

2.2. EIB/EU cooperation as foreseen within the Draft Treaty – Bearing this ambivalence in mind, within the Draft Treaty for a European Constitution (as last amended on 6 August 2004 – CIG 87/04) the EIB appears within ten articles:

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|-----------------------------------|---|
| Article I-34 & III-396 | which define the terms under which the EIB operates in relation to the adoption of European legislative acts; |
| Article III-184 | which invites the EIB to consider lending to an indebted member state under particular conditions; |
| Article III-373 | which lays down the terms under which the Court of Justice has jurisdiction over the EIB; |
| Article III-384 | which lays down the terms under which the Court of Auditors has jurisdiction over the EIB; |
| Article III-393 | which refers to the EIB’s legal personality; |
| Article III-399 | which refers to the EIB’s obligations towards transparency. |

¹ Such as communications, council conclusions and resolutions, strategies as well as policy documents.

² Amsterdam International Law Clinic, *The European Investment Bank: A European Institution Subject to EU Policy?* (2002).

Of the ten articles, just three refer to the Bank's cooperation with the EU institutions and to its obligations towards EU policy objectives, both *within* and *outside* the EU:

Article III-394 which outlines the EIB's general tasks – with reference to these it is foreseen that '*the European Investment Bank shall facilitate the financing of investment programmes in conjunction with assistance from the Structural Funds and other Union financial instruments.*'

Article III-221 where it is said that '*the Union shall also support the achievement of [its] objectives by the action it takes through [...] the European Investment Bank.*'

Article III-317 (1, 3) which states that '*the European Investment Bank shall contribute, under the terms laid down in its Statute, to the implementation of [multi-annual cooperation programmes].*'

Despite the foreseen cooperation between the Bank and the EU institutions, there is a lack of provisions concerning how this cooperation should operate. As this report progresses, it will become evident the degree to which, with few exceptions, the EIB benefits from substantial operational freedom within its financing activities, whether they are its own or carried out in conjunction with other community financial instruments.

2.3. EIB/EU cooperation as foreseen within the EIB's Statute – Even within the Bank's own Statute, there is very little reference to cooperation with the EU institutions. The sole real reference to cooperation with the European Commission is found in Article 21 (2) of the EIB's Statute: '*Applications made through a Member State shall be submitted to the Commission for an opinion. Applications made direct by an undertaking shall be submitted to the Member State concerned and to the Commission*'; yet this article limits cooperation exclusively to the consideration of individual projects financed by the Bank – known also as the 'inter-service consultation' (see Section 4.1 of this report: 'Article 21: an opinion on conformity'). Formally, therefore, the Bank's relationship with the EU institutions is left without any exhaustive and comprehensive explanation. It remains open as to how any liaison between the Bank and the Community is fine-tuned. The bulk of the activities carried out by the Bank in cooperation with, or under instructions from, the EU institutions appears to be determined by what could be termed as 'gentlemen's agreements'.

3. The EIB and its *operational* relationship with the EU institutions

The EIB describes itself as ‘*an autonomous body with an independent decision-making structure constantly seeking to establish a balance between autonomy and responsiveness which includes that its actions are not simply consistent with Community policies but are positively supporting them*’.³ The EIB also claims to possess strong operational links with the Commission, as both initiator and executive body, for many areas of EU policy relevant to that of the Bank itself. Typically, cooperation with the EU institutions is managed by the EIB through two arms: through its Brussels office – under the EIB’s General Secretariat – in charge of liaising with the EU institutions on political issues; and through its Policy Support Department – within the EIB’s Project Directorate – based in Luxembourg and in charge of liaising with the EU institutions on more technical grounds. Yet, cooperation between the EIB and the EU institutions appears to be characterised by a highly informal mode of conduct. The following sections of this report reveal the type of dialogue currently under way between the EIB and the EU institutions.

3.1. European Council – EIB attends the meetings of the ECOFIN Council (economic, financial and budgetary affairs) and its preparatory bodies, such as the EFC (Economic and Financial Committee), making available its expertise on economic issues and capital investment financing. Moreover, the European Council frequently requests the EIB to implement those new Community initiatives requiring banking or financial instruments (see Section 4.3. of this report: ‘Programmes mandated to the EIB’). The members of the ECOFIN Council are also, as a general rule, members of the Bank’s Board of Governors (for example, the Finance Ministers of the Member States), thereby supposedly ensuring the consistency of the EIB’s financing policies with the economic policy of the Union. It is mainly through this personal overlap between the EIB Governors and the ECOFIN Council that the Bank honours its statutory tasks of advancing the objectives of the EU.

3.2. European Parliament – Cooperation with the European Parliament is minimal. Members of the EIB’s Management Committee are occasionally invited to attend meetings of parliamentary committees specialising in the European Union’s various areas of activity. The EIB cooperates with those committees whose responsibilities relate to the EIB’s operational priorities – namely the Committee on Economic and Monetary Affairs (EMAC). EMAC has been authorised for the past four years to draw up an own-initiative report – pursuant to Rule 163 of the Parliament’s Rules of Procedure – on the European Investment Bank’s Annual Report. To do this, EMAC appoints a ‘rapporteur’ to draft the report and it is up to the rapporteur to determine the level of intensity of their dialogue with the Bank. In the case of the 2001–02 EMAC report, the EMAC rapporteur organised a mission to the EIB’s headquarters in Luxembourg where a question-and-answer session was held with EIB officials. More controversial was this year’s report, drafted by Spanish MEP Monica Ridruejo, whose account was deemed too aggressive by her fellow EMAC colleagues and was rejected on 6 April in favour of a more moderate account. Ridruejo’s report was perceived by many MEPs as a publicity exercise aimed at increasing Ridruejo’s media visibility to the detriment of an already fragile relationship between the European Parliament and the EIB.

³ EIB Information 2, 1998, p. 7.

3.3. European Commission – Out of all the EU institutions, the European Commission (‘the Commission’) is the institution to have developed the most intense relationship with the bank, mainly as a result of Council conclusions and objectives that the Commission is mandated to implement.

Cooperation between the Commission and the EIB is a continuous process. During 2003, a special Joint Working Party was launched to review the various aspects of this cooperation, with a particular emphasis on joint working processes and joint product delivery. The conclusions of the Joint Working Party were endorsed in February 2004 at the annual meeting between Commissioners and the EIB’s Management Committee (see Section 4.6 – ‘Joint Working Party: an overarching policy dialogue’ – for a more detailed explanation).

In terms of procedures and working processes, cooperation between the EIB Group and the different Commission services varies in intensity as well as in the form that it takes. Setting aside the inter-service consultation, cooperation appears to follow an initial ‘upstream’ process, involving policy formulation and policy dialogue between the two institutions, subsequently extending ‘downstream’ via sector strategies and specific programmes (see Chapter 4 – ‘Levels of Cooperation’ – for detailed explanation of the forms of cooperation between the Bank and the Commission).

3.4. Court of Auditors: the Tripartite Agreement – In March 1999 the EIB, the Commission and the Court of Auditors signed a tripartite agreement concerning cooperation for the purposes of the Court of Auditors’ audit rights with respect to the EIB. The Agreement was renewed on 27 October 2003 by Philippe Maystadt (EIB), Juan Manuel Fabra Vallés (Court of Auditors) and Romano Prodi (European Commission).⁴

Under Article 248 of the Treaty, the Court’s rights to access are limited ‘*to information necessary for the audit of Community expenditure and revenue managed by the Bank*’. This was deemed insufficient by the European Parliament who, in its 2002 Report, proposed amending the agreement in order for the Court to have ‘*at least the same audit rights, with respect to the EIB as it has with respect to the ECB: this means, the Court should audit the operational efficiency of the management of the EIB*’.⁵ At present the EIB has gone as far as supplying the Parliament with a copy of the Annual Statement of its Audit Committee.

3.5. Economic and Social Committee (ESC) – Given that the field of activity of the EIB extends to many areas in which the ESC is interested and active, the ESC has drawn up several own-initiative opinions as regards the EIB. In 2000 the ESC produced an opinion on the ‘role of the EIB in regional policy’ in which it assessed the effectiveness of the Bank’s activities and indicated desirable future areas of activity – in particular, the Committee noted that in evaluating convergence the EIB should not confine itself solely to economic indicators but should broaden its parameters to include social indicators, along the lines already established by the United Nations.⁶

⁴ This is publicly available on the EIB website, http://www.eib.org/publications/publication.asp?publ=67®ion=-1&years=-1&categories=105&country=-1&txtFreeSearch='*&page=2

⁵ European Parliament resolution on the activity report for 2002 of the European Investment Bank (2004/2012(INI))

Currently, the ESC is working on another own-initiative opinion concerning the effects that the EIB's involvement in public-private partnerships (PPP) has had on growth (since the late 1980s, the EIB has approved more than 100 PPP projects within the EU).⁷ The opinion is still in its working phase, and it is due to be adopted at the beginning of 2005. As a result of these opinions, the ESC has developed very good contacts with the various services of the EIB, regular meetings have taken place, and EIB representatives have been invited to various working sessions, and the such like, of the Committee. The EIB, for its part, provides the Committee with regular presentations on the Bank's activities, with question-and-answer sessions, and with reports. In 2003 for example the EIB presented the ESC with a draft report on the EIB's strategy on Accession Countries. However, despite the highly developed working relationship between the EIB and the ESC, there is, as yet, no formalised link between the two institutions.

3.6. Committee of the Regions – Liaison with the Committee of the Regions (COR) is less developed than that with the ESC. The EIB occasionally attends a number of sessions of the Committee and, at times, EIB President Maystadt may attend the Committee's plenary – as he did in 2004. The COR had the opportunity to work closely with the EIB during the drafting of an important opinion, adopted last year, on the 'Management and consequences of natural disasters'.⁸ The EIB will also have an involvement in the preparation of the opinions the COR is drafting on the new regulations for Structural Funds. Nevertheless, the COR does not provide any specific advice to the EIB itself since it has no role in managing specific projects on the ground. In addition, within the Treaty of the European Union the COR's formal advisory role is limited to the EU institutions: the Commission, the Council and the Parliament. On the other hand, as for the cases mentioned above, the COR may seek (informally) the opinion of the EIB on specific issues. There is no section of the COR that liaises with the EIB more than others, and no standard procedure for seeking this opinion. Collaboration is dependent on the topic at stake: the department of the COR that wishes to seek the EIB's opinion makes contact with the EIB's liaison office in Brussels, which in turn liaises with the most appropriate department within the EIB.

⁶ Economic and Social Committee, 'The role of the European Investment Bank in European regional policy', *Official Journal of the European Communities*, C367/04, 20 December 2000, available at http://europa.eu.int/eur-lex/pri/en/oj/dat/2000/c_367/c_36720001220en00140018.pdf

⁷ Personal Communication with the ESC 09/09/2004.

⁸ Committee of the Regions, 'Management and consequences of natural disasters: the role of European structural policy', *Official Journal of the European Union*, C256/74, 24 October 2003, available at http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/c_256/c_25620031024en00740079.pdf

4. Levels of cooperation

Given the Bank's increasing cooperation with the European Commission, the rest of this report focuses on the different levels of cooperation that take place between the Bank and the Commission. As mentioned previously, cooperation between the two institutions varies in intensity according to area of activity.

Cooperation is dependent on the historical ties developed between the EIB and the Commission's individual Directorates (DGs). For a number of DGs, such as Fisheries, Eurostat and Agriculture, cooperation is practically non-existent, given the lack of common area of activity. Whilst for a number of other DGs, such as DG Research or DG Information Society (Infso), cooperation has been a recent phenomenon – the result of specific community objectives (eg. the Lisbon Agenda) – and consequentially the policy dialogue is still very much upstream. With DGs such as DG Regio, cooperation dates from a long time back, and areas of activity overlap so frequently that policy dialogue has reached a level of intensity such that operational agreements are often bypassed within a matter of years. On 19 January 2000, for example, DG Regio and the Bank signed a Memorandum of Understanding (MoU) on specific areas of cooperative activity concerning Structural Funds; over the past four years, however, cooperation has developed to such an extent that it has rendered the MoU obsolete.⁹

Consequently, where cooperation is a recent phenomenon (ie. DG Research), bilateral consultations are limited to a few officials within the DG: in the case of DG Research just one unit manages contacts with the Bank both in relation to the inter-service consultation and policy dialogue; on the other hand, in DG Environment, one unit handles the inter-service consultation, while a number of other units are involved bilaterally with the Bank on specific policy areas (eg. climate change, water waste treatment, clean technologies). Where, instead, cooperation has reached an advanced stage, such in the case of DG Regio, policy dialogue has permeated the entire directorate, and practically all units are in some way involved in a dialogue with the Bank.

From the interviews conducted for this study it emerges that four broad levels of cooperation can be identified: one legal, and the other three operational: the first level of cooperation (legal) being the result of the inter-service consultation as foreseen by Article 21 of the Bank's Statute; whilst the three operational levels of cooperation comprise the EIB's own initiatives, programmes mandated to the Bank by the Commission, and the EIB's management of Community resources. These are described in detail in this chapter.

4.1. Article 21: an opinion on conformity – As explained earlier, Art. 21 of the Bank's Statute sets out that all loans to be financed by the Bank must be subject to an opinion from the European Commission as well as from the Member State in which the project will take place. Until recently, this procedure was often mistaken for some sort of approval, rather than a simple opinion. This caused the Commission to frequently be questioned on its role within the EIB's project evaluation process, given that a number of projects financed by the EIB had a negative impact both on

⁹ The current operational arrangements are defined within *the Proposal for a Council Regulation laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund*, (COM(2004)492 final) available at [http://europa.eu.int/comm/regional_policy/sources/docoffic/official/regulation/pdf/com\(2004\)492final_en.pdf](http://europa.eu.int/comm/regional_policy/sources/docoffic/official/regulation/pdf/com(2004)492final_en.pdf)

society and on the environment. This misunderstanding was also fuelled by the EIB's own misuse of the Commission's role in the evaluation of a project. On at least two occasions, EIB Communication officials defended the Bank's lending operations by clearly stating that no EIB loans had ever been granted without previously obtaining a Commission consensus.¹⁰ As well as upsetting the Commission, this misuse of the Commission's role within the EIB's project evaluation process has created much confusion as to whom should be held accountable for shoddy project evaluations. According to the information collected via the interviews, the opinion formulated by the Commission is to be taken as an 'opinion of conformity', meaning that the Commission is requested to provide the Bank with indication as to whether the project considered for financing is in breach of European laws and policies. The Commission is not requested to approve the project, nor enter into the decision-making process for the approval: this is a competence exclusive to the EIB. The Commission plays a minor role within the EIB's project cycle.¹¹

4.1.1. The Commission within the EIB project cycle – The EIB follows a standard project cycle for all of its loans, with two exceptions: global loans, the appraisal of which is a matter for the EIB's intermediary banks; and when managing community budgetary resources, which requires a further step to the process (see Box 1 below). For projects within the EU the entire decision-making process lasts about three to four months, whilst for projects outside of the EU the cycle is completed on average within nine months. The project cycle is divided into five phases:

1. *Project pre-appraisal* – If a project appears to meet the Bank's criteria, the appraisal procedure is launched by the EIB Directorate General for Lending Operations, on the basis of a file compiled by the promoter. This typically includes general and legal information about the borrower; financial and economic data; the project's general design and technical description; as well as the environmental design of the project.¹²
2. *Project appraisal* – The EIB Management Committee examines the financing proposal and determines: the project's added value and quality; the promoter's ability to carry out the project; the project costs; the project's environmental impact; and its financial return and credit risk.
3. *Project approval* – The overall results of the appraisal are summarised in a report to the Board of Directors – whose membership includes members of the Commission (see Annex C for a brief description of the EIB's governance structure). The Board's decision may be taken while there are still a number of points to be finalised, although the Board's decision to approve the loan does not take effect until the finance contract is signed.
4. *Project signing* – The project is signed between the promoter and the EIB only once all unresolved issues have been clarified. There is no standard time between the project approval and the project signing: this is dependent upon the issues outstanding. However, the signing of the contract can only take place once the European Commission and the Member State of interest have provided the EIB with a favourable opinion. A favourable opinion is a precondition to the contract signing.¹³
5. *Project monitoring* – Monitoring of projects, borrowers and loan servicing continues during the operational phase and the repayment period. This is the responsibility of the Directorate General for Lending Operations. When the project is finished, the Bank produces a project completion report, exclusively for its internal use.

¹⁰ On 21 October 2003 a meeting between the EIB and civil society groups in Brussels, and on 29 June 2004, during an Expert Workshop: 'The EIBs Responsibility towards EU and International Environmental Policies', with civil society groups in the European Parliament, Brussels.

¹¹ EIB, 2001, The Project Cycle, available at http://www.eib.org/Attachments/strategies/cycle_en.pdf

¹² EIB, 2001, The Project Cycle, p. 3, available at http://www.eib.org/Attachments/strategies/cycle_en.pdf

Some projects are subjected to retrospective evaluation by the EIB's Operations Evaluation Department upon completion. The reports of the Operations Evaluation Department are published on the EIB's website.

The point at which the Commission is contacted by the Bank for an opinion varies according to whether the project under consideration takes place *within* or *outside* the EU – the reason for this being a matter of timing. Article 21 of the Bank's Statute states that '*The Member State and the Commission shall deliver their opinion within two months of being contacted by the Bank – that contact generally being made two months before the Board of Directors' meeting to approve a project.*¹⁴ Hence, given that on average the evaluation of a loan *within* the EU requires three months, whilst one *outside* the EU requires nine months, for most of the loans *within* the EU, the Commission is contacted by the Bank whilst the project is still in the *pre-appraisal* phase, whilst for loans *outside* the EU, the Commission is contacted during the *appraisal phase*. Consequentially, the volume and quality of information provided by the Bank on which the Commission is to base its opinion will vary considerably. According to the Commission officials interviewed, for the majority of cases concerning loans *within* the EU, the information provided to the Commission has been minimal (even just a few lines), whilst, for projects *outside* the EU, data has been more substantial (up to dozens of pages). Either way, the Commission's involvement in the project cycle ends at the approval phase, after which it has no jurisdiction over the project's monitoring and evaluation. This is a competence exclusive to the EIB.

Box 1

Global Loans and Community Budgetary Resources

Global Loans – are credit lines that the EIB makes available to financial intermediaries for financing small and medium-scale projects, either ventures mounted by SMEs or small-scale infrastructure schemes. This type of loan enables the Bank to contribute indirectly to the long-term financing of projects which, because of their size, are not eligible for direct EIB funding. The volume of such lending varies from country to country. In total, both within and outside the European Union, the Bank has dealings with nearly 400 banks and financial institutions, which are or have been its partners in deploying this type of instrument. The appraisal of global loans essentially entails an examination of the intermediary bank from two main angles: 1) financial robustness and ability to enter into a lasting relationship with the EIB; 2) ability of the financial intermediary to channel EIB funds swiftly to the customers targeted by the global loan (SMEs or promoters of small-scale infrastructure) – specialisation, size of portfolio, appraisal methods for this type of project, procedures for monitoring borrowers and projects, etc. Given that the EIB is not directly involved in the evaluation of global loans, the EIB appraisal team seeks to define precise criteria for the intermediary to follow when channelling the global loans to promoters.

Community Budgetary Resources – Within the framework of Community development aid and cooperation policies in support of non-member countries, the Bank may be called on to lend Community or Member States'

¹³ EIB, 2001, The Project Cycle, p. 5, available at http://www.eib.org/Attachments/strategies/cycle_en.pdf

¹⁴ According to the EIB and Commission officials interviewed, there are rare occasions when the Commission will not have formulated its opinion officially in time for the Board of Directors' meeting. In this instance the Commission services inform the Board of Directors informally and ensure that their opinion is formalised in writing in time for the signing of the contract between the EIB and the promoter (since this cannot take place without the Commission having expressed its opinion).

budgetary resources (eg. operations in the Mediterranean region; operations under the Lomé Convention with the African, Caribbean and Pacific States). In these cases, in addition to the regular project cycle, the management of such budgetary resources imposes two requirements on the EIB: 1) before being put to the Bank's Board of Directors, projects attracting budgetary funds located in non-member Mediterranean or ACP countries are submitted to a Committee of Member States for its opinion (see *The Cotonou Investment Facility* within Section 4.5. 'Community budget managed by the EIB'); 2) all projects attracting budgetary funds (including a guarantee from the Community budget) are subject to possible control by the Court of Auditors of the European Union.

4.1.2. Formulating an opinion: a gentlemen's agreement – As mentioned above, the EIB makes the loan information available to the Commission two months prior to the Bank's Board of Directors' meeting. The EIB forwards the data relevant to the loan in question to DG Ecfm, which, being responsible for liaising between the EIB and the Commission, then dispatches the data to all DGs. From that moment the Commission is given two months to formulate an opinion. This opinion is presented to the EIB's Board of Directors by the Commission's representative member of the Board, DG Ecfm's Director General. Within each DG of the Commission, an EIB contact point is appointed (indefinitely) and charged with handling the inter-service consultation. This contact point, or focal point (there is no formal term used by either the Commission or the EIB), is consequently responsible for dispatching the loan information to the most relevant experts within that DG.

Typically, it will be the country desk officers of the country of interest to the loan who are asked to provide an opinion. It is often the case, according to the Commission officials interviewed, that, especially for loans outside the EU, the opinion of the Commission delegation in the country in question is also sought. In the case of the copper mining project in Laos, the Commission delegation in Laos was consulted and provided DG Relex with a positive opinion.¹⁵ There is no Commission staff member employed full time to manage the inter-service consultation with the exception of DG Ecfm's office in Luxembourg which manages relations with the Bank (five or six officials who generally employ between 50–100 % of their time on EIB-related matters). Thus, providing an opinion to the Bank is an added task for the majority of Commission staff. The amount of time devoted to the inter-service consultation is also variable from DG to DG.

Although all of the Commission's DGs have an appointed EIB contact point, for many DGs this is purely a formality, since EIB financing will not be of interest to a number of the Commission directorates (eg. Fisheries or Eurostat). In contrast, directorates such as Environment, Regional Policy (Regio) and External Relations (Relex) provide their opinion on a regular basis. The above-mentioned DGs are also the directorates which have a longer-standing relationship with the Bank, especially DG Regio, whose focus on Community regional policy is also the Bank's *raison d'être*. Thus, within these DGs, a regular and consolidated relationship has developed between country desk officers both within the Commission and the EIB.

Typically, these communicate informally by phone and email over issues arising from the information provided to the Commission for an opinion on the loan under consideration by the Bank – always keeping both the contact point

¹⁵ DG External Relations (Relex) is the Commission's Directorate charged with dealing with all third countries (although African, Caribbean and Pacific countries (ACP) also fall within the jurisdiction of DG Development).

within their DG and DG Ecfm informed. Most interviewees expressed their view that the quality of the information provided by the Bank to the Commission is often of ‘poor quality’ and insufficient for formulating an opinion: Environmental Impact Assessments (EIAs), for instance, are often incomplete at the time when the inter-service consultation takes place. However, when a Commission official feels that more substantial information is needed, the Bank is asked to provide such information. In the event that the information is not available (as is often the case with EIAs), the Commission provides the EIB with details as to what kind of information the Bank should deem acceptable from the project promoter – this has indeed been the experience with DG Environment who, in 2002, went as far as agreeing a Memorandum of Understanding with the EIB specifically on such matters (see Box 2).

According to the interviewees, the Bank assures the Commission that it will follow the recommendations, though, as mentioned in the previous section, there is no monitoring mechanism in place for the Commission to ensure that this is the case.

Most interviewees recalled having raised a number of concerns on several occasions over loans submitted to them by the Bank under Article 21 – though no details were provided since, according to the interviewees, loan information at that stage is still classed as confidential. This kind of communication between the Commission and the Bank is typically conducted between the country desk officers in both institutions. This usually translates as the Commission rendering a positive opinion with specific recommendations to the Bank, which in turn assures the Commission that recommendations will be followed – again, for the above-mentioned reasons, no formal obligation exists. The agreement appears to rest on the institutions’ mutual trust: a practice comparable to a ‘gentlemen’s agreement’.

4.1.3. Formulating a negative opinion – In the (unprecedented) event that all the Commission services formulate a negative opinion, a number of steps must be followed:

- 1) First of all, the Commission’s legal department needs to assess whether the Commission could be held liable for causing disadvantage or loss through the formulation of a negative opinion.
- 2) Then the College (the chiefs of Cabinet from all DGs) must meet and evaluate the concerns expressed by the Focal Points and vote on whether to support or reject the negative opinion.
- 3) If College also provides a negative opinion, then it is the responsibility of all Commissioners to vote in favour or against the negative opinion.

The complexity of this procedure inevitably makes it extremely difficult to reach a negative opinion. Additionally, Article 21 of the Bank’s Statute states that: *‘Where the Commission delivers an unfavourable opinion, the Board of Directors may not grant the loan or guarantee concerned unless its decision is unanimous, the director nominated by the Commission abstaining.’* Thus, even in the instance that a negative opinion was to make it through the Commission’s lengthy procedure, it may still be outweighed by a favourable opinion expressed by the EIB’s Board of Directors. Only in the instance that *‘both the Management Committee and the Commission deliver an unfavourable opinion, the Board of Directors may not grant the loan or guarantee’* (Article 21, emphasis added). This has never happened. There appears to be a considerable discrepancy between the effort demanded on the part of the Commission to formulate a negative opinion and the political weight it carries – a clear illustration of the Bank’s

recognition of, yet independence from, the EU institutions. Through the interviews it emerged that most ‘focal points’ feel that there is little scope for initiating such a process, given the limited impact that a negative opinion can exert on the Board’s final decision. If a DG formulates a negative opinion, this may still be outweighed by the positive opinions expressed by other DGs. As explained in the previous section, what has become common practice is for the Commission to provide the EIB with a favourable opinion accompanied by a number of recommendations which, the Commission trusts, will be followed by the Bank – the Commission is not involved in the project’s monitoring and retrospective evaluation.

4.1.4. The inter-service consultation: policy influence – The Commission feels that, within the inter-service consultation, it can only ask so much from the Bank. The reasons are primarily institutional and cultural. Firstly, within the inter-service consultation the Commission’s leverage is limited, given that it is consulted simply to provide an opinion, not an approval. Secondly, the Commission itself often fails to consider project data in detail when evaluating grants and funds. For example, whilst for Cohesion Funds the Commission holds all the necessary information to proceed with the approval process, for Regional Funds such information is missing, since the financing is managed by intermediaries. In addition to this, the Commission also lacks the capability to closely monitor and retrospectively evaluate its own financing operations, let alone those of the EIB over which it exerts minimal jurisdiction. Demanding, therefore, that the Bank perform better than the Commission, given the lack of legal provision to do so and the Commission’s own operational limitations, was perceived by many of the interviewees as being a difficult position for the Commission to maintain.

4.2. The EIB’s own initiatives – The EIB’s own initiatives are specific programmes that the Bank undertakes in response to major European policy priorities (eg. the Lisbon Agenda). The mechanism that facilitates the coherence between European policy objectives and the EIB’s operations is the EIB’s Board of Governors (see Annex C for a brief description of the Bank’s governance structure), that is to say a set of 25 national ministers (often finance ministers) appointed by the 25 member States (the EIB’s shareholders) and charged with laying down and approving the EIB’s general policy strategy. By wearing the hats of both the ECOFIN council and of the EIB’s Board of Governors, national ministers of finance should enable Member States to maintain control over the Bank’s operations, and in particular ensure coherence between EU policy objectives and the EIB’s operational plan. A clear example of this is the EIB’s Innovation 2000 Initiative (i2i), set up in response to the Lisbon Agenda.

The operational independence of the EIB facilitated a swift response to the key Community objectives and the speed of the Bank’s response can also be seen as a direct result of the cooperative mechanism in place between the EIB and the European Commission: The i2i was in fact designed in cooperation with the European Commission’s R&D Framework Programme (DG Research) in support of small and medium enterprises (SMEs) within the high technology sector.

4.2.1. *Modus operandi* – The idea behind most EIB own initiatives is to create a synergy between the Bank’s lending operations and the Commission’s grant schemes in an attempt to maximise resources and results. As explained earlier on, the intensity of cooperation between the two institutions depends heavily on the historical relationships

established between the EIB and the Commission's individual directorates. Until recently the EIB had almost no contact with DG Research, though, as science and technology gained weight on the European policy agenda, the EIB and DG Research deemed the development of some kind of cooperation necessary. As a result, in 2001, a Memorandum of Understanding (see next chapter for details and Annex D for a copy of the actual MoU) was signed between EIB President Maystadt, and Commissioner Busquin (DG Research) whereby the terms and conditions of cooperation were laid down between the institutions on matters relating to the i2i. According to officials both within the Commission and the EIB, cooperation between DG Research and the EIB is still at an 'upstream' level,¹⁶ such that much of the dialogue is still focused on exploring possible avenues of collaboration. At present, cooperation entails: periodic high-level meetings (on average one per year); a flow of information (mainly through email); the creation of specialised working groups (in 2001 three specialised groups were created with contact points in both institutions: one concerned with research and technology development activities, one with research infrastructures, and one with venture capital provision for high-tech companies and incubators); and the secondment of staff (at present DG Research is hosting an EIB staff member for one year). Monthly video conferences are also being held between DG Research and the EIB. All cooperation is said to be very informal and flexible.

4.2.2. The EIB own initiatives: policy influence – The EIB states that '*enhanced cooperation with the Commission has had a marked impact on EIB activity in areas eligible for i2i financing.*'¹⁷ Yet a Commission internal memo clearly expressed concern about the degree of integration between the i2i and the R&D Framework Programme in serving the financing of the entire circle of innovation from research to production. Moreover, although the *quantitative* indicators of the i2i are impressive – by the end of January 2003 yearly average disbursements had totalled EUR 6–7 billion, with the European Investment Fund (EIF) holding 184 high-tech funds within a total commitment of EUR 2.5 billion and guaranteeing venture capital in 94 operations – the absence of *qualitative* indicators makes it extremely difficult to establish the degree of success of the i2i programme. Thus, although cooperation between the EIB and the Commission can be intense at times and according to specific areas of activity, such as in the case of the Innovation 2000 Initiative, the Commission's scope to influence the EIB's own-initiative lending operations is limited. Even when enshrined in writing, cooperation has, at best, been defined within the informal operational framework of Memoranda of Understanding.

4.3. Memoranda of Understanding (MoUs) – MoUs are light and flexible mechanisms of cooperation that identify specific areas of activity in which the Bank and the Commission can build an operational understanding (see Box 2 for an example of an MoU – signed between the EIB and DG Environment – and Annex D for a copy of the MoU agreed between the EIB and DG Research). In their design, MoUs attempt to create a flexible connection between two very different cultural environments: one being a grant-making institution, the European Commission; the other, a financial institution, the EIB. The idea behind this light mechanism of cooperation is to create a synergy between the two institutions and to make them aware of each other's activities and working practices in an attempt to achieve

¹⁶ The EIB distinguishes between (1) an 'upstream' level of policy dialogue, where EIB contributes, in close contact with its governing bodies, to a wider dialogue on EU priorities and their translation into operational EIB lending policies and (2) a 'downstream' level, where individual lending operations are identified, assessed and proposed. It is at this second level that the governing bodies have asked the Bank to identify clearer criteria to better establish and maximise the added value of its lending operations (EIB, *Corporate Operational Plan 2004–2006*, EIB: Luxembourg, 2004).

a win-win situation – as described in the previous chapter in the example of the MoU signed between DG Research and the EIB. In the opinion of many of the interviewees, MoUs represent an initial step towards a more developed form of dialogue between the Commission and the EIB and are an important structure in bridging the cultural differences between the two institutions. However, as described in the previous section, it is not clear just how effective this mechanism has proved in translating policy objectives into practice. MoUs provide the EIB with a good deal of operational freedom and place no legal obligations on either side. In a similar manner to the inter-service consultation, they depend very much upon the institutions’ mutual trust: again a form of gentlemen’s agreement. Thus, although on the one hand the operational independence of the EIB allows for a rapid response to core Community objectives, on the other hand the lack of any binding mechanisms of cooperation between the Bank and the Commission makes it structurally difficult to ensure that outcomes are positive.

Box 2

Example case of a Memorandum of Understanding (MoU)

MoU with DG Environment and DG Ecfm – *Working procedures between the EIB and the Commission services (DG Env and DG Ecfm) on the environmental aspects of consultation with the Commission under Article 21 of the EIB Statute* – signed in May 2002. The Bank and DG Environment have had many difficulties in reaching an agreement on environmental criteria. The MoU signed in 2002 was agreed by the two parties as a mutual recognition of the need to find common ground on which to build an understanding about such criteria. The 2002 MoU originates mainly from the need to bridge a gap in the procedural inefficiency of the inter-service consultation (Article 21). As part of the 2002 MoU, DG Environment and the EIB have agreed a *modus operandi* for the Bank to follow in relation to assessing the environmental impacts of any loans considered. DG Environment has provided the Bank with the Environmental Impact Assessment (EIA) forms that the European Commission uses for financing projects through its Cohesion Funds. The Bank is supposed to adopt these forms as a formal requirement for promoters to abide by and according to which the Bank is to appraise projects submitted for financing. The 2002 MoU has also devised a series of environmental criteria that the Bank is supposed to follow in evaluating the EIA. From this, DG Environment is reassured that, in the likely event that an EIA has not been completed in time for the inter-service consultation, the Bank will nevertheless follow the agreed set of procedures and ensure a sound evaluation of the project’s environmental impact. The MoU also establishes bilateral meetings between DG Environment and the EIB. Meetings have taken place now for the past three years, twice a year – once in Brussels and once in Luxembourg, at the EIB’s headquarters – during which DG Environment briefs and updates the EIB on Community environmental legislation.

To date (October 2004), the EIB has signed seven MoUs with the European Commission, with the following DGs: Ecfm; Environment; Research; Regio; INFOS; DG Enlargement together with Multilateral Development Banks, concerning accession countries; and DG Relex together with the World Bank concerning enhancing donor coordination in the Middle East and North Africa. These are described briefly below.

MoU with DG Regio – *Accord de coopération au titre de l’action structurelle communautaire pendant la période 2000–2006* – Signed in January 2000, this MoU defines cooperation between the EIB and DG Regio on matters

¹⁷ Innovation 2010 Initiative, EIB, July 2003.

related to European regional development, notably on: 1) preparatory phases, concerning the programming and negotiation of community structural actions, mainly via the exchange of information; 2) consultations and discussions concerning co-financing operations; and 3) the evaluation of environment-related projects within FEDER, Cohesion Funds, and ISPA.

MoU with DG Research – *Joint memorandum establishing a framework for co-operation between the community research framework programme and the “Innovation 2000 Initiative” between the European Community represented by the Commission of the EC and the European Investment Bank* – Signed in June 2001, the memorandum sets out a framework for cooperation between the EC and the EIB Group (including the EIF) over the medium term, with the aim of optimising their action in the fields of research and the exploitation of its results. Arrangements for cooperation fall into two basic categories: general measures to promote the overall alignment of both strategy and action between the EC and the EIB, including the information flow between the two parties and with the client base; and secondly, specific areas of intervention – stimulation of research and technology development, support for research infrastructures, and promotion of high technology companies and incubators via venture capital provisions.

Available at: http://www.bei.org/Attachments/i2i/agre_memo_fr.pdf

MoU with DGs INFSO and ECFIN – *Working procedures¹⁸ between the EIB and the Commission services (DG INFSO and DG ECFIN) for consulting the Commission on projects in the field of electronic communications networks and services under Article 21 of the EIB Statute* – Signed in February 2003, the MoU establishes procedures that serve to mutually reinforce the actions of both the EIB and the Commission services in the field of electronic communications networks and services, to improve the consultation process, and to enhance cooperation between EIB and DGs INFSO and ECFIN. The mechanism put in place should ensure that the Bank and Commission services cooperate from early in the life of a project in order to ensure compliance with EU legislation and policy.

MoU with DG ECFIN – *Working procedures¹⁹ between the EIB and the Commission services for consulting the Commission on global loans and mid-cap grouped loans under Article 21 of the EIB Statute* – Signed in July 2004, the agreement reflects both the adoption by the Bank of the new definition of SMEs in the Commission’s Recommendation 2003/361/EC of 6 May 2003 and the introduction of grouped loans in favour of mid-cap companies. It summarises the existing procedures for consultation with the Commission on global loans under the Article 21 procedure and states that SMEs are defined according to the Commission’s criteria in new global loan contracts signed from 1st January 2005, and also details the procedure for consulting the Commission under the Article 21 procedure for mid-cap grouped loans.

MoU with European Commission and IFIs – *Memorandum of Understanding between the European Commission, in liaison with the EIB, EBRD, World Bank Group, NIB, NEFCO, CEDB and BSTDB on Co-operation for Accession Preparation on Central and Eastern European Countries, Cyprus, Malta and Turkey* – Signed in September 2003, the MoU seeks to harmonise instruments of financial assistance and to coordinate co-financing and project administration

¹⁸ Rather than providing a wide framework for cooperation, these working procedures establish a detailed set of procedural rules to be followed at service level in day-to-day bilateral communication when dealing with concrete project proposals.

¹⁹ As per note 17.

in the CEECs, Cyprus, Malta and Turkey. Furthermore, it aims to enhance the effectiveness of Commission, EIB and other IFIs in supporting the transition and catching up process in those countries and the efforts of these countries to harmonise their standards with the EU-15.

MoU with European Commission and the IBRD – *Memorandum of Understanding for a Strategic Partnership between the European Commission, the European Investment Bank (EIB) and the International Bank for Reconstruction and Development (IBRD) in the Middle East and Southern Mediterranean / North Africa Region* – Signed in May 2004, the objectives of this partnership are: 1) to strengthen institution-wide coordination at the level of both headquarters and the resident offices/Delegations in the region, in order to ensure complementarity, cohesion and coordination and to promote joint activities; 2) to promote joint technical work and policy dialogue and to enhance the link between analysis, policy and investment initiatives at all levels; and 3) to promote mechanisms for the common financing of projects and programmes.

Available at: http://www.eib.org/Attachments/memorandum_of_understanding_040504.pdf

At present only two of these MoUs are publicly available (see above), though in its report on *Transparency – Report and Proposals*, published in June 2004, the EIB states that it ‘will seek to enhance information already disclosed on agreements/MoUs signed with the Commission, through provision of full text, extracts or detailed descriptions.’ A formal request for access to such MoUs was submitted in July this year to the EIB by CEE Bankwatch Network/Friends of the Earth International. At a meeting held on 22 July 2004 at the EIB’s Brussels office, EIB representatives made assurances that *all* MoUs will be disclosed by the end of the year.

4.4. Envelopes mandated to the EIB – The ECOFIN Council may at times identify an area in which cooperation is welcomed between the EIB and the Commission. In this instance, the ECOFIN Council will provide the EIB with an ‘envelope’, that is a mandate to the EIB to invest a set amount of the EIB’s own resources within a specific region outside the EU, on a specific area of activity, and within a set period of time (see Table 1 below for examples). This is set out under Article III-317 (para. 3) of the Draft Treaty, which states that: ‘*The European Investment Bank shall contribute, under the terms laid down in its Statute, to the implementation of the measures referred to in paragraph 1*’ – these being ‘*the implementation of development cooperation policy, which may relate to multi-annual cooperation programmes with developing countries or programmes with a thematic approach*’ (para. 1). Outside the European Union therefore, the EIB makes significant amounts available under such mandates and within the cooperation framework established between the EU and the cooperating non-member state.²⁰ In this context, the EIB supports investment in four main areas (see also Table 1 below):

1. In **Central & Eastern Europe** EIB lending is effected both through the EU guarantee²¹ and via the Bank’s own Pre-Accession Facilities – without such guarantees. In the context of the EU Pre-Accession strategy, the EU

²⁰ The EIB may also initiate financing activities outside the EU by virtue of paragraph 1 of Article 18 of its Statute, which states that ‘*by way of derogation authorised by the Board of Governors, acting unanimously on a proposal from the Board of Directors, the Bank may grant loans for investment projects to be carried out, in whole or in part, outside the European territories of Member States.*’

²¹ A Council Decision of 22 December 1999, for instance, grants a Community guarantee to the EIB against losses under loans for projects outside the Community (Central and Eastern Europe, Mediterranean Countries, Latin America and Asia and the Republic of South Africa).

Programme of Community Aid to the Countries of Central and Eastern Europe (PHARE), managed by the Commission, has been supplemented by two new grant instruments: ISPA, which provides support to investments in transport and environmental protection; and SAPARD, designed to channel grants into agricultural reforms and rural development. The EIB has been active in the co-financing of ISPA for numerous transport and environmental projects. Within the framework of the Stability Pact for South-Eastern Europe, the EIB has also begun lending, since the late 1990s, in the **Balkans** in close cooperation with the World Bank and the European Bank for Reconstruction and Development (EBRD).

2. In the **Mediterranean**, the EIB invests mainly within the framework of the Euro-Mediterranean Partnership. Most of its lending takes place via its Facility for Euro-Mediterranean Investment Partnership (FEMIP) – under which it manages both its own resources and community budgetary resources (see Table 2 and Section 4.5. ‘Community budget managed by the EIB’). The EIB invests also in Turkey both through the TERRA programme (Turkey Earthquake Reconstruction and Rehabilitation Action) and under the Turkey Special Action Programme;
3. In the **African, Caribbean and Pacific** (APC) countries, the EIB lends through its Cotonou Investment Facility (see Table 2 and Section 4.5. ‘Community budget managed by the EIB’) under which the Bank manages community budgetary resources as well as its own. The EIB also lends by mandate to the **Republic of South Africa**, which became an associate member of the EU–ACP conventions in 1998. Financing from the EIB in South Africa is provided under a separate bi-lateral agreement;
4. Lending in **Asia and Latin America** (ALA) was mandated to the EIB for the first time in 1993. The current mandate (ALA III) deploys EUR 2.480 million and covers the period from February 2000 to February 2007. There are no amounts allocated per country.²²

Table 1

Envelopes mandated to the EIB		
Envelope	Period	Mandate
Turkey	2000–06	EUR 450 million
South Africa	2000–06	EUR 825 million
Central & Eastern Europe	2000–06	EUR 9.2 billion
Mediterranean Countries	2000–06	EUR 6.4 billion
Asia and Latin America	2000–06	EUR 2.4 billion
Total		EUR 19.275 billion

4.4.1. Modus operandi – Envelopes are mandated by the Council to the EIB in an attempt to use the EIB’s lending activities (loans) to complement the Commission’s multi-annual programmes (grants). The terms of reference for the envelopes – that is the loans’ maximum ceiling, timeframe and area of activity – are defined in the relevant Council decision, though the operational modalities are normally left to the relevant financing parties to agree upon (eg. the Commission, the EIB, the World Bank, etc.). These agreements are usually the result of informal discussions (eg. meetings between the Bank’s lending operation department and the Commission’s desk officers) that may culminate

²² EIB, 2002, *Financing in Asia and Latin America*, available at http://www.eib.org/Attachments/country/ala_en.pdf

in the undersigning of a Memorandum of Understanding – as has been the case in the co-financing in the Middle East and North Africa between the Commission (DG Relex) the EIB and the World Bank. In either case, the EIB evaluation will follow its standard project cycle.

4.4.2. Envelopes mandated to the EIB: policy influence – As with its own initiatives, the EIB benefits from a great deal of operational freedom when lending under envelopes mandated by the Council. The EIB will discuss the operational modalities for the lending activity informally with the Commission (and other possible co-financiers), although the EIB will continue to apply its standard cycle to the evaluation of projects and any agreement it may enter into will not be legally binding.

In contrast to the EIB's own initiatives, however, Commission envelopes clearly define the limitations and objectives within which the Bank is free to operate. Moreover, in stark contrast to the Bank's own initiatives, there is a clear monitoring element within the EIB's lending operations under such envelopes, given that the Commission must report, on a yearly basis, both to the European Council and the European Parliament on the Union's financing activities outside the EU.²³ This systematic reporting system clearly adds a new dimension to the Bank's lending operations, although the Bank's autonomous legal personality makes it difficult to determine its level of accountability to the EU institutions. The Bank's president may be asked to present himself before the Parliament to elucidate certain aspects of its lending operations under such mandates, although formally the Bank benefits from a high level of operational freedom.

4.5. Community budget managed by the EIB – According to the objectives of the Union's multi-annual programmes, the EIB may be entrusted with managing community budgetary resources on behalf of the European Commission. This has been the case for a number of programmes (see Table 2 below) whereby the EIB manages community budget via one of its facilities. As with the mandated programmes, the aim of this is to mutually combine and enhance the results of both the Commission's multi-annual programmes and the Bank's lending operations.

Table 2

Community budgetary resources managed by the EIB				
Programme	DG	Mandate	Community Budget	EIB Budget
Multi-annual Programme for enterprise and entrepreneurship ²⁴	Enterprise / Economic & Financial Affairs	2001–05	EUR 300 million Managed by the EIF	0
SME Finance Facility ²⁵	Economic & Financial Affairs	1999–03	EUR 30 million	EUR 300 million
Cotonou Investment Facility ²⁶	Development / External Relations	2000–05	EUR 2.2 billion	EUR 1.7 billion
Facility for Euro-Mediterranean Investment & Partnership (FEMIP) ²⁷	External Relations	2002–06	EUR 1.8 billion	EUR 7.4 billion

4.5.1. *Modus operandi* – The examples below provide a description of two of the EIB’s major facilities through which the EIB manages Community and Member States’ budgetary resources in parallel to its own resources: the ‘Cotonou Investment Facility’, the ‘Facility for Euro-Mediterranean Investment and Partnership’ (FEMIP):

The Cotonou Investment Facility

As noted in Table 2, the EIB manages, on behalf of the Commission, the Cotonou Investment Facility. The Facility was officially launched on 2 June 2003 with the aim of providing support to the private sector – in particular small and medium enterprises – in African, Caribbean and Pacific (ACP) countries. Between 2003 and 2008, the Facility is expected to disburse EUR 2.2 billion raised via the European Development Funds (EDF).²⁸ Additionally, the EIB plans to make available EUR 1.7 billion from its own resources. The lending is to be spread over energy, agriculture, water, transport and construction projects.

In terms of its management, the Facility is answerable to the Investment Facility Committee, charged with approving the Facility’s operational guidelines, investment strategies, business plans, annual reports and policy documents. The Committee is made up of representatives from EU Member States and one representative from the Commission (DG Development). Although the Commission is excluded from any voting power (this is a privilege exclusive to Member States), the Commission is nevertheless responsible for drafting the Facility’s operational guidelines in conjunction with the EIB and for providing its opinion on the Facility’s investment strategies, business plans and the conformity of projects with Country Strategy Plans – in other words, with the agreement signed between the Commission and the

²³ As set out by Article 2 of the Council Decision 2000/24/EC.

²⁴ http://europa.eu.int/comm/enterprise/enterprise_policy/mult_entr_programme/programme_2001_2005.htm

²⁵ http://europa.eu.int/grants/grants/sme_finance_facility/sme_finance_facility_en.htm

²⁶ http://europa.eu.int/comm/development/body/publications/courier/courier198/en/en_012_ni.pdf

²⁷ EIB, Report on FEMIP Technical Assistance (TA) Support Fund: Objectives, Strategy and Scope of Activities, 2004, available at http://www.eib.org/Attachments/general/events/femip_alexandria_07062004_ta_en.pdf

²⁸ The European Development Funds (EDFs) do not form part of the EC budget. The EDFs are financed directly by the Member States of the European Union outside the usual EC budgetary mechanisms. The European Development Funds have been running continuously since 1957 to promote and expedite the economic, cultural and social development of the ACP States

country in question.²⁹ The Committee also carries out regular evaluations of the Facility's performance by comparing the Facility's annual report against its original operational plan. As for mandated programmes, the Commission is required to report to the Council and the Parliament on the management of such community budgetary resources by the EIB.

The Facility for Euro-Mediterranean Investment and Partnership (FEMIP)

FEMIP was launched in October 2002 and is implemented by the EIB on behalf of the European Commission in close cooperation with all participants in the region's development: the European Commission, the banking community in Europe and the beneficiary countries, the World Bank, the IFC, the African Bank for Development (AfDB), and other multilateral and European bilateral development finance institutions. The EIB has been entrusted with managing Community budgetary resources (MEDA programme) as a result of its long-standing experience in the Mediterranean Partner Countries (MPCs): between 1974 and 2001, the Bank lent a total of EUR 12.6 billion within the MPCs.

Thus, with the creation of FEMIP, the EIB plans to invest, by 2006, EUR 7.4 billion of its own resources in the MPCs as well as EUR 1.8 billion via existing Mediterranean lending mandates, risk capital resources from the EU budget, and technical assistance and investment aid funds provided by the Union.³⁰ In total, 60% of financing will be earmarked for financing private businesses – FEMIP's priority objective – and the remaining 40% for infrastructure and socio-economic sectors – health, education, environment, etc. In terms of its management, FEMIP operates in a similar fashion to the Cotonou Investment Facility. The evaluation of projects to be financed under the Facility is submitted to an Article 14 Committee – a committee very similar to the Investment Facility Committee within the Cotonou Investment Facility – through which Member States and the Commission evaluate projects individually (though once again voting power is limited to Member States only). The Commission (DGs Relex and Europaid) is again involved in drafting the Facility's operational plans in close cooperation with the EIB, and working plans are agreed between the two institutions via periodical meetings. According to the Commission officials interviewed, no evaluation of FEMIP's performance has yet been carried out, although this is forecast and will most probably be carried out by the Commission in conjunction with the EIB in the near future.

4.5.2 A special case: The European Investment Fund

The European Investment Fund (EIF) was founded in 1994 as a joint venture between three shareholder groups: European Investment Bank (60%), the European Commission (30%) and European financial institutions (10%). Together with the EIB, the EIF forms the EIB Group. However, both organisations maintain a separate management and governance structure, though personal overlaps at the level of their Governor and Board of Directors exist. Its main task is to provide financial institutions with infrastructure and SME guarantees and to be the EIB Group's vehicle for venture capital (see Annex C). Within the European Investment Fund the Commission benefits from a

(i.e. the African, Caribbean and Pacific countries party to the Cotonou agreement). The EDFs are administered by the European Commission.

²⁹ EU, 2000, between Representatives of the Governments of the Member States, meeting within the Council, on the Financing and Administration of Community Aid under the Financial Protocol to the Partnership Agreement between the African, Caribbean and Pacific States and the European Community and its Member States signed in Cotonou (Benin) on 23 June 2000 and the allocation of financial assistance for the Overseas Countries and Territories to which Part Four of the Commission Treaty applies.

³⁰ <http://www.eib.org/site/dynamic.asp?designation=med&sCountChildren=1&childHeaderId=289>

greater level of policy influence than on any other area of activity of the EIB Group. The Commission is a shareholder of the Fund (30% of its capital – community budgetary resources) and, as such, the Commission not only is member of the EIF’s Board of Directors, but also chairs the Board. The Chief Executive, who is responsible for the day-to-day management of the Fund, heads the EIF Management and reports to the Board of Directors which, apart from its supervisory role, is responsible for approving all EIF operations. Moreover, there exists an Audit Board – an independent statutory body charged with verifying that the Fund’s operations have been conducted in compliance with the procedures laid down in its Statutes and the Rules of Procedure – which consists of three auditors, one of whom is from the Commission. This Audit Board is answerable directly to the shareholders and thus also the Commission. In addition to this, as both a Community body and a financial institution, the Fund cooperates with other independent control bodies entrusted with auditing tasks under the Treaty or other regulations: the Internal Audit of the Commission and the European Court of Auditors.

4.5.3. Community budget managed by the EIB: policy influence – From the examples reported above, it becomes apparent that, where the Bank is entrusted with managing community budgetary resources, the layers of interaction between the Bank and the Commission are much more complex and the level of interaction much deeper than in any of the cases previously examined. As well as determining the objectives, timeframe and ceiling of these lending operations, the Commission is also involved in setting the conditionalities for such operations – in accordance with the “Country Strategy Plans” stipulated between the Commission and the cooperating country.

On a monitoring level, as well as reporting the Bank’s activities on a yearly basis to both the Council and the Parliament, the Commission is also in charge of defining the programmes and evaluating them. This is taken even further in the case of the European Investment Fund (EIF), where the fund’s management is directly accountable to the Commission for the Fund’s operations.

4.6. Joint Working Party: an overarching policy dialogue – The Joint Working Party (JWP) is an initiative born out of a High-Level Meeting – an informal lunch which takes place every year – in spring 2003, between the European Commission and the EIB’s Management Committee. Composed of a secretariat, located within the Commission’s DG for Economic and Financial Affairs (DG Ecfm), the JWP is chaired jointly by the EIB (the EIB representative in Brussels) and the Commission (DG Ecfm). The JWP was set up in response to the need to keep track of and coordinate the increasing policy dialogue between the Bank and the Commission. Although still in a ‘work-in-progress’ phase, the JWP can be seen as a stocktaking exercise which aims at assessing the extent and utility of such cooperation between the two institutions, as well as providing a forum for clarifying roles and responsibilities (eg. raising awareness of each party’s activities and political views, at the level of both desk officers and senior policy officials). Although initially set up with a one-year mandate, the EIB and the Commission have agreed to renew the JWP’s mandate given its usefulness in providing an overarching and cross-sectoral mechanism for political dialogue. The conclusions of the Joint Working Party’s first year of activity were presented at this year’s high-level meeting.

5. Levels of Policy Influence

Despite the EIB claiming to work in close cooperation with the Commission on all aspects related to the examples mentioned above, it is apparent that the degree of policy influence the Commission exerts on EIB activities varies according to the form of cooperation between the two institutions. Where the EIB handles community budget, the Commission benefits from much wider de facto political influence than when it is simply exploring possible avenues of cooperation with the EIB's own initiatives or mandating envelopes. Agreements therefore vary widely: from light forms of cooperative mechanisms on the one hand – such as the Memorandum of Understanding concerning EIB and Commission cooperation on the Innovation 2000 Initiative – to more legally binding agreements on the other hand – for example those stipulated for the management of investment facilities, such as FEMIP, the Cotonou Investment Facility and, above all, the EIF's Statute. As demonstrated by the examples provided in this last chapter, the levels of policy influence are multiple. The European Commission's ability to impact on the EIB's policies is heavily dependent upon the formal obligations of the Bank towards the Commission. The more formal the relationship, the more leverage the Commission can exert on the Bank's operations. Overall, four distinct levels of cooperation can be identified in relation to the Commission's influence on the Bank's operations:

Non-influential	<i>The inter-service consultation</i> , where the Commission's influence within the approval of a project is limited to providing the Bank with a simple opinion on the conformity of projects to European laws. The terms and conditions for lending are set by the EIB alone and the Commission is also excluded from any monitoring and evaluation of financed projects.
Semi-influential	<i>The EIB's own initiatives</i> , where the EIB and the Commission find common ground on which to build a cooperative, but independent, approach to the pursuit of common objectives. In this instance the two institutions may agree on a non-legally-binding set of procedures (Memoranda of Understanding) and engage in the periodic exchange of information and expertise. The terms and conditions for lending are still set by the EIB, though in accordance with the Commission's objectives. Again the Commission is excluded from any evaluation or monitoring role.
Quasi-influential	<i>Mandated programmes</i> , where the Council defines the objectives of the Bank's lending operations in accordance with the Commission's multi-annual programmes. Such objectives are formalised in legally binding documents (Council decisions), although much operational freedom is left to the EIB as to the terms and conditions of its lending operations. However, the Commission is involved in the monitoring of such operations, since it must report, on an annual basis, to both the Council and the Parliament.
Fully influential	<i>Community budget</i> , of which the EIB may be entrusted the management on behalf of the Commission – typically via one of the Bank's facilities. In this case it is for the Commission to dictate the terms and conditions of the Bank's lending operations. The Commission is also involved in the drafting of the facilities' operational plans and in the monitoring and evaluation of individual projects. These activities are described in detail within official community legislation and, as in the previous case, the facilities' operations are to be reported on by the Commission to the Parliament and the Council on a yearly basis.

Interviewees expressed a positive attitude towards the current developments within cooperation with the EIB. Most interviewees felt that in recent years the EIB has begun showing signs of improvement, as far as opening up to cooperation and policy dialogue is concerned. This was mainly identified by the Commission officials interviewed as the result of three, equally important, aspects:

- Leadership* Philip Maystadt was considered by all interviewees to have brought about major changes in the Bank's culture. He is seen as having shifted the Bank's political outlook from a purely conservative one, under the leadership of his predecessor, Sir Brian Unwin, to one far more progressive in comparison, as well as one more in tune with the Bank's new requirements as an integral part of Community policy objectives;
- New Blood* Maystadt's progressive leadership appears to have encouraged, and been encouraged by, the replacement of senior conservative members of staff with younger and less conservative professionals;
- External pressure* The recent and constant scrutiny of the Bank's operations by civil society organisations is thought to have contributed substantially to the Bank's change of course.

Most interviewees felt that, as cooperation strengthens between the Bank and the European Commission (eg. through the MoUs and the Joint Working Party), the Bank's overall politics will inevitably alter as a result of a continuous influence exerted by the Commission on the Bank's policies. MoUs were perceived as an initial and positive attempt to reconcile the EIB's demand for operational independence with the Commission's need to influence the Bank's key programmes – although they are still topic/programme specific.

However, most interviewees identified two major shortcomings in the EIB's structural set-up that may hinder major developments in the Bank's overall operational framework:

1) *Size and expertise of the EIB staff* – The Bank is not staffed adequately for the size of its operations. Moreover, the Bank would benefit from increasing its staff in terms of the level of expertise in environmental and sustainable development issues. Most interviewees were surprised to learn that, compared to its sister IFIs, the EIB employed just 10% of the number staff at the World Bank, and that where the EIB employs just one full-time environmental expert, the World Bank employs about 300. The interviewees welcomed the Bank's recent intention to employ a social impact expert as a sign of acknowledgement on the part of the Bank of the need to adapt to new requirements. Interviewees also acknowledge that the understaffing of the Bank is a direct result of a conscious political decision of Member States, an issue to which the Commission is also very sensitive.

2) *Part-time leadership* – Project oversight could possibly be ameliorated by employing full-time directors. At present the Board of Directors is composed of non-resident professionals who meet at the EIB's headquarters in Luxembourg 10 times per year.

6. Conclusions and recommendations

The official mission of the EIB is to further the objectives of the European Union by making long-term finance available for sound investment – and the EIB forms an integral part of the family of EU institutions. However, as the report has shown, the oversight and political influence of the three core institutions of the European Union (Council, Commission, Parliament) over the Bank is very limited. This is primarily due to the fact that, when setting down the Bank's Statute, the Member States of the European Union made a clear choice in favour of the Bank's independence and against drawing it too closely into a legally defined relationship with the rest of the family of EU institutions. The inevitable result has been a high degree of ambiguity surrounding the Bank's accountability to the European Community.

Nevertheless, as illustrated by the study, control over the Bank's lending operations is possible where the EIB is charged with managing community budgetary resources. Yet these represent a minimal portion of the Bank's total lending activities, which for the most part are carried out with the EIB's own resources and over which the EU institutions have little leverage.

It is important to note that – due mainly to public pressure – the political will of the EU institutions to increase the effectiveness of the programmes and policy goals of the EU has increased in recent years. This makes it important, particularly for the European Commission, to guarantee the coherence of programmes and the monitoring of results achieved, including the operations of the EIB. In this respect, the legal and operational independence of the EIB should be revised accordingly.

As this study has shown, there are a number of problems with the EIB at the institutional, as well as at the operational level. Most notably the EIB lags behind the rest of the family of EU institutions in terms of transparency, inclusiveness and most specifically with respect to the implementation of EU social and environmental standards. Again, this is the result of the Bank's independence and of its ambiguous legal status. From an NGO perspective, there are a number of issues that need to be resolved before the EIB follows European standards and values within its lending activities in pursuit of EU policy objectives. The first is to develop the Bank's mentality in order to match it with that of the rest of the EU institutions; the second is to provide the EIB with substantive policy guidance in its lending operations.

A revision of the EIB's structure also needs to take place to ensure that the EIB's operations are coherent with EU policies. The study would suggest that such a revision could take place at different levels:

Programme level – The European Commission should pay more attention to the evaluation of both programmes and initiatives mandated to, and carried out in conjunction with, the EIB. The European Commission is responsible for reporting to the Council and the Parliament on the Union's spending activities, and even if – as shown in the study – the EIB's own initiatives are exempted from such formal reporting mechanisms, in a number of cases (eg. the Innovation 2000 Initiative) these initiatives are meant to complement Community funding. If the synergy is not

yielding the desired results (as DG Research's internal memo suggests), this needs to be brought to the attention of the Council and the Parliament, who are responsible for overseeing the achievement of Community goals – and this could be easily managed via the Commission's numerous reports. The Commission should not cover up for the ineffectiveness of the Bank's operations by keeping such information secret; on the contrary, any reason for a missed target should be reported and investigated further. Questioning the Bank as to why cooperation between the Commission and the EIB failed to deliver its objectives would then be a matter for the Parliament, and indeed the Council, to manage. This would surely encourage the Bank to pay more attention to European policy objectives when planning its lending operations.

Where the Commission can exert pressure directly, such as over the EIB's management of Community budgetary resources, the European Commission must play a more active role in screening the programmes of the EIB. At the moment the Commission relies very much on the Bank's expertise in judging the financing of projects. This must change, since the Commission – although not infallible – is still more effective than the EIB in applying social and environmental standards in the evaluation of projects.

Policy level – The newly formed Joint Working Party (JWP) between the Bank and the Commission could become a prime venue for enhanced regular oversight. Ideally, the JWP's status should shift from being an ad hoc informal working group, performing stocktaking exercises, to being a regular, formal and inter-institutional body backed by a clear mandate to supervise and coordinate the operational relationships between the European Commission and the EIB. In the long run this would provide policy guidance to the Bank, which in turn would help in advancing the EIB's overall institutional culture.

Institutional level – The ambiguity surrounding the EIB's legal status must finally be resolved, since the formal recognition of the EIB as a EU institution would subject the Bank to the full scope of EU legislation and to the full jurisdiction of bodies such as the European Auditors Office, the European Ombudsman and the European Anti-Fraud Office (OLAF). The EIB would no longer be able to dodge its responsibilities and accountability by hiding behind this veil of legal ambiguity. Such an objective should be high on the European Commission's and the European Parliament's agenda, if the Union's environmental and social goals are to be achieved.

Naturally, given the personnel overlap between the EIB Governors and the Ministers sitting in the ECOFIN Council, Member States play a fundamental role in the Bank's reform. Since the current structure of the Bank is the direct consequence of the wishes of Member States, the Council can hardly be seen as an ally in the pursuit of EIB reform. The bank's current position is largely supported by the EU Member States, and, given that the EIB has generated financial resources at below-market rates for investments aimed at strengthening the cohesion of the European Member States, with the recent enlargement of the European Union, it is highly unlikely that this will change. Yet this should not get either the European Commission, or the Parliament, off the hook. On the contrary, as the report has shown, both play an important role in promoting change.

The current Draft Treaty for a European Constitution, for example, gives the European Commission the unprecedented power to propose changes to any article of the EIB's Statute and for the Parliament to support such an action. Article III-393 of the Draft Treaty states that:

'a European law of the Council may amend the Statute of the European Investment Bank. The Council shall act unanimously, [...] on a proposal from the Commission and after consulting the European Parliament and the European Investment Bank.'

This should be seen by the Commission as an avenue it would want to follow, and by the European Parliament as an initiative it would want to support. The European Commission should propose to amend or introduce specific articles the Bank's Statute in order to clarify the Bank's legal status and finally determine the EIB's degree of accountability towards the European Community. The European Parliament could support the proposal in the co-decision process with the Council.

More boldly, given the increased and systematic delegation of community budgetary resources to the EIB, the European Commission could aim to alter the EIB's Statute so as to become a shareholder of the Bank, as in the case of the European Investment Fund and the EBRD. The legal feasibility of this proposal would need to be investigated further, though undoubtedly, if feasible, this would raise the Commission's influence over the Bank's overall policy – given that the Bank would effectively become as accountable to the Commission as to any of its shareholders.

Whatever the changes to be instigated or the avenues to be followed in reforming the Bank, a lot of noise must be made by civil society groups in order to place the EIB high on the political agenda of the European Commission, the European Parliament, and the European Council. Hopefully this study will provide both EU officials, and members of civil society, with useful ideas about to how to proceed with such changes.

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Annexes

Annex A

Report questionnaire for Commission officials.

The exercise consists of two separate but interrelated parts.

Part 1: Lead question: How is the EIB supervised by the European Commission?

The provisions of the EU Treaties and the EIB-Statute fall short in defining more precisely the nature and practice of relations between the EIB and the EU institutions. Article 11.2 of the Statute of the EIB grants the European Commission a seat in the Board of Directors of the EIB. Article 21 grants monitoring and veto powers to the European Commission with regard to decisions on investment projects and, to a limited extent, Bank policies. These Articles must be seen as a key provision for an external and continuous governance mechanism of the Bank. In practice, so called Focal Points in various Directorate Generals of the Commission seem to constitute the main channel in the relation between the EIB and the EU institutions.

Questions to be addressed by the scoping study

- Which documents and regulations are defining the relationship between the EIB and the European Commission?
- Are the Focal Points the only or main people dealing with EIB policies and practices?
- Describe how the European Commission monitors EIB policies and projects
- Describe how these Focal Points operate in practice? In which Directorate Generals (DGs) and within which units are they based? How are these Focal Points staffed? How many person/hours are devoted exclusively to the monitoring of EIB operations?
- In which phase of the EIB project cycle are the Commission Focal Points informed about a project? What kind of information about projects pending EIB decisions is made available to the Focal Points?
- To whom do these Focal Points report within their respective DGs? Whose advice and opinions are being taken into account in their report, both from within and from outside the respective DGs?
- How do the Focal Points relate to each other? Which Focal Points of which DGs have informally less power to voice opinions, which have more power?
- Describe the process of formulating an opinion by these Focal Points, as well as how this opinion is being presented to the EIB? Are there cases of dissenting opinions in the last five years? In case yes, by whom and on which projects?
- By which unit of the EIB is the opinion of the Focal Points received; describe the process within the EIB to responding to the Focal Points. Describe the process within the EIB to deal with a dissenting opinion of a Focal Point? What is the impact and the follow-up process with regard to specific decisions in the EIB relating to such a dissenting opinion?
- How do staff in the Focal Points regard closer cooperation with NGOs, in particular with regard to information about specific investment projects pending decision by the EIB?
- How do staff in the Focal Points regard closer cooperation with members of the Committee on Economic and Monetary Affairs (EMAC) of the European Parliament? Is there an existing relationship? If not, would such a relationship being welcomed?
- Are there legal provisions, outside the normal Commission procedures, impeding the sharing of information by the Focal Points to third parties? If yes, which kind of provisions and which kind of information would be excluded?
- What do staffers in Focal Points regard as the main leverage points for EIB reform within their specific tasks?

Part 2: Lead question: What is the role of the European Commission in processing the recommendations of the Extractive Industry Review (EIR) for the EIB?

The successful NGO campaign on the EIR in spring 2004 has resulted in a resolution of the European Parliament and a comment by the European Commission in support of a range of EIR recommendations. Both call on the EIB, among others, to take over the recommendations of the EIR. This part of the scoping exercise aims at gathering insight into how policy issues are generally processed between the European Commission, particularly the EIB Focal Points of the Commission, and the EIB, and what the implementation of some key recommendations of the EIR would imply for the EIB. Its goal is to identify avenues to draw the EIB into dialogue with the EU institutions about the EIR.

Questions to be addressed by the scoping study

- Describe in which DGs of the European Commission the EIR recommendations are being processed and how the EIB Focal Points are participating in this process and in presenting results to the EIB?
- Describe how the relevant DGs in the European Commission are perceiving the possibilities to implement EIR recommendations for lending operations and policy formulation within the EIB
- Describe which EIR recommendations are being considered for further elaboration in the dialogue between the European Commission and the EIB?
- Describe the experiences that exist with regard to dialogue and decision-making on policy issues between the European Commission and the EIB?

Part 2: For which EU programmes has the EIB been given a mandate to implement them?

NGOs argue that reforms in the relations between the EIB and the EU institutions are necessary because increasingly the EIB is given a mandate to execute EU programmes. The goal of this part of the research is to draw up a complete list of EU programmes mandated to the EIB. In order to advance the debate on the need to clarify the relations between the EU institutions and the EIB, the focus of this part of the scoping exercise shall be on the different management structures in place for implementing EU programmes executed by the EIB. This part of the study may also lead to a better insight in answering the questions described in Part 1.

Questions to be addressed by the scoping study

- Which EU programmes are being implemented by the EIB? What is the amount of money involved in these programmes?
- Which DGs of the European Commission are presently involved in EU programmes implemented by the EIB?
- Describe the process by which EU programmes dealt with by the EIB are implemented
- Has there been any evaluation of past programmes? If yes are the results available, and if so where?
- Has there been any evaluation of management structures of EU programmes mandated to the EIB?
- Does the European Commission have an opinion on the quality of EU programmes executed by the EIB and whether the EIB's work furthers the goals of the EU, as specified in those programmes?
- Describe the influence of the European Commission (and its perception of this influence) in the EIB's implementation of EU programmes, its possibility of correcting this implementation and its role in the evaluation of such programmes?

Annex B

The European Investment Bank: an overview

Genesis – The idea of a European Investment Bank originates from the Messina Conference of 1955 when, in view of the preparation of a European Treaty, the European Union’s founding states agreed on the need to establish a long-term financing facility that would foster the development of a European Economic Community.

As a result, the European Investment Bank was established in 1958 under the Treaty of Rome as the official financing institution of the European Economic Community (today the European Union). The Bank’s institutional framework is defined by the Treaty³¹ within Article 299, which establishes the Bank’s own Statute – drawn up as a protocol annexed to the Treaty – whilst its general tasks are outlined in Article 300: namely the mobilisation and transfer of capital from richer regions within the Community to poorer ones, as well as linking the national economies of member countries.

Membership – The members of the Bank (shareholders) are the 25 member states of the European Union. Each member subscribes capital to the Bank in accordance with its economic weight. Only 6% of the capital is paid in; the remaining 94% is under guarantee. France, Germany, Italy and the UK together make up 65% of the Bank’s total country contributions. The strength of the Bank’s shareholders has allowed the EIB to benefit from ‘AAA’ credit rating which, in turn, allows it to borrow ‘cheap’ and consequentially offer substantially lower interest payments and fees than many other international financing institutions such as the World Bank and the European Bank for Reconstruction and Development (EBRD). The Bank’s resources consist therefore of capital subscribed by Member States and funds borrowed from the world capital market.

Governance and structure of the EIB – The EIB’s two main governing bodies are the Board of Governors and the Board of Directors, charged with developing the Bank’s policies and approving its lending operations. Such lending operations are managed by the EIB’s Management Committee. A brief description of each is provided below, together with the Bank’s organisational chart.

Board of Governors – This consists of Ministers designated by each of the 25 Member States, usually Finance Ministers. It lays down credit policy guidelines, approves the annual accounts and balance sheet, decides on the Bank’s participation in financing operations outside the European Union as well as on capital increases. It appoints the members of the Board of Directors, the Management Committee and the Audit Committee. National ministers of finance therefore wear the hat of both the ECOFIN Council and the EIB’s Board of Governors. This allows Member States to maintain control over the Bank’s operations, and in particular to ensure coherence between EU policy objectives and the EIB’s operational plan.

³¹ ‘Draft Treaty establishing a Constitution for Europe’, *Official Journal of the European Union*, C 169, 18 July 2003.

The Board of Directors – This has sole power to take decisions in respect of loans, guarantees and borrowings. As well as seeing that the Bank is properly run, it ensures that the Bank is managed in keeping with the provisions of the Treaty and the Statute and with the general directives laid down by the Governors. Its members are appointed by the Governors for a renewable period of five years following nomination by the Member States and are responsible solely to the Bank. The Board of Directors consists of 26 Directors, with one Director nominated by each Member State and one by the European Commission. There are 16 Alternates, and consequently some of these positions are shared by groupings of States. Furthermore, in order to broaden the Board of Directors' professional expertise in certain fields, the Board will be able to co-opt a maximum of six experts (three Directors and three Alternates), who will participate in the Board meetings in an advisory capacity, without voting rights. Since 1 May 2004, decisions have been taken by a majority consisting of at least one-third of members entitled to vote and representing at least 50% of the subscribed capital. Directors carry out their duties on a part-time basis.

The Management Committee – This is the Bank's permanent collegiate executive body. It has nine members. Under the authority of the President and the supervision of the Board of Directors, it oversees the day-to-day running of the EIB, prepares decisions for Directors and ensures that these are implemented. The President chairs the meetings of the Board of Directors. The members of the Management Committee are responsible solely to the Bank; they are appointed by the Board of Governors, on a proposal from the Board of Directors, for a renewable period of six years.

The Audit Committee – This is an independent body answerable directly to the Board of Governors and responsible for verifying that the operations of the Bank have been conducted and its books kept in a proper manner. It reports to the Board of Governors and, when the Governors approve the Annual Report of the Board of Directors, it issues a statement on the audits carried out.

The EIB's lending operations – The EIB offers various financial services to support projects, depending on eligibility and project category.

Direct Loans (also known as individual loans) – Direct loans are agreed directly by the EIB and are targeted at capital investment projects exceeding EUR 25 million and cover up to 50% of the project's costs. Direct loans can be signed for a minimum period of four years and a maximum period of 20 years. The EIB is responsible for evaluating every project.

Global Loans – Global loans are credit lines which the EIB makes available to financial intermediaries for financing small and medium-scale projects: either SMEs or small-scale infrastructure schemes. This type of loan enables the Bank to indirectly finance projects which, because of their size, are not eligible for direct EIB funding. The volume of such lending varies from country to country; however, the Bank has dealings with roughly 400 banks and financial institutions, both within and outside the European Union.

Venture Capital – Since 1997, the EIB has been deploying, throughout the European Union, the European Investment Fund (see section below) – a venture capital facility designed to strengthen the equity base of high-technology SMEs and those with strong growth potential. Operations under this heading encompass financing for

venture capital funds, security packages for such funds and conditional and subordinated loans. The EIF is the only point of contact for all venture capital and SME portfolio guarantee transactions within the EIB Group (that is the EIB plus the EIF).

The European Investment Fund - The European Investment Fund (EIF)³² was founded in 1994 as a joint venture between three shareholder groups: European Investment Bank (60%), European Commission (30%) and European financial institutions (10%). Its main task is to provide financial institutions with infrastructure and SME guarantees and to be the EIB's vehicle for venture capital. Together the EIB and the EIF now form what is called the 'EIB Group'. The EIF began its involvement in venture capital in 1997, as part of the European Commission's 'Growth and Employment' initiative and has placed particular focus on SMEs as a result of the Lisbon Strategy and the Euro-Mediterranean Investment and Partnership (FEMIP). As well as venture capital, the EIF provides portfolio guarantees for all types of institutions involved in the financing of SMEs. For its venture capital and guarantee activity, the EIF uses either its own funds or those available within the framework of mandates entrusted to it by the EIB or the European Union. As at 1 January 2003, the EIF managed a portfolio of 184 funds corresponding to commitments in excess of EUR 2.5 billion. Apart from its own operations, the EIF has charge of the following activity:

- Since 1998 on behalf of the European Commission, the EIF has managed the SME Guarantee Facility and the ETF Startup venture capital programme, two facilities under the Growth & Employment Initiative;
- Since 1997 the EIF has managed a guarantee programme called the Growth & Environment pilot scheme.
- In 1997 it also launched the Innovation Equity Capital pilot project (I-T Commission) in collaboration with the European Commission's Directorate General for Enterprise, an initiative aimed at encouraging early-stage investments in technologically innovative SMEs as part of the European Commission's Innovation/SMEs Programme.

The EIF does not invest in SMEs directly, but through financial intermediaries (private banks). These intermediaries are given full delegation of activity: the EIF is not involved in individual investment/credit decisions. SMEs in search of finance are requested to contact an EIF intermediary in their country/region for information on eligibility criteria and application procedures (the list of intermediaries is publicly available and is published on the EIF's website).

³² The EIF is classified as a Multilateral Development Bank under the European Community's solvency ratio directive (Directive 89/647/ECommission).

Annex C

MoU EIB/DG Research

**Joint memorandum
establishing a framework for co-operation between the community research framework
programme and the “Innovation 2000 Initiative”**

**Between the European Community represented by the Commission of the European
Communities**

and

the European Investment Bank

1. Introduction

1. In defining a strategy to achieve the transition to a competitive and dynamic knowledge economy, the European Council at its Lisbon meeting stressed that the Union must work towards the objectives set out in the Commission’s communication “Towards the European Research Area”. In particular, it asks the Council, the Commission, and the Member states, with the support of the European Investment Bank (EIB), to take the necessary steps to improve the networking of research activities and to improve the investment in research and technology.
2. Following up the Lisbon strategy at their Stockholm spring meeting in March 2001, Heads of State emphasised that Europe must do more to harness research and finance talent to ensure that European ideas reach the European market place first. The Community research framework programme (FP) should therefore make full use of its new instruments on excellence, integration and joint implementation of national programmes. Moreover, the EIB was invited to step up its support of R&D activities within its “Innovation 2000 Initiative” (i2i).
3. The EIB is at present the majority shareholder of the European Investment Fund (EIF). The President of the EIB is at present also Chairman of the Board of Directors of the EIF in consideration of the majority participation of the EIB in the EIF. The EIB and the EIF (mentioned together as "The EIB Group") work closely and in full cooperation coordinating their activities in order to pursue at best their respective statutory missions in the interest of the Community.
4. This joint memorandum sets out a framework for co-operation between the Commission and the EIB Group over the medium term, with the aim of optimising their action in the field of research and the exploitation of its results.

2. The bases for co-operation

5. The bases for co-operation between the framework programme and the “Innovation 2000 Initiative” exist in the fact that these two financing programmes:
 - share a number of *common objectives* with respect to stimulating research and innovation, so as to induce, in a sustainable manner, a more dynamic and competitive economy contributing to social and economic cohesion, and fit for the era of a knowledge-based society;

- act through *complementary means of intervention*, which, in the form of grant financing (framework programme), and loan and venture capital financing (“Innovation 2000 Initiative”, or the financial instruments managed by EIF on behalf of the Commission), apply to different aspects and investment needs of technology-related activities as they move from conception to application; accordingly, the complementary nature of a joint financing can be either parallel or sequential;
 - both operate according to the principle of *combining their interventions* with other sources of funding, so as to maximise their impact in achieving their respective goals. As members of the Community institutional framework, and in the particular context of the framework programme and the “Innovation 2000 Initiative”, the Commission and EIB Group will co-operate, so as to maximise the impact of their respective financing of research and development activities. The EIB mandate under the Treaty (Art. 267) requires it to act in liaison with Community institutions. Moreover, the Commission’s proposal for the new framework programme 2002–2006 envisages making grants to large integrated projects and networks of excellence in the context of “overall funding plans” which would combine with other sources of financing.
6. Furthermore, both the Commission, under the FP, and the EIB Group, under i2i, are seeking to refocus their financing activities and to develop new instruments and means of action so as to respond more effectively to key structural deficits regarding the knowledge-based economy.
7. This framework should actively contribute to the development of new types of intervention on the part of each of the Parties, and at the same time provide a means for getting the best value from them individually and in combination, while itself evolving as necessary to achieve these ends.

3. The framework for co-operation

8. The arrangements for co-operation defined under this framework fall into two basic categories:
- The first category relates to *general measures to promote overall alignment* of strategy and action between the Parties, including information flow between them and with the client base.
 - The second category consists of *specific areas of intervention* in which co-operation will take place: stimulation of research and technology development, support for research infrastructures, and promotion of high technology companies and incubators via venture capital provisions.

3.1. Arrangements for promoting co-operation in general

i) Strategy and policy

9. The Parties recognise that improving the joint impact of their respective means of intervention in the field of research and innovation should start from coherent overall strategies and priorities, taking as their common point of reference the orientations agreed by Heads of State under the Lisbon process.

10. Periodic high level meetings between the EIB Group and the Commission are therefore envisaged, with the objective of reviewing the state of research and innovation financing in the European Union and the strategic priorities of the Commission and EIB with regard to these fields in the coming years.
11. Such meetings could also, if programmed appropriately, help to ensure a coherent strategic input to the Spring European Council meetings with respect to the contribution of research and innovation policies, and related funding initiatives, to the development of the knowledge-based society in Europe.
12. They would also review the state of progress with regard to the development of this framework for co-operation, and consider any specific strategic questions arising from it.

ii) Improved information flow between the services of the Parties

13. If the FP and i2i are to operate effectively in a more dynamic environment, and to mount joint activities, a better mutual awareness of each other's activities and working practices is required, and more systematic liaison in the process of intervention in favour of research and innovation activities.
14. To this end, the Commission and EIB envisage that arrangements will be made to improve the flow of information between their respective services on matters relating to support for research and innovation. This will take various forms:
 - the responsible services of the Commission and EIB will consult one another on the development of major policy documents;
 - regular contacts will ensure an early awareness of matters of mutual interest, including specific projects where combined interventions may be of benefit;
 - where appropriate, cross-participation by Commission and EIB personnel will be assured in important events dealing with research and innovation financing organised by each Party. Joint organisation of fora and symposia, and sharing of findings of studies and strategic analyses is also envisaged.
15. In addition to the existing cooperation procedures between the Commission and the EIB and in order to facilitate the achievement of these aims, a "counterpart system" of contact points within each Party will be identified with responsibility for inter-institutional liaison. As appropriate, these contact points may be linked to specific topics of mutual interest, such as those set out below. Other arrangements will also be considered, such as the temporary secondment of staff.

iii) Coherent information to "clients"

16. In order to exploit more effectively the complementarities between the financing instruments of the framework programme and the "Innovation 2000 Initiative", and stimulate interest in possible combined financing arrangements, the Commission and the EIB Group will strive to integrate better the presentation of their respective financing opportunities to the public and their specific "client" groups.

17. The principal means for achieving this will be through links between the web-based information services operated by each Party. These will be installed in the context of a process of upgrading these services, which is being conducted by both the Commission (Cordis server) and the EIB Group.
18. As appropriate, information on funding opportunities associated with each Party may be included in the documentary information provided by the other to prospective applicants or proposers, in the form of leaflets, brochures, etc.

3.2. Co-operation relating to specific areas of intervention, and associated modalities

19. Potentially the most powerful means to enhance the joint impact of the framework programme and “Innovation 2000 Initiative” will be to combine these two sources of financing. The areas in which co-operation will be actively pursued, and the arrangements for doing so, are set out under three separate headings in the paragraphs which follow. The prospects for co-operation differ in each case, but the intention is to exploit fully the potential for maximising the overall impact of these two financing instruments, and put into effect the necessary arrangements to do so in an effective and workable manner.
 - i) Research and technology development (RTD) projects and subsequent exploitation of results*
20. Since grant (FP) and loan and venture capital (i2i) instruments can be complementary in financing research, as well as the subsequent phases of exploitation and commercialisation, combining these modes of intervention could give added stimulus to investment in research, as well as improve the prospects for its exploitation in commercially viable and socially desirable innovations.
21. The EIB Group's “Innovation 2000 Initiative” identifies the promotion of R&D as one of the areas in which it should become more active, including through intensifying its joint financing activities of public R&D programmes, and specifically Community-supported programmes.
22. As regards the Commission, possibilities for combined financing exist within the present framework programme. They should be amplified in the future as the proposal for the framework programme 2002–2006 explicitly anticipates this possibility and calls for a much larger proportion of research to be funded through “integrated” RTD projects, which, in some cases, may reach a size of up to several tens of millions of euros.
23. The Commission and EIB will work towards establishing operational modalities for combining their financing of RTD projects. In the present context, this will involve:
 - creating a mechanism for early involvement of EIB in projects submitted under the framework programme, where one or more participants signal their interest in EIB loan financing, for example to carry out additional research, or contribute to development or commercialisation;

- developing a means to accelerate EIB project assessment (“fast track”) for proposals that have already been evaluated under the framework programme, while maintaining a separate EIB decision process.
24. To prepare the ground for implementing the forthcoming framework programme 2002–2006, development of practical measures for combined financing of research activities, between the FP and i2i will be pursued, that could include, for example:
- opening a “window” for EIB financing, within its normal lending rules and procedures, focusing on a number of the scientific and technological priorities established in the proposal for the framework programme 2002–2006. This could provide the basis for more intensive co-operation on specific topics within these priority areas; topics which could be identified, programmed and publicised in a timely fashion in the context, for example, of the strategy co-ordination arrangements referred to in Section 3.1 (subsection *i*) above.
 - associating EIB with calls for proposals relating to integrated projects under the framework programme, with combined or co-ordinated evaluation processes to enable project participants to benefit from grant and loan financing within the same framework;
 - developing joint instruments combining, in one package, financing from the FP and i2i. These might involve, for example, guarantees from budgetary funds on EIB loans.

ii) Research infrastructures

25. Large research infrastructures—a term which covers for example biological collections, research satellites, high capacity computing facilities and databases, and scientific instruments such as synchrotron radiation sources—have a critical role in many areas of scientific research, but also increasingly in industrial innovation. The need to create a co-ordinated approach to the future development of Europe’s fabric of research infrastructures is well recognised and the Commission has put forward its views on how this could be achieved¹. A stronger catalytic role of the Union is anticipated for new infrastructure development, with corresponding provisions in the proposal for the framework programme 2002–2006, and financing mechanisms which combine different sources of funds, including the private sector, the structural funds and EIB resources, as well as those of the Member States.

¹ A European Research Area for infrastructures. Working document of the Commission services, SEC (2001) 356.

26. The EIB is an established partner of the structural funds, reflecting its policy focus on regional development, with a co-operation agreement already in force with the Commission in this area². In the context of the structural funds, the EIB and the Commission are working jointly on a number of areas with a view—among other things—to reinforce research initiatives at regional level, especially in Objective 1 regions lagging behind. The EIB is also a major actor in European infrastructure development, notably in respect of the Trans-European Networks, and has built significant expertise in financing public-private partnerships (PPPs). Following a specific request from the Lisbon council, it is also working to support the development of a trans-European network for scientific communications (the Géant project) and within the i2i framework anticipates investment directed to public and private research facilities.
27. The Commission and EIB will explore how their instruments and expertise can most effectively be combined in the process of developing new large-scale research infrastructures of European interest and furthermore serve to leverage other sources of finance. Community grants and EIB loans could often intervene at different stages in the lifecycle of research infrastructure alongside other sources of finance. For example, grants would be more suited for supporting feasibility studies and contributing to design tasks, as well as research projects and trans-national access during operation, while EIB loans would provide a means to amortise construction costs over an extended period of operation. EIB loans could also provide a comfort to other private investors and create awareness of additional research funding sources in the research community. Financing models along these lines, elaborated in sufficiently flexible terms to be applicable to a range of different infrastructure projects, will be established to help the prospective partners to arrive at a practical and sustainable financing regime over the entire life of the infrastructure in question, and thus provide additional stimulus for action.
- iii) Venture capital provision for high technology companies and incubators*
28. Europe could draw more competitive benefits from its high-quality research and technology. The critical role played by high technology SMEs (start up and growth companies) in this process is well-recognised, as is their contribution to economic development, especially in the most dynamic, high growth, knowledge-based sectors of the economy. Measures to encourage the creation and growth of these companies occupy a prominent place in the Lisbon strategy.
29. The EIB Group has recently restructured its activities to increase its investment potential in this field. By the end of 2003, the EIF will have mobilised about 3 billion euros under i2i in support of innovative SMEs via venture capital funds, and to develop further the EU's venture capital markets. Early-stage financing, as well as the support of dedicated technology venture funds, science parks and incubators belong to the key priorities of the EIF. EIF also manages several strands of the Community's multi-annual programme for enterprise 2001/2005 relating to venture capital ("ETF start up" and the "seed capital action").

² Cooperation Agreement on Community structural assistance during the period 2000-2006 between the European Commission and European Investment Bank, Luxembourg, 19 January 2000.

30. Under the framework programme, the Commission has set up several initiatives to nurture the processes leading from research to the creation of technology start-ups. The various actions include creating “research and finance fora” in particular fields, such as biotechnology and information technology; encouraging networking between incubators and between venture capital operators; and advising research actors on access to venture capital. The Commission proposes to strengthen these actions under the framework programme 2002–2006.
31. To bring their respective actions into closer alignment, and contribute to more coherent and effective overall structures for nurturing entrepreneurship, technology start-ups and growth firms from research, the Commission and the EIB Group will seek more structured co-operation in the following, non-exclusive, domains:
- improving the flow of expertise between the Parties in respect of technology and finance, for example through light consultation mechanisms for strategy and financing actions relating to start-ups, incubators and “business angels”;
 - orienting economic and technological intelligence actions, supported under the framework programme, in part towards the strategic information needs of venture capital funds and entrepreneurs³. The Commission and the EIB Group would work together in identifying the type and format of information needed and mobilising the resources available, e.g. strategic studies on emerging research and technology areas, databases, foresight studies, information services, documentation centres and specific research networks, and diffusing them to users in the finance community;
 - reinforcing networking activities between innovation actors (research and finance, including venture funds supported by EIF through joint initiatives, such as by setting up research & finance fora in emerging research or industrial fields, such as nano-technology;
 - adapting support and information services operated by the Commission and EIF to meet the needs of researchers-entrepreneurs and venture capital funds in a more coherent manner. For example, existing services and information sources (e.g. web sites, help desks, brochures) from EIF and the Commission would be linked.

4. Implementation and further development of the co-operation framework

32. The memorandum will be reviewed on a periodic basis and, as necessary, modified or terminated. A steering group made up of representatives of the services of the EIB and the Commission will oversee the further development and implementation of the activities. Specialised working groups, or teams of an appropriate nature, may be established as required, to develop co-operation modalities relating to particular topics, or to develop specific arrangements for possible combined financing where this is seen to be appropriate.

³ Such studies would also contribute to the co-ordination of strategy and policy activities as described in paragraphs 10-13 above.

33. At the outset, three working groups are in place, concerned respectively with research and technology development activities and subsequent exploitation of results; research infrastructures, and venture capital provision for high technology companies and incubators. The focus of these groups may be adjusted if new priorities emerge.
34. EIB will bring the contents of the relevant parts of this Joint Memorandum to the attention of the EIF in order to coordinate the respective activities.

Done at Brussels,

For the Commission, Philippe Busquin

For the European Investment Bank, Philippe
Maystadt