19 The European Investment Bank

An EU Institution Facing Challenges and Providing Real European Added Value

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Keywords
European Investment Bank, status and role of development banks, Green Bonds, European Fund for Strategic Investments (EFSI), InvestEU

Abstract
Multilateral banks play an important role in financing larger investment projects within the EU and in most parts of the world. These institutions are less known than that commercial banks, even though many of these institutions – and in particular, the European Investment Bank – have provided a truly remarkable volume of financial support for the countries where they operate, including EU Member States. This paper introduces the largest of the multilateral financial institutions: the European Investment Bank. It elaborates on the specific regulatory framework applicable to its structure and operation as well as a number of special characteristics affecting this institution exhibiting a unique dual nature: a multilateral bank and an EU institution. This paper examines the complexity of the EIB's operation, in particular, the impact of external circumstances such as EU enlargements of the past and the Brexit issue in the present. Beyond these specific questions, generic issues relating to its operations, governance, the applicable specific prudential requirements and the non-supervised nature of multilateral financial institutions are analyzed as well. This paper also reflects on the EIB's unimpeachable role in financing the EU economy and on its pioneering role in bringing non-financial considerations, such as environmental protection into the implementation of financial operations.

19.1 Introduction

Multilateral financial institutions play an undeniable and rather significant role in a wide range of investment projects while providing a financial contribution to the different

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economies of Europe and the world. Compared to commercial banks, the function and operation of these institutions is less conspicuous, even if the volume of financing provided by them can be regarded as considerable.[1] In this paper I intend to analyze the function and operation of the European Investment Bank (EIB) – which is the largest among the multilateral financial institutions –, and beyond the assessment of its formal regulation, I elaborate on its specific characteristics and the circumstances affecting it.

In Europe altogether four significant multilateral financial institutions provided financial contribution to investment projects in the past, and three of them are still present on the continent: *(i)* the World Bank (International Bank for Reconstruction and Development – IBRD) group, *(ii)* the European Bank for Reconstruction and Development (EBRD), *(iii)* the Council of Europe Development Bank (CEB), and *(iv)* the EIB – together with its subsidiary, the European Investment Fund (EIF). Although three of the aforementioned four institutions are named 'European', only one of them, namely the EIB can be considered an institution of the EU. The EIB is owned by the EU Member States and operates worldwide (with very few exemptions such as the US, Japan, North Korea) with an emphasis on the financing of EU economies. This paper aims to describe and analyze how the EIB's organization can serve and support the performance of financial activities within and beyond the framework of the applicable status regulation.

19.2 Basic Features of the European Investment Bank's Operation

The EIB started its operation on 1 January 1958 with a paid-in capital of EUR 100 million current value contributed by the founding Member States. This resulted in EUR 250 million (current value) of activities value (total assets and guarantees) by the end of that very same year.[2] The last paid-in capital increase took place in 2014 with EUR 10 billion, with the paid-in capital reaching EUR 21.6 billion. In essence, this capital increase made it possible to achieve a peak level of the EIB's overall activities by the end of 2017 at EUR 549.2 billion. The level of the Bank's own funds at the end of 2017 stood at EUR 69 billion. The yearly financial surplus from the Bank's activities increases the level of own funds year by year.[3]

The EIB is not a profit-oriented institution, however, its operational surplus within the last three years until 2017 exceeded EUR 2.5 billion. The EIB does not pay dividends,

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1 Nick Robinson, 'The European Investment Bank: The EU's Neglected Institution', *Journal of Common Market Studies*, Vol. 47, Issue 3, 2009, pp. 651-673.

2 *European Investment Bank Annual Report 1958*, at www.eib.org/attachments/general/reports/ar1958en.pdf. On the history of EIB *see* Lucia Coppolaro, 'Setting up the Financing Institution of the European Economic Community: The Creation of the European Investment Bank (1955-1957)', *Journal of European Integration History*, Vol. 15, Issue 2, 2009, pp. 87-104.

3 Data from *EIB Financial Report 2017*, at www.eib.org/attachments/general/reports/fr2017en.pdf.

therefore it was able to increase its own funds and risk-taking capacity, while also continuously complying with the best banking risk management practices and all applicable elements of the Basel capital adequacy requirements. Although the EIB is not a profit-oriented bank, it does not mean it would operate at a financial loss. However, it does not aim to maximize its profit to pay dividends. The business model of the Bank is to use its best AAA credit rating to get cheap and long-term financing from the capital markets, which it passes on to its counterparts. On this basis the most important international credit rating agencies maintained the bank's best rating level with a stable outlook over the past years. The business model of the bank – passing over financial advantages to its counterparts, relying on the high level of capital adequacy ratio (28.5% at the end of 2017) on the one hand and cheap and long-term fundraising on the other – has proven to be successful.

Although all EU Member States are owners of the Bank, their shares in the capital are not equal. The four biggest shareholders (Germany, France, Italy and at present the United Kingdom) hold 16.1% each, while others hold minor stakes in the ownership structure. *E.g.* Austria 2.2, Belgium 4.6%, the Czech Republic 0.76%, Hungary 0.72%, Poland 2.0%, Spain has 10%. These reflect the economic weight of the Member States at the time of their accession to the EU. These proportions, however, should be reviewed in the light of the economic changes that have taken place since 2004.

The volume of the EIB's activity is rather significant, however, it is not necessarily widely known and recognized in the Member States. At the end of 2017 the overall exposure of the Bank stood at EUR 567.7 billion, of which EUR 504 billion were earmarked for projects within the EU. During its 60 years' history the EIB as a policy driven bank has contributed to the settlement of several significant political issues.[4] At the time of its foundation, it served the unification of the developed part of Europe. It helped avoid further devastating wars, it facilitated reconstruction and fast recovery after World War II and later supported the enlargements of the European Communities. The Bank also helped prevent economic crises and mitigate their effects, and during the change of political regimes (in Greece, Portugal, Spain, and the former socialist countries of Europe) it helped the economic restructuring.

After the last financial crisis started in 2008, the EIB assumed a significant role in reopening frozen financial markets and later in stimulating sluggish investments. Besides its direct financial tools, the EIB took the lead in several mediatory tasks and initiatives serving the public interest. Historically, but even now the Bank's role in the theoretical and practical support for the environment policy, awareness-raising for climate change issues and dissemination of financial tools serving these is especially important. The EIB not only advocated for and publicized climate-action but also took lead in implementing

4 Patrick Honohan 'The Public Policy Role of the European Investment Bank within the EU', *Journal of Common Market Studies*, Vol. 33, Issue 3, 1995, pp. 315-330.

conventions on climate protection, acting as an innovator *e.g.* by issuing so-called Green Bonds.[5] The development and introduction of innovative banking products served and serves the common political vision to reduce Europe's technological disadvantage *vis-á-vis* the US and the large economies of the Far East. The most recent innovative product is the European Fund for Strategic Investments (EFSI) which will be examined later in this paper.

According to the Statute of the EIB the Bank shall grant financing, in particular in the form of loans and guarantees to its members or to private or public undertakings for investments to be carried out in the territories of Member States, to the extent that funds are not available from other sources on reasonable terms.[6] The primary role of the EIB is therefore to cover market financing gaps where commercial banks are not able or for some reason unwilling to take on the role of financer. Such cases are in particular investment projects where, in addition to the amount of funding required, the duration (expected maturity) exceeds the possibilities of commercial bank financing. These cases include the financing of investment projects at the time of financial and economic crises. In certain cases, the Bank may grant loans or provide other financial means for investments to be carried out, in whole or in part, outside the territories of the Member States. When granting a loan to an undertaking or to a body other than a Member State, the Bank shall make the loan conditional either on a guarantee from the Member State in whose territory the investment will be carried out, or other adequate guarantees regarding the financial means of the debtor. Such other adequate securities may be a guarantee from the EU budget[7] for financing investments in third countries or a guarantee for European Fund for Strategic Investments.[8]

The EIB's specific situation and the targeted nature of its activities are also reflected in the need for preliminary approval by the European Commission as well as the non-objection opinion of the Member State concerned for each financing operation.

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5 *EIB Climate Awareness Bonds Factsheet*, at www.eib.org/attachments/fi/2018-cab-factsheet-v7.pdf.

6 Protocol on the Statute of the European Investment Bank, Article 16.

7 Decision No 466/2014/EU of the European Parliament and of the Council of 16 April 2014 granting an EU guarantee to the European Investment Bank against losses under financing operations supporting investment projects outside the Union.

8 Regulation (EU) No 2015/1017 of the European Parliament and of the Council of 25 June 2015 on the European Fund for Strategic Investments, the European Investment Advisory Hub and the European Investment Project Portal and amending Regulations No 1291/2013 and No 1316/2013.

19.3 The Institutional Status of the EIB

The European Investment Bank – celebrating its 60th anniversary last year – is a fully-fledged EU institution. The Bank was established by the Treaty of Rome in 1958.[9] The EIB was set up at the same time as the EEC and the EU's core institutions (Commission, Council, Parliament, Court of Justice) as a part of the EU institutional system, sooner than the European Court of Auditors, the Ombudsman or the European Central Bank. Although the TEU does not mention the Bank among the institutions of the EU, it has clearly been placed in the institutional chapter of TFEU and in the Protocols No. 5, 6 and 7 attached thereto. The amendments to the Treaties did not fundamentally affect the rules governing the EIB's status, so one can still find these rules in Articles 308-309 TFEU. Similarly to other EU institutions (*e.g.* the CJEU or the ECB), the Statute of the EIB (Statute) containing the fundamental rules of its operation are also incorporated into the TFEU.[10] As an EU institution, the Bank has the same privileges and immunities as all other EU institutions,[11] its existence and legal personality derives from the Treaty itself.[12]

Multilateral development banks are set up in a special framework compared to commercial banks. Their founders are exclusively states (and in exceptional cases international organizations such as the EU and the EIB in respect of the EBRD), which established these institutions by way of an international treaty, determining the basic rules of their operation in their founding treaties: their statutes. This is not different in case of the EIB, in addition to the special circumstance that the international treaty establishing the Bank – the Treaty of Rome – was not exclusively (and not primarily) concerned with the establishment of the Bank, but of many other well-known rules and institutions of the EEC.

In the case of the EIB, Article 1 of the Statute – an international treaty – annexed to the TFEU, provides that "the Bank shall perform its functions and carry on its activities in accordance with the provisions of the Treaties and of this Statute", *i.e.* not on the basis of other EU and national banking regulations. However, this does not mean that the EIB could operate without taking into account prudential requirements. The Statute itself lays down certain basic requirements, such as: *(i)* the requirement of co-financing [Article 16(2)], *(ii)* the highest level of aggregate amount outstanding at any time of loans and guarantees granted by the Bank. [It shall not exceed 250% of its subscribed capital, reserves, non-allocated provisions and profit and loss account surplus – Article 16(5)], *(iii)* the

9 *Cf.* Articles 266-267 EC Treaty, Articles 308-309 TFEU. As regards the development of EIB's institutional status and its institutional connections *see* Sheila Lewenhak, *The Role of the European Investment Bank*, Routledge, London, 2012, pp. 1-14 and 67-80.

10 Protocol No. 5 attached to TFEU on the Statute of the European Investment Bank.

11 Protocol No. 7 attached to TFEU on the privileges and immunities of the European Union.

12 *Cf.* Judgment of 3 March 1988, *Case C-85/86 Commission v. European Investment Bank*, ECLI:EU:C:1988:110, para. 24.

requirement of sufficient coverage for expenses, risks, guarantees, as well as the prohibition on interest rate reduction (Article 17), *(iv)* the principle of rational financing [Article 18(1)], and *(v)* the prohibition on taking equity participation [Article 18(2)].

However, these general rules may be regarded as general principles of operation, and a specific prudential regulation for the EIB like the generic CRD/CRR[13] applicable to commercial banks does not exist. Although the Bank's Audit Committee is responsible for verifying, in accordance with Article 12 of the Statute, that the activities of the Bank are in conformity with best banking practices (BBPs), the benchmark is merely a Board of Governors Decision on the application of best banking practices and not a form of external legal regulation.[14] These best practices cover the following areas: prudential requirements, limits, internal organization, control mechanisms, risk taking, reporting, business conduct. Although the EIB's most recent reports refer to the application of best banking practices, the Bank itself highlights the fact that the BBPs can only be used to the extent that they do not conflict with the core legal framework applicable to the EIB.[15]

Article 309 TFEU clearly states that the Bank's primary task is to contribute to the balanced and even development of the internal market in the EU interest without profit-making requirements. This contribution means funding projects in less developed regions on the one hand and financing businesses if they cannot be fully financed by the various instruments available in certain Member States on the other. Thirdly, it provides funding for projects that are in the common interest of several Member States and are so large in extent or are of such nature that they cannot be fully financed by the various means available in the Member States concerned.

The owners of the EIB are EU Member States, who have established the Bank as parties to the Treaty of Rome and who are currently contracting parties of the TFEU. Only Member States can become owners of the Bank. Since the basic rules of the Bank's operation are laid down in the Statute, which forms part of the TFEU, it can only be amended by the Member States unanimously. However, this follows a special procedure in the Council: it can be launched either upon request of the Bank or, on the basis of a special legislative procedure on a proposal from the Commission.[16]

The Statute determines the Bank's capital and the share of each Member State in the capital subscribed. Similarly to other multilateral development banks, the EIB's subscribed

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13 Directive 2013/36/EU of the European Parliament and of the Council on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms; Regulation (EU) No 575/2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms.

14 *Cf.* Best Banking Practice Guiding Principles of the European Investment Bank, at www.eib.org/attachments/general/best_banking_practice_guiding_principles_en.pdf.

15 EIB Group Corporate Governance Report 2017, p. 10, at www.eib.org/attachments/general/reports/eib_group_corporate_governance_report_2017_en.pdf.

16 Article 308 TFEU.

capital is not paid in entirely. The subscribed capital shall be paid in by Member States according to the ratio set out in the Statute, however the owners must be ready to make the unpaid capital available to the Bank, upon request of the Board of Directors, in other words, without further decision by the owners. At the same time, a formal capital increase requires a unanimous decision of the owners (Member States) represented by the Governors within the Board of Governors.

What the regulation is not prepared for are steps taken in reverse, *e.g.* a possible decrease or withdrawal of capital, either with or without a reduction in the number of owners. The United Kingdom's forthcoming exit from the EU also creates a special legal, regulatory and economic situation to which the currently applicable legal framework is unable to give effective answers. In case of an unregulated Brexit, the Bank would be thrust into a very serious legal and economic situation – not only due to the impending uncertainties in relation to its capital structure.

19.4 The Institutional Structure of the EIB

The Bank is governed and managed by the Board of Governors, the Board of Directors and the Management Committee. The competences of the governing bodies are laid down in the Statute, however the differences between the applicable rules and the operative practice of the Board of Directors and the Management Committee raise certain questions.

19.4.1 The Board of Governors

The Board of Governors consists of the designated ministers of the Member States (normally the finance ministers), exercising owners' rights especially in the field of *(i)* capital increase (requires unanimous decision); *(ii)* deciding the paid-in ratio of the subscribed capital (requires unanimous decision); *(iii)* laying down general directives for the credit policy of the Bank, the supervision of their implementation and their interpretation; *(iv)* appointment, discharge and compulsory retirement of the members of the Board of Directors, the Audit Committee and the Management Committee (requires qualified majority); *(v)* approval of the annual balance sheet, profit and loss account, as well as the annual report of the Board of Directors; *(vi)* decisions concerning the suspension of the operations of the Bank and liquidation (requires unanimous decision), the appointment of liquidators; and *(vii)* decision on establishing subsidiaries, approval of their respective statutes (requires unanimous decision). The decisions of the Board of Governors are usually taken by simple majority of its members. This majority must represent at least 50% of the subscribed capital. Qualified majority requires 18 votes in favor and 68% of the subscribed capital.

19.4.2 The Board of Directors

The Board of Directors is the main decision-making body of the Bank both in the field of loans and other financing transactions, as well as fundraising operations. The Board of Directors consists of 29 directors, 19 alternate directors and 6 non-voting experts. The Chairman of the Board of Directors is the President of the Bank (who has no voting rights). Each Member State and the Commission may nominate one Director. Two Deputies can be nominated by Germany, France, Italy and the United Kingdom each, and one Deputy per Country Groups set out in the Statute. Directors and alternates are appointed by the Governing Council, while the expert members of the Board of Directors are elected by the Board of Directors for a period of five years. In the course of EU enlargements, the Board of Directors was supplemented by the deputy directors of member countries holding larger shares, as well as the deputy directors rotated between smaller Member States according to a specific order established by the country group or constituency agreements.

It is worth noting, however, that the legal status of the country group agreements (constituency agreements) is not exactly regulated and does not comply with the applicable provisions of the Treaty (or the Statute). The Czech Republic, Hungary, and Poland are members of the largest constituency by virtue of the number of its members: the constituency has nine member countries, which is almost 1/3 of the Member States.[17] The constituency agreement was adopted by the Member States concerned in 2006 and slightly modified in 2016, in respect of the rotation of the Vice-President' nomination, and the nomination of the Audit Committee and the Deputy Directors.

From a practical point of view, the constituency system seemed a good solution to the management and control claims of the Member States during the continuous enlargements of the EU. Today, however, a review of the organizing principles has become overdue due to changes in the political and economic situation of the different Member States.

Some consequences of Brexit would also justify a comprehensive reform. The most important issue is, however, that these agreements have not been incorporated into the legal documents applicable to the Bank's operation, nor do these legal texts refer to them. In some cases, they serve as a reference and are respected by the Member States, but the Bank itself is in no way bound by them. It is quoted as a reference not only in informal and background consultations, but even during the appointment processes of Management Committee or Audit Committee members, but there is no trace of such a rule in the Statute. This system also includes a number of elements that are disadvantageous for new Member States (which are almost all – except for Romania – members of the constituency consisting of nine Member States), such as the frequent switching of vice-presidents or the disproportionate representation in individual committees and working groups of the Board of

17 Further members of these constituency are Bulgaria, Croatia, Cyprus, Malta, Slovakia, Slovenia.

Directors. Where one Member State has independent representation in each position, while others are be consulted through representatives of eight other Member States, who must jointly develop the position to be represented, there is a serious and grave disadvantage in advocacy.

The primary task of the Board of Directors is to ensure that the Bank runs properly and to manage it in accordance with applicable legal provisions in force and with the general directives laid down by the Board of Governors. The main competences of the Board of Directors are: *(i)* approval of financing and fundraising transactions; *(ii)* decision on payment of subscribed but not paid-in capital (to the necessary extent); *(iii)* approval of general, theoretical issues relating to the operation of the Bank; *(iv)* approval of the business plan (Corporate Operational Plan); and *(v)* approval of the annual accounts and reports and their submission to the Governing Council (and also their publication upon approval).

The Board of Directors makes the majority of its decisions on the basis of a proposal from the Management Committee. Each Director has one vote, which may be transferred firstly to the Deputy Director nominated by the Member State (or group of Member States to which the Member State belongs) or to another Director. In such a case, a Director may have up to two votes. This rule makes the role and existence of the alternate directors at least questionable.

A simple majority requires at least one third of the members representing a minimum of 50% of the subscribed capital. Qualified majority requires at least 18 votes in favor, representing a minimum of 68% of the subscribed capital. The quorum of the Board of Directors is at least 18 members with voting rights. Although not mandatory, the Board of Directors strives for unanimous decision-making.

The Management Committee is responsible for implementing decisions of the Board of Directors (see below). In practice, however, there is a certain degree of irregularity in the selection of projects approved, but not yet contracted by the Board of Directors, as the Board decision is not followed by automatic contracting. The actual date of conclusion of the contract is determined by the internal management and/or the Management Committee and the Bank. While the Board of Directors has the ultimate responsibility for financing transactions, it does not have a real influence on the implementation of its decision.

The Board of Directors may, by a qualified majority, delegate certain tasks to the Management Committee. Such delegation can be the approval of specific financing transactions based on an approved framework. The general requirements governing delegation of powers must be applied in respect of the powers delegated by the Board of Directors, as set forth in the *Meroni* case.[18]

18 Judgment of 13 June 1958, *Case C-9/56, Meroni & Co., Industrie Metallurgiche, SpA v. High Authority*, ECLI:EU:C:1958:7.

According to the Statute of the Bank,[19] members of the Board of Directors are selected from persons whose independence and suitability are beyond doubt; the members are solely responsible to the Bank. However, the condition concerning the independence of members and their sole responsibility towards the Bank raises certain questions from a practical point of view. The overwhelming majority of board members hold a position in their respective government and this duality can at least give rise to doubts regarding the actual independence of members.

19.4.3 The Management Committee

The Management Committee is responsible for the daily management of the Bank under the authority of the President and under the supervision of the Board of Directors. Members of the Management Committee are the President and the eight Vice-Presidents appointed for a six-year term by the Board of Governors upon the proposal of the Board of Directors. The Management Committee ensures the preparation and subsequent implementation of the Board of Directors' decisions for funding and financing operations. In case of urgency, it may take immediate measures while simultaneously informing the Board of Directors. Rules governing the organization and operation of the Bank are adopted by the Management Committee. The Management Committee is a corporate decision-making body whose members are equal and not subordinated to the President of the Bank. The President has very few own competences: *(i)* they chair the meetings of the Board of Directors and the Management Committee; *(ii)* exercise powers of appointment and dismissal at the Bank's work organization; *(iii)* represent the Bank in legal and other matters (transferable competence); and *(iv)* make proposals for the expert members of the Board of Directors.

The Management Committee makes its decisions by a simple majority of its members present. In addition to formal meetings, the President and vice-presidents are also frequently consulted on a number of banking issues. The result of these discussions is normally unanimity, apart from some rare exceptions. Within the purview of the President's special powers mentioned above, it is up to his own habits and leadership culture to consider proposals and opinions of the Vice-Presidents on matters where the President has the right to decide. The current and former members of the Management Committee have not yet made public their views on this experience.

The selection of the members of the Management Committee is based in part on formal regulation and partly on customary law. Although the number of members is determined by the Bank's Statute, there is no formal rule concerning the privileges of the four largest shareholders who have always nominated a member to the Management Committee, while

19 Article 9 of the Statute.

other Member States are only entitled to nominate members by country groups (constituencies) on a rotational basis. These country groups (constituencies) are: *(i)* Spain, Portugal; *(ii)* Belgium, Netherlands, Luxembourg; *(iii)* Ireland, Denmark, Greece, Romania; *(iv)* Austria, Sweden, Finland, Estonia, Latvia, Lithuania; and *(v)* Bulgaria, Czech Republic, Cyprus, Croatia, Hungary, Malta, Poland, Slovakia, Slovenia.

While the term of office of the Management Committee's members is officially six years, in case of members (vice-president) of larger constituencies it often happens that they resign after three or four years of service on the basis of an internal agreement, surrendering the position to the candidate of the next nominating Member State within the constituency. This resignation is formally always voluntary, but strongly expected, and this practice contravenes the provisions of the Statute and TFEU. This practice also has the consequence that some members of the Management Committee are basically not in a position to perform as efficiently as those who can complete their six-year mandate, which has an overall detrimental effect on the Bank's operational efficiency.

The example of vice-presidents nominated by the constituency composed of nine Member States that joined the EU in and after 2004 clearly illustrates the disadvantages of the country group system as detailed above. Since 2004, Czech, Hungarian, Polish, Slovenian, and Slovak vice-presidents from this country group have been nominated. All were appointed for a six-year term and resigned after three years. There were five vice-presidents in 15 years, while the vice-resident nominated by Italy for example has served two full terms and the President from Germany has also been reappointed in 2018 for a second six-year term. This situation clearly shows that the opportunities and gravitas of the different Management Committee members are not comparable.

There is a further weakness concerning the succession of Management Committee membership. While members may be reappointed, if a member's term of office expires without immediate reappointment or the appointment of a new member, the position remains vacant.[20] This situation could be remedied by a solution employed in EU institutional rules – *e.g.* for members of the CJEU or the Court of Auditors – whereby the member's term of office is automatically extended until the successor is appointed.

19.4.4 The Audit Committee

The proper operation of the Bank is supervised by the Audit Committee composed of six members who are appointed by the Board of Governors for a six-year term (non-renewable); one new member is appointed yearly. The nomination and replacement of members raises similar issues to those of Management Committee members, and the substantial difference

20 In May 2019 there were two seats vacant in the Management Committee.

between regulation and practice also raises important operational and transparency issues here. The core task of the Audit Committee is the same as that of the supervisory board in company law. The Committee is responsible for certifying to the Board of Governors that the information contained in the annual report gives a true, reliable and fair view of the financial position of the Bank, that the Bank has performed its activities properly and that its activities are in accordance with the provisions of the Statute and the Rules of Procedure. The adoption of this statement by the Audit Committee requires unanimity.

According to the Statute, the Audit Committee also supervises whether the Bank's activities are in line with best banking practices. In terms of definition, it is important to emphasize that prudential banking requirements are found in EU prudential rules (especially in the CRD Directive and the CRR Regulation), but these legislative acts are not applicable to the EIB and other multilateral banks. The concept, elements and requirements of the best banking practices do not take the form of formal legislation. Instead, they can be found in the guidelines and other industry standards of the European Banking Authority. These guidelines and standards are however of a general nature and as such they can serve as a benchmark for commercial banks. The EIB, like other multilateral development banks, differs from commercial banks in many aspects, as such it can apply the requirements of best banking practices with certain restrictions only.[21]

The Audit Committee has recourse to the external auditor(s) it has designated. A special feature of the rules applicable to EIB auditors is that they are not mentioned in the external rules (TFEU, Statute of the EIB). Only the internal rules, namely the Rules of Procedure refer to them, to their designation, laconically foreseeing that the Audit Committee designates external auditors (after consulting the Management Committee).[22] No further guidance or rules may be found in the Rules of Procedure on further details of the selection procedure (*e.g.* details of the selection process, time of assignment and its possible extension, other possible or excluded tasks). In fact, the current auditor selected in 2008 is still in charge of the Bank's audit duties, which is in line with the relevant EU legislation.[23] At the same time, it may also be stated that his mandate has been significantly longer than the non-renewable term of office of Audit Committee members.

21 The EIB has published the applicable BBP rules in a document on the Bank Best Banking Practice Guiding Principles of the European Investment Bank in October 2018, at www.eib.org/attachments/general/best_banking_practice_guiding_principles_en.pdf.

22 Article 26(2) of the Rules of Procedure of the EIB.

23 According to Article 17 of Regulation 537/2014 of the European Parliament and of the Council on specific requirements regarding statutory audit of public-interest entities the maximum duration of the appointment of a statutory auditor is 10 years and in case public tendering in selection process 20 years. Certain Member States like Hungary apply significantly stricter rules for the maximum duration of appointment.

19.5 The EIB's Operations and the Incorporation of Environmental Considerations

In general, the EIB offers loans, guarantees and other specific financing products for its counterparts in the field of innovation, infrastructure, energy, social and environmental investments, SME-finance *etc.* The recipients of EIB's loans and other financial instruments are *(i)* the EU Member States, and in certain cases also non-Member States; *(ii)* enterprises, public and private undertakings or bodies directly (above EUR 25 million financing volume, *e.g.* public sector or corporate loans, project financing); and *(iii)* enterprises, public and private undertakings or bodies indirectly via financial intermediaries (under EUR 25 million financing volume).

The financing provided by the EIB must be always additional and should not exceed 50% of the investment costs. However, in exceptional cases (*e.g.* projects concerning renewable energy infrastructure, energy efficiency, migration or projects following natural disasters) the EIB may finance a higher share of the investment costs. In addition to traditional financing operations, the EIB offers further ancillary services. Its activity is often described by three words: lending, blending and advising. Blending means that the EIB's refundable financing is blended with other sources such as EU grants (non-refundable funds), guarantees, structured financing *etc.* Providing financing is only one step towards a successful project. They also need to be properly managed. As there is a significant need for assistance in project management, the EIB provides advisory services on both project administration and project management to help investments.

Multilateral development banks such as the EIB play a key role in boosting climate related or climate conscious financial products. In the past years the Bank has reached an annual lending level exceeding 25% of its own total resource dedicated to climate action and it aims to increase the share of climate action financing from 25% to 35% of its total lending outside the EU. In its Corporate Operational Plan the Bank made a commitment to maintain these volumes.[24]

Climate action financing is not only a fashionable buzzword, it has legal relevance too. In case of the EIB, a prerequisite of any financing operation is the Environmental and Social Assessment to be prepared and attached to the operation documentation. It is for determinant the acceptability of all EIB-financed projects to ensure the protection and improvement of the environment and the application of appropriate social safeguards in line with the EIB Statement of Environment and Social Principles and Standards.[25]

24 EIB Corporate Operational Plan for 2019, at www.eib.org/attachments/strategies/operational_plan_2019_en.pdf.

25 *See* www.eib.org/attachments/strategies/eib_statement_esps_en.pdf.

In case of all projects the EIB aims to verify compliance with both national and EU environmental law, including the Environmental Impact Assessment (EIA) Directive[26] and the nature conservation directives.[27] Beyond EU legislation, all EIB-financed projects must comply with national environmental law, including international conventions ratified by the host country. Where EU standards are stricter than national standards the higher EU standards must be fulfilled.

Besides the general financial products, the EIB also has specific instruments for environment/climate related financial purposes: the Natural Capital Financing Facility (NCFF) and the Private Finance for Energy Efficiency (PF4EE). The NCFF is a financial instrument that supports projects delivering on biodiversity and climate adaptation through tailored loans and investments. The NCFF is a loan (amounting to up to EUR 15 million) backed by an EU guarantee. It contains a technical assistance facility that can provide each project with a grant – financed by the EU's LIFE program – of up to a maximum of EUR 1 million for project preparation, implementation and monitoring. The PF4EE is a joint operation of the EIB and the European Commission. It consists of energy efficiency loans financed by the EIB and credit risk protection (guarantee) and expert support services (technical assistance) funded by the EU's Life program.

From a funding perspective, for its own financing, the lending activities are mainly funded via bond issuance in international capital markets. The EIB issues a very wide range of debt products, in terms of size, currency, maturity and structure. The Bank offers large benchmark/reference bonds, public bonds, and private placements (typically in smaller size). The EIB issues Green Bonds, officially called Climate Awareness Bonds (CAB), whose proceeds are dedicated to climate action projects. Green Bonds generate accountability of project disbursements, which explains policy makers' increasing attention to this segment. The first Green Bonds were issued by the EIB in 2007, and then by the World Bank in 2008. Later on, others have followed suit: multilateral financial institutions and sovereigns such as the State of California, Sweden or Poland. The concept of Green Bonds is not a legal category. Nevertheless, Green Bond issuers have developed the Green Bond Principles (GBPs). Issuance aligned to the GBPs should provide an investment opportunity with transparent green credentials. The GBPs are voluntary process guidelines that recommend transparency and disclosure, while promoting integrity in the development of the Green Bond market by clarifying the approach for issuing the Green Bond. The GBPs are intended for broad use by market players. According to the GBPs, eligible Green Project categories include: renewable energy, energy efficiency, pollution prevention and control, environ-

26 Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment.

27 Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (Habitats Directive) and Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (Birds Directive).

mentally sustainable management of living natural resources and land use, terrestrial and aquatic biodiversity conservation, clean transportation, sustainable water and wastewater management, climate change adaptation, eco-efficient and/or circular economy adapted products, production technologies and processes, green buildings.[28] EIB-issued Green Bonds currently focus on renewable energy and energy efficiency. For the sake of transparency, the EIB annually publishes its Report on climate finance, which gives – among others – detailed information on the utilization of funding deriving from Green Bonds.

19.6 The European Fund for Strategic Investments and the EIB

The European Fund for Strategic Investments (EFSI) has particular importance in the financial activities of the Bank and the EU. The EFSI backed by an EU guarantee makes the expansion of the EIB's activities and risk-taking capacity possible. The European Strategic Investment Fund was set up by the European Commission and the EIB during autumn of 2014 to find a solution to halt the decline in investment volume within the EU and reverse the process.[29] The EFSI is not a traditional fund but a contractual cooperation between the Commission and the Bank. The Bank originally contributed EUR 5 billion of its own funds and the Commission (EU budget) provided a portfolio guarantee of EUR 16 billion to EFSI. This guarantee allows the Bank to finance riskier (obviously non-speculative) projects than it was able to finance earlier, (which were not eligible for financing due to lower risk limits). The original target level of investments was EUR 315 billion by 2018. Since the target was reached in time, the Commission and the EIB decided to extend the cooperation to achieve a level of EUR 500 billion investments by 2020. In order to be able to continue the operations under EFSI, both the EIB and the Commission increased their contribution (to EUR 7.5 billion and EUR 26 billion respectively), amounting to a total of EUR 33.5 billion.[30] The EFSI is an excellent example for the Bank's policy-driven, but also bank-type operation, and its results illustrate the different situations and opportunities within the Member States. The initiative was established by the European Commission (in 2014) which recognized that the post-crisis economic recapture was slow and uneven,

28 International Capital Market Association: Green Bond Principles (GBP), at www.icmagroup.org/assets/documents/Regulatory/Green-Bonds/June-2018/Green-Bond-Principles---June-2018-140618-WEB.pdf.

29 *An Investment Plan for Europe*, COM(2014) 903 final, 26 November 2014.

30 Regulation (EU) 2015/1017 of the European Parliament and of the Council on the European Fund for Strategic Investments, the European Investment Advisory Hub and the European Investment Project Portal (EFSI Regulation).

and that there were backlogs in EU competitiveness and limits to the financial capacities of the EU budget.[31]

The EU budget guarantee supports the Bank's stability. Meanwhile, new products and methods facilitate leverage and are a source of real economic impact, they promote volume of mobilized investment and, of course, its qualitative and quantitative results. Thus, by the end of July 2018, the investment volume mobilized exceeded the planned EUR 315 billion, reaching EUR 330 billion. This achievement has contributed to the stabilization the EU economy. Starting with 2018 the scope of eligible projects was extended and there is also the possibility of financing projects in the field of agriculture, forestry and general projects for strengthening cohesion.

The EFSI Regulation empowers the EIB to execute financing operations, but it sets up a specific organizational and procedural system for implementation. The Steering Board is responsible for the strategic orientation of the EFSI, defining operational rules and procedures, laying down rules on operations with investment platforms and national development banks or institutions, as well as defining the risk profile of EFSI. The Board has five members: three members from the Commission, one from the EIB and one non-voting expert member from the European Parliament.

The Investment Committee is the main decision-making body, it decides whether to grant an EU guarantee for a proposed transaction. This Committee is a body fully independent from the EIB, and its members cannot request or accept instructions from the EIB, or from any other EU institution, Member State or other public or private bodies. The Investment Committee consists of eight independent experts and the Managing Director. Its members are appointed by the Steering Committee on the basis of an open selection procedure for a single renewable term of three years.

The chief executive of the EFSI is the Managing Director, who is responsible for the day-to-day management of the EFSI and for the preparation of Investment Committee meetings. The Managing Director reports on the activities of the EFSI to the Steering Board on a quarterly basis. The Managing Director and the Deputy Managing Director are selected in a very complex procedure. At the start of the selection procedure, the Steering Board, following an open procedure conducted by the EIB, selects a candidate for the position. The candidate is heard by the European Parliament and appointed by the President of the EIB for a fixed term of three years (renewable once). In general, this procedure is much more complicated than the selection procedure of the EIB President.

31 *Cf.* Daniel Mertens & Matthias Thiemann, 'Building a Hidden Investment State? The European Investment Bank, National Development Banks and European Economic Governance', *Journal of European Public Policy*, Vol. 26, Issue 1, 2019, pp. 23-43.

In June 2018 the European Commission tabled its proposal on the financial instruments for boosting investments in the EU between 2021-27, the so-called InvestEU program.[32] In its proposal and the accompanying evaluation, the Commission considered the EFSI implemented by the EIB a success. The Commission designed the new program on the basis of the EFSI. However, there is a substantial difference between the EFSI and the InvestEU proposal. Within the framework of InvestEU the EIB – who delivered the success of the EFSI – would not be the sole beneficiary of the EU guarantee entrusted by the execution of the program, but also other multilateral financial institutions (World Bank, EBRD, CEB *etc.*), and Member State promotional institutions would also be invited. According to the Commission's statement opening up the possibility to other institutions to benefit from the EU guarantee is driven by the consideration that there are other experienced potential financial partners in the EU, that have specific expertise, knowledge of their local market *etc.* However, the EIB Group will remain the Commission's main financial partner in this program. One can easily recognize that these circumstances are not new, the multilateral and national promotional institutions existed already at the time of the launching of the EFSI. By contrast, it is hard to understand why the Commission intends to take – at least partially – the implementation out of the EIB's hands, especially after acknowledging it had done a great job.

19.7 The Impacts of Brexit on the EIB

Brexit – as a political decision – may have, albeit different in nature, but serious and disadvantageous direct and indirect consequences for the Bank. Brexit shall bring about not only a major change in the Bank's ownership structure, but it also prompts a substantial amendment of the decision-making, management and internal regulatory system of the Bank. As a result of the United Kingdom's exit, the Bank's capital position must be settled and increased. All this should be implemented in a well-regulated, transparent, understandable, measurable, predictable way for markets, credit rating agencies, customers and members, in a way that does not reduce the trust in the Bank and maintains the Bank's business activity, problem solving ability, and provides a stable framework for future operations.

A significant part of these tasks had to be completed before the originally set date of Brexit (29 March 2019). Transformations change ownership ratios, strengthen or somewhat reduce the positions of the largest members, and change the decision-making proportions

32 *Proposal for a Regulation of the European Parliament and of the Council establishing the InvestEU Program*, COM(2018) 439 final.

within the Board of Directors. The composition and role of the Management Committee may also change. Until May 2019 these decisions have not yet been taken.

The UK's share of the EIB's capital is 16.11%, amounting EUR 3,5 million paid-in capital, EUR 35.7 million callable capital, a total of EUB 39.2 million subscribed capital by the UK. The most important step is to preserve the pre-Brexit level of subscribed capital, which would does not increase the paid-in capital by Member States. Further questions relate to the potential repayment of the paid-in capital to the UK, its impact on the capital adequacy ratio and other ratios of the EIB. On the lending side, the UK represents 8% of the overall exposure of the Bank. Should there be no agreement on withdrawal, there will be no guarantee for the continuation of the protections and privileges of the EIB and its assets in the UK, and the EIB's further activities in the UK must be terminated as well.[33]

On the other hand, Brexit also creates opportunities. One of them is to modify the composition and role of the constituencies (Member State groups), taking into account the increased economic gravitas of the younger Member States (which has been recognized in the Commission's legislative proposals for the next Multiannual Finance Framework). All these issues are currently in the discussion and decision-making phase. Neither before the original Brexit deadline, nor in May 2019 was there an adopted Agreement on withdrawal. From the Bank's side, there were no published internal steps or decisions of generic nature to prepare the Bank properly for such an unprecedented situation, when the number of its owners decrease.

Whatever happens, uncertainty will lead to the worst situation. It causes complicated governance issues, delays capital replacement, which has – through formal arrears and decreasing market reputation – consequences for both the Bank's own funding and its active financial operations. The longer it takes, the harder it impacts the Bank and indirectly, the European economy has to suffer.

19.8 Conclusions

In this short study, I have not only aimed to give a simple description of the organizational operation of the world's largest multilateral financial institution, but also tried to present the background, deficiencies and open issues of its operation. I have demonstrated, that the Bank's proactive operation is increasing, and the renewal in both organizational and personal terms is not only a continuous endeavor, but also a practice, however complex, slow and somewhat unbalanced. In recent years, the presentation of the Bank's activities to the general public has greatly improved, and it is much better understood how the Bank's

33 Source of the figures is EIB Investor Presentation, at www.eib.org/attachments/fi/eib-investor-presentation.pdf.

operations affect the everyday life and living standards of European citizens. One can clearly see, that the Bank is sensitive not only towards financial risks and the impact of its operations, but also towards their social and environmental consequences. Clear signs of this sensibility are the compulsory Environmental and Social Assessment which must be prepared and attached to the operation documentation and the issuance of Green Bonds on the funding side.

Based on the assessment above, I consider the issues experienced in relation to the governing bodies of the bank, including the Board of Directors and the Management Committee, to be of particular importance, the effects of which clearly evolve into the daily management of the Bank. The relationship between the status of deputy directors and members of the Board of Directors is unjustified, while the current structure of the country group (constituency) system must also be reviewed. These may be the hardest nuts to crack within the Bank's operation. It would result in not only a formal rearrangement of the respective bodies, but also a substantial change in the influence of the Member States on decision-making within the Bank.

An important measure would be the reform of the relevant institutional rules, and as a first step, the reform of the selection of the external auditor and the precise definition of their tasks. Furthermore, the selection of the EFSI's Managing Director should also be reconsidered, since the selection procedure is even more complex than that of the President of the Bank, notwithstanding the fact that the Managing Director has no special decision-making competences. The Bank should be much more prepared for external challenges, as the recent Brexit conundrum shows. Right now, the Bank is incapable of properly tackling a partial decrease of its capital following the exit of one of its main owners. The Bank must be prepared for such situation, both internally and in respect of the applicable regulatory environment.

What is missing is regulatory support from the EU, more precisely, the Commission. A great many decision makers failed to realize even after 60 years, that the EU has a truly capable financial institution – currently the largest in the World – which would deserve more support and recognition. This is in the common European interest. Further questions are raised by the lack of prudential regulation of the Bank's operations (not only in the case of the EIB, but also in case of all other multilateral institutions), and more specifically, the substitution of regulation by reference to best banking practices. The EIB and similar institutions are comparable in size with important systemic commercial banks, which in contrast with the multilaterals, seem to be rather over-regulated and supervised.