

Transmission Line Yacyreta Paraguay

Complaint SG/F/2015/01

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CONCLUSIONS REPORT

30 September 2015

[EIB Complaints Mechanism](#)

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The EIB Complaints Mechanism

The EIB Complaints Mechanism intends to provide the public with a tool enabling alternative and pre-emptive resolution of disputes in cases whereby the public feels that the EIB Group did something wrong, i.e. if a member, or members, of the public considers that the EIB has committed an act of maladministration. When exercising the right to lodge a complaint against the EIB, any member of the public has access to a two-tier procedure, one internal – the Complaints Mechanism Division (EIB-CM) - and one external – the European Ombudsman (EO).

If complainants are not satisfied with the outcome of the EIB-CM's procedure, a confirmatory complaint can be submitted by the complainant within 15 days of the receipt of the EIB-CM's reply. Complainants who are not satisfied with the outcome of the EIB-CM's procedure and who do not wish to make a confirmatory complaint may also lodge a complaint of maladministration against the EIB with the European Ombudsman.

The EO was "created" by the Maastricht Treaty of 1992 as an EU institution to which any EU citizen or entity may appeal to investigate any EU institution or body on the grounds of maladministration. Maladministration means poor or failed administration. This occurs when the EIB Group fails to act in accordance with the applicable legislation and/or established policies, standards and procedures, fails to respect the principles of good administration or violates human rights. Some examples, as set by the European Ombudsman, are: administrative irregularities, unfairness, discrimination, abuse of power, failure to reply, refusal of information, unnecessary delay. Maladministration may also relate to the environmental or social impacts of the EIB Group activities and to project cycle related policies and other applicable policies of the EIB.

The EIB Complaints Mechanism intends to not only address non-compliance by the EIB to its policies and procedures but to endeavour to solve the problem(s) raised by complainants such as those regarding the implementation of projects.

For further and more detailed information regarding the EIB Complaints Mechanism please visit our website: <http://www.eib.org/about/accountability/complaints/index.htm>

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CONCLUSIONS REPORT

1 THE COMPLAINT

1.1 On 2 February 2015, (“the complainant”) lodged a complaint with the EIB Fraud Investigation (“IG/IN”) concerning the EIB financed-project “Transmission Line Yacyreta” (“the Project”). IG/IN considered that the complaint touched upon issues of maladministration rather than fraud and transferred the case to the EIB Complaints Mechanism (“EIB-CM”).

1.2 On 26 May 2015, the EIB-CM acknowledged receipt of the complaint and informed the complainant that it was carrying out a review of their case as well as about the date by which they might expect a formal reply from the Bank. On 28 July 2015, the EIB-CM informed the complainant that due to the complexity of the inquiry, it appeared appropriate to extend the time frame for handling the complaint.

2 THE ALLEGATION

2.1 The complainant denounces irregularities in the approval of the loan. He alleges that the approval of the loan and guarantee agreement is not valid because the Act no. 5184/2014 does not meet the legal requirements established in the National Constitution. In particular, the complainant argues that the text of the loan and guarantee agreements were not included in the text of the Act but were annexed to it. Additionally, he mentions that the publication of the loan agreement and state guarantee in the Official Gazette nos. 127 and 172 respectively was irregular and therefore not valid.

3 THE PROJECT

3.1. The Project concerns the construction of a 500kV, 360 km high voltage transmission line between Villa Hayes (close to Asuncion, the capital) and Yacyreta hydro power plant and expansion of three 500/220 kV substations. It includes a power loss reduction component through the installation of electronic meters in the distribution network. The Project is co-financed by the EIB, the Interamerican Development Bank (IDB) and the Andean Planning Corporation (CAF). The promoter of the Project is the National Electricity Administration (hereinafter “the promoter”). The total amount of the EIB loan is 74.895.305, 27 EUR. No disbursement has been made yet.

3.2 By Act no. 5184/2014, the Paraguayan Government approved the loan agreement and guarantee agreements of the State of Paraguay, signed with the Interamerican Development Bank (IDB), the EIB and the Andean Planning Corporation (CAF) on 11 December 2013 to finance the Project.

4 THE SCOPE OF THE EIB-CM

4.1 The EIB-CM enables any person or group, who alleges that there may be a case of maladministration of the EIB in its actions and/or omissions, to lodge a complaint with the EIB Secretary General. Article 4, Part II of the EIB-CM Principles, Terms of Reference and Rules of Procedure (“CMPTR”) describes the scope of the mechanism as comprehending all complaints of maladministration lodged against the EIB Group. The EIB-CM concerns any of the Group’s activities with the exclusion of complaints concerning allegations of fraud or corruption, which fall within the mandate of the EIB Inspectorate General – Fraud Investigation Division as well as of complaints lodged by the EIB Group’s staff.

4.2 Pursuant to Article 2.3, part IV of the CMPTR, *"The EIB Complaints Mechanism Division is not competent to investigate complaints concerning International organisations, Community institutions and bodies, national, regional or local authorities (e.g. government departments, state agencies and local councils)"*.

5 METHODOLOGY OF THE INQUIRY

5.1 In the course of the enquiry the EIB-CM reviewed the complaint to the EIB. The EIB-CM held internal consultation meetings with the relevant EIB services. Additionally, the EIB-CM reviewed the entire Project's documentation and the relevant legal framework.

6 FINDINGS

6.1 The validity of the approval of a loan and guarantee agreement is, for obvious reasons, of high importance for the Bank. For this reason, the EIB Finance Contract sets as a condition precedent to disbursement the receipt of a legal opinion which should confirm that all necessary legal steps were taken.

6.2 In that regard, Article 1.04A *"Conditions prior to disbursement"* of the EIB Finance Contract stipulates that *"The disbursement of the first tranche under Article 1.02 is conditional upon receipt by the Bank, in form and substance satisfactory to it, on or before the date falling 5 (five) Business Days before the Scheduled Disbursement Date, of the following documents or evidence:*

(...)

c) legal opinions indicating the relevant legal provisions establish that the legal requirements to sign and conclude the present contract on behalf of the Borrower and the contract of guarantee by the Guarantor, and, consequently that the obligations of the Borrower and the Guarantor incurred under the aforementioned contracts, are valid and enforceable;

(...)" (trans.)

6.3 On 10 November 2014, the Attorney General of Paraguay ruled on the validity and enforceability of the loan agreement approved by Act no. 5184/2014. The Attorney General reached the following conclusion that the obligations assumed by the promoter and guaranteed by the State of Paraguay, under the terms of the contract signed with the EIB, had been incorporated into national law in accordance with the stated constitutional law and that its obligations are consequently valid and enforceable.

6.4 On 4 May 2015, on the request of the Promoter, the Attorney General opined also on the validity of the Act's publication. The Attorney General stated that Article 43 of Law No 1535/99 *"Financial administration of the State"*, had been complied with, and that the obligations assumed by the Republic of Paraguay in the guarantee contract signed with the EIB were valid and enforceable.

6.5 During the EIB-CM meeting with the EIB services, the latter proposed to ask for an additional legal opinion of an independent local lawyer in order to verify the validity of the Act no. 5184/2014. The lawyer concluded the following:

➤ **Form of the Act no. 5184/2014**

With regard to the validity of the form of Act No. 5184/2014, which does not expressly include the text of the agreement but which states that reference is made to the text established in annexes, it is clearly inferred from the terms used in the Act that the said annexes comprise the text of the Act, which is valid since the wishes of the legislature are clear in that regard.

According to the lawyer, this formula of referral to texts that are not expressly included in the Act is not very common, but there are similar precedents such as Act No. 3671/2008, which approves the letter of agreement signed between the Republic of Paraguay and the IDB. This formula of referral has been used for a long time, for example in the Act that adopts the Commercial Code of the Argentinean Nation in the Republic. The lawyer concludes that the formula of referral is valid and the texts referred to form part of the Act, comprising it.

➤ Publication of the Act no. 5184/2014

Regarding the publication of Act no. 5184/2014, the lawyer stated that although the publication of 7 July 2014 omitted the appendix; this omission was subsequently remedied with the publication in the Official Gazette number 172 of 9 September 2014. Therefore, the official publication requirement was duly fulfilled.

7 CONCLUSION

7.1 It must be noted that the EIB services have not proceeded to a disbursement without the necessary legal opinions verifying the validity of the Act no. 5184/2014 in line with the procedure described in the Finance Contract. On the contrary, the fact that following the complaint, the EIB services proactively asked for an additional legal opinion can be considered as an example of good administration.

7.2 In light of the foregoing, the EIB-CM concludes that, based on the information available, its inquiry did not reveal any instance of maladministration by the EIB services.

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30 September 2015

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30 September 2015