



Press and Information

General Court of the European Union
PRESS RELEASE No 10/21
Luxembourg, 27 January 2021

Judgment in Case T-9/19
ClientEarth v EIB

Curtis project in Spain: The EIB must accept ClientEarth's request for an internal review

The General Court annuls the EIB decision that declared inadmissible the request for review of the resolution of the EIB's Board of Directors

The construction project, in the municipality of Curtis in Galicia (Spain), of a biomass power generation plant, known as the Curtis project, was among the successful projects in a tender procedure for renewable energy projects organised by Spain in 2016. The promoter of the Curtis project contacted the services of the European Investment Bank (EIB) to engage in discussions about the possibility of obtaining EIB financing.

By a resolution adopted on 12 April 2018 ('the resolution at issue'), the Board of Directors of the EIB approved the financing proposal of a maximum amount of EUR 60 million. On 9 August 2018, ClientEarth, a non-governmental organisation (NGO) for the protection of the environment, submitted to the EIB a request for internal review of the resolution at issue, in accordance with the Aarhus Regulation¹ and Decision 2008/50.²

By letter of 30 October 2018, the EIB informed ClientEarth that it was refusing the request for an internal review of the resolution at issue. It stated that it considered it inadmissible on the ground that the request did not relate to an act amenable to internal review, namely an 'administrative act' within the meaning of the Aarhus Regulation ('the contested act').

ClientEarth brought an action before the General Court of the European Union against the EIB's decision.

ClientEarth puts forward two pleas in support of its action. By its first plea, it takes issue with the EIB for having, when adopting the contested act, misapplied, with regard to the resolution at issue, certain conditions necessary for an act to be classified as an 'administrative act' within the meaning of the Aarhus Regulation. The second plea alleges breach of the obligation to state reasons.

In today's judgment, the Court, sitting in an extended composition, notes, first of all, that, as regards the two pleas for annulment put forward in support of the action, the second concerns the infringement of an essential procedural requirement applicable to the contested act, namely the obligation to state reasons for that act, while the first, alleging errors of assessment in the application of the Aarhus Regulation which vitiate the contested act, concerns the substantive legality of that act.

In that context, the Court recalls that the Courts of the European Union are not able to carry out a substantive review of an act if the statement of reasons in that act is insufficient as regards an

¹ For the purpose of incorporating the Aarhus Convention into the legal order of the European Union, the European Parliament and the Council of the European Union adopted Regulation (EC) No 1367/2006 of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to [EU] institutions and bodies (OJ 2006 L 264, p. 13).

² Commission Decision 2008/50/EC of 13 December 2007 laying down detailed rules for the application of Regulation (EC) No 1367/2006 of the European Parliament and Council of the European Union on the application of the Aarhus Convention as regards requests for the internal review of administrative acts (OJ 2008 L 13, p. 24).

essential point of the reasoning which led to the author's choice. Accordingly, the Court must ascertain whether the statement of reasons in that act is sufficient before addressing the plea relating to its merits.

The Court finds that the reasons set out in the contested act were sufficient to enable the applicant to know the reasons why the EIB had rejected as being inadmissible the request for internal review of the resolution at issue which it had sent to the EIB and to enable it to challenge the merits of those reasons in the context of the first plea. Thus, the Court rejects as unfounded the second plea relating to the infringement of the obligation to state reasons.

The Court then assesses the first plea in law alleging errors of assessment in the application of the Aarhus Regulation. It recalls, *inter alia*, that when called upon to interpret the provisions of directives implementing, as regards the Member States, the requirements of the Aarhus Convention, the Courts of the European Union noted that the objective pursued by the European legislature was to give the public concerned 'wide access to justice' and that that objective pertained, more broadly, to the desire of the EU legislature to preserve, protect and improve the quality of the environment and to ensure that, to that end, the public plays an active role. Accordingly, it considered that, although the parties to the Aarhus Convention had a certain margin of appreciation in the application of that convention, a highly protective approach to the effectiveness and objectives of that convention in the context of the implementation obligations incumbent on the Member States should nevertheless be adopted.

In that context, the Court concludes that **the concept of 'a measure of individual scope' adopted 'under environmental law', included in the Aarhus Regulation, must be interpreted broadly**, as meaning that it is not limited solely to measures of individual scope adopted on the basis of a provision of secondary legislation that contribute to the pursuit of the objectives of the European Union in the field of the environment, such as are laid down in Article 191(1) TFEU, but rather covers any measure of individual scope subject to requirements under secondary EU law which, regardless of their legal basis, are directly aimed at achieving the objectives of EU policy on the environment.

In that regard, the Court examines whether the resolution at issue may be regarded as being such a measure of individual scope. It considers that, in so far as it found that the Curtis project satisfied the criteria of an environmental nature adopted by the EIB to be eligible for EIB funding, **the resolution at issue was indeed a measure of individual scope adopted 'under environmental law' within the meaning of the Aarhus Regulation.**

The Court recalls that the internal administrative review procedure provided for in the Aarhus Regulation provides for the possibility of review proceedings before the Court of Justice of the European Union which, pursuant to that regulation, must be brought 'in accordance with the relevant provisions of the [FEU] Treaty' and therefore, in principle, in compliance with the conditions laid down in Article 263 TFEU. In view of the link that thus exists between the concept of an act having 'legally binding and external effects', within the meaning of the Aarhus Regulation, and that of an act producing 'legal effects vis-à-vis third parties', within the meaning of Article 263 TFEU, it is reasonable, in the interests of general consistency, to interpret the former in accordance with the latter.

It follows that, even if the resolution at issue was not, as the EIB claims and as it stated in its letter to the promoter of the Curtis project of 13 April 2018, a legal commitment to grant the loan to the special purpose vehicle, in so far as other technical, economic and financial aspects of the project were still to be appraised, **the resolution at issue nevertheless produced certain definitive legally binding effects vis-à-vis third parties, in particular as regards the promoter of that project, in that it declared the eligibility of that project for EIB financing with regard to its environmental and social aspects**, thus enabling the promoter to take the next steps needed to formalise the loan which he was to receive. In the light of those environmental and social aspects, the subsequent decision of the Management Committee to grant the loan, having carried out the appraisal of the Curtis project as regards the other aspects that remained to be examined, can at most be regarded as a purely implementing measure.

The internal review procedure laid down by the Aarhus Regulation should have related specifically to environmental aspects and the request for internal review submitted by ClientEarth questioned, inter alia, the EIB's assessment of the sustainability of the Curtis project and of its contribution to achieving the objectives of EU policy in the field of the environment. Thus, that request related, at least in part, to the definitive legally binding effects vis-à-vis third parties produced by the resolution at issue.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery

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