Appeal brought on 2 April 2021 by European Investment Bank against the judgment of the General Court (Second Chamber, Extended Composition) delivered on 27 January 2021 in Case T-9/19, ClientEarth v EIB

(Case C-212/21 P)

Language of the case: English

Parties

Appellant: European Investment Bank (EIB) (represented by: T. Gilliams, G. Faedo and K. Carr, Agents)

Other parties to the proceedings: ClientEarth, European Commission

Form of order sought

The appellant claims that the Court should:

declare the appeal admissible and well founded;

set aside in its entirety the judgment under appeal as set out in its operative part;

if the Court considers that the state of the proceedings so permits, dismiss the action at first instance;

order ClientEarth to pay the costs of both parties incurred as a result of both the appeal proceedings and those of the proceedings at first instance.

Pleas in law and main arguments

The appellant relies on three grounds of appeal.

First, the judgment under appeal erroneously declares as inadmissible the EIB's defence concerning its independence in the sphere of its financial operations. The General Court failed to consider EU primary law provisions underpinning the EIB's defence, misapplied the duty to state reasons, and distorted the EIB's reply to ClientEarth's request for internal review based on Article 10 of the Aarhus Regulation[1] . As a result, the General Court erroneously interpreted the definition of "administrative act" in accordance with Article 2(1)(g) of the Aarhus Regulation.

Second, the judgment under appeal erroneously held that the resolution adopted by the Board of Directors of the EIB on 12 April 2018, which approved a proposal to finance a project for the construction of a biomass power generation plant in Curtis (Spain), constitutes an administrative act having "legally binding and external effect" within the meaning of Article 2(1)(g) of the Aarhus Regulation. The General Court infringed the principle of the primacy of EU primary law over EU secondary law and over international agreements, disregarded Articles 271(c) and 263(4) TFEU, and wrongly applied Article 263 TFEU.

Third, the judgment under appeal erroneously held that the resolution of 12 April 2018 of the EIB Board of Directors constituted an administrative act "adopted under environmental law" within the meaning of Article 2(1)(g) of the Aarhus Regulation. The General Court erroneously interpreted the definition in Article 2(1)(f) of the Aarhus Regulation, failed to identify the correct legal basis for the resolution at issue, and inconsistently interpreted the Aarhus Regulation in light of the Aarhus Convention.

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[1] Regulation (EC) No 1367/2006 of the European Parliament and of the Council 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 Community institutions and bodies (OJ 2006, L 264, p. 13).