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What's **NEW** in the **INVESTMENT PLAN** for **EUROPE**:



**BUSINESS** *as usual* or **GENUINE** *innovation*?

# INTRODUCTION

*In November 2014 the European Commission (EC) announced a new investment plan that is to unlock investment in the real economy of over EUR 300 billion from 2015 to 2017. This idea dates back to the 2014 campaign for the European elections. The then running candidate for EC presidency, Jean-Claude Juncker, made the “Juncker Plan” his key political promise. Then when installed as the EC head, President Juncker pushed for the Investment Plan for Europe to rapidly deliver on this promise.*

**At the time of the publication of this paper (July 2016), the Investment Plan for Europe is up and running according to the EC. It is composed of three pillars:**

- X** The European Fund for Strategic Investments (EFSI), the aim of which is to “overcome current market failures by addressing market gaps and mobilising private investment. It will support strategic investments in key areas such as infrastructure, education, research and innovation, as well as risk finance for small businesses”<sup>1</sup>.
- X** Supporting investment in the real economy via the European Investment Advisory Hub (a technical assistance tool to share good practices, lessons learnt and real-life case studies on project finance and project management) and the European Investment Project Portal – “a portal of projects to ensure that investors have reliable information on which to base their decisions”.
- X** Creating an investment friendly environment via regulatory changes and progress towards a Digital Single Market, Energy Union and Capital Markets Union.

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<sup>1</sup> [http://ec.europa.eu/priorities/jobs-growth-and-investment/investment-plan\\_en](http://ec.europa.eu/priorities/jobs-growth-and-investment/investment-plan_en)

## The European Fund for Strategic Investments



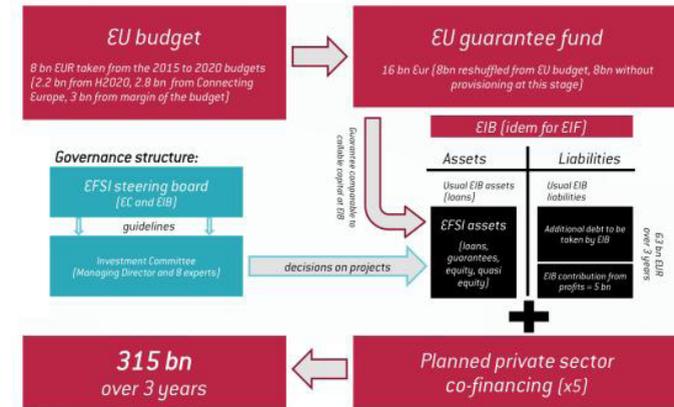
Investment Plan for Europe, 20 April 2015, European Investment Bank, <http://www.eib.org/infocentre/publications/all/investment-plan-for-europe.htm>

The EFSI is the central element of this plan, since it has to deliver and support a total of EUR 315 bn worth of projects across Europe. On 19 May 2016, the EIB Group announced that EUR 12.8 bn had been approved under EFSI financing, comprising total investments related to EFSI approval worth EUR 100 bn for 249 approved transactions in 26 EU countries<sup>1</sup>. Under the Small and Medium Enterprise (SME) window led by the European Investment Fund (EIF), 185 operations have been approved, while the EIB has approved 64 operations under the Infrastructure and Innovation window.

The rationale underlying the EFSI is multi-faceted. A prominent element is that the EU is still struggling with low growth rates and high unemployment, and is thus prioritising the need to rid itself of recessionary pressures in the context of generalised and deepened austerity

and a still palpable investment gap. Against this backdrop, the EIB has been identified since the outbreak of the crisis as an efficient tool to promote growth and jobs without committing too much new fresh money. In 2009 and 2012, the capital of the EIB was already increased by EU governments in order to enhance its lending capacity and to have the bank play a counter-cyclical role.

But what the EC had in mind in 2014 was to incentivise the EIB to invest in risky projects with greater growth and jobs potential in order to unlock private capital and attract investors in projects that would help to kick start the European economy. Such a 'heavy risk' approach was an attempt to tackle the repeated criticism by some national governments and economists that the EIB is too risk averse and obsessed with keeping its AAA status<sup>3</sup>. Therefore, the idea was to push the EIB to support riskier pro-



"Probably too little, certainly too late – an assessment of the Juncker Investment Plan", Mathilde Le Moigne, Francesco Saraceno, Sébastien Villemot, March 2016 <http://www.ofce.sciences-po.fr/pdf/dtravail/WP2016-10.pdf> (p.13)

jects by providing it with guarantees coming from the EU budget. This is not something new, as the EIB has already relied on and used such guarantees when operating outside of the EU for instance. But it has so far only been used to a limited extent for its activities within Europe, for instance via risk sharing instruments for research and innovation projects such as the so-called 'SME initiative'.

From that starting point, the public debate about the 'Juncker Plan' went in many directions: the EC insisted that innovative financial instruments, including risk-sharing mechanisms, would be at the core of the EFSI. EC officials even called the Juncker Plan "project bonds on steroids"<sup>4</sup>. The media has continued to report that the EFSI is a new way of spending the EU budget, which could be taken as a blueprint for future EU budget models<sup>5</sup>.

With one year of EFSI operations behind us, it is now time to have a look at its set-up, particularly as it has considerably evolved compared to the first announcements by the then candidate Juncker. This paper will look into specific elements of the Investment Plan for Europe which have barely been touched upon from a civil society perspective: the governance of the EFSI, its accountability and its risk of corporate capture. It will also tackle the question raised by former Italian Prime Minister Enrico Letta: "Is this investment plan the major offensive in favour of investment that President Juncker promised to the European Parliament upon his election, or is it, in more mundane terms, merely a communication tool?<sup>6</sup>". Finally, the report will formulate policy recommendations to get the EFSI and the EIB back on track.

<sup>1</sup>2. [http://www.eib.org/efsi/efsi\\_dashboard\\_may\\_20\\_en](http://www.eib.org/efsi/efsi_dashboard_may_20_en)  
<sup>3</sup>3. <http://www.robert-schuman.eu/en/european-issues/0337-jump-starting-investment>

<sup>4</sup>4. <http://www.euractiv.com/section/euro-finance/news/juncker-plan-financing-under-scrutiny/>  
<sup>5</sup>5. <https://euobserver.com/economic/131842>

<sup>6</sup>6. Investment in Europe: Making the best of the Juncker Plan, April 2016, Enrico Letta, Thomas Pellerin-Carlin, David Rinaldi and Eulalia Rubio, <http://www.deloisinsititute.eu/011-22725-Investment-in-Europe-Making-the-best-of-the-Juncker-Plan.html>

## The **EFSI**, a **STRUCTURE** with **QUESTIONABLE ADDITIONALITY**

The EFSI was officially set-up via a regulation finalised in July 2015<sup>7</sup> following tough negotiations between the European Commission, the European Parliament and the European Council. What emerged from this agreement is a technocratic structure, as described below.

The EFSI is established within the EIB and is essentially a structure aimed at approving the use of a guarantee backed by the EU budget to provide support to the operations of the EIB or its sister the European Investment Fund, part of the EIB group which mainly finances SMEs via a variety of financial instruments such as debt and equity. National Promotional Banks (NPBs), such as KfW in Germany or CDC in France, may also benefit from these guarantees, but at this stage these opportunities have not significantly materialised.

The EFSI governance structure is composed of a Steering Board, and an Investment Committee which is headed by a Managing Director.

**X** The **STEERING BOARD**<sup>8</sup> determines the strategic orientation of the EFSI, including its risk profile and its operating policies and procedures. It is controlled by the European Commission and the EIB. The Steering Board comprises four members, three appointed by the EC and one by the EIB. The Chairperson of the Steering Board is a representative of the Commission, Gerassimos Thomas (EC, DG Energy). Its other members are Ambroise Fayolle (EIB Vice-President), Irmfried Schwimann (EC, DG Competition) and Benjamin Angel (EC, DG Economic and Financial Affairs). Alternate members are all Commission officials: Nicholas Martyn (EC, DG Regional Policy), Robert-Jan Smits (EC, DG Research and Innovation) and Giorgio Chiarion Casoni (EC, DG Economic and Financial Affairs).

**X** The **INVESTMENT COMMITTEE**<sup>9</sup> is responsible for approving the support of the EU guarantee in line with EFSI investment policies and the requirements of the EFSI Regulation. It is made up of eight independent experts who have been appointed by the EFSI Steering Board and contracted by the EIB for a period of one year, renewable up to a maximum term of six years. The EFSI Regulation insists on the importance of the multidisciplinary nature of this group of experts. Article 7 insists that the composition of the Investment Committee shall be gender-balanced and be made up of experts with experience of investment in one or more of the following fields: research, development and innovation; transport infrastructures and innovative technologies for transport; energy infrastructures, energy efficiency and renewable energy; information and communication technologies infrastructures; environmental protection and management; education and training; health and medicine; SMEs; cultural and creative industries; urban mobility; social infrastructures and the social and solidarity economy.

**X** This investment committee is chaired by a **MANAGING DIRECTOR** who is responsible for EFSI's day-to-day management and for the preparation and chairing of meetings of the Investment Committee. Former Vice-President of the EIB Wilhelm Molterer has been appointed in this position, and is supported by a Deputy Managing Director (Iliyana Tzanova who was a former employee of the European Bank for Reconstruction and Development – EBRD). Both nominations were endorsed by the European Parliament.



Source: EIB annual report 2015

### HOW DOES IT WORK IN PRACTICE?



**X** The EIB staff does most of the work: it is contacted by project promoters who want to benefit from EIB support, generally via a loan. Then, the EIB judges upon the merits of a project via the 'appraisal' phase in which it assesses the economic viability of the project and its consistency with relevant national and European legislations.

**X** When the EIB staff, following its initial assessment, identifies a project with a particular risk profile or added-value which makes it necessary for the EIB to use the EU guarantee provided by the EFSI, it thus sends the relevant project assessment to the EFSI investment committee (IC).

**X** Then, a few days before the EIB's directors adopt the project, the IC votes on whether the proposed project should be granted the EFSI guarantee or not.

**X** Once the granting of the EFSI guarantee is formalised, the EIB directors can adopt the project, and it is then up to the bank to sign the contract with the project promoter and to carry out financial support for it.

<sup>7</sup> Regulation (EU) No 2015 / 1017  
<sup>8</sup> <http://www.eib.org/efsi/governance/efsi-steering-board/index.htm>

<sup>9</sup> <http://www.eib.org/efsi/governance/efsi-investment-committee/index.htm>

## PROBLEMS AND OPEN QUESTIONS

### GOVERNANCE MATTERS

At the end of the day, the real change compared to usual EIB practices lies largely in the decision of the Investment Committee to provide a project with the EFSI guarantee. In EIB President Werner Hoyer's own words, the "EFSI is a guarantee facility which resides within the EU bank"<sup>10</sup>. Other than that decision upon the granting of the guarantee, most of the work is carried out by the EIB itself.

This reflects the political battle which took place between the EC and the EIB. The EIB's position can be summarised by a statement included in the minutes of its board of directors' meeting held on 3rd February 2015: "all operations appearing on the EIB's balance sheet would be approved by the Board of Directors, whereas the scope of the Investment Committee would be solely to determine eligibility for the EU budget guarantee."<sup>11</sup> This was further confirmed in speeches from Werner Hoyer calling the Investment Committee the "Guarantee Committee", as a way to ensure that the competences of this committee are limited to approving the guarantee deriving from the EU budget.

The European Commission had pondered whether to create a whole new fund from scratch – as a separate structure from the EIB – while the EIB was more inclined to streamline the EFSI within its already existing procedures to make it as similar as possible to its usual operations. This casts doubts about the level of confidence and trust between the two institutions, despite their long history of cooperation. Why did the EC not trust that EIB decision making bodies would propose truly 'additional' projects? Why did the EIB not trust that the EC would not interfere in the decision making of its statutory bodies?

What came out of this inter-institutional confrontation is a hybrid structure: the EIB decision-making process looks intact at first sight, while the EFSI governing bodies are of-

ficially separated from the EIB internal structure. But actually, looking closer at the decision-making process at the EIB around EFSI projects, it appears that the EIB's board of directors is being further sidelined. Indeed, the EFSI set-up limits the competences of the EIB board in terms of decision making on projects and lending policies. According to the EIB statutes (article 16), project approval lies solely in the competences of the EIB board, as well as laying down terms and conditions for the risk profile of EIB operations – for so-called EIB special activities, meaning the riskier operations in the EIB lending portfolio.

But with the EFSI procedure this decision making scheme is distorted since the IC decides first if the project falls under the scope of 'special activity' or not. In addition, for projects approved by the IC, the procedures require immediate disclosure of the summary of decisions taken in the IC meeting and adequate reporting to other EU institutions about it. This means in practice that the system has not been built for the EIB's board of directors to refuse the adoption of projects benefiting from the IC greenlight – even if, in theory, they can still oppose a project. There is no procedure set in the case that the EIB board may decide not to accept the guarantee if it finds that the project does not meet the terms and conditions of the risk policy for special activities and the EIB can finance it under its normal operations.

### THE SENSITIVE ISSUE OF ADDITIONALITY

According to the EFSI Regulation, in order to be additional, the EFSI needs to finance either projects with higher risk or projects which address market failures or sub-optimal investment situations, or which could not have been carried out in the period during which the EU guarantee can be used, or not to the same extent.

So far, this has resulted in **one major difference compared to the EIB's usual operations: supposedly, assessing and financing more projects with a high risk profile – under its 'special activities'**. This would be a response to the often heard criticism that the EIB needs to change its practices as it proved in the past to be too reluctant to finance high-risk projects out of fear of losing its triple-A rating.

But even if this change of risk profile is stipulated by the EFSI Regulation, the EIB remains the one in charge of gathering information on projects, carrying out due diligence and providing the relevant information for the IC to then make a choice vis-a-vis the granting of the guarantee.

This is one of the reasons why we fear that the EIB is merely conducting business as usual under the EFSI: primarily because it is allowed to do so by the IC which grants the EFSI guarantee.

In a recent study, the Delors Institute expressed similar doubts in its lessons learnt since the beginning of EFSI operations: "Given the pressures to attain the €315 billion goal and the broad and flexible definition of 'additionality' included in the EFSI regulation, there is a risk that EFSI ends up being used indiscriminately to expand all types of normal EIB and EIF operations."<sup>12</sup>

In the foreword of this same study, former Italian Prime Minister Enrico Letta explicitly remarks that "there is a significant risk that the European Fund for Strategic Investments will finance projects that are not very additional, with the sole aim of reaching its target amount. In other words, European public money would be used to finance projects that could very well have been financed by national public funds or private capital."

These concerns are also reflected in a recent report adopted by the European Parliament on 28 April 2016. The report "stresses that [EFSI] resources should demonstrate real additionality compared with the usual operations funded by the EIB"<sup>13</sup>.

Another risk in this regard is that operations financed under EFSI would have seen the light of day anyway thanks to the private sector itself. This issue is a classic one for all public banks: the risk of crowding out private investment while aiming at crowding it in.

An additional argument is that high-risk profile operations have been part of the EIB's portfolio for years, under what it calls its 'special activities'. The EIB Corporate Operation Plan for 2015-2017 makes it clear in this regard that the bank will expand its level of 'special activities' from 6% in 2014 to around 30% by the end of 2017 thanks to the different risk profile of EFSI operations<sup>14</sup>. The EFSI is then all about expanding the volume of those special activities – so nothing completely new for the bank.

<sup>10</sup> Conference "Europe as an Investment Destination", 6 April 2016, <http://www.eib.org/infocentre/events/all/europe-as-an-investment-destination.htm>  
<sup>11</sup> <http://www.counter-balance.org/what-happens-when-the-eu-banks-directors-meet/>

<sup>12</sup> Investment in Europe: Making the best of the Juncker Plan, April 2016, Enrico Letta, Thomas Pellerin-Carlin, David Rinaldi and Eulalia Rubio, <http://www.delorsinstitute.eu/011-22725-investment-in-europe-making-the-best-of-the-juncker-plan.html>

<sup>13</sup> Report on the European Investment Bank (EIB) – Annual Report 2014 (2015/2127(INI))  
<sup>14</sup> Operational Plan 2015-2017, Luxembourg, April 2015 [www.eib.org/attachments/strategies/cop2015\\_en.pdf](http://www.eib.org/attachments/strategies/cop2015_en.pdf)



Photo European People's Party CC BY 2.0 <https://www.flickr.com/photos/eppofficial/13581358974/in/album-72157634660313439/>

**This raises a delicate question: what kind of 'risky projects' are to be supported by EFSI?**

During the negotiations on the setting-up of the Investment Plan, this was an open question. Can taking an equity in a French or German carmaker facing competitiveness issues represent a risky project for the EIB? Should we consider as 'risky projects' operations in Greece or Portugal with high social and employment benefits but likely to generate losses for the EIB? If a risky project means addressing market failures, should the EFSI focus on short term market failures or rather address structural issues such as lack of financing for energy efficiency projects in central and Eastern Europe, or even try to do both at the same time? Are projects supported via innovative financial instruments aiming to attract institutional investors (like project bonds) in their essence considered to be 'risky'? These are all central questions whose answers may have pulled the Investment Plan for Europe in substantially divergent directions.

Surprisingly, it seems that even projects with a lower risk profile can access EFSI support, provided that they address "market failures or sub-optimal investment situations"<sup>15</sup> It is nonetheless paradoxical that, as such a requirement is indeed necessary for all traditional EIB operations – as the true 'raison d'être' of the bank's support to such projects – this means concretely that regular EIB activities could be part of the Investment Plan for Europe. Such a broad definition of additionality casts a shadow on the real impact of the EFSI and shows that, behind the well-structured, purpose-built communication plan of the EU institutions, a very different picture of what the EFSI is all about can be drawn.

Indeed it is rather alarming that when they created the EFSI, the relevant decision-makers did not sufficiently discuss what 'risky projects' should really mean. Moreover, the EFSI Regulation remains quite vague about this definition of risks, and merely leaves it up to the EFSI Steering Board to elaborate a risk profile for the EFSI portfolio under the Investment Plan for Europe.

**Are EFSI transparency and reporting requirements fulfilled?**

The EFSI Regulation<sup>16</sup> sets out various reporting and transparency requirements for the EIB and the European Commission. The table below provides an interim assessment of the fulfillment of those requirements:

REQUIREMENTS IN EFSI REGULATION	ASSESSMENT OF IMPLEMENTATION
<i>Article 19</i> > In accordance with its transparency policies and general Union principles on access to documents and information, the EIB shall make publicly available on its website information relating to all EIB financing and investment operations covered by this Regulation.	The information available on the EIB website in relation to EFSI projects is similar to information available for regular EIB operations. Hence there is <b>no additional transparency</b> around EFSI projects. In particular, the assessments of projects via the "scoreboard" <b>have not been made public yet</b> .
<i>Article 7.3</i> > The minutes of Steering Board meetings shall be published as soon as they have been approved by the Steering Board.	The minutes of the Steering Board meetings are regularly published on the EIB website.
<i>Article 7.10.</i> > CVs and declarations of interest of each member of the Investment Committee shall be made public and constantly updated.	CVs and declaration of interest are available on the EIB website. A summary of decisions taken during the Investment Committee meetings are also published after the meetings.
<i>Article 16.1</i> > The EIB shall submit every six months a report to the Commission on EIB financing and investment operations covered by this Regulation.	Such reports are <b>not accessible</b> to the public by the date of publication of this report. The EIB sent its latest report to the EC in March 2016.
<i>Article 16.2.</i> > The EIB shall submit an annual report to the European Parliament and to the Council on EIB financing and investment operations covered by this Regulation. The report shall be made public.	Such a report has <b>not yet been made public</b> in 2016. This can, inter alia, be explained by the absence of an inter-institutional agreement between the EIB and the EP on the implementation of EFSI. Among other items, this agreement is to cover access to information and reporting matters. In May 2016, the agreement had not been adopted and negotiations between the two institutions are ongoing.
EIB report to Commission and European Court of Auditors (Article 16.3)	Such a report has <b>not been made public yet</b> .
<i>Article 16.6</i> > By 31 March of each year, the Commission shall submit to the EP, to the Council and to the Court of Auditors, the required information on the situation of the guarantee fund. In addition, it shall, by 31 May of each year, submit to the EP, to the Council and to the Court of Auditors an annual report on the management of the guarantee fund in the previous calendar year.	Such a report has <b>not yet been made public</b> in 2016.
<i>Article 7.12</i> > The EIB shall submit twice a year to the EP, the Council and the Commission a list of all decisions of the Investment Committee rejecting the use of the EU guarantee, subject to strict confidentiality requirements.	Such a report <b>has not been produced nor shared</b> with the Parliament – this is also linked to the absence of an inter-institutional agreement between the EIB and the EP on the implementation of EFSI.

<sup>15</sup> Article 5.1, EFSI regulation

<sup>16</sup> Regulation (EU) No 2015 / 1017



## THE CASE OF THE A4 MOTORWAY IN ITALY

In April 2016, the EIB communicated that the EFSI guarantee would be used to finance the widening of the Autovie Venete A4. This operation consists of widening a 18.5 km highway section between Quarto d'Altino and San Donà di Piave (in the Veneto region) and the 41 km highway section between Palmanova (A23 junction – Friuli Venezia Giulia) to Portogruaro (A28 junction – Veneto). The stated objectives of this project are to save time and reduce vehicle operating costs for road users due to enhanced road capacity, as well as to offer safety and environmental benefits by reducing congestion.

Apart from questioning the environmental benefits of building a highway and its added-value in delivering on the EU's climate objectives, there are also serious question marks hanging over the history of this project and its connection to the so-called 'Veneto System' (see below).

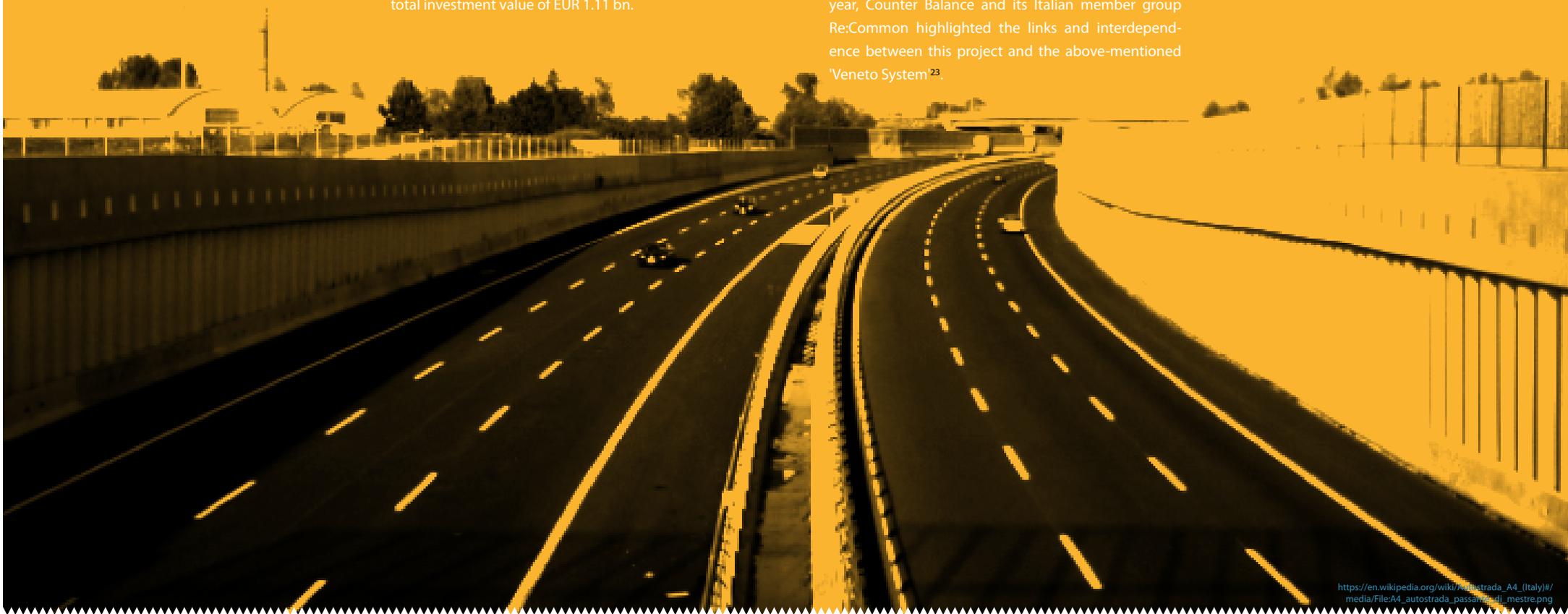
It emerges that this project was already approved for financing of EUR 420 million by the EIB back in 2010<sup>18</sup>, and that the first part of the project was constructed and inaugurated in 2014<sup>19,20,21</sup>. Therefore, the EFSI financing would cover only the second part of the project: the 41 km highway section between Palmanova and Portogruaro (A28 junction – Veneto)<sup>22</sup>. The proposed EFSI financing amounts to EUR 120 million, of a total investment value of EUR 1.11 bn.

BELOW ARE SOME OF THE NUMEROUS QUESTION MARKS AROUND THIS PROJECT:

X The project's page on the EIB website mentions that visitors should refer to an Environmental and Social Data Sheet (ESDS) for details of the project's impact. However, this ESDS sheet is not available on the EIB website.

X This highway is part of complementary sections to the Passante di Mestre bypass, close to the city of Mestre. This motorway bypass has been under the spotlight for its connection to the 'Veneto system' and the main sub-contractors carrying out work are under corruption investigations. In a previous report, published this year, Counter Balance and its Italian member group Re:Common highlighted the links and interdependence between this project and the above-mentioned 'Veneto System'<sup>23</sup>.

Interestingly enough, the promoter of the Passante di Mestre project – CAV – also has the mandate to complete the construction of the A28 junction. In this context, a pending question is: what due diligence did the EIB and EFSI governing bodies undertake in granting their support to the A4 motorway, given its links to the controversial Passante di Mestre?



<sup>18</sup> <http://www.eib.org/projects/pipeline/2009/20090448.htm>  
<sup>19</sup> <http://www.salini-impregilo.com/it/sala-stampa/comunicati-stampa/inaugurata-con-otto-mesi-di-anticipo-la-terza-corsia-a4-tratto-quarto-d-altino-san-dona-di-piave.html>

<sup>20</sup> <http://mattinopadova.gelocal.it/regione/2014/11/18/news/quarto-d-altino-san-dona-apre-la-terza-corsia-dell-a4-1.10335839>  
<sup>21</sup> <http://www.salini-impregilo.com/en/projects/in-progress/motorways-airports/third-lane-of-the-a4-between-quarto-d-altino-and-san-dona-di-piave-ve.html>

<sup>22</sup> <http://www.commissarioterzacosria.it/Progetto>  
<sup>23</sup> 'Highway to Hell: European money fuelling controversial infrastructure projects': <http://www.counter-balance.org/highway-to-hell-european-money-fuelling-controversial-infrastructure-projects/>

## X IS THE EFSI INVESTMENT COMMITTEE WELL PLACED TO ENSURE THE BEST USE OF PUBLIC MONEY?

Another sensitive issue concerns the overall accountability of EFSI governing bodies, especially its Investment Committee.

The EFSI Regulation has set out various requirements for the EFSI Investment Committee, including its gender balance and the multidisciplinary nature of its members. According to the EIB website, “the Investment Committee is gender-balanced, diversified and experts have a high level of market experience in project structuring and financing, as well as micro- and macro-economic expertise in one or more of the key fields covered by EFSI, amongst them research and innovation, transport, renewable energy, education and health.” The objective of such a selection of experts was to guarantee the independence and non-politicisation of the decisions of the Committee.

The latter is made up of a Managing Director<sup>24</sup>, Wilhem Molterer (former EIB Vice-President, who is now in charge of chairing and preparing the meetings of the Investment Committee), and eight experts. These experts have been appointed by the EFSI Steering Board and contracted by the EIB for a period of one year, renewable up to a maximum term of six years, following an open recruitment

process. The Committee takes decisions about the use of the EU guarantee by simple majority with each of its members having one vote, including the Managing Director.

But why would experts decide on the use of EU budget? Should not it rather be elected people or civil servants working in institutions controlled by the elected representatives of European citizens – the European Parliament – and guided by a mission of contributing to the public interest, such as within the European Commission itself? This is surely not the first time that so-called experts are responsible for missions of public interest – see recent criticisms of European experts groups by European NGOs<sup>25</sup> and the European Ombudsman<sup>26</sup>. But this is the first time that such an approach is being used for EIB investments and guarantees coming from the EU budget. Indeed, the Investment Plan for Europe created a new body – the Investment Committee – with very limited accountability and whose decisions are practically unchallengeable. This shift towards an expert-centred approach is particularly concerning when applied to the EFSI, as higher democratic standards for a flagship EU initiative would rightly be expected.

- What degree of independence for individuals who benefited from EIB loans in their previous or current positions?

We have analysed the CVs and declarations of interest of all the eight experts of the Investment Committee, as published on the EIB website<sup>27</sup>. **What comes out of this analysis is that the composition of the Committee fails to fulfill the criteria of independence.**

Of the eight members of the Investment Committee, we found that at least three of them have worked for companies that benefited in the past from EIB loans. This casts some doubts on how independently these experts can act in their new endeavour. Indeed, would these experts be in a strong enough position to refuse awarding the EU guarantee to projects that were earmarked by EIB services for that purpose?

In addition to jeopardising their standing in front of the EIB, this proximity between the IC and the EIB itself brings risks of corporate capture. By hiring a set of experts closely linked to business and industry sectors which are historic clients of the EIB, it is unlikely to see the EFSI take

a radically different direction compared to standard EIB operations. This also considerably increases the risk of conflicts of interest for individual members of the IC. It is thus no surprise that, during the first meeting of the EFSI Investment Committee held on 27th January 2016, Thierry Deau declared a conflict of interest for the A6 Weisloch-Tauenberg to Weinsberg PPP project in Germany.

Finally, this lack of independence leads to further confusion in the delimitation of what private and public spheres are, especially in relation to managing a public budget – in this case the European budget. When Jean-Claude Juncker first proposed an investment plan, it was perhaps not fully expected that it would turn out to be a fund whose use of public European budget would be determined by investment bankers and financial elites.

<sup>24</sup> <http://www.eib.org/about/structure/organisation/services/entity/sg/manager/wilhelm-molterer.htm>  
<sup>25</sup> <http://alter-eu.org/documents/2013/03/talk-about-expert-groups>  
<sup>26</sup> <http://www.ombudsman.europa.eu/en/press/release/faces/en/58870/html.bookmark>

<sup>27</sup> <http://www.eib.org/efsi/governance/efsi-investment-committee/index.htm>

>>>>>> THE CASE OF **THIERRY DEAU** <<<<<<<<

Thierry Deau<sup>28</sup> is the founder CEO of Meridiam SAS (Paris, France)<sup>29</sup>, a global investor and asset manager specialising in public and community infrastructure. This investment fund has received support from the EIB in the past, in 2009<sup>30</sup> and 2015<sup>31</sup>.

According to an article by the French newspaper Le Monde in April 2016, Meridiam is a growing investment fund which manages EUR 5bn of assets for projects worth EUR 30bn. It is stepping up its activities within Europe and is now expected to provide bids for the privatisation of French airports (Nice and Lyon in particular)<sup>32</sup>.

Deau is also a board member of Lisea Biodiversity, a foundation launched by Lisea, a French company which is a concession from Vinci set up to build the high speed rail line Tours-Bordeaux. Lisea Biodiversity<sup>33</sup> aims to help preserve and improve the natural heritage in areas crossed by this rail line and participates in the funding of local projects proposed by associations, companies and public- or private-sector research centres located in one of the six French departments crossed by the rail line. Significantly, Lisea also benefitted from an unprecedented EUR 1.2bn loan from the EIB in 2011<sup>34</sup>, and that Meridiam SAS has been investing in the same project<sup>35</sup>.

Deau is also a member of Le Siecle, an elite social club in France which convenes French intellectuals, politicians, chief executives, journalists and artists<sup>36</sup>.

<sup>28</sup> <http://www.eib.org/efsi/governance/efsi-investment-committee/thierry-deau.htm>  
<sup>29</sup> <http://www.meridiam.com/en>  
<sup>30</sup> <http://www.eib.org/projects/loans/2009/20090627.htm>  
<sup>31</sup> <http://www.eib.org/infocentre/press/releases/all/2015/2015-209-meridiam-announces-eib-participation-in-its-africa-fund.htm>  
<sup>32</sup> Le Monde, La belle ouvrage du fonds français Meridiam, 27 April 2016  
<sup>33</sup> [http://www.vinci.com/vinci/nsf/en/newsroom/pages/launch\\_of\\_the\\_lisea\\_biodiversity\\_foundation\\_france\\_122012.htm](http://www.vinci.com/vinci/nsf/en/newsroom/pages/launch_of_the_lisea_biodiversity_foundation_france_122012.htm)

>>>>>> THE CASE OF **GILLIAN DAY** <<<<<<<<

Gillian Day<sup>37</sup> has held different positions at the Royal Bank of Scotland (RBS), including the position of Managing Director until February 2015. Before that she worked for JP Morgan. Over the last decade, the EIB has awarded numerous loans to RBS, including when Gillian Day held senior positions at the bank.

>>>>>> THE CASE OF **DALIA DUBOVSKA** <<<<<<<<

Dalia Dubovska<sup>38</sup> was project manager for Lietuvos Energija, a Lithuanian energy company. In 2015 the EIB financed the Vilnius CHP Project<sup>39</sup> for the development of two combined heat and power plants constructed by Lietuvos Energija. Before that, she held various positions including that of Project evaluator and Public Private Partnership (PPP) Expert at the Central Project Management Agency in Lithuania<sup>40</sup>.

<sup>34</sup> <http://www.eib.org/infocentre/press/releases/all/2011/2011-083-ligne-a-grande-vitesse-sud-europe-atlantique-tours-bordeaux-financement-sans-precedent-de-la-bei-1-2-milliards-deuros.htm>  
<sup>35</sup> Le Monde, lbid  
<sup>36</sup> [https://en.wikipedia.org/wiki/Le\\_Si%C3%A8cle\\_%28think\\_tank%29](https://en.wikipedia.org/wiki/Le_Si%C3%A8cle_%28think_tank%29)  
<sup>37</sup> <http://www.eib.org/efsi/governance/efsi-investment-committee/gillian-day.htm>  
<sup>38</sup> <http://www.eib.org/efsi/governance/efsi-investment-committee/dalia-dubovska.htm>  
<sup>39</sup> <http://www.eib.org/projects/pipeline/2015/20150433.htm>  
<sup>40</sup> <https://www.linkedin.com/in/dalia-dubovska-budriene-01a47250>

## CHAPTER 3

# HOW to get the **EFSI** and the **EIB** BACK ON TRACK?

*IN THIS CONCLUDING CHAPTER WE FORMULATE PROPOSALS TO ADDRESS SOME OF THE CHALLENGES HIGHLIGHTED IN PREVIOUS CHAPTERS. WE EXTEND THESE RECOMMENDATIONS TO THE EIB ITSELF, AS IT IS THE MAIN DRIVER IN THE EFSI SEAT.*

### OTHER EU INSTITUTIONS HAVE A CRUCIAL ROLE TO PLAY IN HOLDING THE EIB AND EFSI TO ACCOUNT

It is simply not enough to leave it up to the EIB to implement the Investment Plan for Europe. In order to ensure the additionality and added-value of the European Fund for Strategic Investments, stronger control from other European institutions needs to be exerted on the EIB and on EFSI governing bodies.

- The **European Commission** holds a unique position within the Investment Plan for Europe, both through the allocation of the EU budget and its domination of the EFSI Steering Board. In addition, through the so-called Article 19 procedure stated in the EIB's statutes, the EIB should request the EU Commission's opinion on all its financing operations – this gives de facto veto power to the Commission on any EIB operation. The European Commission also holds a director's seat on the EIB's board of directors, alongside the member states. Therefore, the European Commission, through its dominant position in the EFSI Steering Board, should do its utmost to ensure the EFSI's additionality and that it delivers on its stated objectives, among which is the transparent use of the scoreboard to assess EFSI projects. Given the tools at its disposal – including its presence on the EIB's board and its ability to veto any project proposed for EIB financing under Article 19 of the EIB statutes – the Commission should also strive to reform the EIB and make it a more open, transparent and sustainable institution.

- The **European Parliament** traditionally has only limited powers over the EIB and has struggled for years to properly oversee the bank. In fact, even if the EIB is engaging in more regular dialogue with the European Parliament, the bank still largely ignores the parliament's recommendations<sup>41</sup>. It is only since the late nineties that the European Parliament recognised the importance of the bank through annual resolutions in which it assesses the activities of the bank and alternates between fierce criticism and showering praise on the bank's support of EU policies.

But in the case of the EFSI, there is a historic opportunity for the European Parliament to push for a more systematic oversight of the EIB. Indeed, the parliament is co-legislator and has been strongly involved in the setting-up of the Investment Plan for Europe. For the first time, through the use of the EU budget, the parliament will have the legal means to monitor the activities of the EIB within Europe via the EFSI. The regulation setting up the EFSI demands that the EIB and the EC clearly demonstrate to European citizens and the parliament how they are delivering and what is the added-value of the new instrument. Therefore, it will be the responsibility of the parliament to analyse the functioning and outcomes of the EFSI and hold the EFSI governing bodies to account if necessary.

- The EFSI Regulation also calls for the **European Court of Auditors** (ECA) to monitor the operations of the EIB under the EFSI – something it has never done in the past for EIB operations within Europe. So far, the ECA scrutiny has mainly been targeted at EIB operations outside of Europe benefitting from guarantees or support from the EU budget. The Court should take this opportunity to assess thoroughly the impacts, added value and additionality of EFSI operations, especially in comparison to regular EIB activities.

<sup>41</sup> <http://www.counter-balance.org/the-junker-plan-a-genuine-opportunity-for-the-parliament-to-scrutinise-the-eib/>

- Finally, the **European Ombudsman** should pay close attention to the transparency and accountability of EFSI operations. In recent years, the Ombudsman's office has attentively scrutinised the EIB and expressed concerns about its transparency standards, even ruling maladministration in two cases of access to information and public procurement. The Investment Plan for Europe is an opportunity to build on this experience and ensure a high level of transparency, public participation and information disclosure in EFSI operations so that this flagship EU initiative delivers tangible outcomes for all European citizens.

### FUNDAMENTAL REFORMS ARE NEEDED TO CHANGE THE WAY THE EIB OPERATES



The EIB is facing several governance challenges, and these currently affect the way in which the EFSI operates.

When it comes to corporate capture risks, the EIB needs to adopt more stringent practices in order to avoid conflicts of interests in its governing bodies, such as the Management Committee and the Board of Directors. Revolving doors and any positions leading to "business among friends" need to be ruled out from EIB operations more effectively. In the context of the EFSI, it is alarming that a majority of EFSI clients are companies or organisations which have already benefited from EIB loans in the past. It is certainly important for any public bank to develop solid and long-standing relationships with its clients, but for the EFSI to deliver additionality it is surely not enough to rely on the same clients as benefit from standard EIB operations. The EFSI Investment Committee's role is to identify such dynamics and ultimately assume responsibility in order to ensure that it grants the EU guarantee only to projects which are in line with the EFSI's strategic orientatons.

In addition, there is a transparency challenge to be addressed, as demonstrated by the low ranking of the EIB in the 2015 Aid Transparency Index<sup>42</sup> as well as the very limited **transparency of the EIB governing bodies**.

For the first time, Counter Balance has managed to access the minutes of a meeting of the EIB Board of Directors in January 2016<sup>43</sup> following a series of requests for information. The EIB directors, representing the shareholders of the bank, meet ten times a year in Luxembourg to adopt the EIB's policies and approve projects worth EUR 70bn a year. At every meeting, therefore, they approve projects amounting to on average around EUR 7bn. All the more striking is that this happens behind closed doors. Currently, the EIB only publishes on its website a rough agenda of upcoming meetings, and then within ten working days after these meetings it provides the public with a rough summary of the decisions taken, along with a list of conflicts of interest declared by the participants with respect to the projects to be financed. But, unlike the European Central Bank (an institution clearly not renowned as the most democratic institution in Europe), the EIB does not disclose the minutes of meetings where key decisions are taken.

What needs to come now is a commitment from the EIB to make such disclosure a standard practice and to proactively publish such information on its website. In this way the public will have the opportunity to understand how decisions about projects impacting territories and people in Europe are made. In the context of EFSI and the increasing use of the EU budget to guarantee the EIB's operations, it is now becoming urgent to step up the level of transparency at the EIB.

At project level, the EIB needs to disclose more information about projects which benefit from the EU budget guarantee. **All contracts signed between the bank and its clients, either public or private ones, need to be disclosed on a systematic basis.** This would be a game changer for the bank: to prove the additionality of its lending and demonstrate to the public that it is including strong environmental, social, fraud and integrity clauses in the contracts it signs.

In terms of public participation, the EIB has made progress in the last decade. It has set up annual meetings with civil society organisations and is regularly opening public consultation on its horizontal and sectoral policies.

Nevertheless, it remains extremely complicated for citizens affected by EIB projects to make their voices heard in a meaningful manner. In this context, a previous Counter Balance report<sup>44</sup> made the case for a **reinforced accountability architecture** for the EIB. Three main levels of intervention were identified:

1. Sound improvement of the independence and effectiveness of the current complaints mechanism of the EIB has to be achieved during the revision of its procedures in 2016.
2. The European Ombudsman needs to play a more active role in exerting its external scrutiny over the EIB.
3. A blueprint for extended Ombudsman's competences and mandate should be created via setting a precedent with the EIB. This should go hand in hand with a stronger role for the Court of Auditors and the European Parliament to monitor and further democratise the EIB.

In the context of the Juncker Plan – and the establishment of the EFSI – the EIB will be awarded with an even greater macroeconomic role at European level. The increased lending capacity of the bank will mean that there will be more and more controversial projects to deal with, such as large infrastructure projects with important environmental, debt and social impacts. New trends in finance, including the use of financial intermediaries to reach out to SMEs and the creation of new financial instruments (blending facilities, investment platforms or risk-sharing mechanisms such as Project Bonds), pose challenges to the effectiveness of accountability mechanisms. This raises the question of whom the EFSI governing bodies (Steering Board and Investment Committee) are ultimately accountable to: other than the European Ombudsman as a last resort, there is no existing internal accountability mechanism under the current EFSI structure.

### CONCLUDING REMARKS



This report concludes that the establishment of the EFSI is problematic as it largely enables the EIB to further conduct business as usual. While its additionality has thus far been questionable, it is also fraught with governance issues: the current EFSI governance structure does not provide for proper accountability of the decisions to grant the EU guarantee to specific projects.

This makes the EFSI acutely vulnerable to corporate capture. In this context, it is not surprising that big corporations with previous business relations with the EIB are taking the lion's share of EFSI support extended to date.

In light of such critical analysis, it is even more concerning to hear from EU officials that the EFSI is likely to become a permanent fund to be rolled-out after 2017 and that it could become a model for the next EU budget for the period 2020-2026<sup>45</sup>.

There is, therefore, a strong political argument for further controlling the implementation of the EFSI, starting from the mid-term review to be conducted by the European Commission. Before discussing the prolongation of the EFSI, a genuine qualitative analysis of its features needs to take place. The European Commission needs to go further than simply congratulating itself for delivering on investment volumes and instead focus on the quality and additionality of EFSI operations.

In the mid-term, those willing to improve the functioning of EFSI should also consider setting in action deep reform of the EIB itself, if any new plan of this kind is to really benefit European citizens. In this context, the business model of the EIB needs to be publicly debated, including within the European Parliament.

<sup>42</sup> <http://www.counter-balance.org/transforming-development-finance-europes-multilateral-lenders-fail-on-aid-transparency/>

<sup>43</sup> <http://www.counter-balance.org/what-happens-when-the-eu-banks-directors-meet/>

<sup>44</sup> <http://www.counter-balance.org/new-report-towards-a-reinforced-accountability-architecture-for-the-european-investment-bank/>

<sup>45</sup> <https://euobserver.com/economic/131842>

