

# The European Investment Bank and tax havens

“Counter Balance – Challenging the European Investment Bank” is a campaign promoted by a network of European NGOs with the aim of making the EIB contribute to the EU development agenda to eradicate poverty, foster sustainable development and achieve the Millennium Development Goals.

This fact sheet is part of the campaign’s toolkit.

## Strong European words against tax havens

The fight against tax evasion and tax avoidance, as facilitated by tax havens, is high on the political agenda in the aftermath of the global financial and economic crisis. European leaders have increased the public pressure on tax havens and offshore financial centres. French prime minister François Fillon has said that tax havens are “black holes that should no longer exist”. Swedish Finance Minister Anders Borg has said “tax parasites” must be seriously dealt with.

In 2008 the Council of EU committed, “to implement the principles of good governance in the tax area” and to “improve international cooperation in the tax area (...) and develop measures for the effective implementation of the above mentioned principles.”<sup>1</sup> These principles are “transparency, exchange of information and fair tax competition”.

The Council added “the need to include in relevant agreements to be concluded with third countries by the Community and its Member States (...) a specific provision on good governance in the tax area”<sup>2</sup>.

These principles have been ratified by the European Parliament’s report on tax fraud which says that Europe should take the lead and make the elimination of tax havens worldwide a priority, and “invites the Council and the Commission to use the leverage of EU trade power when negotiating trade and cooperation agreements with the governments of tax havens, in order to persuade them to eliminate tax provisions and practices that favour tax evasion and fraud”.<sup>3</sup>

## What’s the problem with tax havens?

Tax evasion and avoidance from developing countries represents a significant multiple of global overseas development assistance every year. This leakage is facilitated by tax havens, which provide infrastructure and services to allow secretive transactions. Tax havens play a key role in global finance. According

to the IMF, tax havens represented, in 2004, at least 50% of global financial flows and were involved in more than one third of global investment portfolios. The United Nations Conference on Trade and Development estimates that more than one third of foreign direct investments go to tax havens and has described how this trend has been increasing since the 1990s.

Plugging tax leaks is needed to help maintain and extend public services, redistribute wealth, restore government policy space and enable developing country citizens to exert accountability on their governments. The promotion of progressive tax systems, the strengthening of tax administrations and the fight against tax and regulatory havens are critical in the area of development finance and must be reflected in European investments in developing countries as part of a coherent European development policy.

## The European Investment Bank...

The European Investment Bank (EIB), the EU’s house bank whose role in developing countries is increasing, should therefore comply with these commitments and implement clear regulations to prevent tax evasion and foster good governance in tax matters. Nevertheless, a July 2009 study<sup>4</sup> published by Counter Balance shows that many projects and beneficiaries funded by EIB money involve tax havens and transnational companies that use them for tax purposes.

The EIB remains little known to parliamentarians, NGOs and others who track development spending. But the bank is taking a prominent role in the European Union’s response to the financial and economic crisis. The EIB will, for example, allocate EUR 2 billion to support Africa in the context of the financial crisis over the next three years, mainly for investments in infrastructure, energy projects and the financial sector.<sup>5</sup>

In accordance with the Cotonou Agreement, EIB lending directed towards African, Caribbean and Pacific (ACP) countries falls within a development mandate.

1 See: [www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/ecofin/100339.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ecofin/100339.pdf)

2 See: [www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/ecofin/100339.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ecofin/100339.pdf)

3 See: [www.europarl.europa.eu/oeil/file.jsp?id=5597642](http://www.europarl.europa.eu/oeil/file.jsp?id=5597642)

4 The report “Flying in the face of development: How European Investment Bank loans enable tax havens” (July 2009) can be downloaded at <http://www.tinyurl.com/nf5ot3>

5 [www.eib.org/about/press/2009/2009-079-at-least-an-additional-ususd15-billion-to-respond-to-financial-crisis-in-africa.htm](http://www.eib.org/about/press/2009/2009-079-at-least-an-additional-ususd15-billion-to-respond-to-financial-crisis-in-africa.htm)

The Cotonou Agreement states that the EIB shall “act in accordance with the objectives of this Agreement” – defined as “reducing and eventually eradicating poverty consistent with the objective of sustainable development and the gradual integration of ACP countries into the world economy.”

Furthermore, an historic ruling by the European Court of Justice in November 2008, in a case moved by the European Parliament against the European Commission and the Council of European Union about the decision-making on the external lending of the EIB (covering all other regions of the world apart from the ACP countries), made it clear that any economic cooperation activity backed by the EU in developing countries has to be regarded as development intervention and therefore should comply with the principles and goals stated under European development policies.

In recent years the EIB has been trying to improve its policies and procedures. Following the start of the so-called “war on terror” at the beginning of this decade, the EIB introduced a new policy prompted by an international clampdown against money-laundering. This is reflected in the bank’s development of an internal policy on “Preventing and Deterring Corruption, Fraud, Collusion, Coercion, Money Laundering and the Financing of Terrorism in EIB Activities”. Furthermore, since 2004 the bank adopted an internal policy on offshore financial centres, the first international financial institution to have a stand-alone policy on this matter.

## ... and tax havens ...

Counter Balance’s tax havens study – based on research of EIB documents, plus interviews and accompanying analysis of companies and procedures – illustrates that there is substantial cause for concern. It identifies:

- Serious loopholes
- Lax implementation
- Specific suspicious projects and transactions.

**A public bank should not facilitate private tax avoidance.**

The EIB should ensure that recipients of its loans do not avail themselves of tax havens or use other practices such as abusive transfer pricing which may lead to tax evasion or avoidance.

Yet, in the last five years, the EIB has loaned EUR 5.66 billion to top tax havens using banks from the UK, France and the Netherlands (Société Générale, Barclays, BNP Paribas, RBS, ING), while EUR 210 million has gone

to African funds using tax havens in their strategies. Furthermore, some of the major infrastructure projects financed by the EIB in the name of development happen to have close links with tax havens, which is also the case with financial intermediaries benefiting via the EIB’s Global loans.

## Controversial infrastructure projects in Africa funded by the EIB and linked to tax havens

### Tenke-Fungurume copper/cobalt mine in DR Congo:

The EIB agreed a preliminary commitment of up to EUR 100 million in August 2007. The project involves the Tenke Holding Ltd./Lundin Holding, registered in tax haven Bermuda.

### The West African Gas Pipeline from Nigeria to Ghana:

The project involves the West African Gas Pipeline Company Limited (WAPCo). The company was established by the governments of the four countries as a public-private partnership and is owned by Chevron-Texaco, Nigerian National Petroleum Corporation, Shell Overseas Holdings Limited and Takoradi Power Company Limited. WAPCo is registered in Bermuda, and will operate as an offshore company with major fiscal, environmental and social exemptions specifically allowed through the WAGP Treaty and Enabling Legislations.<sup>6</sup>

### The Mopani copper project in Zambia:

Financed by the EIB with a EUR 48 million loan in 2005. The project involves Mopani Copper Mines plc., which is majority owned by Carlisa Investments Corporation, based in the British Virgin Islands.

## ...especially in developing countries

There is a long list of EIB clients and projects in developing countries which use tax havens and similar secrecy jurisdictions – one of the most used tax havens for investments in the African region is Mauritius. This is particularly contradictory to the development purposes that the EIB claims to have in poor countries because secrecy jurisdictions foster tax competition, allow bank secrecy and therefore corruption, and facilitate tax evasion and tax avoidance.

Indeed, Mauritius offers a zero tax regime to foreign investors, provides opacity, and the tax agreements it has signed with African countries contribute to depress tax revenues in these countries. A Norwegian government report on tax havens and development published in June 2009 finds that: “Mauritius offers a location to foreign investors for a nominal fee to the government and for very low taxes protected through tax treaties. This is an example of a harmful structure, whereby Mauritius offers investors the opportunity to establish an additional domicile, which allows the investor to exploit a virtually zero tax regime. In reality, the source country is robbed of tax on capital income through this type of structure, while the tax-related outcome for the investor is very favourable”.<sup>7</sup>

<sup>6</sup> [www.foei.org/en/publications/pdfs/wagp-inet.pdf](http://www.foei.org/en/publications/pdfs/wagp-inet.pdf)

<sup>7</sup> Commission on capital flight from developing countries. “Tax havens and development. Status, analyses and measures”. Report from the Government Commission on Capital flight from Poor Countries. Appointed by Royal Decree of 27 June 2008. Submitted to Erik Solheim, Minister of Environment and International development, on 18 June 2009.



Tax justice campaigners on patrol in Jersey, March 2009

## Example of an EIB client in Mauritius Africinvest Ltd.<sup>8</sup>

The EIB signed a EUR 20 million project on December 2008 with Africinvest Ltd., managed by Mauritius-based AfricInvest Capital Partners. It focuses on the growth and expansion of small and medium-sized enterprises in primarily Sub-Saharan West and East Africa. Africinvest is an affiliate of Tuninvest Finance Group,<sup>9</sup> a private equity fund active also in leveraged buy outs. It seeks an average 20% rate of return on investments. Other shareholders of this EIB beneficiary are European development funds FMO and BIO.

## Limited scrutiny and sanctions

The Counter Balance study also reveals that the EIB's capacity to assess its clients is limited and that the EIB is particularly unconvincing in its answers on global loans, that are provided on trust to Europe's biggest banks, the largest users of tax havens.

Equally, the EIB remains weak on its monitoring of clients and projects following project approval – companies receiving EIB money are relied on to report against themselves if there is a significant change, a concept open to broad interpretation.

Taken together with the significant lack of transparency that prevails at the EIB – certainly when compared with other multilateral development banks – which prevents concerned citizens' groups checking up on the due diligence procedures or the evidence that is used, the EIB fails to make a convincing case that its money is being well-used according to its policy on fraud and corruption.<sup>10</sup>

Even in the rare instances where the EIB does identify tax evasion practices, its sanctions are weak. There is no public announcement of companies that are excluded from finance, and no debarment from tendering for other EIB projects unless or until a final criminal

conviction has been achieved. This does little to discourage companies, and is a far weaker approach than that being taken by the World Bank and other similar public institutions.

## Steps towards a new policy...

In September 2008, while addressing the European Parliament as President of the EU, French president Nikolas Sarkozy stated that companies and banks operating through tax havens and off shore financial centres should not receive public support as part of the unprecedented government bailouts given to counteract the effects of the financial crisis. This bold statement clearly applies also to the EIB, which is playing a key role in the fiscal stimulus package at the EU level and is further supporting European companies and financial intermediaries in their operations overseas.

However, the passivity of the EIB when it comes to tax havens and the tax evasion industry may have been encouraged by the difficulties connected with achieving a strong international consensus on robust measures to target tax havens, including within the European Union. In particular the current definition of offshore financial centres and "non-cooperative jurisdictions" as set out by the OECD, which has been mandated by the G20 to monitor progress in this regard, remains very vague and ineffective. As an example Monaco and Switzerland, two well-known tax havens, have been recently excluded from the so called 'grey list' of carefully monitored jurisdictions.

In any case public and political opinion have swung more solidly than ever in recent years behind bold moves against tax evasion and in favour of progressive taxation. The EIB should take the opportunity **to improve its policy to ensure that it closes the loopholes and ensures that greater transparency and a stronger threat of punishment are used to demonstrate to clients**

<sup>8</sup> [www.foei.org/en/publications/pdfs/wagp-inet.pdf](http://www.foei.org/en/publications/pdfs/wagp-inet.pdf)

<sup>9</sup> [www.africinvest.com/index.html](http://www.africinvest.com/index.html)

<sup>10</sup> Counter Balance (2009). The Long Struggle for Accountability of IFIs – the case of the EIB and the World Bank. Available at: [www.counterbalance-eib.org/EIB-transparency/](http://www.counterbalance-eib.org/EIB-transparency/)

that the EIB is serious about this agenda, and not merely defensive.

Some first steps are being taken. On May 27, 2009, as a follow up to the G20 summit conclusions on the fight against tax havens and tax evasion, the EIB issued a press release announcing that it strictly enforces procedures in this respect but is undertaking a review to ensure its policy is up to date.

Commenting on the bank's offshore financial centres policy, EIB president Philippe Maystadt said, "The EIB is committed to ensuring that its loans are used for the purposes intended, the promotion of European Union priority objectives".<sup>11</sup> The review "will aim to ensure that the EIB's lending activities continue to mitigate against lost income from assets that are kept hidden in tax havens in developed and developing countries. It will be undertaken in close cooperation with other international financial institutions to ensure that EIB continues to comply with the latest requirements".

As a further follow up, in August 2009 the EIB published an interim policy towards offshore financial centres. Counter Balance welcomes that the EIB has finally recognised that practices in offshore financial centres need enhanced due diligence and precise ex-ante requests – to be legally covenanted in financial agreements – to business backed by the bank's taxpayer guaranteed money. More importantly, the EIB has now clearly committed to phase out its support for companies, banks and operations related also to OECD monitored jurisdictions by March 2010. Furthermore, although the bank will mainly follow the OECD's loose definition of tax havens in its review, it is a noticeable step ahead that it reserves the possibility to carry out ad hoc reviews of some countries vis-a-vis tax matters.

## ...need further development

The EIB's interim policy is a promising first step. However, if the EIB wants to really move ahead in the fight against capital flight, it would need to develop a more stringent definition of offshore financial centres and prohibited and monitored jurisdictions, well beyond the current approach pursued by the OECD. Today the international prohibited list is empty. The onus of proof for being awarded EIB public support should be on the private sector, which should justify why it is looking in many cases for tax cuts and more competitive tax locations for its operations.

Moreover, it remains alarming that the EIB and European governments are not yet willing to tackle the

fundamental problem of private sector financial institutions that benefit immensely from the bank's public support through so-called 'global loans' and that are among the key players enjoying tax evasion through tax havens.

Given that money is fungible and that it is widely recognised that most major banks in the world as well as most highly leveraged financial institutions operate through tax havens, more ambitious measures of systematised and thorough screening of financial intermediaries and company blacklisting should be set up. The EU's house bank still has tremendous leverage to deploy in order to condition the European private financial sector to act for the benefit of all Europeans and to guarantee that invested money benefits local communities in developing countries.

As concerns the latter, the EIB should include adequate legal instruments and clauses in project agreements in order to guarantee that host countries do receive an adequate share of project revenues, thus minimising the risk to these communities and not just those of investors, as is the case today. This requires a creative approach to analyse precise mechanisms that would make EIB operations contribute to domestic resources mobilisation more than capital flight to rich countries. Given that the EU is the single largest contributor to global aid, Counter Balance believes that the EIB should be focusing on assuming an international leadership role in this regard.

It is important, therefore, that the EIB proceeds further in the fight against tax avoidance and evasion and carries out its announced comprehensive review on this matter. This review should include all stakeholders in order to devise and finalise a thorough policy that actually serves the purpose.

The campaign "**Counter Balance – Challenging the European Investment Bank**" is promoted by:

CEE Bankwatch Network (Central and Eastern Europe);  
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<sup>11</sup>EIB reinforces efforts to fight tax avoidance. Available at: [www.eib.org/about/news/eib-reinforces-efforts-to-fight-tax-avoidance.htm](http://www.eib.org/about/news/eib-reinforces-efforts-to-fight-tax-avoidance.htm)

