

ORDER OF THE COURT OF FIRST INSTANCE (First Chamber)  
26 November 1993 \*

In Case T-460/93,

**Étienne Tête**, residing at Caluire-et-Cuire (France),

**Jean-Pierre Raffin**, residing in Paris,

**Felix Massola**, residing at Villeurbanne (France),

**Louis-Max Duplessy**, residing at Villeurbanne,

**Marie-Louise Guigen**, residing at Villeurbanne,

**Henri Chevaleyre**, residing at Villeurbanne,

**François Meillasson**, residing at Villeurbanne,

**Jean Margerand**, residing at Villeurbanne,

**Jean-Claude Pagand**, residing at Villeurbanne,

**Henri Alloix**, residing at Villeurbanne,

**Groupe des Élus Verts au Conseil Régional**, based at Charbonnières-les-Bains (France),

**Collectif Auto-stop**, based at Lyon (France),

**Association Sauvegarde de l'Ouest Lyonnais**, based at Caluire-et-Cuire,

represented by Jean-Marc Bazy, of the Lyon Bar, and Raphaël Romi, professeur agrégé de droit public, with an address for service in Luxembourg at the Chambers of Monique Wirion, 1 Place du Théâtre,

applicants,

\* Language of the case: French.

**European Investment Bank**, represented by Xavier Herlin, Manager of the Legal Affairs Department, acting as Agent, assisted by Roger O. Dalcq, of the Brussels Bar, with an address for service in Luxembourg at the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

supported by

**Commission of the European Communities**, represented by Maria Condou, of its Legal Service, and by Théophile M. Margellos, a lawyer seconded to the Commission, acting as Agents, with an address for service in Luxembourg at the office of Nicola Anncchino, also of its Legal Service, Wagner Centre, Kirchberg,

intervener,

APPLICATION for the annulment of a decision of the European Investment Bank of 12 November 1991 granting a loan to the communauté urbaine (municipal authority) of Lyon for the northern sector of ring road of the conurbation of Lyon,

THE COURT OF FIRST INSTANCE  
OF THE EUROPEAN COMMUNITIES (First Chamber),

composed of: R. Schintgen, President, R. García-Valdecasas, H. Kirschner, B. Vesterdorf and K. Lenaerts, Judges,

Registrar: H. Jung,

makes the following

## Order

### Facts

1 On 12 November 1991, the Board of Directors of the European investment Bank (hereinafter 'the EIB') authorized the grant to the Lyon communauté urbaine of a loan to finance its contribution to the project for the northern sector of the ring road of the Lyon conurbation. On 15 September 1992, a financing contract for that project was concluded between the EIB and the Lyon communauté urbaine. On the same day, the EIB issued a press release announcing that the contract had been signed.

### Forms of order sought by the parties and procedure

2 By application lodged at the Registry of the Court of Justice on 18 November 1992, the applicants, whose names are set out above, together with Raymond Puget, residing at Vaulx-en-Velin (France), brought this action for the annulment, on the one hand, of the EIB's decision authorizing the loan and, on the other, of the loan contract itself. The applicants relied on four pleas alleging infringements of various provisions of the EEC Treaty and of the Protocol on the Statute of the European Investment Bank (hereinafter 'the Statute').

3 By letter dated 11 February 1993 to the Registrar of the Court of Justice, counsel for the applicants stated that 'Mr Puget's name should be simply removed from the list of applicants' and that this amounted to 'discontinuance on the part of that person'. The President of the First Chamber of the Court of First Instance has acted on that statement in an order given on the same day as this order.

4 By document dated 8 March 1993, the EIB raised an objection of inadmissibility on the grounds that the requirements for admissibility laid down by Article 180 of the EEC Treaty were not fulfilled in this case and that Article 173 of the EEC

Treaty was not applicable to acts of the EIB. In the alternative, the EIB claimed that the applicants had not shown a direct and individual interest in bringing the action and that the application was out of time.

- 5 In their observations lodged on 14 April 1993 on the objection of inadmissibility, the applicants claimed that the application was admissible.
- 6 By application lodged at the Registry of the Court of Justice on 19 March 1993, the Commission requested leave to intervene in support of the form of order sought by the EIB.
- 7 By order of 14 May 1993, the President of the Court of Justice gave the Commission leave to intervene in support of the form of order sought by the EIB.
- 8 On 14 June 1993, the Commission lodged its statement of intervention, in which it averred that the application was inadmissible.
- 9 Pursuant to Article 4 of Council Decision 93/350/Euratom, ECSC, EEC of 8 June 1993 amending Decision 88/591/ECSC, EEC, Euratom establishing the Court of First Instance of the European Communities (OJ 1993 L 144, p. 21), the Court remitted this case to the Court of First Instance by order of 27 September 1993.
- 10 The applicants claim that the Court should:
  - annul the decision of the EIB authorizing the loan and the loan contract itself:
  - order the EIB to pay the whole of the costs and ECU 5 000 for procedural disbursements.

The EIB, as defendant, claims that the Court should:

- declare the application inadmissible;
- dismiss the application and order the applicants jointly and severally to pay the whole of the costs.

The Commission, intervening, claims that the Court should:

- declare the application inadmissible;
- order the applicants jointly and severally to pay the whole of the costs.

- 11 The Court must rule on the objections of inadmissibility on the terms laid down by Article 114(3) and (4) of the Rules of Procedure. In this case the Court considers, on the one hand, that it has obtained sufficient information from its examination of the documents in the case-file and that there is no need to open the oral procedure, and, on the other, that it is appropriate first to consider the objections of inadmissibility to the effect that Article 180 of the EC Treaty precludes the application's being held admissible and the contested decision is not of direct concern to the applicants.

**The objections of inadmissibility to the effect that Article 180 of the EC Treaty precludes the admissibility of the application and the contested decision is not of direct concern to the applicants**

*Arguments of the applicants*

- 12 The applicants maintain that Article 180 of the EC Treaty does not have the aim of debarring a third party who considers himself to have been injured by a decision of the EIB from bringing an action for annulment. In the judgment in Case 294/93 *Les Verts v Parliament* [1986] ECR 1339, paragraph 25, the Court of Justice held that an application for annulment might lie against a measure of the European Parliament intended to have legal effects *vis-à-vis* third parties, a situation which, in the applicants' view, is comparable to the situation in this case. They argue that the

reasoning of the Court of Justice in that judgment should be transposed to this case. Consequently, Article 180(c) of the EC Treaty should be interpreted simply as a limitation on the powers of the Member States and the Commission to bring proceedings. Consequently, neither the Council nor third parties are debarred from bringing an action for annulment against decisions adopted by the EIB. If the opposite interpretation were adopted, it would mean that the EIB could infringe the Treaty with impunity.

- 13 In their view, that interpretation is borne out by Article 29 of the Statute, which provides that ‘disputes between the Bank on the one hand and its creditors, debtors or any other person on the other, shall be decided by the competent national courts, save where jurisdiction has been conferred on the Court of Justice’. If third parties had no possibility of being involved in proceedings before the Court, that article would make no sense in so far as it refers to disputes between the EIB and third parties.
- 14 In addition, the judgment of the Court of Justice in Case C-370/89 *SGEEM and Etroy v EIB* [1992] ECR I-6211, by which the Court, in ruling on an action for damages brought against the EIB, corrected the omission of the EIB in the wording of Article 215 of the EEC Treaty, shows that it is necessary to give the Treaty a wide interpretation. The applicants add that Article 173 of the EEC Treaty, which, they maintain, is applicable to their action, has been amended by the Treaty on European Union. The new Article 173 of the EC Treaty authorizes natural and legal persons to bring actions for annulment against decisions of the European Central Bank. The EIB was overlooked in Article 173 of the EC Treaty, as it was in Article 215, although its decisions may also have legal effects *vis-à-vis* third parties.
- 15 The applicants assert that they have a direct interest in bringing an action. The loan granted to the Lyon communauté urbaine promotes the construction of the northern sector of the ring road. It puts third parties — taxpayers — under an obligation to repay it. The freedom of the Lyon communauté urbaine — which is already heavily indebted — is limited for the future as regards the management of its budget, which creates a risk for democracy. That loan, which the applicants argue is unlawful because the EIB exceeded its powers in granting it, limits the EIB’s ability to grant loans consonant with its true vocation. In order to show that the loan is unlawful, the applicants refer to the proposals made by the Commission in 1993 relating to the establishment of a European Investment Fund.

*Assessment of the Court*

- 16 It should be emphasized in the first place that, according to Article 180(c) of the EC Treaty (which is identical to the former Article 180(c) of the EEC Treaty), actions for annulment may be brought against decisions of the EIB's Board of Directors only by Member States or the Commission. Consequently, that provision precludes actions — such as the present one — brought by individuals.
- 17 It should, however, be considered whether that provision of the Treaty ought to be interpreted in the way proposed by the applicants, who have relied in this connection on the judgment in *Les Verts v Parliament*, cited above. It must be observed that the reasoning for the solution adopted in that judgment was that, in its original version, the EEC Treaty merely granted the Parliament powers of consultation and political control rather than the power to adopt measures intended to have legal effects *vis-à-vis* third parties. When the Parliament subsequently acquired increased powers enabling it to adopt such measures, it appeared necessary for the Court to be able to subject them to judicial review (see the judgment in *Les Verts v Parliament*, cited above, paragraphs 22 to 25).
- 18 In the instant case, the applicants have not shown that the powers of the EIB have increased in a comparable manner up to the date of the contested decision. In fact, the EIB has retained its original role, which is to grant loans and guaranties (see Articles 129 and 130 of the EEC Treaty and Article 198d and 198e of the EC Treaty). The EIB therefore does not adopt decisions having legal effects *vis-à-vis* third parties who are not in receipt of EIB loans or guarantees. The proposal made by the Commission in 1993 with regard to the establishment of a European Investment Fund, to which the applicants have referred, confirms that interpretation of the EIB's present powers.
- 19 In that context, it should further be considered that the future European Central Bank will be considerably different from the EIB. Article 108a of the EC Treaty provides for it to adopt regulations and decisions (which will be binding on the addressees), hence the necessity to allow for the possibility of natural or legal persons' bringing actions for annulment. In view of the different powers of the two banks, the analogy suggested by the applicants does not therefore appear to be justified.

- 20 It follows from the foregoing that the more flexible interpretation of Article 180 and 173 of the EC Treaty proposed by the applicants would go beyond the limits laid down for the Community judicature by the wording of Article 180(c) of the EC Treaty.
- 21 It should, however, be considered whether Article 29 of the Statute is capable of altering this analysis. The judgment *SGEEM and Etroy v EIB*, cited above, relied on by the applicants, shows that the Community judicature has been invested with jurisdiction in respect of disputes between the EIB and third parties concerning non-contractual liability on the part of the Community. Consequently, it cannot be claimed that Article 29 makes no sense if third parties may not bring actions for annulment. It should be added that the jurisdiction of the Community judicature to entertain disputes under Article 178 of the Treaty secures effective judicial redress for third parties against acts of the EIB.
- 22 Even if the fourth paragraph of Article 173 of the EC Treaty (which is identical to the second paragraph of Article 173 of the EEC Treaty) were applicable to this application, it would be necessary to consider whether the contested decision was of direct concern to the applicants. In this context, it must be held that the applicants' legal situation has not yet been altered by the decision to grant a loan to the Lyon communauté urbaine. The interests of taxpayers and future elected representatives, invoked by the applicants, do not suffice to show that the applicants' legal situation is affected by the contested decision. Only the decisions taken by the various French authorities with a view to the construction of the ring road in question, for example compulsory-purchase decisions, are liable to affect the applicants' legal situation.
- 23 The Court has held with regard to the procedure for the approval of the budget by Parliament that that procedure leads only to the authorization of the commitment of expenditure, and that therefore a natural or legal person cannot be directly concerned by the steps in that procedure (see the order in Case 295/83 *Les Verts v Parliament* [1984] ECR 3331 paragraph 7). Consequently, no more can such a person be directly concerned by an EIB decision authorizing the grant of a loan.

24 It follows that the application must be dismissed as inadmissible without its being necessary to consider the other objections of inadmissibility raised by the EIB and the Commission.

### Costs

25 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicants have been unsuccessful and the EIB claimed that they should be ordered to pay the costs, they must be ordered jointly and severally to pay the costs incurred by the EIB.

26 The intervener claimed that the applicants should be ordered to pay 'the whole of the costs'. However, under Article 87(4) of the Rules of Procedure, the Commission, as an institution, must be ordered to bear its own costs.

On those grounds,

### THE COURT OF FIRST INSTANCE (First Chamber)

hereby orders:

1. **The application is dismissed as inadmissible.**
2. **The applicants are ordered jointly and severally to pay the costs, with the exception of the costs incurred by the intervener, which it must bear itself.**

Luxembourg, 26 November 1993.

H. Jung

Registrar

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R. Schintgen

President