

The case against European investment bank EIB is the first of its kind against the world's biggest multilateral investor and marks a new precedent of more transparent decisions on environmental funding.

Lawyers said that granting the loan for the construction of a biomass power generation plant in Spain breached the EIB's financing criteria for responsible investment in renewable energy and that there had been errors in the assessment of the project's suitability for funding.

The EIB claimed the request was inadmissible and refused ClientEarth's request for scrutiny – a right guaranteed under international and EU law by the Aarhus convention.

It confirms that the EIB must follow European Union law and review its funding decisions when a lawful request is made – including ones on investments which have an environmental impact.

"Today's judgment sets a major precedent. As a public institution using taxpayers' money, the EIB must be accountable and ready to review its decisions if they break its internal rules or EU law meant to protect the environment," said ClientEarth environmental democracy lawyer, Sebastian Bechtel.

The court's ruling makes it clear that the EIB should be more accountable on how it invests public money. This will set a precedent that public institutions should be accountable for their decisions, especially ones which harm the environment, said Xavier Sol, director at Counter Balance, a group of NGOs which monitors financial decisions.

"This is a groundbreaking ruling, as for the first time a NGO manages to break EIB's legal immunity in front of courts," he added.

The bank had argued that its decisions should be exempt from scrutiny under EU law, but the court annulled its decision that the request for review was inadmissible.

Responding to EURACTIV's questions, the EIB said: "We just received the court judgement and our legal team is analysing it in order to identify which actions need to be taken in light of this. We will revert on the matter as soon as these decisions are made."

The decision comes only a week after the publication of the EIB's annual report, which signalled more investment in climate mitigation as part of its climate roadmap, published in November 2020. The EU bank plans to use 50% of its loans to support climate and environmental sustainability, saying Europe's future is no longer in fossil fuels.

Biomass is included in the EIB's list of sustainable projects for power generation, as long as the sources are sustainable.

But even industry leaders admit that not all biomass is sustainable and should not be automatically categorised as carbon neutral.

To bring climate benefits, biomass needs to come from low-value wood residues or smaller trees coming from timber harvests – not from high-value trees that could be used in products like furniture or construction material, the industry says.

“How can we make sure the environment is really at the heart of its funding decisions if the bank seeks to deny the right of environmental groups to question them?” said Bechtel.

“We cannot just blindly believe that the EIB always uses public money for the best possible environmental outcome. If there is evidence that an EIB project breaks environmental law and worsens climate change or biodiversity loss, the bank must be open to criticism and judicial scrutiny,” he added.

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