State-corporate crime reconsidered
A criminological case study of European Investment Bank lending in the EU

Daniel James Beizsley

Thesis submitted to the Law, Economics and Governance faculty of Utrecht University and the Faculty of Law of Eötvös Loránd University in partial fulfilment for requirements for the degree of Doctor of Philosophy after following the Erasmus Mundus Doctoral Programme in Cultural and Global Criminology.

Word count 74,545
Date of submission: 23rd April 2019
Supervisor: Prof. dr. John Vervaele (Utrecht University)

Co-supervisors: Dr. Damián Zaitch (Utrecht University),
Dr. Péter Hack (Eötvös Loránd University).
The research contained in this thesis is the sole work of the candidate and has not been submitted for a degree at any other universities previously. Through the course of undertaking this work, no commercial doctoral advisory services have been sought, contracted nor used. All materials used in the course of this thesis are listed in the bibliography and appendix and no other sources or aids have been used.
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Name of the author: DANIEL JAMES BEIZSLEY  
MTMT-identifier: 10067972  
Title and subtitle of the doctoral dissertation: STATE CORPORATE CRIME RECONSIDERED: A CRIMINOLOGICAL ANALYSIS OF EUROPEAN INVESTMENT BANK LENDING IN THE EU.  
DOI-identifier: 10.15476/ELTE.2019.218  
Name of the doctoral school: LAW  
Name of the doctoral programme: GLOBAL AND CULTURAL CRIMINOLOGY (DCGC)  
Name and scientific degree of the supervisor: DR PETER HACK (LAW)  
Workplace of the supervisor: 1053 EGYETEM TER 1-3, BUDAPEST 1053

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Abstract

In its role as the EU’s financing arm the European Investment Bank (EIB) is an understudied player in Europe’s infrastructure market despite annual lending volumes of nearly €70 billion and its status as the world’s largest international financial institution (Clifton et al, 2017). Not all EIB-financed projects contribute to Europe’s development as per intended and can attract censure from the European Parliament and adverse media coverage. EIB finance for the Castor undersea gas storage plant in Spain, the MOSE and Passante di Mestre projects in the Veneto region of Italy can be characterised in these terms and have been criticised for causing environmental damage and stimulating corruption networks whilst being inconsistent with the bank’s lending criteria and standards.

This thesis aims to better understand how the EIB engages in behaviours that are counter to the legal and regulatory frameworks to which it subscribes - conduct which is viewed as a form of ‘organisational deviance’. In order to support this analysis, the thesis is influenced by two criminological research endeavours (state-corporate crime and crimes of globalization) that, in part, focus on infrastructure projects financed by international financial institutions and therefore overlap significantly with the EIB and its lending activities. However, these bodies of literature remain underdeveloped when addressing the internal processes and organisational settings of the institutions under study that lead to their involvement in financing projects, an inevitable result of the difficulties faced by researchers in accessing such sites. It is at this point where this thesis is positioned. Based on extensive interviewing of EIB officials during fieldwork in Luxembourg in 2016 and 2017, this thesis will track the internal EIB decision making processes that contribute toward it engaging in organisationally deviant behaviour and consequently, it will argue for a reconsideration of the integrated theoretical framework commonly used in the state-corporate crime and crimes of globalization literatures.
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Chapter 1: Introduction

1.1. Statement of the problem

Perched on the Kirchberg plateau just outside Luxembourg city stands a 10 storey, 170m-long, circular glass building. Architecturally it is unspectacular and sobering. Seen from the outside the transparency of the structure allows passersby to peer into the hundreds of small offices and observe the formally-dressed workers at their computers. The building houses the European Investment Bank (herein the EIB) – a European financial giant that is also the world’s largest public lending institution, signing €69 billion in loans in 2017 alone.

The EIB is not a standard commercial investment bank. It is an EU body owned by the member states created as part of the Treaty of Rome in March 1957. It exists within the EU governance structures but is financially independent through its fundraising activities on capital markets - though not many commercial banks can count on the sovereign guarantee of 28 European member states.

As the EU’s investment bank, the EIB identifies and invests in infrastructure projects (roads, bridges, power plants etc) that work toward achieving EU policy goals. EIB backed projects can involve finance for projects with risk profiles out of reach of commercial banks and other sources of finance. The involvement of the EIB as a financier can stimulate private sector investment that otherwise would not have occurred. This is the niche that the EIB fills, and it has quietly been doing so since its inception without much fanfare. It operates under the radar, lending large volumes but receiving very little attention from the media and even less so from academia. According to its official history the EIB has preferred it this way (Bussière, 2008).
The EIB is one of many international financial institutions (IFIs herein) whose mission and objectives vary according to geographic focus but are usually managed by clusters of nation states and undertake lending operations to fulfil certain policy objectives such as economic development, infrastructure investment and poverty alleviation. The more famous of these are the descendants of the Bretton Woods institutions such as the World Bank Group and the International Monetary Fund (IMF) which for decades have been undertaking lending operations in hundreds of countries. These are not the only IFIs by any means and there are several less well-known institutions that undertake similar activities including the European Bank for Reconstruction and Development (EBRD), the Asian Development Bank (ADB), the Inter-American Development Bank (IADB) and the African Development Bank (AfDB).

These organisations and their activities are not without their detractors and have long been subject to critical assessments that highlight the distance between their policy objectives and mission statements versus the effects on the ground of their lending operations (the literature on IFIs will be discussed in detail in Chapter 2). The anti-globalisation movement of the 1990s and early 2000s articulated a noisy critique of the IFIs (in particular the World Bank, IMF and the World Trade Organisation) as institutions that, instead of promoting economic development as promised, worked to establish and secure new capital flows from the developing world into the first through the expansion of debt as a form of neo-colonialism – a critique that while first expressed within a protest movement quickly gained traction and eventually forced concessions and reforms from the nation states behind them (US Senate, 2010).

In addition to purely economic assessments, IFI operations have been shown to facilitate, or be directly responsible for, wide ranging unethical behaviours in the finance, implementation and monitoring of large infrastructure projects such as pipelines, dams and those in in the extractive industries that have caused environmental damage and the involuntary or
forced displacement of local communities. IFI projects have also resulted in dozens of corruption scandals across the globe that share similar features - project costs are inflated, funds are siphoned off by corrupt individuals in collusion with state officials and taxpayers are left to shoulder the loan repayments without benefiting from the project’s intended development objectives. When this dynamic is consolidated a cycle of debt and dependency on further IFI loans is established (Toussaint and Millet, 2010) - in countries with low incomes the consequences of such corruption is deadly.

Further exacerbating these criticisms against the IFIs is the view that they function outside, above and beyond the reach of the law of the nation states in which they operate and that by virtue of being supranational organisations evade being held accountable for their activities. Within the US, for example, IFIs have been afforded immunity from suit through the 1945 International Organizations Immunities Act, meaning that it is not possible to use US courts to challenge decisions made by the World Bank (Klabbers, 2015, p. 131) while attempts to challenge to World Bank operations in host countries have largely failed due to this immunity (Harrison, 2016). This perceived lack of accountability of IFIs extends to concerns over individual IFI officials and the activities in which they engage - the World Bank’s statute affords all staff immunity from any legal process for acts performed as part of their duties.

The EIB, in contrast, exists in altogether different legal circumstances - through its position in the EU governance structures it is subject to judicial oversight by the European Court of Justice (although in Chapter 7 I will discuss the limitations to this) and therefore the accusation that is often levelled at the IFIs that they are beyond the law is not one that can be immediately applied to the EIB. However, a similar provision of immunity for EIB officials is established in Article 12 of the 1965 Protocol on the Privileges and Immunities of the European Communities which appears to give EU (including EIB) officials blanket protection from prosecution:
“in respect of acts performed by them in their official capacity, including their words spoken or written” - though this has been tested in several prosecutions and it is not clear the extent to which this provision provides across the board immunity (Woolfe, 2004).

The criticisms made against the IFIs are born from an analysis that tends to focus on the role played by the US-led IFIs operating in the developing world. The EIB’s footprint in the Global South - it lent €7.9 billion to non-EU countries in 2017 (European Investment Bank, 2018, p. 4) - means it is still a substantial development player in its own right, but this lending represents roughly 10% of its annual activity with the rest being undertaken within the EU. As a consequence, the critiques of the IFIs operating in the Global South as outlined above are only relevant to a minority of EIB backed projects which are, by virtue of size, peripheral to the principal objectives of the organisation. Therefore, this thesis will analyse EIB lending where the bulk of it is undertaken – in the EU. This immediately places some distance between the analysis of the EIB presented in this thesis and criminological studies focused on the World Bank and IMF in terms of the location of lending activities and the resulting political-economic differences. These analyses have sought to interpret the relationship between the Global North and South through IFIs using criminological perspectives that track the consequences of these structural interdependencies on poor countries and their populations. By basing this study’s focus on EIB operations in the EU, this study will inevitably bypass such debates. Despite these differences there is still substantial overlap between the organisations’ structures, activities and relationships with other organisations (i.e. state and transnational corporations) that means they are comparable institutions in several respects suggesting the potential for the conclusions of this thesis to be generalisable to the other IFIs. Large infrastructure projects that the EIB supports involve states, transnational corporations, local authorities and therefore, much in the same way as in the criminological literature on the IFIs, this study will examine these
relationships but within the context of the European Union as opposed to the Global South.

A primary objective of this thesis is the attempt to better understand how an IFI takes decisions on supporting controversial projects to which the EIB is no stranger. One recent problematic EIB investment in the EU is the Šoštanj coal power plant in Slovenia which benefitted from two EIB loans totalling €550 million in 2007 and 2010 (European Investment Bank, 2013). The corruption scandals connected to the project reveal how individuals working for the project promoter, in collusion with government insiders, artificially inflate project costs in the procurement stage thereby leaving citizens with an overpriced infrastructure asset at the cost of investment in other sectors. The EIB, by offering significant financial resources to the project and by failing to monitor how its funds are disbursed, can facilitate and exacerbate these corruption networks in large infrastructure projects that result in the public being significantly short-changed. In this case, the initial project cost was estimated at €600 million but eventually rose to €1.4 billion (The Slovenia Times, 2014). These criticisms are further underpinned by a more fundamental doubt as to the rationale for EIB involvement and the extent to which EIB financing for the Šoštanj plant is at all compatible with EU policy objectives on climate and emissions. Questions regarding the economic justifications for EIB support for individual projects and the EIB’s role in supervising how its funds are spent are central to this thesis and covered in detail in chapters 7 and 8.

Many of the charges levelled against the EIB centre on its violations of project standards (e.g. environmental, social, technical) to which it is supposedly meant to adhere through its legal obligations at EU/member state level, international agreements it has signed, its due diligence and compliance standards, and its own policy commitments. The EIB does not always comply with these standards and at times offers support for projects that are at best inconsistent with such standards, or at worst in violation of them. When the EIB violates these commitments, I will consider such
behaviour as a form of organisational deviance – a concept used throughout this thesis which draws attention to the ways in which organisations may act counter to the law, regulations and their founding statutes and mission statements (the concept is defined in more detail in Chapter 4).

When these standards are violated it can result in the EIB supporting infrastructure projects that lead to negative effects for the local communities hosting them in terms of environmental damage and the stimulation of corruption with the resulting impacts being felt at national level. In chapter 4 I will present three vignettes of EIB backed projects and will conceive of some of the effects on communities as being socially injurious – a criminological concept connected to the idea of harm that is used to denote courses of action or behaviours that while not being illegal according to legal frameworks nevertheless cause substantial negative impacts, or harms, on the public at both local and national levels (Kramer et al, 2002). The task of this thesis, therefore, is to better understand how and why the EIB deviates from its normative commitments, the underlying reasons for doing so and the extent to which criminological tools can contribute toward gaining a better understanding.

In order to undertake this research this project inevitably adopts a critical view of the EIB. However, and simultaneously, this thesis acknowledges the role played by the EIB in financing the continent’s development and is not intended to dispute the EIB’s reason for being. Rather, the objective is to better understand how and why some of its operations go awry and identify the internal processes and outside influences that are responsible. When EIB projects fail the consequences can be disastrous, and therefore a better understanding of the reasons that underpin these events is required. It is at this point where this thesis is positioned.
1.2. Academic relevance of studying the EIB

Similar types of organisational deviance by financial or governmental institutions have been the object of study for criminologists who have attempted to use the subject’s conceptual and theoretical insights to better explain how organisations can engage in activities that cause harms (both direct and indirect) to the public. Some criminologists go further and argue that the severity of damage caused by organisations means that the subject should continue to label such deviance as crime even if these activities do not specifically violate criminal law frameworks (this debate is attended to in Chapter 4).

The study of law breaking by states and corporations or as the result of joint ventures has maintained a steady presence at the margins of criminology but never at its core. Critical criminologists have long since studied crimes committed by elites operating in business and government despite difficulties in gaining institutional support, access to research subjects and the challenges of disseminating findings. Despite the paucity of research some theoretical advancements have been made - of particular relevance to this thesis on the EIB are those made within two sub-fields: state-corporate crime and crimes of globalization, and it is these two that will provide an initial frame for the project. Both bodies of research are dominated by US scholars examining the connections between US businesses and the US state and IFIs that are strongly influenced by the US state as the dominant shareholder. The EIB does not exist nor operate in the same political-economic context but there is enough convergence between these two disciplines and the EIB for them to contribute toward this analysis: EIB partners with other states and businesses mirroring state-corporate crime, while it is managed by a cluster of states investing in infrastructure projects much in the same way as the World Bank and other IFIs that are discussed in the crimes of globalization literature.
Research within state-corporate crime and crimes of globalization has consolidated around the use of an integrated theoretical framework that uses three levels of analysis (macro, meso and micro) that allows for a combination of political economy, organisational and individual level theories to explain organisational deviance and crime, often choosing classical criminological theory at each level of analysis: strain (Merton, 1938), anomie (Merton, 1968) differential association (Sutherland, 1947). This framework will provide an initial departure point that will serve to guide the analysis on the EIB by identifying the international level (EU, member states and the international political-economic environment), the internal world of the EIB and the roles undertaken by individuals which all have an influence on dictating how the EIB takes decisions on supporting infrastructure projects. Due to the lack of access to the institutions under study, the model has not been explored to its full potential, a weakness keenly felt at the organisational and individual levels of analysis which are often reliant on secondary data sources and are beset by a lack of knowledge and clarity on the internal worlds of the institutions under study. The consequence of this is that understanding of the internal decision-making processes that leads to organisations undertaking certain courses of action or behaviour remains noticeably underdeveloped.

In order to address this lack of criminological knowledge, this project will pay special attention to how the EIB and individual EIB officials appraise projects, how the EIB takes decisions within its governance structures and how it monitors projects during the implementation stage. At present no such detailed knowledge is available within criminology on the intricacies of IFI internal operations and therefore this thesis represents an original contribution to the subject. In addition, by proposing the EIB as a case study to these two bodies of research this study will unmoor state-corporate crime and crimes of globalization from its concentration on the US and US-run institutions and in the process establish new territory for further inquiries into other IFIs and large lending institutions.
1.3. Research objectives

Research in state-corporate crime and crimes of globalization has provided a contribution to expanding knowledge on the crimes committed by states, corporations and IFIs but it is beset by several limitations which this thesis intends to address. Within both bodies of work there is scant knowledge obtained from sources working within those institutions leading to a lack of primary data, a fact recognised by its authors (Michalowski and Kramer, 2006). This lack of knowledge, in my view, has led to research in which the internal processes of the organisations understudy are broadly imagined or guessed at - resulting in partial and incomplete analysis. This thesis will address this shortfall and in Chapter 8 I will present a detailed analysis of internal EIB processes which are informed by interviews with EIB officials. Such developments will assist in future researchers’ analysis of IFIs and their lending activities as what emerges is a much more detailed understanding of the innerworkings of IFIs and how they approach, appraise and decide on support for infrastructure projects and how these processes may stimulate or cause forms of organisational deviance. This knowledge can provide a base for future studies on IFIs and their activities.

A secondary objective of this thesis achieved through its focus on the EIB as a non US-led IFI, is the expansion of the crimes of globalization literature to include institutions outside of its current focus on the World Bank and the IMF. IFIs invest billions of euros into infrastructure projects across the globe and the World Bank and IMF on their own form only a small portion of this amount. It is hoped that this thesis can produce knowledge that could form the basis on future research projects which cover the aforementioned IFIs: the European Bank for Reconstruction and Development (EBRD), the Asian Development Bank (ADB), the Inter-American Development Bank (IADB) and the African Development Bank (AfDB). Criminological research on IFIs is scarce but relating to the above IFIs is non-existent. The conclusions proposed in chapter 9 and the reconfiguration of the theoretical framework to closer match the activities of the IFIs could provide a ready
template for criminologists and other researchers wishing to engage with these institutions.

Lastly, academic knowledge (in all relevant disciplines) that is focused on the EIB is limited in quantity and scope despite its status as the world’s largest public lending institution. The reasons for this lack of academic attention to the EIB can only be guessed at but it is a concern that an EU tool which leaves a significant footprint on the EU’s economy is so poorly understood. This thesis will contribute to this shortfall of knowledge on the EIB and should encourage others to engage with this institution which has for too long escaped concerted academic attention that its size and influence requires.

1.4. Research questions

In order to achieve these aims this thesis will be guided by the following research questions:

1) How does the EIB commit to lending activities that are in violation of the EU/member state legal frameworks, international agreements of which it is a signee and its own policy commitments?

2) What external factors or internal organisational processes contribute toward this form of organisational deviance?

3) What socially injurious actions can result from EIB lending activities and what harms do they create for the communities hosting them?

4) How can we interpret this conduct using criminological theory?

To answer these questions this thesis will proceed as follows: Chapter 2 will introduce and explore the academic literature most relevant to this study on IFIs, criminology and the sociology of organisations as well as the sparse academic literature on the EIB. Each body of literature represents a partial overlap with the scope of this study and it is necessary to borrow from each
in order to construct the initial conceptual terrain needed to undertake this project.

The EIB is a complex bureaucratic organisation involved in sophisticated lending activities within dozens of regulatory regimes and therefore requires a chapter of its own in which a substantial outline of its mission, activities and place in the EU legal framework can be given - this will be done in chapter 3. Following on, chapter 4 will present three vignettes of controversial EIB-backed projects outlining the sequence of events, the EIB’s role in the projects and will explore the negative impacts on the communities hosting them i.e. the immediate environmental and financial effect on citizens living in proximity to such projects, but additionally from a broader standpoint which connects badly managed infrastructure projects to having adverse effects on state budgets leading to public expenditure being reduced elsewhere (the term ‘communities is defined in section 4.3.1.). In order to recognise the connection between EIB lending activities and these results, this thesis will view this type of EIB conduct as producing ‘socially injurious actions’ or ‘harms.’ In addition, chapter 4 will discuss the ways in which the EIB can violate the normative frameworks to which it adheres resulting in it engaging in behaviours that are a form of organisational deviance – also a precise definition of such deviance will be developed.

In Chapter 5 I will deconstruct the widely used theoretical framework used within the state-corporate crime and crimes of globalization fields and then rebuild it in order for it to serve as an appropriate framework for an inductive exploration of EIB lending activities. Chapter 6 will propose the research strategy and methodology involved in this study as well reflecting on the ethical implications involved in researching a powerful institution that declined to participate in the research process then attempted to actively subvert it.
Chapters 7 and 8 are the main results chapters sorted by macro (7) and meso/micro (8) in which I attempt to unravel the processes that resulted in the EIB’s lending activities becoming organisationally deviant as proposed in Chapter 4. In Chapter 9 I will reconstruct the conceptual and theoretical frameworks in light of the thesis’ main results while Chapter 10 will reflect on the research questions, the contribution this project has made to criminology, the limitations of the project and lastly will propose future avenues for criminological research.
Chapter 2: Organisations, IFIs and criminology

2.1. Introduction

This chapter will begin by introducing academic literature on international financial institutions (IFIs) from several academic perspectives before presenting some overlapping criminological research. The chapter will conclude by discussing the limited amount of research focused on the EIB.

2.2. International financial institutions

In 1944 representatives from 44 Allied nations met at a ski resort in Bretton Woods, New Hampshire, to discuss the post-war monetary order that would be underpinned by new forms of governance between independent states to foster international cooperation to avoid the closed off markets and protectionism which had caused so much instability in the interwar years. Countries joining the new order would commit to a system of fixed exchange rates which it was hoped would lead to decreasing barriers for international trade. As part of the new ‘Bretton Woods’ system two institutions were created - the International Bank for Reconstruction and Development (IBRD) which later became known as the World Bank Group, and the International Monetary Fund (IMF). After the war concluded and when the institutions became operational they would work to promote a series of economic policies underpinned by a reduction in barriers to the movement of capital and the privatisation of previously state-run industries together with an ‘export led’ growth strategy (Williamson, 2009, p. 9) – a set of policies which are now commonly referred to as neoliberalism and as synonymous with contemporary understanding of the rather ill-defined term globalisation.
Returning to the present I will now briefly introduce the most well-known of the IFIs - the World Bank Group. It is, in fact, a collection of 5 institutions – the aforementioned International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), the International Finance Corporation (IFC), the Multilateral Investment Guarantee Agency (MIGA) and the International Centre for Settlement of Investment Disputes (ICSID). The first two institutions offer loans and grants toward projects in developing countries and often when discussing the World Bank it is these institutions which are described. This thesis will continue in this tradition.

The World Bank’s initial objective was to contribute finance toward the post-war reconstruction of Europe and her depleted infrastructure but later its mission and location of its activities pivoted under the leadership of Robert McNamara in the 1970s toward poverty alleviation in the Global South (Wade, 2011). In order to achieve its objectives it issues loans and grants toward specific projects e.g. infrastructure or to policy initiatives e.g. vaccination programmes. As of 2016 its remit includes 8 policy realms: economic policy, private sector development, finance, human development and gender, urban and rural development, public sector management, social development and protection, environment and natural resource management (The World Bank, 2016).

There are several comparable IFIs that undertake similar activities but with different geographical focus, policy area or ownership. For example, the Inter-American Development Bank (IDB) is the largest source of development finance for Latin America and the Caribbean and is owned by 48 nations (including the US and European countries) - 26 of which are eligible to receive loans. The Asian Development Bank (ADB) follows a similar pattern – it offers loans across the continent to accelerate economic and social development and its majority shareholders are the US and Japan with 15% each. The European Bank for Reconstruction and Development (EBRD) operates mainly across central Europe and central Asia and is
owned by 67 nations – though the majority of shares are owned by G7 countries. The European Union and the EIB each have a 3% shareholding in the EBRD – one of the few cases of a supranational organisation being a shareholder in another.

Other IFIs are less focused on individual projects and initiatives and work toward upholding the structural integrity of the financial system. The IMF’s main objective is “to ensure the stability of the international monetary system” which it does through surveillance and monitoring of its member countries (“The IMF at a glance,” 2018). If one of its members is in financial distress, it lends large amounts of money to that state, known as a bail-out, to prevent contagion spreading into the financial system. Loans are offered on the condition of the member state implementing reforms to their economies that can involve opening domestic markets to foreign competitors - such conditions attached to loans are known as structural adjustment programmes (SAPs) (Easterly, 2005). Such ‘conditionality’ is underpinned by performance targets (i.e. budgetary, export targets) and became an integral feature of IMF lending by the 1960s (Taylor, 1997, p. 146).

More recent examples of major IMF interventions into economies have been in Turkey and Argentina in 2001 (and again in 2018), Uruguay in 2002 and in the aftermath of the 2008 financial crisis in Ireland, Portugal and perhaps most controversially in Greece as part of the Troika arrangement between the IMF, European Commission and the European Central Bank. The IMF has been the subject of sustained critique during its history that points to the damage it causes when it demands sudden and abrupt economic changes from member state borrowers (Payer, 1975; Danaher 1994) which others have argued can be causal factors in the outbreak of conflicts and civil wars (Walton and Seddon 1994; Ellis-Jones 2003; Hartzell et al, 2010).
Other IFIs work to develop rules to be adopted by member countries. The Organisation for Economic Cooperation and Development (OECD) is comprised of 36 states (all high-income countries) and works toward developing guidelines to be adopted by member countries in order to facilitate ‘a level playing field’ in the global economy. One policy area in which the OECD is particularly active is in tax governance and many recent anti-tax avoidance agreements e.g. the Base Erosion and Profit Shifting (BEPS) framework have been agreed upon at OECD level. Another example is OECD work on transfer pricing (the price at which transactions between subsidiaries of the same entity are priced) which has led to standards being implemented across member countries that represent a large portion of global trade. Elsewhere, the OECD has been active in agreeing standards by which financial jurisdictions may be judged as being uncooperative jurisdictions (known as tax havens) which have been widely used as benchmarks across the world and in policy discussions at national and multilateral levels. In relation to this thesis, the European Commission maintains a permanent delegation to the OECD in which it can engage in the OECD forum and undertake policy discussions with the major economies. Standards agreed at OECD are often endorsed by the EU and can inform the development of new EU legislation.

The World Trade Organisation (WTO) is another IFI that is focused on developing rules and standards. It is the successor to the General Agreement on Tariffs and Trade (GATT) that was signed by 23 nations in 1947 in order to promote international trade by reducing tariffs and other trade barriers. GATT was updated 1994 at the Uruguay Round Agreements after which it became known as the WTO. The WTO develops standards and regulations on goods, services and intellectual property including the global system of tariffs on goods. In addition, the WTO houses a dispute resolution mechanism that resolves trade tariff disputes between member countries (“Dispute settlement,” 2018).
As established in this section, IFIs vary in terms of objectives, scope and geographical focus. Now I will now turn to academic literature on their operations.

2.3. Academia and IFIs

IFIs and in particular the World Bank and IMF exercise vast influence over the global economy in a way that is perhaps underappreciated. Taylor’s (1997) observation that two-thirds of the world’s population are bound by the economic policies devised by “experts” based in Washington DC lends support to this claim. There is a sizeable academic literature on the macro-economic impacts of the institutions which is supplemented by extensive reporting that is published by dedicated research directorates within the institutions e.g. the World Bank Development Report and the IMF Global Financial Stability Report.

More relevant to this thesis is the equally rich body of academic literature on the IFIs that adopts a critical standpoint toward their activities. Perhaps the most stringent critique of the IFIs is that despite lending billions of dollars across the developing world, their emphasis on export-led growth and trade liberalisation has not translated into an even form of development and levels of extreme poverty remain stubbornly high in countries with long histories of IFI involvement (Chossudovsky, 1999; Toussaint and Millet, 2010). In other words, the very type of economic development practiced by the IFIs has failed on its own terms.

One area of IFI activity that has received longstanding criticism has been support for extractive industries and the export of raw materials from mineral rich countries in South America, Africa and Asia (Szablowski, 2007). The development contribution of large-scale mining activities has been questioned consistently (Pegg, 2006) as well as the negative environmental impacts and dangerous working conditions and worker safety records. The difficulty of host governments to adequately tax the activities of mining companies has also been emphasised (Gamu et al, 2015) as has
the relationship between mining in the developing world and corruption (Leite and Weidmann, 1999).

IFI\text{sf}s have a long history of partnership with military dictatorships in the developing world. To take the example of the Democratic Republic of Congo, billions of dollars of IFI loans were given to the country during the brutal Mobutu dictatorship that never reached citizens to whom they were designed to help, instead they were siphoned off by his cronies and then added to the country’s crippling external debt (Ndikumana and Boyce, 1998). Such corruption can also directly fuel military conflicts - Stanley (2009), in her study on torture and transnational justice in Indonesia, reveals how World Bank loans intended toward poverty alleviation programmes were used by the Suharto regime to violently repress the Timorese people.

Throughout its history the EIB has also financed comparable projects and has faced the same criticisms as above in the context of its support for the Chad-Cameroon pipeline or the Mopani Copper Project in Zambia. The EIB is active in the Global South and is a substantial development player in its own right, but it also partners the World Bank, or ‘piggy-backs’ onto its projects as a junior financier. The EIB’s support for extractive projects has been consistently criticised by European NGOs and the EU Parliament that doubt the questionable development claims of such projects and underline the environmental impacts or corruption risks. However, such EIB activities in the developing world fall outside of the focus of this study and therefore the thrust of the critique of the IFIs as mechanisms of the industrialised North to extract wealth from the Global South seen through the lens of neocolonialism will not be examined in this thesis. Instead, the EIB’s role as a predominantly intra-EU IFI produces a different set of macro-economic and political questions that will need to be unpacked and addressed. This range of international forces that influence and direct EIB lending will be explored in Chapter 7.
Furthermore, the above research focuses on the consequences of IFI backed projects and policies but has little to say about how the IFIs take such decisions, often presenting IFIs as monolithic institutions free from internal disagreement that take consensual decisions and act in unison. The following section will explore the literature on the IFIs that engages, to some extent, with the internal worlds and organisational settings and their impacts on IFI activities. These themes shall be examined in detail in relation to the EIB in Chapter 8.

2.4. Sociology of organisations and IFIs

Particularly useful to this criminological study on the EIB is work undertaken by organisational sociologists whose research on IFIs uses the organisational setting as the main unit of analysis. This type of analysis, and the access it entails within the institutions, is largely absent from the criminological case studies outlined in the following section (2.5.). As a result of this lack of access, much criminological work on organisational deviance borrows from the sociology of organisations.

Babb (2009), writing in the institutionalist tradition of the sociology of organisations, suggests that research to date on IFIs has failed to tackle ‘the Washington consensus’ i.e. how US domestic politics (both executive and legislative branches of the government) negotiated in the corridors of Washington continues to have substantial effects on the policies and objectives of the IFIs. According to Babb (p. 20), congressional activism and its influence on the IFIs is subtler and more sophisticated than is often imagined, and despite the US being the predominant voice within the World Bank, it must agree to a series of compromises. The EIB, unlike the World Bank, does not have one big dominant shareholder, and so a different set of questions regarding compromises made within the bank along shareholder lines must be asked. If there is not one predominant voice but several, how does shareholder pressure function inside the EIB when it is divided
between several large shareholders? This question will be tackled in Chapter 7.

Also based in the institutionalist tradition, Weaver (2008, p. 4) explores the World Bank’s dependency on its external environment for resources (both monetary and also for legitimacy), with such dependency conditioning the IFIs to be responsive to their shareholders’ needs in order to survive. However, by attempting to satisfy its shareholders who have heterogeneous priorities, a series of conflicts is generated that lead to increasing and pervasive gaps between talk, decision and actions. Weaver concludes that this creates ‘organisational hypocrisy’ within the IFIs – a concept developed by Brunsson (1989, 2003) which she uses to underpin her analysis of the World Bank and the discrepancy between its stated policies and outcomes. Both Babb’s and Weaver’s research underline the necessity to understand the dynamic between the EIB and its shareholders and the conflicts this can generate within the institution.

Barnett and Finnemore (1999) in their work on IFIs (including but not limited to the World Bank) view such organisations as more autonomous, less resource dependent than as suggested by Babb and Weaver. Influenced by the works of Ascher (1983); Ayres (1983); Ferguson (1990); Wade (1996), the authors contest the notion that IFIs are mere passive mechanisms with no independent agendas. The authors suggest that a principle-agent analysis could assist in understanding the relationship between states and IFIs. When applied to the EIB – this raises a series of important questions regarding its autonomy. Is it merely a financial mechanism that lends passively in support of EU policy objectives or does it take lending decisions, at least in part, that are conducive to its own long-term strategic interests?

What is lacking from the above studies is an inside perspective on the IFIs that attempts to connect the internal worlds to subjects that are much more within the purview of criminologists. Vaughan (1982, 1985, 1990, 1999)
has consistently attempted to merge theoretical sophistication from the sociology of organisations with criminological research into *organisational deviance* – a concept which focuses on the abilities of organisations to deviate away from their stated mission and the normative frameworks to which they subscribe. In particular, Vaughan’s (1997) research into the 1986 Space Shuttle Challenger disaster explores individual mistakes in the analysis of pre-launch data, exacerbated by organisational secrecy and underpinned by external political pressures to give the go-ahead for the launch. This approach of combining the micro-meso-macro approaches is one that has been adopted by criminologists and shall be used in this project on the EIB (such a theoretical framework is proposed in chapter 5).

These perspectives from the sociology of organisations provide detailed insights into the functioning of organisations and IFIs but do not overlap substantially with subjects closer to the focus of criminology and therefore are of only partial assistance in this project. I will now turn to terrain in which insights from organisational sociology combine with criminology.

### 2.5. Sociology of organisational deviance

The research questions posed in chapter 1 establish the focus of this thesis to better understand how and why the EIB may undertake its lending operations in violation of the legal and normative frameworks to which it subscribes. Clarke (1990) argues that organisations provide the means and opportunity for rule-breaking and simultaneously can be the scene of the crime and can even be both perpetrator and victim. The study of how organisations behave in such ways is explored within research on the sociology of organisational deviance and is underpinned by an attempt to better understand how organisations can become involved in rule breaking.

Organisational deviance, or what Vaughan (1999, p. 271) terms as the ‘dark side of organisations,’ recognises the ability of formal organisations to create adverse societal consequences as a result of mistake, misconduct, and negligence. This body of work, in comparison to studies in workplace
deviance, is intended to increase understanding of the ability of organisations as “juristic actors” (Coleman, 1974) to become organisationally deviant and act, or undertake operations, in violation of legal, administrative and regulatory frameworks.

Research in this area began in earnest post-WW2 through the paradigm shifting work undertaken by Sutherland into crimes committed in the upper echelons of society (see section 2.6.). Soon after, Geis (2017) in the early 1960s explored wide-spread price fixing, conspiracy and other anti-trust violations in the American electrical industry, observing that many of the executives engaged in such activities, not for personal profit, but for “the good of the company.” However, it was not until the events of the Watergate scandal that a growing interest in, and recognition of, the ability of organisations to act illegally and in ways counter to the public’s perception of their activities. Particularly influential during this period was Ermann and Lundman’s (1978) theoretical framework that was proposed to study organisational deviance by both corporations and government. Within a decade several textbooks appeared that contained collections of essays on corporate crime and organisational deviance (Douglas and Johnsons, 1978; Geiss and Stotland, 1980).

Vaughan’s (1997) investigation into the Challenger Space Shuttle disaster is perhaps the most advanced study in this area and through her forensic analysis of organisational processes in which she unpacks the culture and practices within NASA and the socialisation of deviant organisational practices that she argues were responsible for the crash. Punch (2000, p. 244) casts doubt on this interpretation suggesting that organisations cannot take decisions themselves but only through the behaviour of individuals who comprise the organisation. Moreover, Punch (ibid, p. 245) argues that organisations should be seen as a venue that contains parallel shadow worlds of internal power-struggles, rivalry, factionalism, favouritism, politics, manipulation which contribute to causing the organisation to undertake deviant activities or operations. Later Vaughan (2002, p. 125)
develops this even further and argues that internal struggles between individuals should be considered alongside the organisation’s internal processes, but also be placed in context of the regulatory environment in which the organisation exists and the competitive environment it shares with rival entities.

The insights developed by the study of organisational deviance will inform this thesis on the EIB through its focus on the organisation as the unit of analysis but also through the relationship between internal procedures and processes and the potential for deviance. It is therefore without surprise that the study of organisational deviance has been influential for criminology and especially for sub-fields that focus on crimes committed by organisational actors both in private business and state institutions.

2.6. The criminological response

As the EIB is an institution whose primary activity is financial in character, it is inevitable that the study of its worst excesses shares much conceptual ground with research undertaken by criminologists and those working on business or corporate crime. As is the case in research on organisational deviance, the bedrock of all such criminological research is the work of Sutherland (1940, 1947) and the resulting paradigm changes that came from his work. Firstly, Sutherland attempted to reorientate criminological focus away from street-level offenders and onto the activities of the corporations and the executives in charge of them. Secondly, the broadening of the term ‘crime’ to become unmoored from a purely juridical understanding to include violations of regulatory or administrative law (the debate over the concept of crime and its use within criminology and in this thesis is discussed in more detail in Chapter 4).

The enduring invitation for scholars to engage with crimes committed in the business world and the new sociological terrain that Sutherland expanded remained unfilled after his death despite some early exceptions (Clinard,
1952; Cressey, 1953). This changed as a result of the Watergate scandal in the 1970s (in the same way as in the study of organisational deviance) and the congressional hearings that revealed high level conspiracies between politicians and corporations that stimulated a renewed interest in studying the crimes of the powerful with many such studies covering significant overlaps between the study of political crimes in connection with corporations (Pearce, 1976, Quinney 1977).

During this period the paradigm change instigated by Sutherland was refined by Clinard and Quinney (1973) who separated the term white-collar crime into two types: occupational crime and corporate crime in which the first is crime committed by individuals in the course of their professional duties (e.g. bribery, embezzlement) while the latter is intended to study the corporation itself, the decisions it takes and the effects of the operations in which it engages. This clarification opened the door for a new wave of criminological research that focused on the organisation (Clinard and Yeager, 1980; Ermann and Lundman, 1978; Gross, 1978; Schrager and Short, 1978; Cullen et al, 1987) but simultaneously underlined the need for the incorporation of theories from other disciplines such as the aforementioned sociology of organisations and sociology of organisational deviance.

This development was influential in establishing new ground for 2 additional research endeavours which influence this study on the EIB:

*State-corporate crime*

Kramer (1992) developed the concept of state-corporate crime as a result of his analysis of the Space Shuttle Challenger disaster and his observation that the causes of the event were the collective product of the interaction between NASA and the private contractor responsible for designing one of the rocket boosters. Kramer viewed the disaster as the result of deviant
inter-organisational relationships between institutions of state and private corporations.

Kramer’s call for further studies on such deviant relationships between states and corporates led to the emergence of a body of case studies. In analysing a 1991 factory fire in North Carolina that killed 25 workers, Aulette and Michalowski (1993) point to systematic regulatory failure by federal and state agencies that led to violations of basic safety standards being committed by the factory owner in pursuit of profit. Following on, Kauzlarich and Kramer (1993) examined the environmental damage caused by radioactive contamination from the US nuclear weapons production industry and advance the idea that institutional arrangements and a “culture of non-compliance” due to insufficient oversight from the government produced a criminogenic environment that encouraged the production facilities (run by subcontractors) to break environmental regulations. Matthews and Kauzlarich’s (2000) analysed the failure of the Federal Aviation Administration (FAA) to comply with certain safety recommendations made by the National Transportation Board that resulted in the 1996 crash of Valujet Flight 592 that resulted in the deaths of 105 passengers. The authors then place these failures in the context of the deregulation of the airline industry and desire for capital accumulation on the part of aviation companies. While the thrust of the state-corporate crime case studies are concentrated on the US state by US academics there are some studies which are based in Europe. Evertsson (2017) uses the state-corporate crime lens to examine tax rulings made by the EU member states favoring multi-nationals to use aggressive tax planning techniques at odds with EU state-aid law while Bernat et al (2014) explore the connections between Spanish banks and political power in the country in the context of the financial crisis of 2007/2008 and the subsequent deep recession.

The state-corporate crime framework is further added to by the introduction of a typology of institutional relationships integral to the production of crime and deviance - state-facilitated and state-initiated. In the first, state-corporate crimes are the outcome of negligence or inactivity on the part of
state regulatory agencies that fail to restrain deviant business activities through lack of regulations and or enforcement (Michalowski and Kramer 2006). Cruciotti and Matthews (2006) in their analysis of the Exxon Valdez oil spill the authors argue should it understood as the natural consequences of a series of decisions taken by several state agencies such as the Alaska Pipeline Service Company, the U.S. Coast Guard, the state of Alaska and the US government. The second type, state-initiated, are when corporations employed by a government engage in organisational deviance at the direction of, or with the tacit approval of, that government (Michalowski and Kramer 2006, p. 21) – examples of which could be the environmental and human injury caused by nuclear weapons production and the US-led invasion of Iraq. Kauzlarich et al (2003, p. 247) attempt to develop these ideas and place them on a horizontal continuum – at one end actions which are ‘omission implicit’ are characterised by ‘avoidable human suffering, ‘omission explicit’ such as bureaucratic failure or regulatory dysfunction, ‘commission implicit’ – funding unethical experiments, and then finally ‘commission explicit’ encompassing actions such as genocide and imperialism. Elsewhere, Barak (2010, p. 383) has questioned the possibility of drawing clear distinctions between initiation and facilitation, preferring to view behaviours as driven by neoliberal ideology, socio-historical and cultural contexts, and powerful elite networks which are embedded in government and businesses.

The concept of state-corporate crime has also been used in research that focuses, less on single disasters or accidents, but on structural level processes such as globalization and its impacts on specific populations. Wonders and Danner (2002) point to the hyper-exploitation of women as a state-corporate crime which is a consequence of globalisation through economic displacement, unfair and unsafe labour practices, the effects of environmental harm and military conflict – all of which disproportionately affect women as direct causalities. This focus away from spectacular disasters as case studies, or as ‘moments of rupture’ has been welcomed by some who view the subjects’ concentration on individual events as somehow preventing deeper understanding of the phenomenon under study.
Lasslett (2010), Tombs (2012) Bernat and Whyte (2017) have argued that theorists should move beyond the immediate circumstances of particular moments grounded in the spectacular (crashes, explosions, accidents etc) in order to properly engage with the underlying social relationships between states and corporations that underpin such events – as the consequence of capital accumulation and the social and political relations needed to uphold such accumulation. Tombs (2012, p. 175) suggests that extant research tends to concentrate on:

“Discrete joint ventures between corporations and states, either at specific moments or towards specific ends, thus abstracting these from a more generalized set of social relationships, which are on-going, enduring and more akin, in fact, to a process.”

Rothe and Friedrichs (2014, p. 159), in response to Tombs’ call to reorientate the study of state-corporate crime, point to the potential problems in recasting the study of financial institutions in purely structural terms “because it moves towards a notion of an inherently criminal system and away from more traditional, concrete and “manageable” conceptions of crime.” This debate within state-corporate crime is relevant for this thesis on the EIB as, instead of posing forensic analysis of events which lead to the EIB taking certain lending decisions seen as ‘events,’ but as per Bernat and Whyte (2017) pushes to investigate the pattern of social relations embedded in particular social and economic practices. What are the relationships that drive EIB lending activity and specifically the cases identified in chapter 4? These questions will be addressed in chapter 7.

**Crimes of globalization**

Friedrichs and Friedrichs (2002) coined the term ‘crimes of globalization’ in the first criminological article that attempts to draw attention to the illegal or harmful practices that are the result of IFI financed projects in partnership with governments and multi-national corporations. Through their analysis of a World Bank financed dam in Thailand that resulted in the forced eviction
of indigenous communities along the Mun River, Friedrichs and Friedrichs highlight the criminogenic tendencies within globalisation and call on criminologists to engage with the activities of the IFIs (in particular the World Bank and the IMF) in the developing world.

The number of case studies thus far in the crimes of globalization literature is limited and have been undertaken by a small coterie of scholars focusing exclusively on the World Bank and IMF. Rothe, Muzzatti and Mullins’ (2006) exploration of the factors that caused the sinking of the Le Joola ferry in 2002 in Senegal that ended with the loss of 1,863 lives, attempt to underline connections between conditions attached to World Bank and IMF loans given to Senegal that mandated budgetary cuts that then removed the ability of the Senegalese state to properly fund the necessary levels of maintenance to ships such as Le Joola. The authors argue that IFIs operating in developing countries can become facilitators of state crimes through such loan conditionality.

Rothe (2010) highlights the role played by IFIs in the illegal expropriation of minerals from the Democratic Republic of Congo by the neighbouring countries of Uganda and Rwanda. As the result of pressure to meet export targets that were attached to IMF loans, Ugandan and Rwandan soldiers entered the DRC to steal the necessary quantities often committing atrocities in the process. The authors argue that this created a highly criminogenic situation exacerbated by the IMF’s failure to ascertain the origin of Uganda’s reported increase in mineral exports despite it being obvious that it was based on stolen gold from the Democratic Republic of Congo.

Other case studies have been produced that focus less on individual projects but on the structural conditions that IFIs that can create in borrowing countries. Rothe et al (2009) contend that the effect of World Bank and IMF policies in Rwanda contributed to setting the conditions for the Rwandan genocide in 1994 through loan conditionality that contributed toward the economic meltdown that in part contributed to the genocide. In the same
vein, Ezeonu (2008) connects the neoliberal policies implemented by the IFIs in sub-Saharan Africa that led to creation of the conditions necessary for outbreak of the AIDS epidemic. As part of this critique, Ezeonu argues that the IFIs (World Bank, IMF and WTO) working in tandem with corrupt regimes have developed policies which worsen the living conditions of many Africans.

Evertsson’s (2016) contribution to the extant case studies is to expand the geographic focus to include Europe and to highlight the role that the states play, particularly the Netherlands and Luxembourg, as initiators of tax crimes. This work is beneficial to this thesis as it reminds us that globalization is not something which is merely ‘done’ to the Global South - the same intensifying transnational capital flows that underpin the previous case studies, are also present in richer Global North and have equal potential to be criminogenic. Evertsson concludes by arguing that neoliberal ideology at the macro level is the main causal factor that drives organisations to engage in tax crimes. However, with much of the crimes of globalization literature, the use of neoliberalism as a causal factor for crime and organisational deviance remains vague. Chapter 7, in particular, will return to this point.

Crimes of globalization’s focus on the relationship between IFIs, states and corporations in the production of crime establishes conceptual ground that will benefit this thesis on the EIB. However, its focus on the World Bank and the IMF’s operations in the developing world means that many of the questions moored in a political-economy analysis of Global South and Global North relationships that it asks are not relevant to this thesis on the EIB which focuses on events in Europe under a different set of political and economic arrangements.

These 3 research endeavors (organisational deviance, state-corporate crime and crimes of globalization) provide the initial conceptual space in which this study of the EIB is positioned. The complexity of the EIB, insofar as it
operates as an autonomous financial entity engaged in business relationships with both state and corporate institutions, means it shares many similarities with the research objects in the above fields, but neither one can provide a satisfactory vantage point to engage with the EIB by itself and therefore must be combined together.

2.7. Harms and the organisations and infrastructure projects that cause them

One influential idea within critical criminology is the concept of harm and the potential for individuals or organisations to engage in behaviours that provoke a range of harms toward groups (citizens, residents and the public at large). Dorling et al (2008, p. 14) view such harms as being:

- Physical e.g. domestic violence, exposure to various environmental pollutants.
- Financial/economic harm e.g. fraud, pension mis-selling, regressive taxation.
- Emotional or psychological harm e.g. police targeting of minority populations.
- Sexual harms e.g. the degree of harm experienced by victims of rape both during the act and when being processed by the criminal justice system.

Elsewhere Hillyard et al’s (2004) influential collection of essays sought to expand terrain for the study of harms which now includes corporate and workplace harms (Tombs 2016), gendered harms (Cain and Howe 2008) and socio-economic harms (Pemberton 2015). The concept has been promoted as an alternative to ‘crime’ in its traditional understanding insofar as it is encompasses a broad range of behaviours often ignored by the criminal justice system but which nevertheless cause substantial and demonstrable harms and suffering to individuals or groups of people. Many of the scholars working in this area refer to the development of theory
relating to harms as ‘zemiology’ based on the Greek word *zemia* meaning to harm or damage (Boukli and Kotze, 2018).

Integral to this thesis on the EIB is the idea that the harms listed above can be caused, or at least contributed to, by activities engaged in by organisations. Kramer (1983, p. 166) envisages corporate harms as behaviours which produce physical harms to employees, the general public and consumers and which is the result of deliberate decision-making by persons who occupy positions as corporation managers or executives. Punch (2000) and Bergman (2000) offer convincing accounts of the extent to which companies cause considerable pain and suffering, serious injury and death during the course of their operations while Kramer et al. (2002) interpret these harms as ‘socially injurious actions’ which describe the range of harms inflict on the public which are organisationally based and are the consequence of decisions taken which are intended to benefit the corporation.

Another key idea in this thesis is the notion that infrastructure projects should be viewed by criminologists as venues, sites or mechanisms though which the various crimes and harms described in this section can occur - a view which has already been proposed within criminology but which has gained little traction (Schotter and Rhineberger-Dunn, 2013). Large infrastructure projects are intensely complex initiatives involving dozens of state agencies, possibly hundreds of subcontracting companies and thousands of individual workers and can become criminogenic and cause harm during all stages of the project (project finance, procurement, construction, ex-post monitoring).

For example, Tanzi and Davoodi’s (1998) discussion on the ‘tangentopoli’ (bribe city) scandal that affected Italy during the 1990s reveals the extreme effects corruption can have on infrastructure construction through illegal overcharging for contracts in collusion with state officials in several state agencies. After dozens of companies and politicians were implicated in the
scandal, construction costs fell by 59% in Milan. To take the example of Spain, large infrastructure projects have been consistently targeted by corporations with connections to the country’s two main political parties as mechanisms through which to extract public funds (Bel et al, 2014) with the result that Spanish tax payers are overcharged for an excess supply of transport infrastructures which subsumes budgetary funds better allocated elsewhere such as in healthcare and education.

Infrastructure projects through their interactions with the natural environmental, habitats and eco-systems pose risks which do not take the form of spectacular events (e.g. Chernobyl disaster or the Deepwater Horizon oil spill) but are underpinned a steady generation of harms which can be even more lethal over extended periods of time but which are not illegal nor violate any type of regulatory standards. To take the example of motorways, Finkelstein et al (2004) make the connection between residing in close proximity to a motorway and increased mortality rates, while Brunekreef et al (1997) examine the connection between traffic air pollution and reduced lung function in children living near motorways. The benefit of using the concept of harm as a lens to study these infrastructure projects is that it recognises that the harms generated by infrastructures may not be illegal as such, but can nevertheless pose risks which have the potential to be physically damaging.

In Chapter 4 I will introduce 3 EIB financed infrastructure projects and will offer a detailed analysis of the illegal activities/regulatory failings connected to the projects. In addition, I will discuss the range of harms caused by them which are not prohibited by any specific normative framework.

2.8. The European Investment Bank

The EIB’s role as the EU’s financing arm and its status as the world’s largest multilateral lending institution has aroused little attention from academia. Robinson (2009) characterises the EIB as a ‘neglected institution’
insofar as its size and influence within the EU is not commensurate with research dedicated to it – save for the occasional debate on the scope of its public policy responsibilities in the EU with one of the only discussions of its public policy role being offered by Honohan (1995). Robinson concludes that this failure to recognise the importance of EIB funding with regard to EU expenditure contributes to a misreading of EU politics. Furthermore, as EIB finance can often be the dominant source of EU-funding for projects in many policy areas (e.g. transport), the dearth of research focusing on its role removes the possibility of understanding the cumulative financial effect of the EU as a whole (ibid, p. 661). Mertens and Thiemann (2017) also point to a mis-reading of EIB activity in Europe and suggest the EIB has emerged in the post-crisis period to become part of an emerging ‘European investment state’ whose investment reach and scope is yet to be determined.

It is therefore not a surprise that if scholars working within research communities that specialise in the European Union or the political economy of Europe have overlooked the EIB, then it has escaped the attention of other disciplines such as criminologists entirely.

Where academia has engaged with the EIB, and where there is potential for overlap with the criminological focus of this thesis, is in relation to the EIB’s position in the EU legal framework and the consequences that follow in terms of external controls and accountability. Hachez and Wouters (2012) review the EIB’s external accountability principles with regard to human rights, social and environmental issues in its operations both inside and outside of the EU. The authors conclude that access to remedy for external stakeholders is generally weak, especially in projects outside of Europe where EU laws and standards are used as non-binding benchmarks by the EIB and therefore represents weak external control over EIB operations. This is buttressed by a call for a greater role for the European Court of Justice to enhance its accountability in its non-EU operations. This research project will extend the analysis of the EIB’s accountability framework as offered by Hachez and Wouters, but extend the analysis to include how this
functions with regard to individual projects financed by the EIB that contain fraud risks or result in types of organisational deviance (this concept is explored in detail in section 4.2.4.).

Langan (2014) argues that the EIB’s investments in African, Caribbean and Pacific (ACP) countries favour extractive operations with questionable development outcomes for the countries hosting such activities, concluding that investments are structured to benefit European stakeholders’ business interests. Such operations, according to Langan, are symptomatic of the disjuncture between the EU’s development agenda and the real outcomes on the ground, concluding that EIB investments can work toward (re)embedding poverty, reinforcing power disparities and perpetuating colonial trading patterns with little social benefit to host communities. These activities are then worsened by the EIB’s support for companies domiciled in tax havens that artificially reduce any taxable benefit that could be owed to the government (ibid, p. 481). The conclusions made by Langan are broadly reminiscent of the charges made against the other IFIs previously discussed in sections 2.3. and 2.4..

Lesay (2013) shares the same conclusions as Langan. Through a discourse analysis of EIB communications he reconstructs the development arguments employed by the EIB to support its activities in the ACP countries. Lesay situates the EIB as being closely associated with development practices which are underpinned by economic theories that most commonly referred to as the ‘Washington Consensus’ as promulgated by the World Bank and IMF – under which the benefits of increased export-led economic activity will inevitably ‘trickle down’ to the poorest in the countries in which they operate. In this vein, Lesay sees the EIB as guilty of promoting a hegemonic development discourse insofar as the way in which these organisations frame development is constructed as the only single viable development approach. It is also the one which is coincidentally most beneficial to the IFIs shareholders and their wider geo-political interests.
Gutner (2002) in her comparative analysis of the environmental performance in Central and Eastern Europe (CEE) of the EIB, EBRD and World Bank uses neorealist and historical institutional approaches to explore organisational designs and incentive systems’ role in the translation of environmental objectives into practice. Out of the 3 IFIs, Gutner concludes that the EIB has the weakest commitment to environmental concerns and is broadly critical of the EIB’s performance in the region – as per this analysis, the EIB suffers from weak donor commitment to its environmental activities which are further affected by weak environmental standards and a reluctance for EIB officials to search out projects of particular environmental merit (ibid, p. 195). Since 2002 the EIB has strengthened its standards in line with improvement to EU legislation but as chapter 4 will demonstrate, the EIB does not always comply with such policy commitments. Chapter 8 will offer an account of how the EIB at times can violate its environmental standards.

The dearth of research on the EIB is surprising and is frequently commented upon in the works mentioned in this section. This is both a blessing and a curse insofar as there are few conceptual obstacles along the establish path to overcome but simultaneously there is little research on which to ground the project.

2.9. Chapter conclusions

Each of the bodies of literature discussed in this section adds to this analysis of the EIB, but each one on its own can only contribute a part. Much of the literature on the IFIs (from political science, the sociology of organisations as per sections 2.3 and 2.4.) is based on broad critiques of their position as the institutions which direct and manage a certain conception of globalization and as the mediating agencies between the Global North and South. These critiques, while useful from a macro-economic perspective, are not applicable to the EIB given the concentration of its operations within the EU.
The benefit of these perspectives, however, is that they provide detail on the operations of IFIs which is thus far absent from criminological knowledge on IFIs which is a subfield still in its infancy which has thus far not offered any detailed analysis of the IFIs as organisations themselves in terms of their structure, internal process and governance. Combining the knowledge from these perspectives, however, creates a broader foundation for this study that is not constrained by the each’s limitations. This thesis will aim to develop a better understanding of both the macro-economic pressures affecting the EIB and their effects on its internal organisational setting and these factors’ relationship with organisational deviance.

In addition, I have explored the literature that views infrastructure projects as sites or venues which can be criminogenic and stimulate organisational behaviour that can be in violation of legal or regulatory frameworks leading to the creation of significant harms on populations in their vicinity. Infrastructure projects have not been of central concern to critical criminologists despite their criminogenic potential. In response, this thesis on the EIB places the understanding of large infrastructure projects at its centre and will explore the connections between the financing, building and operation of infrastructures and the relationship with organisational deviance. By attempting this task I hope to develop criminological theory that could be used by future researchers in projects on other IFIs.
Chapter 3: Introducing the EIB

3.1. Introduction

This chapter contains a detailed overview of the EIB beginning with its origins and covering its activities and operations, its place in the EU institutional landscape as well as the governance regimes (both internal and external) that regulate its behaviour.

As a large financial institution handling billions of euros of loans annually the EIB is inevitably a complex organisation divided into dozens of sub-departments which undertake their own specific tasks that contribute toward the organisation’s goals. EIB staff are charged with generating revenue, ensuring projects are implemented according to environmental and social standards and also undertake supervisory or compliance functions that verify that the EIB undertakes its activities consistently with the legal/regulatory environment in which the organisation exists. Then, in addition, it has staff undertaking administrative functions to assist in managing operations and logistical and support staff.

In the previous chapter I identified a lack of knowledge within criminology on the internal worlds of the IFIs as being a weakness within the current research. This chapter, therefore, will present an overview of the institution which will be used as foundation for the analysis chapters (7 and 8) in order to connect many of the organisational features presented in this section to EIB activities which are of criminological concern. In addition, the EIB is an unfamiliar institution to many (mirrored in the lack of academic attention it receives as discussed in section 2.8.) and therefore this section will familiarise the reader with its most important aspects which can be referred to during the rest of the thesis.
3.2. History

Ideas for a European investment fund had been mooted in the interwar years and in the immediate aftermath of WW2 but it was not until the Messina conference of 1955 that some consensus between European governments began to emerge. On the signing of the Treaty of Rome in 1958 that established the European Economic Community (EEC), the EIB came into being.

The EIB’s initial purpose was to serve the development needs of the 6 original members of the EEC (Belgium, France, Italy, Luxembourg, the Netherlands and West Germany) through the financing of infrastructure projects and supply of capital to local financial institutions. At first, the bank only used capital from member states’ funds but by the 1961 the EIB had generated enough money to approach the capital markets and offer its first bond issuance (Lewenhak, 1982, p. 15). This period marked the first steps taken by the bank toward fiscal autonomy.

In the post-war period Europe was beset by reconstruction problems, enormous regional disparities and a shortage of financial resources. The EIB’s remit was to facilitate the mobilisation of capital towards projects which could increase production, modernise the economy and bring investment to underdeveloped regions. There was no immediate consensus between the founding members as to how to achieve these aims. Italy had seen the creation of the EIB as an investment fund for its backward Mezzogiorno region whilst Germany was intent on conceptualising the institution as a bank that would be run on a strictly profit-making basis as opposed to a fund financed by member states’ contributions and then redistributed. Indeed, Germany saw the potential problems that the Italian model posed – states would contribute more than others and receive less back in terms of investment therefore creating a fiscal risk out of its control. The debate was indicative over differences between the EU states that have repeatedly surfaced throughout the European project; namely that of a
fiscally conservative Germany pitted against a more expansionist economic policy of the southern European states. According to Clifton et al (2017, p. 4) the model that emerged was both innovative and resulted from concessions between the founders – it would be a ‘bank’ in the sense that it would operate on the capital markets but it would not be fully independent as Germany had wanted by virtue of being controlled by the Board of Governors appointed by the member states. Therefore, the EIB’s hybrid structure was born out of compromise rather than design.

In order to finance the bank each member state contributed an initial subscription to be paid up in local currency more or less in proportion to the weight of each country’s economy – France and Germany both contributed 30 million in EIB’s unit of account (a currency based on the dollar to be used as a standardising mechanism between the 6 member states) Italy 24 million, Belgium 8.65, the Netherlands 7.15 and Luxembourg 0.2 (Lewenhak, 1982, p. 4). The money deposited by EIB members is referred to ‘subscribed capital’ which is supplemented by an additional amount of ‘callable capital’ or money that countries have committed to the EIB (but not deposited) which can be called on at any time. By structuring the EIB balance sheet in this way, the bank can leverage more funds and grow in size but without the need for states to deposit the capital in its entirety.

As the EIB expanded and welcomed new countries, the subscribed capital base increased and allowed to the bank expand its operations. Member states do not charge interest on the capital they subscribe, which allows the EIB to purchase interest bearing stock elsewhere and therefore generate funds for itself. EIB rules dictate that outstanding loans can never amount to more than 250% of the subscribed capital base (as per Article 16 of the EIB statute). This ratio keeps the bank fiscally disciplined which helps it maintain its triple-A rating from credit rating agencies that in turn keeps borrowing costs down.
Much of the bank’s activity in the 1960s was dedicated to the Italian question – that of the great disparities between the northern and southern regions and as such it received more than half of early EIB loans – and indeed the first two presidents of the EIB were Italians. Bussiére (2008, p. 74) believes that this “Italian management” was essential to the early success of the bank by developing operational strategies and financial structures in Italy that were then used as a blueprint and applied in similarly deprived regions in other member states.

By the 1970s the bank had established its importance in expanding the new geo-political realities of Europe, namely forming partnerships with countries at Europe’s borders or those with a historical connection (often from colonialism) to the old continent. The EIB invested heavily in Greece and Turkey and established the Yaoundé Convention (an economic agreement between the EEC and newly independent Africa states with financial support from the EIB). In 1975 the EEC and 71 African, Caribbean Pacific (ACP) countries signed the Lomé Convention trade and aid agreement which allowed mutual access to markets that at the time was the largest North-South trade deal in existence. Furthermore, the treaty allowed the EEC to cement its geopolitical status in ACP countries during the bipolar USA vs. USSR era (Bussiére, 2008, p. 163).

During the 1980s and 1990s the European Community expanded against the political backdrop of the end of the cold war, the reunification of Germany and the emerging liberal democratic consensus across Europe. In the 80s and 90s Spain, Portugal, Austria, Sweden, Finland joined before the Union undertook its biggest enlargement in 2004 by bringing in Malta, Cyprus, Estonia, Latvia, Lithuania, Poland, Czech Republic, Slovakia, Slovenia and Hungary.

In 1994 the European Investment Fund (EIF) was established that specialises in venture capital operations and guarantee products for SMEs. The smaller institution, alongside the EIB, is now referred to as the EIB
Group. The operations of the EIF fall outside of the remit of this study and therefore all mentions of the EIB are to the Bank itself and not the entire group.

During the 1990s the EIB emerged to take over the World Bank Group as the largest supranational lending institute in terms of loan volumes (Clifton et al., 2017, p. 1), a position which it occupies in 2018 at the time of writing. The EIB’s financial size is matched by its geographic reach and it is now active in over 160 countries around the world with offices in 46.

With the accession of Croatia in 2013 the EU expanded to include a total of 28 countries. In light of the decision of the United Kingdom to leave the EU, this will be reduced to 27 in 2019. However, as the UK is one of the four biggest shareholders of the EIB this will considerably disrupt the EIB’s operations as the EU’s members will have to choose between replacing its capital share or scaling back operations in line with the reduction to the bank’s capital base (European Investment Bank, 2018, p. 7). These potential governance changes are emerging at the same time as the EIB expands its operations as the senior partner in the European Commission’s European Fund for Strategic Investment (EFSI) - the centrepiece of the Juncker administration’s election campaign to contribute to the rescue of Europe from the lagging after-effects of the 2007/2008 financial crisis. The EIB’s involvement in EFSI and the additional lending it has been tasked to undertake should translate into increased institutional visibility and raise awareness of its activities.

3.2.2. Mission

As the EU’s ‘in-house bank,’ the EIB’s mission since its inception has been to finance economic development and regional integration while contributing to meeting Europe’s investment needs. In order to do this it provides finance for projects across many economic sectors that are in some way connected to the advancement of wider EU policy objectives. In its
literate the EIB often refers to itself as policy driven bank. Article 130 of the Treaty of Rome establishes the bank’s objectives in full:

“The task of the European Investment Bank shall be to contribute, by calling on the capital markets and its own resources, to the balanced and smooth development of the Common Market in the interest of the Community. For this purpose, the Bank shall by granting loans and guarantees on a non-profit-making basis facilitate the financing of the following projects in all sectors of the economy:

(a) projects for developing less developed regions,

(b) projects for modernising or converting enterprises or for creating new activities which are called for by the progressive establishment of the Common Market where such projects by their size or nature cannot be entirely financed by the various means available in each of the Member States; and

(c) projects of common interest to several Member States which by their size or nature cannot be entirely financed by the various means available in each of the Member States.”

(The European Investment Bank. 2013, p. 36).

Despite changes to the political-economic reality in Europe (expansion, the ICT revolution etc), the EIB’s mission has remained relatively static since the 1950s. According to the EIB’s current objectives its priorities are to finance infrastructure, increase access to finance for SMEs, support innovation and skills projects and to promote environmental and climate friendly projects.
In recent years the bank has invested heavily in Europe’s Trans-European networks (TENs) that comprise of investments into transport, energy and communications that encourage ever closer and efficient links between internal markets and territories. These projects are often too capital intensive to be taken on by individual governments but are nevertheless deemed as important to the development of a European wide market. Some landmark pan-European projects that benefitted from EIB finance include the Channel Tunnel, the Øresund Bridge between Denmark and Sweden, large swathes of France’s TGV network and more recently London’s Crossrail project - the biggest ever EIB supported project that received £1.4 billion in loans between 2009 and 2013 (European Investment Bank, 2013).

3.3. Legal basis and statute

3.3.1. The EIB’s basis in EU Law

The EIB came into being in 1958 after the signing of the Treaty of Rome and the beginning of the European Economic Community (EEC). Between 1958 and 2009 the treaties that underpin the European political project have been updated and with it the legal basis for the EIB. In 1992 and on the signing of the Maastricht treaty it was updated to become the Treaty establishing the European Community (TEC) which in turn, was modified in 2009 when the Lisbon Treaty came into force as the Treaty on the Functioning of the European Union (TFEU). Within TFEU, articles 308 and 309 provide the legal basis for the EIB while in addition further provisions relating to the EIB are contained in Articles 15, 126, 175, 209, 271, 287, 289 and 343.

The exact legal status of the EIB is ambiguous. While being tied to the EU through the treaties, article 308 TFEU endows the EIB with an international legal personality distinct from the Union itself in order so it can operate independently on financial markets (Dunnett, 1994, p. 732). The EIB is absent from the list of EU institutions listed in Article 13 of the Treaty on
European Union (TEU) – a distinction which Hachez and Wouters (2012, p. 4) suggest prevents the EIB from being either “an EU ‘institution,’ an EU ‘agency’ nor an ‘EU advisory body’” and therefore must be placed in the remaining category of EU organs as an ‘EU body.’

The ECJ has issued opinions that claim that the EIB is both simultaneously independent from, but also bound to, the EU through its treaty responsibilities. In case C-15/00 the ECJ highlights Article 267 EC which underpins the EIB’s independence but then, in contrast, simultaneously sees the EIB as being part of the framework of the EU community – ultimately deciding that the EIB’s legal position should be considered as ambivalent.

In 2003 this was tested at the ECJ during a case between the Commission of the European Communities versus European Investment Bank (Case C-1500) in which the EIB resisted the introduction of OLAF inspection powers conferred on it by (European Parliament and Council Regulation No 1073/1999, Art. 1(3), and Council Regulation No 1074/1999, Art. 1(3)) by citing its independence as established in Article 267 EC. However, in its decision the ECJ ruled that ‘financial interests of the Community’ as established in Article 280 EC are not restricted exclusively to the budget of the European Community but also covers the resources and expenditure of the EIB that are the result of its independent fundraising activities. Therefore, the EIB as per the ECJ ruling is bound to comply with applicable EU law despite its autonomous position.

3.3.2. Statute

The EIB’s statute was annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union. In accordance with Article 51 of the Treaty on European Union, it forms an integral part of both Treaties and contains 28 articles.

Articles 1, 2 and 3 establish the legal basis on which the statute is written along with its broad objective as defined in Article 309 TFEU as well as its composition as a bank with EU member states as the shareholders. Articles
4 and 5, 22 establish the amounts of subscribed capital paid in each by each shareholder plus the commitment to pay-in any increase to the capital if decided upon by the EIB Board of Governors.

The EIB’s governance structure is defined in Articles 6-12 and 16 including the composition of the Board of Governors, Board of Directors and the Management Committee as well as the voting procedures required at each level for projects to be approved.

Articles 13, 14, 15 outline the EIB’s relationship with the member states that host EIB financed projects and other financial entities within those territories such as national banks - the EIB often finances local banks which then on-lend to project promoters.

The conditions attached to EIB financing operations (e.g. interest rates) are established in Articles 17 and 18 as well as the organising principle that EIB lending should be undertaken as rationally as possible and in the interests of the Union – this represent a broad commitment for EIB projects to, in some capacity, work toward EU policy goals.

The type of customers the EIB can deal with (both public and private) are outlined in Article 19 and the way in which it can receive applications – either directly to the Bank or through the member state hosting the project.

The EIB’s financial autonomy and its ability to operate on private capital markets (i.e. invest on the money markets or buy and sell securities) is established in Articles 20 and 21. As a consequence of this financial autonomy, the EIB is endowed with rights as a legal person which is confirmed in Article 26 which also establishes prohibitions on members states from requisitioning or expropriating EIB property. This autonomy also extends to the Board Governors who – as per the provisions of Article 28 – are permitted to establish subsidiaries or separate entities which may also have legal personality and financial autonomy.
Article 24 communicates EIB policy in the event that member states fail to meet their obligations to the bank including the possibility of being excluded from the Bank’s future operations while Article 25 establishes the right of board to temporarily stop EIB operations.

Disputes between the EIB and project promoters, according to Article 27, may be heard by the competent national courts, save where jurisdiction has been conferred on the Court of Justice of the European Union.

Broadly, the statute defines the EIB’s responsibilities, objectives and the mechanisms it uses to achieve them but it also the document that communicates to the public the institutional promises that it claims to uphold throughout its operations. In Chapter 7 and 8 I will explore the ways in which the EIB can at times fail to do this.

3.4. Governance and organisation structure

3.4.1. Governance

The EIB shareholders are the 28 member states of the EU. Shareholding is roughly equal to a country’s GDP on accession to the EU. The 4 largest shareholders are Germany, France, Italy and the UK each have a 16% shareholding. In combination with Spain as the fifth biggest shareholder they own 74% of the bank’s shares (European Investment Bank, 2015, p. 5). After the UK’s departure from the EU in 2019 it is expected to withdraw its capital from the EIB prompting a reconfiguration of the distribution of shares (European Investment Bank, 2017, p. 7).

3.4.2. Organisation Structure

The EIB’s organisational structure can be divided into governance/management bodies (political appointees by the member states) and the 12 directorates within which the EIB’s rank and file staff work (recruited by the bank itself). In total, the bank employs 2,900 staff who are
mainly based at the EIB’s Luxembourg headquarters with the remaining at EIB satellite offices across Europe and outside.

The EIB’s management structure comprises 3 layers supplemented by an independent audit committee:

*The Board of Governors*

The Board of Governors (BoG herein) consists of representatives of the 28 members states of the EU and meets once per year in Luxembourg. An EIB governor is usually a finance minister or a high-ranking official from a central bank. Membership to the board is therefore dictated by the political events in member states and representatives can change subject to national elections or cabinet reshuffles. Chairmanship of the Board is rotated on an annual basis according to the Order of Protocol established by the Council of the European Union (The European Investment Bank, 2015). The BoG’s role is to dictate credit policy, approve the bank’s annual accounts, decide on the involvement of the bank in projects outside the EU and negotiate any capital increase. The BoG appoints members to the Board of Directors, the Management Committee and the Audit Committee (“Board of Governors,” 2016).

Voting at BoG level is decided on a double majority system, that is, more than half the governors plus the majority of the subscribed capital that enables the smaller nations to have a notable input and also encourages the search for consensus (The European Investment Bank, 2015).

*The Board of Directors*

The Board of Directors (BoD herein) is the EIB non-executive body that approves individual EIB lending and borrowing operations. The board is comprised of directors from the 28 member states plus a representative of the European Commission (The European Investment Bank, 2007). The
board is non-resident but meets in Luxembourg at least 6 times per year and is chaired by the EIB President (The European Investment Bank, 2013).

Any project that is financed by the bank needs the approval of the BoD before any loan is disbursed. In order for a project to be approved at BoD level, a majority of at least one third of members is needed or equivalent of 50% of the subscribed capital. The BoD is charged with the responsibility of ensuring the bank keeps to the provisions of the Treaty and Statue and guidelines laid down by the Governors. The BoD is complimented by six experts who operate in an advisory capacity without voting rights.

*The Management Committee*

The Management Committee (MC herein) is the bank’s permanent executive body and is responsible for the day-to-day operations of the Bank under the authority of the President. The Committee also adopts and implements administrative changes to the bank’s departments such as departmental rules and regulations.

The MC comprises of a President and eight Vice-Presidents appointed for a six-year period by the BoG after considering applicants put forward by the BoD. Historically, the four largest member states/shareholders (Germany, France, United Kingdom and Italy) each appoint a director whilst the remaining 4 are chosen by other members divided into constituency groups that usually implies a system of rotation throughout the six-year period so that all countries may have a vote at some point (The European Investment Bank, 2015).

The board meets as and when is required by the bank, in order to pass a decision on proposals a simple majority must be reached (The European Investment Bank, 2013). In line with Bank’s statute, the President of the Management Committee presides over meetings of the Board of Directors but does not cast a vote (“The Management Committee,” 2016). However,
in the event of a tie the President is called on to cast the deciding vote (The European Investment Bank, 2013).

The Audit Committee

The body in charge of maintaining the books of the EIB, the Audit Committee ensures the operations of the bank are conducted in accordance with the formalities and procedures established in the Statue and Rules of Procedure. The Committee checks that the financial statements and financial information drawn up by the Board of Directors is an accurate reflection of the finances of the EIB (“The Audit Committee,” 2016).

Each year the committee presents its annual report to the BoG on the implementation of accounting policies and financial information, all within the context of aiming to preserve the financial integrity of the bank. It also works closely with the Chief Compliance Officer and receives regular updates on compliance matters that have the potential to endanger the financial integrity of the bank.

3.4.3. EIB professional bodies

The rest of the EIB’s staff are divided into 12 directorates each headed by a Director General and a number of division heads depending on the amount of competences housed in each directorate.

- The General Secretariat defines the EIB institutional strategy (including the EIB Operational Plan) and provides economic analysis on the impact of EIB activities.
- The Operations Directorate is the main commercial/sales arm of the EIB. The directorate houses EIB loan officers whose responsibility is to identify potential EIB projects and then coordinate the EIB appraisal process with the Projects Directorate.
- The Projects Directorate is the EIB technical department that houses its engineers and technical specialists. Its function is to
assesses the economic, environmental and social merit of each proposed project in line with EU and EIB sector policies.

• The Legal Directorate drafts and negotiates all project-related legal documentation, provides legal advice on the Bank’s activity and defends the bank in any litigation.

• The Transaction Management and Restructuring Directorate monitors EIB counterparties during operations and follows late payments inside and outside the EU.

• The Finance Directive is responsible for all borrowing and treasury operations i.e. what monies enter and leave the EIB.

• The Risk Management Directorate manages and controlling credit, market and operational risks in all EIB operations and borrowing activities.

• The Inspectorate General houses the bank’s fraud investigations division that monitors fraud and prohibited conduct risks in all EIB operations, the Operations Evaluation division that undertakes ex-post reviews of projects, initiatives and policies and the Complaints Mechanism which receives and investigates possible instances of EIB mal-administration. The Inspectorate General is independent and reports directly to the EIB management committee.

• The Compliance Directorate identifies and assesses the compliance risk of the EIB i.e. the risk of legal or regulatory sanctions the EIB may face as a result of its failure to comply with applicable legal/regulatory frameworks in the course of its operations.

• The Financial Control Directorate reports the Bank’s financial position, results and performance to internal and external stakeholders.

• The Internal Audit Department examines the internal control systems and risk management systems within the EIB group.
• The Corporate Services Directorate is responsible for the EIB’s IT systems/data governance and for management of EIB offices and facilities.

In this thesis some EIB directorates are more relevant than others insofar as this thesis is focused on the EIB project pipeline and governance bodies whereas backroom functions (IT, human resources etc) are less relevant to the study. Chapter 8 adopts an ‘inside the EIB perspective’ and in section 8.1 explores the relationship between the Operations Directorate and the Projects Directorate while section 8.3 examines the function of the Inspectorate General and the Compliance Directorate.

3.5. Operations

3.5.1. EIB activity on capital markets

In order for the EIB to finance its operations it borrows money on capital markets. As stated in section 3.2. - Article 309 of TFEU and Article 20 of the EIB statute grants the EIB independence to undertake fundraising activities on capital markets in the same way as a commercial bank does.

Borrowing money on capital markets is done through the emission of bonds. The EIB issues bonds (or debt securities) which are purchased by investors (e.g. pension funds) who then earn money through receiving an interest payment from the EIB on top of repaying the loan. The average maturity on bonds that the EIB issues is 8 years (European Investment Bank, 2018, p. 12). The EIB’s fundraising is most concentrated on the EU market (47%) but it also active in the US and UK markets (European Investment Bank, 2017, p. 12). In simple terms, if the EIB obtains one interest rate when issuing bonds it will offer a higher interest rate on the loan it makes to an EIB customer. The difference between the two numbers is the profit the EIB makes. This a simplistic comparison as bond issuance may not be tied to a
particular project but is representative of the broader fundraising principles that banks generally work within.

The EIB has an annual funding target that is achieved by activities on capital markets. In 2017, the EIB raised €56 billion with the objective of keeping its balance sheet stable through management of its assets and liabilities (European Investment Bank, 2017). This fundraising allows the bank to continually meet its financial obligations while being able to on-lend money to its customers.

An essential component to the EIB’s ability to fundraise on capital markets is its credit rating. The EIB has a triple-A rating from the main credit rating agencies Moody's, Standard and Poor's, and Fitch. This privileged rating position is a product of the EIB’s track record of low levels of nonperforming loans – i.e. project promoters which have defaulted on the repayment of loans. However, the EIB is one of the few supranational lenders that can draw on central bank liquidity (at the ECB) if shut out of capital markets, and it can rely on the support of EU member states and their large cushion of callable capital (“European Investment Bank AAA Stable,” 2018). These factors all help to ensure the EIB keeps its triple-A credit rating which in turn makes it cheaper to issue debt and then keeps prices down allowing it to be able to offer cheap loans to its customers. This affords the EIB a competitive advantage and allows the EIB to offer large volume, low interest rate loans to its customers.

3.5.2. Products and services

The EIB offers 3 principle types of products and services:

*Lending*

This is the core activity of the bank and accounts for 90% of its financial commitments. The EIB is an on-lender that means it borrows money on the
capital markets and then relends it to other financial intermediaries or project promoters.

The two main types of loans disbursed by the EIB are:

- Project loans extended to project promoters for individual projects for the minimum amount of €25 million. Project loans must meet the EIB’s lending criteria and are the subject of interest rates and fees while repayment is made on a semi-annual or annual basis.
- Intermediated loans which are EIB loans to local banks and other intermediaries which then ‘on-lend’ to the final beneficiaries. Usually in these types of loans the EIB has no contractual relationship with the end beneficiary.

As loans are made on a continual basis and with a maturity often reaching decades, the EIB has an enormous amount of capital outstanding – in 2017 this was €455 billion (European Investment Bank, 2017, p. 2). In terms of the quality of the EIB’s loan portfolio 77% of loans are guaranteed by EU member states, yet the remaining 23%, or €113 billion, is made up of unsecured loans – this represents the principle financial risk to the bank’s ongoing solvency while the percentage of loans which are never returned is very low and does not pose a substantial risk (The European Investment Bank, 2015).

**Blending**

This type of finance generally ‘blends’ two or more sources of finance. This could take the form of the combination of EIB loans alongside other funds from other EU budgetary instruments. An example of which is the Project Bonds Initiative (described in more detail in section 7.2.3.) that blends EIB and EC funds in order to aid PPP promoters in mobilising additional private sector finance. A second example is the ‘InnovFin – EU Finance for
Innovators’ that is jointly funded by the EIB and EIF.

The EIB offers a number of ‘blended’ alternatives (e.g. Mutual Reliance Initiative, Private Finance for Energy Efficiency and the Natural Capital Financing Facility) that feature a partnership with another EU institution that serves two functions; to spread risk and to attract more private sector investment. (“Products: Lending, blending and advising,” 2016).

Advising

The EIB offers a number of advisory services that it offers clients to complement its lending activity. These services can take the form of technical or financial assistance with structuring large transactions or to governments and industry bodies to improve institutional and regulatory frameworks (“Products: Lending, blending and advising,” 2016).

In partnership with the EC the EIB also manages The European PPP Expertise Centre (EPEC) that advises public sector officials on potential PPP projects on a policy, technical and contractual levels.

3.5.3. The project cycle

The project cycle begins with the first contact with the customer and ends when the last repayment is made to the Bank - often many years into the future. Firstly, potential projects are identified; this could be through a promoter that approaches the bank, through the Bank’s own initiative or by another IFI that seeks the EIB’s involvement as an additional source of finance. Then the EIB appraisal process is initiated in which the project’s financial, economic, social, environmental and technical aspects are evaluated against the EIB’s lending criteria. The EIB view of a project is prepared by the projects directorate using an interdisciplinary team consisting of economists, technical experts and lawyers. A due diligence ‘know your customer’ process is conducted on the customer to ascertain the
beneficial owner and to attest to the company’s financial standing and legal position. This process is explained in detail in Chapter 8.

If the required criteria are met the project is signed off and sent to the Management Committee for a vote and if passed is sent to the Board of Directors for the final vote. If the project passes this stage it can be ‘signed’ – if negotiations are successful with the project promoter with regard to contractual issues then the funds are disbursed which could either be in one lump sum, staggered throughout the life of the project or structured according to pre-agreed project milestones.

During the lifetime of the project (up until the loan is repaid in full) the EIB monitors projects for any potential legal or compliance issues while the Operations Evaluation Unit undertakes thematic ex-post evaluations into the relative successes of projects.

3.5.4. Customers

The EIB has two main types of customer. The EIB issues securities on international markets that are purchased and traded by financial institutions, such as pension funds or insurance companies. EIB backed securities are often seen to offer steady, but not spectacular, revenues making them attractive for institutional investors such as pension funds. The EIB sells securities on markets around the world (in varying currencies, sizes and maturities) and has billions of euros worth of securities outstanding. In 2014 the EIB raised €61.6 billion from this source of finance ("Retail Investors – FAQ," 2016). This type of customer will not be analysed in this thesis given as there is little connection between an entity buying EIB securities and EIB investments in specific projects.

The second type of customer, or the recipient of EIB funds, are project promoters who are the ultimate beneficiaries of EIB loans although such loans can be made through local banks or financial intermediaries that
receive EIB funds then on-lend to a project promoter. The EIB partners with a diverse range of clients such as multi-national corporations, national administrations, local authorities and public sector bodies both inside and out of the EU (“Intermediated loans,” 2016). These are the customers that will form part of this thesis as they spend EIB finance in order to implement projects.

3.6. Compliance and accountability

3.6.1. Compliance

As with any lending institution the EIB houses a compliance department that ensures EIB operations comply with applicable laws, regulations and rules, and it is the first line of defiance in preserving the integrity and reputation of the bank. The compliance function is designed to go beyond the organisation and take reasonable steps to ensure its clients are not involved in money laundering, evasion of taxes or the financing of terrorism. If such behaviour is detected it is the responsibility of the compliance department to ensure the bank takes appropriate action.

The EIB’s Compliance Directorate is independent and functions under the supervision of a Group Chief Compliance Officer (GCCO) who establishes integrity standards, policy instruments and initiatives within the bank that are then applied to all the bank’s activities.

The Compliance directorate operates in accordance with the principles established in the Basel Committee on Bank Supervision and its definition of compliance risk i.e. operations at risk of legal, regulatory or financial sanctions as a direct result of the bank’s non-compliance with laws, regulations and self-imposed standards/codes of conduct (Basel Committee on Banking Supervision, 2005).
The sub-division Office of the Chief Compliance Officer (OCCO) assesses, monitors and reports on compliance risk at individual project level, especially with regard to the bank’s policy on anti-money laundering/combating the financing of terrorism (AML-CFT) and undertakes integrity due diligence of EIB partners involving the gathering of independent information in order to gain a better understanding of the corruption risks associated with a third party. In addition, it provides banks with a process of verification that can confirm information provided to them by a potential customer.

OCCO is consulted by other areas of the EIB during the course of their operations such as the Operations, Legal and Transaction Monitoring and Restructuring in connection with doubts or queries over anti-money laundering concerns. In 2017 OCCO advice was sought in 1129 cases increasing from 1030 in 2016 and 898 in 2015 (European Investment Bank, 2018, p. 13). OCCO also works to detect incidents of non-observance or breaches of rules by staff and reports directly to the President of the EIB (“Compliance,” 2016).

Despite the quantity of tasks given to OCCO it performs its duties with very few staff. In 2005 it had just 4 members of staff. Only in 2010 did it begin to expand with 21 members and in 2017 with 50. The EIB President Werner Hoyer has explained this increased importance given to OCCO within EIB operations as a response to the EIB’s growing profile and scrutiny from stakeholders (Audit Committee, the Board of Directors, European Parliament, European Commission, Rating Agencies and Civil Society) and therefore the need to protect itself from reputational risk issues (European Investment Bank, 2014, p. 3). When in-house capacity is stretched the EIB contracts private companies in order to assist it with compliance tasks.

Of particular importance to the work of the compliance directorate are the bank’s anti-fraud policies. In 2013 the EIB updated its anti-fraud policy to clarify the Bank’s position on fraud, corruption, money laundering and the
financing of terrorism with the objective of guaranteeing that EIB funds are used for their intended purpose and are free from prohibited conduct. The policy sets out definitions of fraud, covers the scope of its application, reporting obligations of EIB employees if they detect instances of fraud, procedures for handling reports anonymously, whistle-blower legal protection and measures to be taken once fraud is detected (The European Investment Bank, 2013).

If fraud is suspected (or detected) within a project this will trigger the involvement of the Fraud Investigations Division (IG/IN) that is coordinated by the office of the Inspectorate General (IG). The IG works in partnership with OLAF and the OCCO on investigations. It has no powers of prosecution and therefore works with national judicial and/or law enforcement agencies across Europe.

In 2017 the IG/IN received 149 allegations of fraud or corruption in EIB operations compared with 120 in 2016 and 114 in 2015 with the majority coming from EIB officials in other departments (European Investment Bank, 2018, p. 6). Despite the balance between EU versus non-EU lending (90% to 10%) allegations of fraud regarding non-EU operations represent nearly half of all allegations. The most common sector for accusations is the transport sector though no explanation is offered.

3.6.2. Internal accountability

*Code of Conduct*

The EIB’s Code of Conduct sets out the professional and ethical standards it expects of its employees and their duties regarding appropriate behaviour inside the bank and the extent to which disciplinary measures can be taken against employees when in violation of such standards.
Rules are established that govern employees’ dealings with customers and the potential for conflicts of interest and insider dealing. Furthermore, the code establishes limits to the political activities of the employees and their communication with third parties as representatives of the bank (The European Investment Bank, 2006).

3.6.3. Accountability to citizens

Complaints mechanism

Any individual, organisation or private company can complain with regard to EIB activities that may have a negative impact on communities both inside and outside the EU.

Complaints can be made in relation to activities or decisions taken by the EIB incorrectly, unfairly or unlawfully and has a focus on compliance issues, i.e. maladministration or violation of standards. Such maladministration could be related to how the EIB handles the social and environmental impacts of a project, access to information and the procurement procedures.

Once a complaint is received its admissibility is checked then a case is opened. EIB officials from the mechanism then collect information from the Bank’s directorates and assess whether the bank’s operations were undertaken in line with the appropriate legal frameworks and policy commitments. Officials write draft conclusions which are circulated with the Management Committee before the final report is shared with the complainants and published on the EIB website.
If the findings of the EIB-CM are unsatisfactory to the complainant then the complaint can be escalated to the European Ombudsman.

Between 2012 and 2017 the number of cases handled by the complaints mechanism increased from 52 to 114 (European Investment Bank, 2018, p. 5).

3.6.4. External Accountability to other institutions

The European Commission

The European Commission (EC) is responsible for the strategic orientation of the EIB and therefore wields considerable power over its activities. This influence can be observed in the fact that the Directorate-General for Economic and Financial Affairs (DG ECFIN) at the EC has a representative on the EIB’s Board of Directors and can cast a vote on EIB projects. The EC also appoints one alternate director from the Directorate General for Regional Policy (DG REGIO). DG ECFIN prepares briefings for EIB directors and information with regard to policy questions, questions over loan projects and statistical information.

Article 21 of the EIB Statute stipulates that all project proposals must be submitted to the EC for its opinion prior to being presented in front of the EIB Board of Directors. Effectively, this gives the EC an opportunity to veto projects at an early stage before they are voted upon by EIB Directors.

Another oversight mechanism the EC has over the EIB is the ‘Groupe Interservice BEI (GIB) that is an inspection body set up to monitor the EIB’s compliance with EU legislation. The DG ECFIN acts as a coordinator of the body.
**The European Court of Justice**

The EIB is subject to rulings made by the ECJ, the highest court in the EU although as already stated in section 3.2. this relationship is not immediately clear due to ECJ issuing contravening opinions on the subject even with the same ruling.

Where the ECJ could have an important role with regard to the EIB is in its ability to rule on potential disputes between the EIB and the Member States but also to assess the legality of the decisions taken by the EIB Board of Governors and Board of Directors as well as disputes between the Bank and its borrowers or lenders.

**European Court of Auditors**

The European Court of Auditors (ECA) has the power to audit the loan operations of the EIB. These audits can take the form of documentary or on the spot audits. However, the scope of ECA audits on EIB operations is extremely narrow and is limited to activities in which the EIB administers EU funds. As the majority of EIB projects are financed through activity on the capital markets this means the ECA only has inspection rights on a fraction of EIB lending activity.

Since 2003 the EIB has been a signee of the Tripartite Agreement between the EIB, EC and ECA. The agreement sees the EIB agreeing to ECA audits and the submission of information requested at the behest of the ECA. The agreement is reviewed every four years and in 2007 and 2011 it was renewed.

Recent ECA audits of EIB activity have included its reports on the implementation of the European Fund for Strategic Investments (the so-called ‘Juncker plan’) which is a combination of Commission and EIB funds and also the JASPERS initiative (Joint Assistance to Support Projects
in European Regions) that blends EIB and Commission funding for projects identified that work in some toward to achieving EU Cohesion Policy.

*The European Parliament*

The European Parliament has no competences with regard to the EIB though it does undertake a number of informal monitoring activities. Once a year a committee set up by the European Parliament (EP) reviews EIB operations and compiles a report which is presented to a plenary session of the EP. The session is attended by the President of the EIB. The report considers the activities of the EIB in context of its legislative, budgetary and political responsibilities.

*The European Ombudsman*

Set up under the Maastricht Treaty the Ombudsman is a fully independent EU body (that is elected by and reports to the European Parliament) that can investigate possible cases of EIB maladministration.

In 2008 the EIB and the Ombudsman signed a memorandum of understanding which provides a framework for cooperation between the two institutions. The Ombudsman has no official powers over the EIB, instead it publishes recommendations which, if accepted by the EIB, may result in changes to EIB policies or processes.

*European Anti-Fraud Office (OLAF)*

OLAF has the power to hold investigations into EIB supported projects within the EU and outside. Established in 1999, OLAF is the EU body that is in charge of protecting the EU’s financial interests from fraud. Prior to 2003, the EIB resisted the OLAF’s inspection rights on EIB projects. In a 2003 case (C-15/00) brought before the ECJ this was overruled leading to full inspection rights and collaboration.
The EIB’s Fraud investigations division (IG/IN) undertakes missions in cooperation with OLAF as the junior investigative partner.

OLAF does not have any prosecution powers and therefore it works in close cooperation with law enforcement agencies in the member states and offers recommendations as the result of its investigations.

3.7. Current financial status and risk

3.7.1. Financial status of the EIB

In 2015, 2016 and 2017 the EIB signed €77.5 billion, €76.4 billion and €69.9 billion in loans respectively making it the largest public financial institution in the world. As the EIB does not profit from loans in the way a commercial bank does, the money it generates from its lending activity is added to its balance sheet which is used to finance expansion. In 2017 this amounted to €2.8 billion (European Investment Bank, 2018). At the end of 2017 the EIB loan portfolio (outstanding loans) amounted to €455 billion. (European Investment Bank, 2018, p. 2).

In 2012, motivated by the lingering effects of the financial crisis on the EU’s economy, the EIB shareholders through the Board of Governors unanimously approved a €10 billion capital increase. This increase in capital paid in by the then 27 shareholders had the objective of leveraging a potential additional €60 billion in lending activity (European Investment Bank, 2013, p. 7).

The global financial crisis of 2007/2008 and its aftermath is an important event in the EIB’s recent history. On request by the European Council the EIB was charged with expanding its lending volumes to contribute toward kick-starting the lagging European economy – in 2009 it increased its lending volumes by 37% from €58 billion to €79 billion. However, the EIB has not managed to go beyond this amount and lending volumes have remained stable.
3.7.2. Risk

As with any lending institution the EIB must closely monitor the ratio between outstanding loans and the bank’s capital base and it is this ratio that sets limits around its macro-level objectives insofar as it establishes a loan ceiling. The EIB employs a number of matrices to analyse its exposure to different risk scenarios (capital requirements, capital adequacy, liquidity coverage) and are disclosed annually in the EIB’s Group Risk Management Disclosure reports. These ratios are important for the Bank as it plays a role in dictating its overall credit policy.

The EIB Operational Plan 2016-2018 (European Investment Bank, 2015) comments on a further objective of allocating money to projects with higher risk profiles (risk in project finance can relate to construction risk, the risk of the project failing to meet its performance targets or the risk of the borrower defaulting on repayments). These types of projects are highly desirable for the Bank to support as it allows the EIB to demonstrate it is providing finance for projects where the market is unable to and therefore works toward complying with its statutory remit.

The ability of the EIB to support special activities is one way that the Bank evaluates its own success. In the Operational Plan for 2016-2018 (European Investment Bank, 2015) the EIB communicates its expectation to have special activities as comprising between 23% - 33% of total lending volumes requiring “a quantum change in the Bank’s business profile” (European Investment Bank, (2015). However, the risk bearing capacity of any banking institution is governed by factors such as capital base, liquidity, borrowing capacity and reputational and regulatory constraints. For the EIB, its risk framework is set out in its Risk Policy Charter (European Investment Bank, 2015) that places limits on the amount of special activities the EIB can undertake and is closely monitored by the Risk Management Directorate.
A further constraint on the amount of risk the EIB can assume is controlled by its need to retain the highest possible credit rating from the international rating agencies. As the EIB can rely on the sovereign guarantee of the 28 EU member states in case of financial distress, its credit rating has historically been high – in 2017 it was rated as ‘AAA’ by the credit rating Moody’s (“Moody's affirms,” 2017). A drop in the EIB’s credit rating would increase costs for the EIB and place constraints on its macro-level objectives by reducing the amount of special activities it could finance. The maintenance of a high-credit rating is therefore essential for the EIB. As a consequence, securing the EIB’s credit rating becomes a macro-level objective in and of itself for the Bank.

3.8. Chapter conclusions

This section has provided an overview of the EIB in terms of its legal basis, mission, operations and the governance regime which controls its activities. The information presented in this chapter serves two purposes:

Firstly, this chapter has provided the reader with a sense of how an IFI operates and the organisational functions needed in order to support its lending activities which to date is absent from criminological research on IFIs. This is significant insofar as much of the criminological research to date refers to ‘organisational factors’ as being important in the context of understanding IFI organisational deviance but does not present such empirical knowledge – e.g. there is no comparable information on the internal governance/management boards of the World Bank within the crimes of globalization literature which has been presented in section 3.4.. This information will serve as a reference for the remainder of the thesis.

Secondly, now that an overview of the EIB has been presented the following chapter 4 can turn to discuss instances in which EIB lending activity has in some way become uncoupled from its statutory mission or inconsistent with the its internal normative framework as outlined in sections 3.2., 3.3. and
3.6. The overview of the EIB presented in this chapter along with examples EIB lending activity in the following chapter will then serve as the foundation for the main analytical chapters (7 and 8) which will explore many of the sections above (i.e. governance, compliance, organisational structure) as being contributing factors in the production of EIB organisational deviance.
Chapter 4: EIB lending activity as organisational deviance

4.1. Introduction

The objective of this chapter is to show why some EIB lending activities undertaken in partnership with EU member states and businesses are relevant for a criminological thesis. Specifically, this chapter will address the third research question on the extent to which some EIB lending activities can be considered as socially injurious and will explore the harms that are caused to the communities hosting them.

In order to accomplish this goal, section 4.2 will first turn to the concepts of organisational deviance and crime and how they are understood and used within criminology with a focus on the sub-fields (state corporate crime and crimes of globalization) which contribute most to the theoretical framework in Chapter 5. Then in section 4.2.4, I will propose a synthesis of these conceptions to be operationalised in this thesis.

The definition developed will then provide a framework for section 4.3., in which I will explore three vignettes of controversial EIB financed projects and comment on how they a) interact with the proposed definition of organisational deviance b) lead to the creation of harm for the communities hosting them.

4.2. Organisational deviance and crime

Since the ground-breaking work of Sutherland (1945) and the coining of the term ‘white collar crime,’ criminology’s development has been trailed by an unshakeable definitional dispute on how the term crime should be understood and operationalised in the field. Sutherland’s contribution to criminology was to broaden the understanding of crime to include harmful behaviours engaged in by powerful actors that, at the time, were treated as
administrative or regulatory offences and generally as ‘lesser crimes.’ This divergence from a reliance on criminal law frameworks was famously criticised by Tappan (1947) who resisted all attempts to define crime as anything other than the violation of criminal law.

The Sutherland versus Tappan debate can be seen as a precursor for a deeper ontological discussion that continues to affect criminology on how the term crime should be understood. The debate can be framed as a struggle between a) traditional criminologists who ground their work in juridical conceptions of crime that must involve violations of criminal law (Tappan, 1947) - though these may at times stretch to administrative or regulatory offences if the outcome is sufficiently severe (e.g. Loeber and Welsh (2012) b) more expansive views that question the ontological existence of crime with some preferring to replace it entirely with the conception of “social harm” as proposed by zemiologists (Hillyard et al., 2004; Boukli and Kotze, 2018) or based on a fully humanistic imagining of criminality as a violation of human rights. This latter development has opened up some disagreements with some arguing that imperialistic war, racism, sexism and poverty should be described as ‘crimes’ due to their deliberate construction (Schwendinger and Schwendinger, 1970), while others such as Green and Ward (2000, p. 110) claim that this goes too far and, in the process, devalues the currency of criminology if the failure to pursue radical egalitarian policies is labelled as a crime.

Elsewhere, corporate crime has been viewed as a consequence of organisational deviance that combines the theoretical insights of organisational research to criminology (e.g. Vaughan, 1982, 1983). First, I will explore this concept as a fundamental building block in the development of the two areas of criminology that most influence this thesis: state corporate-crime and crimes of globalization, while sections 4.2.2 and 4.2.3 will unpack the ontological foundation of each’s understanding of the concept of crime and show how it is operationalised.
4.2.1. Organisational deviance

The concept of organisational deviance is a fundamental component in the way both state-corporate crime and crimes of globalization literatures construct their view and definition of ‘crime’ and therefore before exploring those bodies of research I will first examine its contents.

Organisations make and implement decisions which can be simultaneously capable of following and breaking rules (Green and Ward, 2004, p. 5). The study of organisational deviance is an attempt to better understand how and why this happens. The beginning of the study of organisational deviance was influenced by Sutherland’s work on white-collar crime but was later reinforced by Wright Mills’ (1956) call to study the ways in which activities undertaken by large organisations could be held directly responsible for problems affecting individuals. This was followed by Reiss (1966), Coleman (1974) and Stone (1975) who began to develop the concept of organisational deviance and apply it to the study of corporations and their activities in the US.

Vaughan (1996, 1999) has been consistently adept at bringing insights from the sociology of organisational deviance into criminology. Her 1996 investigation into the Challenger space-shuttle accident in which NASA continued with the launch despite the objections from senior engineers unravels the ways in which deviant practices became normalised and institutionalised across several layers of the NASA organisation structure, arguing that this factor was the principal cause of the crash. Vaughan later proposed a definition of organisational deviance as:

“An event, activity, or circumstance, occurring in and/or produced by a formal organization, that deviates from both formal design goals and normative standards or expectations, either in the fact of its occurrence or in its consequences, and produces a suboptimal outcome as organizational deviance.” (Vaughan. 1999, p. 3)
This conception of deviance has been influential on a number of criminological endeavours. Within their work on state-crime Green and Ward (2000, p. 104; 2004, p. 4) identify three main components of organisational deviance as:

a) behaviour which is in violation of institutionalized rules.

b) behaviour to which others apply pejorative labels (unethical, criminal, perverted etc.)

c) behaviour undertaken which if were to be revealed would encourage others to apply rules, labels or sanctions (‘secret deviance’).

When applied to state-crime this can be seen as “conduct by persons working for state agencies, in pursuit of organisational goals, that if it were to become known to some social audience would expose the individual or agencies concerned to a sufficiently serious risk of formal or informal censure or sanctions” (ibid). This last point is heavily influenced by Becker’s (1963) development of labelling theory and the importance of a social audience in affixing deviant labels to behaviour.

Within state-corporate crime research (e.g. Michalowski and Kramer et al, 2006) the concept of deviance is used to describe organisational practises that somehow violate rules, standards or norms that the organisation has agreed, or is legally bound, to uphold or implement. However, deviance is not a synonym for crime – often it is deviance by state actors that is then a major factor in the production corporate crime. For example, Kramer and Michalowski provide two categories evidencing this distinction - corporate crime can be ‘state-initiated’ i.e. when it occurs under the direction of the state or with its tacit approval, or, it can be ‘state-facilitated’ i.e. when states fail to restrain corporate crimes through lax regulation or when states and corporations adhere to shared goals whose attainment would be hampered by aggressive regulation. (Kramer et al., 2002, p. 271-272).
This distinction between deviance and crime is vital for conceptualising the EIB’s role in 3 controversial EIB-financed infrastructure projects as explored in section 4.3. Throughout the section it is clear that it is the project promoters (as beneficiaries of EIB lending) that engage in criminal activities such as fraud and corruption during the procurement and implementation stage of the project. The EIB is a lending institution and does not implement projects – rather it is an EU owned bank that offers loans within a certain legal and policy framework. Therefore, it may be useful to think of EIB lending activities that are in violation of the legal and policy framework as evidence of organisational deviance as it would be consistent with the definition of deviance as already established by Vaughan as EIB activity would “deviate from both formal design goals and normative standards or expectations.” It is this deviant action by the EIB that can contribute toward ‘initiating’ or ‘facilitating’ behaviour which is can be seen as a crime (both as violation of criminal law frameworks or in the broader understanding of ‘crime’ as discussed in section 4.2.).

4.2.2. State-corporate crime

State-corporate crime theorists view organisational deviance as a foundation in the production of crime – albeit an understanding of ‘crime’ which looks beyond traditional legal definitions of crime. This has its roots in the observation that many of the worst activities undertaken by business and government (or as joint enterprises) cause substantial harms to the population but are not criminalised by law, or, are handled lightly by the criminal justice system (Kramer, Kauzlarich and Michalowski, 2002, p. 266).

This view of crime and its abandonment of a purely juridical understanding has its foundations in Clinard and Quinney’s (1974) examination of the ability of corporations to shape criminal law and government regulations to their benefit in a way that is conducive to their worldview and interests. As a consequence of this analysis, the designation and control of crime are treated
as the result of socially imbedded processes of naming, rather than any resident behaviour (Kramer, Kauzlarich and Michalowski, 2002, pp. 265-266). Seen through this prism, state-corporate crime rejects the ontological reality of crime in its most basic legalistic terms in favour of a conception that reflects the political interests that are most able to influence the criminalisation process.

In order to bridge the gap between organisational deviance and broader non-legalistic conceptions of crime, state-corporate theorists introduce the concept of ‘socially injurious actions’ which is used in tandem with the existing categories and is used to describe actions which cause demonstrable and serious harms to groups of people but are excluded from traditional understandings of crime. For instance, this term could be applied to the illegal or quasi-illegal activities that exist on industry wide scales (operating with varying degrees of cooperation, oversight and regulation by the state) within the tobacco, pesticide and arms industries that are responsible for substantial harm to the population but are rarely subjected to punishment by the courts despite operating in violation of legal frameworks (Passas and Goodwin, 2004). The term, ‘socially injurious actions,’ is therefore a response to the failure of criminal justice system to criminalise such behaviours.

This observation underpins the case studies within state-corporate crime literature (e.g. Matthews and Kauzlarich, 2000; Mullins, 2006) that allow for a definition of crime to emerge that is adequate for identifying the most unethical behaviours of states and corporations that often escape the reaches of the criminal justice system:

“State-corporate crimes are illegal or socially injurious actions that result from a mutually reinforcing interaction between (1) policies and/or practices in pursuit of the goals of one or more institutions of political governance and (2) policies and/or
practices in pursuit of the goals of one or more institutions of economic production and distribution."
(Aulette and Michalowski, 1993, p. 175)

This definition of crime will inform this thesis on the EIB as it underscores the need to move beyond conventional legalistic definitions of crime, but does not reject such frameworks outright. The EIB exists in a complex and far-reaching legal framework (EU legal framework comprising directives and regulations and statutes of the EU institutions) and additionally projects it finances must abide by the national-level legal frameworks of host countries.

However, as will be demonstrated in section 4.3., some EIB lending activities which cause severe and demonstrable harms fall through the gaps in these legal and normative frameworks, and therefore consistent with the state-corporate crime definition, could instead be observed as socially injurious actions.

4.2.3. Crimes of globalization

The definition of crime operationalised in this area of criminology is, much in the same way as state-corporate crime, anchored in critical criminology’s rejection of the centrality of legal frameworks to define our understanding of crime and criminality (DeKeseredy and Dragiewicz, 2012) – or termed elsewhere in the case studies as the hegemony of legalism (Ezeonu, 2015, p. 95). The crimes of globalization literature explores the extent to which the activities and operations undertaken by IFIs (in particular the World Bank and IMF) in the Global South can be considered as ‘crimes’ if significant harms that occur as a result of IFI activities could have been anticipated by the IFI policy makers (Friedrichs, 2015, p. 46).
The case studies within the crimes of globalization literature are underpinned by a concept of crime that uses hybrid constructions combining a) provisions established in national legal frameworks with b) the idea that violations of human rights treaties and international agreements that result in targeted harms against populations should be viewed as crimes.

Following this logic, if elements of IFI policies and projects are in violation of international agreements and cause harm to groups of people in violation of the rights bestowed on them through international treaties and agreements (e.g. the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights, the United Nations Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises) “then crime in a meaningful sense has occurred” (Friedrichs and Friedrich, 2002, p. 17). This conception of crime aims to include IFI behaviours that may not qualify as core crimes (genocide, war crimes, crimes against humanity, and the crime of aggression) under international law, but IFI operations that cause specific harms to populations such as enforced displacement and damage to ancestral lands.

Friedrichs and Friedrichs (2002) explore the construction of World Bank financed dam in Thailand that led to the forced displacement of indigenous communities along the Mun River, arguing that peoples’ rights established in the above frameworks had been violated and the harm caused as a result was severe enough to be considered as a crime. The authors proposed the following definition of crime:

“The World Bank is criminally negligent when it: (1) fails to adequately explore or take into account the impact of its loans for major projects on indigenous peoples; (2) adopts and implements policies specifically at odds with the protocols of the Universal Declaration of Human Rights and subsequent covenants; or (3) operates in a manner at least hypothetically at odds with international and state law.”

(Friedrichs and Friedrichs, 2002, p. 26)
This view of crime here is one that accepts that harms involved in World Bank backed projects are not its specific organisational objectives but are the unintended consequences of policy choices and organisational practices. Consistent with this definition of crime - if the World Bank fails to design and implement sufficient due diligence and duty of care in its organisational practices, and if these procedures are ignored when assessing projects, and if as a consequence substantial harms are inflicted upon communities then such behaviour should be labelled as ‘crime.’

This view of crime is directly applicable to the EIB insofar as it pledges to align project standards in operations it finances with many of the aforementioned multi-lateral agreements. Consistent with the above definition, if EIB financed projects were in violation of similar normative frameworks of which the EIB was signee, and if significant harms were caused through these violations on communities hosting EIB project – then ‘crime’ as per this understanding has occurred.

However, this definition is developed with the World Bank and IMF in mind and is problematic when applied to the EIB given the different political-economic reality and legal environment in which these organisations operate. The World Bank, as a consequence of undertaking its operations in the Global South, is much more involved in the project’s implementation (procurement, construction, monitoring) than the EIB which is more of a source of finance which then monitors to check if implementation has been in line with a certain policy framework. As a consequence, the definition of ‘crime’ as proposed by Friedrichs and Friedrichs (2002) if applied to the EIB would place too much responsibility on the EIB for the outcome of the project and therefore overstates its importance and diminishes the role of the project promoter. As a consequence, this thesis will not rely on the term ‘crime.’
4.2.4. Explaining aspects of EIB lending activity as crime or as organisational deviance?

In order to develop a concept of crime or organisational deviance to be operationalised in this thesis it is first necessary to return to the scope and objectives of this thesis.

Primarily, this thesis is intended to better understand how and why the EIB’s lending operations can violate the normative frameworks (EU law, member state law, EIB policy commitments) to which it adheres. Taking this into account – is it more useful to understand these violations as ‘organisational deviance’ as described in section 4.2.1 or as a ‘crime’ (in its broad non-juridical understanding) as described in sections 4.2.3 and 4.2.3.?

This thesis shall choose the concept of organisational deviance to guide the rest of the thesis’ analysis. This is preferred as it better reflects the EIB’s role as the financier of controversial projects rather than as an implementation agency. As a consequence, this will view EIB organisational deviance as violations of legal/policy framework to which it adheres:

- **EU/Member state legal frameworks.** EIB operations within the EU should comply with the EU legal framework (treaty commitments, regulations and directives) and all member state laws (criminal, administrative and regulatory law).
- **Multilateral agreements.** The EIB has agreed to harmonise its operations to international best practices and is a signee of agreements at OECD, UN and Council of Europe level.
- **Compliance regimes to which the EIB has agreed to implement such as the Basel Committee on Bank Supervision’s standards on compliance and compliance functions within banks**
• Internal EIB policies. The EIB has a number of internal policy documents (e.g. anti-fraud, environmental standards, staff conduct) that it implements during its operations.

In this context, I propose the following definition of EIB organisational deviance:

_EIB lending activity can be seen as a ‘organisationally deviant’ when operations it finances are in violation of either: 1) the legal framework of the EU and the member state hosting the project (including criminal, administrative and regulatory frameworks 2) Multi-lateral agreements of which the EIB a signee 3) Compliance regimes and due diligence procedures it implements 4) Project standards which are the result of internal EIB policy documents._

Now that a definition has been established as to what constitutes EIB organisational deviance I will now explore 3 controversial EIB-financed infrastructure projects using the above definition to evaluate the extent to which the course of action taken by the EIB could be considered as organisationally deviant.

4.3. Three vignettes of controversial EIB financed projects

4.3.1. Introduction

Throughout the EIB’s history it has been involved in numerous controversies surrounding projects it has financed which is underpinned by the conclusion that it can, on occasion, benefit from supporting projects that cause harms (physical, environmental and financial) to citizens who live in close proximity to such projects. In addition, and in a broader sense, EIB projects may contribute to the creation of harms that pose consequences at national level for citizens and institutions, that while not being physically connected to the project, may nevertheless suffer from harms or incur financial losses. In order to conceive of the potential local, regional and national
consequences for diverse stakeholders, this thesis will use the concept of ‘communities.’

This section will identify and explore 4 EIB projects that will provide the anchor for main analytical chapters (7 and 8). The cases chosen should be seen as ‘outliers’ insofar as from a sampling perspective they are not representative of EIB projects - rather, they are chosen because of their uniqueness and in the context of a criminological thesis, for their connection to organisational deviance. As representativeness is not a factor in identifying the cases a different criteria has been used. Firstly, the geographic scope is confined to the EU where the vast majority of EIB operations are undertaken. Secondly, projects have been chosen because they are connected to a range of harms e.g. both financial and environmental. Thirdly, the deviance identified emerges at a range of points across the EIB project cycle e.g. due diligence, implementation and monitoring. Lastly, a range of EIB lending types from direct loans to project promoters to bond financing instruments. As a result of applying this criteria, 4 cases were identified.

The first section will explore two interconnected projects in the Veneto region of Italy. The first case is that of the Passante di Mestre (a motorway bypass) and then the MOSE project (a flood defence mechanism). Both projects were managed by consortiums that contained a mixture of public and private companies and received substantial public funding (from the EU and the Italian state). Both projects follow the pattern of corruption in infrastructure projects insofar as works contracts were artificially inflated allowing funds to be illegally extracted from the projects by organised crime groups for either personal profit or to pay bribes to public officials to secure even more contracts. As a consequence of this type of corruption both projects were delivered late and over budget requiring additional public funding.
The second project, Project Castor, was an underground natural gas storage facility operated by a Spanish conglomerate under a concession from the Spanish state. The technical studies undertaken by the project promoter underestimated the technical risks of injecting gas in proximity to geological fault lines and when it reached the gas injection stage the gas escaped from the facility causing earthquakes on the Spanish mainland forcing the government to close the project indefinitely. As per the contract signed between the project promoter and the Spanish state, the investors were compensated for their €1.3 billion investment that in turn created a debt for the Spanish public who were left with an unusable and costly infrastructure project.

The third project is the Budapest Metro Line 4. The €1.7 billion project received most of its funding from the EU (including two EIB loans). The project suffered from poor governance and oversight by both Hungarian and EU institutions and was beset by conflicts of interest, fraud and corruption between international contractors, Hungarian companies and politicians. After an extensive investigation OLAF recommended that EU loans totalling €228 million and EIB loans of €55 million should be repaid by the Hungarian state. The project is an example of how poor project oversight results in public money being syphoned off by corrupt individuals leaving the Hungarian public to make up the shortfall.

I will now explore each project in more detail.

4.3.2. MOSE and Passante di Mestre

Here I will consider two large EIB supported infrastructure projects in the Veneto region of Italy as both were caught up in a series of interconnected corruption scandals. The MOSE project was an extensive flood defence system for the Venetian lagoon designed to protect the sinking city from rising sea levels, while the Passante di Mestre project was a 32 km motorway bypass around the city of Mestre near Venice.
Italy has a long history of corruption associated with large public infrastructure works (Golden and Picci, 2005), a problem which, contrary to common perception, is not confined to the South and occurs in the more modern centres of trade and industry located in the north (Nelken, 2003, p. 156). The problem is recognised by EU institutions and features in EU Commission publications on corruption across the EU (European Commission, 2014). In the context of long-standing embedded corruption, it would be expected that the EIB adopt a prudent approach toward supporting the MOSE and Passante di Mestre projects. The next section will argue that the EIB continued its involvement even when it was clear that they were affected by corruption.

The EIB supported the MOSE project through three loans paid to the Consorzio Venezia Nuova, a consortium established by the Italian Ministry for Infrastructure and Transport and the Water Authority of Venice. The first €480 million loan was signed in April 2011, €500 million in March, 2013, €200 million in February 2014 and €88 million in 2016 – total EIB support was for €1.3 billion (European Investment Bank, 2016). With regard to Passante di Mestre, in 2013 the EIB agreed a €350 million loan to the Concessioni Autostradali Venete – a joint venture between a Anas S.p.A. (the Italian state owned highway authority) and the Venice regional authority. The EIB disbursed the loan in April 2013 and was paid to the Concessioni via the Italian state-owned investment bank Cassa Depositi e Prestiti (CDP). In 2016, the EIB supported the project again through the issue of a guarantee during a refinancing round of the project (“First Italian toll road,” 2016).

Concentrating on Passante di Mestre, what is significant is that EIB support came in the context of several ongoing corruption investigations that affected persons/companies connected to the project. In 2011, the Italian Court of Auditors published a report raising concerns over the structure of the consortia involved in the project and warned of the potential conflicts of interest, unjustified cost increases and the infiltration of organised crime
groups into the subcontracting companies (“EU-funded project in Italy,” 2014). In March 2013, the EIB opened an investigation into the projects but it was closed due to a lack of evidence (Lucius, 2014). NGO groups requested OLAF to open an investigation but in March 2014 OLAF responded by letter and confirmed that the information it had gathered did not point to violations of regulation No 883/2013 on fraud in EU projects, and as a consequence declined to open an investigation (OLAF, 2014).

Then in June 2014 Italian police raided the homes and offices of 35 businessmen and politicians connected to the MOSE and Passante di Mestre projects. Piergiorgio Baita, the CEO of Mantovani S.p.A (one of the main subcontracting companies for the Passante di Mestre project), was one those arrested and in December of the same year, plead guilty to fraud through emitting false invoices and paid a €6 million fine. In his testimony, he admitted to a conspiracy to create slush funds through the emission of false invoices later used to bribe public officials to secure construction contracts in both the MOSE and Passante di Mestre projects (Vergine, 2014). Remarkably, in 2016 he authored a book revealing the extent of the systemic corruption surrounding the projects (Giambartolomei, 2016).

At the same time, a tribunal in Venice sought authorisation to bring charges against the then immune Italian minister and former governor of the Veneto region, Giancarlo Galan, who was initially imprisoned before being sentenced to 2 years and 10-month house arrest and fined €2.6 million for accepting bribes (Mandurino, 2014). Other public officials included General Emilio Spaziante, a member of Italy’s Guardia di Finanza who was jailed for 4 years for receiving bribes as part of a plea bargain (“Confiscati,” 2015). Prosecutors dubbed the conspiracy network that included business people and public officials as the ‘Veneto system.’

In 2016, and despite of the aforementioned investigations, the EIB again committed to the Passante di Mestre project by choosing the project to be part of the pilot phase for its Project Bond Initiative (PBI) (the initiative is
described in more detail in section 7.2.3.). As part of the refinancing of the project, the EIB guaranteed 20% of the bonds emitted equating to €166 million in total which allowed Concessioni Autostradali Venete to restructure the debt accrued during the project onto more favourable terms and prevent the project from defaulting. NGO groups at the time criticised the EIB for guaranteeing the debt accumulated in the project (Re:Common, 2016) that was running at significant and unaccounted for cost overruns, estimated at 64% (Locatelli et al, 2017).

In the last plot twist, in September 2017 the former Minister for Infrastructure Altero Matteoli (responsible for signing off on EIB projects between 2008 and 2011) was found guilty of corruption in a Venetian court and was sentenced to 4 years imprisonment and the confiscation of €9.5 million euros (Pietrobelli, 2017). Matteroli, the now disgraced former minister, died in a car crash in December 2017 before entering prison (“Ex-Minister,” 2017).

The investigations and prosecutions surrounding the MOSE and Passante di Mestre projects shine a light on how infrastructure projects are used as a device through which individuals and organised crime networks steal public funds, often with the assistance of public officials (an agreed upon definition for the term ‘organised crime’ has proved elusive in criminology (Hagan, 2006) - here the term is used to refer to a network of individuals working in collaboration with public officials (politicians, counsellors, police officers, bureaucrats) to engage in corrupt activities with the aim of defrauding public budgets). Project costs are artificially inflated with the additional money being extracted. Once the mechanism is established additional public funds are requested then extracted leaving the public to make up the shortfall which in big projects can in millions of euros being lost to crime. The failure of the Italian authorities to supervise these projects, and the complicity of some public officials, means that public funds are diverted into the hands of organised crime groups while the public are left with overpriced infrastructure projects. In addition, in the case of MOSE the
corruption scandals have meant that the project is now long overdue and is still not operational – in October 2018 Venice was subject to serious flooding and with the MOSE flood defence not in a position to be deployed it was unable to prevent the city being 70% flooded causing extensive property damage (“Italy Flooding Inundates,” 2018).

Then, what is the significance of EIB support for both projects? By continuing to financially support the projects despite the ongoing judicial processes and warnings from the NGOs, the EIB continued to underscore the above debt creation mechanism whilst profiting financially from it. Seen this way, could EIB support for the projects be consistent with the definition of organisational deviance as proposed in section 4.2.4.?

Firstly, and from a rather broad standpoint, the EIB has an institutional commitment to “zero tolerance” of corruption in any of the projects that it finances (European Investment Bank, 2017) and therefore this commitment would prevent it from investing in either project once it had been made aware of the risks. More substantially, the EIB’s Anti-Fraud policy (European Investment Bank, 2013) establishes the Bank’s obligations to ensure its operations are free of prohibited conduct (fraud, corruption, money laundering). According to the policy, the EIB undertakes customer due diligence on all its counterparties and requires contractual rights of inspection and access to information for the EIB and other competent institutions (ibid, p. 4).

The Anti-Fraud policy for EIB operations within the EU is based on EC Directives 2004/17, 2004/18, 89/665, 92/13 and further more through Article 325 TFEU that obliges the EIB to prevent Prohibited Conduct in relation to EIB activities to ensure rational use of the Bank’s funds in the interest of the Union (ibid, p. 3) In addition, secondary EU legislation establishes rules on financial support for projects affected by fraud and irregularities. Council Regulation (EC, Euratom) No 966/2012 of 25 October 2012 enacts provisions regarding fraud in procurement procedures
and provides the legal basis to halt, suspend or terminate the contracting process in response.

In addition to EU level frameworks, the EIB anti-fraud policy states that the Bank is “cognisant” of the principles enshrined in several international frameworks aimed at preventing corruption and fraud in business (the UN’s Convention Against Corruption, the OECD’s Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the Council of Europe Criminal Law Convention on Corruption, the Financial Action Task Force’s Recommendations and the International Financial Institution’s (IFIs) Anti-Corruption Task Force’s Uniform Framework Agreement (European Investment Bank, 2013, p. 1).

One question that arises here is – if the EIB discovers prohibited conduct related to projects in which it intends to support, should it walk away from the project altogether or work with local law enforcement to reduce the fraud risks and ‘clean’ the project? In the case of these two projects the extent to which organised crime groups, with the support of public officials, had infiltrated the project was already substantial before it supported the project for the second time in 2016. By continuing to add further financial resources the EIB was subsidising the debt creation mechanism and itself profiting from doing so. Therefore, the activities of the EIB that were in violation of its own anti-fraud policies demonstrate that EIB lending to the project was consistent was organisationally deviant as per this chapter’s definition. In chapters 7 and 8 I will explore the EIB’s motivations for supporting both projects in more detail.

4.3.3. Castor Project

Spain has long-standing problems in the way in which it manages infrastructure. Firstly, an over-abundance of large infrastructure projects defined by mismatches in supply and demand (Bel et al, 2014) e.g. Spain has several abandoned airports and high speed train networks used by very
few passengers. In addition, the country also has problems in the way it manages the distribution of risk in PPP projects - found to be often weighted toward the state to protect the construction companies (Bel et al, 2017). This section on Castor will focus on the second problem and will explore how the allocation of risk was central to the disaster.

Castor was an attempt to convert the abandoned Amposta undersea oil field 22 km off the Spanish coast into a natural gas storage facility. The project involved the construction of two platforms, the drilling of 13 new wells and a connecting pipeline to an onshore processing plant and a further connection to Spain’s national energy grid. When the project was to become operational, natural gas would be injected into the undersea facility providing Spain with extra gas reserve capacity. In 2007, the concession to undertake the operation was awarded by the Spanish state to a consortium later taken over by Spanish construction conglomerate Grupo ACS (“Agreement between,” 2007).

The project benefitted from a comprehensive investor protection framework that guaranteed investors’ financial commitment to the project in the event of the concession being returned to the state. Article 5.3 of the Spanish Royal decree ITC/3995/2006 established the first guarantee, while Article 14 of the Royal Decree 855/2008C extended the compensation rights to even include cases of fraud and negligence on part of the concessionaire. Under these terms the Grupo ACS investment was guaranteed by the Spanish state under any eventual outcome. The significance of this type of contract on the outcome of the project is explored in more detail in section 7.2.3.

The project was designated as a priority by the Spanish state and was submitted to the European Commission as a potential Project of Common Interest (PCI) and was later identified by the EIB as the first to be financed as part of a Commission devised financing instrument called the Project Bonds Initiative (also described in more detail in section 7.2.3). Through a
special purpose vehicle the concessionaire emitted bonds on the capital markets to refinance the construction costs onto more generous terms as the project was heading for a default – the EIB supported the project by purchasing €300 million of the project bonds emitted in July 2013 (at 5.7% interest) as an anchor investor and also offered a €200 million liquidity line to be drawn upon throughout the life of the project. The remaining bonds were purchased by insurance companies and pension funds primarily located in the EU (Ernst and Young, 2015, p. 88).

The gas injection phase began in August 2013 and over the course of the summer triggered hundreds of earthquakes that arrived on the mainland damaging property leading to the project being suspended by Spanish authorities in October 2013 (Govan, 2013). As per the terms of the concession, the promoter returned the infrastructure to the state, which issued another Royal Decree accepting its relinquishment. Within weeks the Spanish state repaid €1.35 billion to the project promoter. Out of this sum, all the bondholders including the EIB were repaid their investments (European Investment Bank, 2014). In order to finance the repayment, the Spanish government planned to add the €1.35 billion to all Spanish gas consumers’ bills to be repaid over the next decade.

Both the project promoter, the Spanish state and the EIB underestimated the technical risks of injecting gas into the ground near a geological fault line. As a result of this, Spanish citizens are left to pay for a €1.35 billion infrastructure project that will never be used, while the investors who supported the project (including the EIB) are reimbursed, and in the case of Grupo ACS, even profited from the debacle (“The Castor Project,” 2017). The question that arises here is – what was the EIB’s role in the project and did it act in accordance with its legal obligations and policy commitments? And if not, was the EIB’s behaviour consistent with the definition of organisational deviance as proposed in section 4.2.4.?
Large construction projects such as Castor require a full technical environmental, social impact assessment (ESIA) in accordance with EU Directive 2011/92/EU. This was undertaken in 2008 by the project promoter and then approved by Spanish authorities in 2009 (European Investment Bank, 2018, p. 47). During the consultation stage, Spanish NGO groups raised their objection to the project citing the existence of several academic studies warning of the potential risk of inducing seismic events through injecting gas into the seabed in proximity to a geological fault line (ibid, p. 20). Despite these concerns, the EIB reviewed and approved the ESIA between late 2009 and July 2010 before the EIB Board of Directors approved the project in the same month (European Investment Bank, 2018, p. 47).

In addition to the ESIA requirement, Castor as a large works project was subject to the following regulatory components:

- Spanish Royal Decree 1/2008, of 11 January regarding the environmental impact assessment of projects.

According to the EIB’s internal investigation into its role in the Castor project, the EIB performed its duties in accordance with the above EU and Spanish legislation, but with an important caveat - that no specific EU or national legislation existed that was specifically aimed at underground
natural gas storage facilities when the ESIA was undertaken (European Investment Bank, 2018, p. 35). Moreover, the same EIB report claims that during the EIB’s due diligence process it should have, but didn’t, apply the ‘precautionary principle’ as per detailed in Article 191 of the Treaty on the Functioning of the European Union (European Investment Bank, 2018, p. 8).

The precautionary principle establishes the EU’s approach to risk management in situations when a) projects contain potential for harm to populations and environment b) there is no scientific consensus or specific guidelines. As no specific guidelines existed on underground natural gas storage facilities the precautionary principle should have been triggered. The principle is operationalised in Article 25 of the EIB Statement of Environmental and Social Principles and Standards that outlines the need for project promoters to design specific mitigation strategies and ensure that “environmental damage should be rectified at source, and that the polluter should pay” (European Investment Bank, 2009, p. 14). The EIB report confirms that no additional advice was sought by the EIB during its appraisal of the project (ibid, p. 40) and therefore it acted in violation of the principle.

All of the parties involved in the Castor project (the Spanish state, the project promoter and the EIB) failed to recognise the technical risks involved in undertaking the project and are all responsible for it arriving to the gas injection stage. In the case of the EIB, it ignored safeguards put in place to avoid such outcomes but nevertheless continued to support the project in order to make a financial gain from its investment. As per the independent review of the Project Bonds Initiative of which the Castor project formed part, without EIB involvement the Castor project would not have arrived to the gas injection stage (Ernst and Young, 2015, p. 87) and so the EIB’s role should be seen as central to the disaster.
As a consequence of violating the precautionary principle during its due diligence procedure the EIB contributed to causing substantial harm to the Spanish public through the generation of a €1.35 billion debt. This debt should be seen as being socially injurious insofar as it was added to Spanish gas consumer’s bills in a period in which Spain was suffering from high levels of energy poverty (Aristondo and Onaindia, 2018) to which this further increase would have inevitably contributed – consistent with the definition of a financial harm as outlined in section 2.7. Therefore, the violation of an EU treaty requirement should be considered as an example of organisational deviance as per this chapter’s understanding of the concept. In chapters 7 and 8 I will explore in detail how such deviance occurred.

4.3.4. Budapest Metro Line 4

The Budapest line 4 project should be seen in the context of Hungary’s ascent to the EU and the massive amount of EU finding that poured into the country prior, during and in the aftermath of its accession. Of particular concern to the EU in the lead up to the 2004 enlargement was the capacity of accession to countries to cope with the administration and management of EU structural funds and the potential to minimise corruption risks (Batory, 2013). This vignette will explore the ways in which elite corruption networks in Hungary used the line 4 project to steal both EU and Hungarian funds but it will also argue that poor project monitoring by the EIB failed to identify conflicts of interest which were central to the development of corruption connected to the project.

Plans to expand the Budapest Metro line 4 had been in development since the 1970s but it was only after Hungary’s accession to the EU in 2004 that the project began. In 2005, the EIB signed two loan agreements with Hungarian state and Budapest municipality for the value of €530 million. In 2009 the EU approved the project as a priority and as per decision No.B (20096793) it was eligible for €696 million in EU cohesion funds. The total
project cost was set at €1.7 billion with 85% to come from EU funds and 15% from the Hungarian state. The line eventually opened in 2014 after a series of construction and legal delays at well over double the original estimated cost (Kovács, 2014).

In 2012 and well into the construction stage, OLAF received numerous allegations from the EU Commission Directorate General for Regional Policy (DC REGIO) and the European Court of Auditors (ECA) regarding irregularities connected to contracts signed with the Budapest municipality and contractors (OLAF, 2016, p. 8). During its investigation, OLAF discovered irregularities (bribes, fraud, artificial contract inflation) in dozens of works contracts between Hungarian authorities and multinationals Siemens and Alstom, as well as several Hungarian companies, of which some were directly connected to prominent Hungarian political parties and politicians including the former Prime Minister Péter Medgyessy. OLAF’s report concluded that out of the €1.7 billion of project finance, €1 billion was affected by such irregularities which led the case to becoming the largest ever instance of fraud and corruption in an EU financed project (Paravacini and Posaner, 2016). Similar to the Passante di Mestre and MOSE project, the consequence for the Hungarian public is that the Metro project’s cost was artificially inflated so that EU and Hungarian public funds could be extracted by corrupt individuals with the costs being transferred to the Hungarian public. I will now turn to the EIB’s role in the events and will it compare it with the definition of organisational deviance as proposed in section 4.2.4.

The main criticism of the EIB that is made in this section is that it failed to monitor how its funds were spent in line with the provisions of the project finance contracts. According to the contracts the EIB signed with the Hungarian state and Budapest municipality (clauses 6.10 and 6.09 respectively), the installation of an independent and internationally recognised FIDIC engineer was required. The role of the FIDIC engineer is important as he/she ensures the project is implemented in line with
internationally recognised project management guidelines (both financial and technical) of large construction projects. The OLAF investigation revealed that the FIDIC engineer appointed to the project also participated in the procurement process as a customer, a clear conflict of interest. Moreover, the company that provided the FIDIC engineer received bribes from Siemens to assist in securing contracts in the project procurement process (OLAF, 2016, p. 26).

This brings us to the question – what legal frameworks did these conflicts of interest violate? And what legal and/or internal policy commitments was the EIB obliged to enforce in order to prevent such conflicts of interests occurring?

Firstly, article 10 of the Hungarian Public Procurement law of 2003 (law CXXIX) establishes a provision that a consultant (in this case the FIDIC engineer) cannot participate in the procurement procedure if it has a financial interest in one of the bidders. The EU also has a series of directives regarding procurement that are to be implemented by national level authorities (at the time of the Budapest metro line 4 project Directive 2004/18/EC was the most relevant later replaced by as Directive 2014/24/EU) which would have been violated by the FIDIC engineer in this case.

Whilst it is clear that the companies involved here were defrauding the EIB (and the European Commission), it is also true that the EIB is responsible for the adequate monitoring of projects it finances, including being aware of the identities of all the project companies in order to prevent such conflicts of interest from occurring. This commitment is operationalised in the EIB document ‘Guide to Procurement’ that is underpinned by Council Directive 2004/18/EC regarding public works, public supply, and public service contracts and Council Directive 2004/17/EC of 31 March 2004 regarding entities operating in the water, energy, transport and postal service sectors (European Investment Bank, 2011, p. 7).
As part of this document, the EIB commits to exclude support for project promoters that are conflict of interest during the procurement process (European Investment Bank, 2011, p. 6). In the case of the Budapest project the EIB failed to uphold its own commitment to monitor the project and in section 8.3.4. I argue that this occurred, to a large extent, by a lax monitoring culture within the EIB. As a result, EIB finance contributed to worsening the criminogenic conditions that existed around the project that included systemic bribe paying to secure public contracts and is consistent with the definition of organisational deviance proposed in section 4.2.4..

4.4. Chapter conclusions

This chapter has introduced the multitude of ways in which organisations, and specifically the EIB, can engage in deviant behaviours and has connected them to different perspectives within criminology that have attempted to interpret these activities. Through the exploration of the EIB’s role in four infrastructure projects (section 4.3.) I have demonstrated instances in which EIB lending activity has been undertaken in violation of its treaty commitments, the EU legal framework, due diligence and compliance regimes, and of its own internal policy commitments and therefore constitutes a type of organisational deviance consistent with the definition proposed in section 4.2.4.. This new definition, by including the legal and regulatory environment relevant to a) a bank b) an EU institution, results in a more precise definition that has so far been absent from the criminological literature on IFIs.

As a consequence of the organisational deviance discussed in this chapter, EIB lending activities can create new, or intensify existing, criminogenic conditions when it finances large infrastructure projects. These criminogenic spaces opened up by EIB lending and organisational deviance allows external actors (both individuals and organisations) to financially profit (by both legal and illegal means) from these infrastructure projects.
The result of which is the generation harms or socially injurious actions which are endured by the communities that host such projects. This interim conclusion has answered the third research question regarding the harms caused by some EIB lending activities but in chapter 7 and 8 I will expand the analysis of these projects to better understand how and why these events occurred and the impact of decisions taken by the EIB during the projects’ cycles.

This chapter has also underlined the need to use additional concepts in criminological research instead of relying solely on the use of ‘crime’ in its traditional understanding. Concepts such as ‘socially injurious actions’ that go beyond purely juridical understandings of behaviours are useful insofar as they allow research to better understand how infrastructure projects cause harms that, while not in direct violation of any specific legal or normative framework, nevertheless cause significant physical or financial harms. This conclusion can be reinforced when comparing the Budapest and Castor cases - in the first case it is clear that illegal behaviour occurred (bribe paying) the totality of which undermined the project whereas in the Castor case the project was not in violation of any legal framework but created adverse financial consequences far beyond those created in the case of the Budapest metro. This exposes the limitations of using traditional concepts of crime that would generate a distorted view of the effects of each project if the analysis relied exclusively on traditional criminological conceptions of crime.
Chapter 5: Conceptualising the EIB

5.1. Introduction

This thesis on the EIB will adopt an inductive strategy to the use of theory that, as opposed to deductive research strategies (proposition/hypothesis testing), allows empirical and theoretical findings to emerge from the data. The inductive approach works in the context of discovery and is flexible enough to combine existing theoretical insights with new developments (Baker et al., 2012; Eisenhardt and Graebner, 2007).

This strategy is optimal when entering an organisation ‘blind’ as is the case when researching the EIB. The inductive approach taken is informed by extant literature (both criminological, from the sociology of organisations and small amount of research dedicated to the EIB) but remains flexible enough in order to respond to emergent findings during the research process. While Glaser and Strauss’ (1967, p. 1) claim that this approach constituted “the discovery of theory from data” and was considered provocative at the time, the inductive strategy has become commonplace within research on organisations.

No inductive strategy is ever entirely so and this thesis is informed by two existing criminological frameworks (state-corporate crime and crimes of globalization) which use versions of an integrated framework that collates existing criminological theory into a three level (macro, meso, micro) schema to unpack the structural, organisational and individual causes for organisational deviance and crime. Consistent with the inductive strategy, this thesis uses these frameworks as departure points and deploys them as guides rather than as testable frameworks in place of the hypothetico-deductive approach. However, as we will see in chapters 7 and 8, these frameworks are both limited and limiting and additional theories and concepts from the sociology of organisations and organisation studies will be included.
In section 5.2. I will unpack the theoretical positions adopted in both sets of literature. Section 5.3. will establish aspects of the frameworks that are most relevant to this analysis on the EIB while section 5.4. will consolidate the elements of the frameworks to be used as a guide for the main analytical chapters in 7 and 8.

5.2. State-corporate crime theoretical framework

Research on state-corporate crime is influenced by a widely used three-tiered theoretical framework to explore crime and organisational deviance from macro, meso and micro perspectives. Kramer and Michalowski (1990) suggest that by uniting these divergent perspectives to the study of state and corporate crime this integrated approach offers increased explanatory power. The first, macro perspective, is built upon a political economy approach that locates criminogenic forces within the political-economic structure of capitalism that creates an incentive for organisations to achieve profit using illegitimate means (Barnet 1981, Michalowski 1985). The second, meso level, is influenced by research on organisational deviance and its relationship with an organisation’s emphasis on goal attainment (Finney and Lesieur, 1982); the result of defective standard operating procedures (Hopkins, 1978); or as consequence of organisational structure (Kramer, 1982). On a micro level, the framework is influenced by Sutherland’s (1949) theory of differential association and the individual learning of deviant activities. Kauzlarich and Kramer (1998) further elaborated the framework by linking the three levels of analysis (micro, meso, macro) with 3 catalysts for action: (a) motivation (b) opportunity structure (c) operationality of control. Combined together the framework attempts to indicate the factors that contribute to organisational deviance at the intersection of a catalyst for action and a level of analysis using 9 possible configurations (Kramer, Michalowski and Kauzlarich, 2002).
Within the framework each configuration is added to by the inclusion of several concepts that have emerged from case studies and previous criminological research. For instance, the macro level explores the interaction between organisational goals and the economic pressures that encourage organisations to undertake certain courses of action, as well as the illegal means available to the organisation to undertake them, and the potential legal sanctions that function as controls or constraints. The meso level of analysis and the opportunity structure catalyst draws attention to organisational cultures and operative goals of sub-departments which drive organisational behaviour and the extent to which defective standard operating procedures may intensify aspects of organisational cultures. Lastly, the micro level views individuals’ emphasis on goal attainment as being influenced by the perception and attractiveness of illegal means which may or not be restrained by rationalisations and personal morality.

The concepts are especially useful at the beginning of the data collection process and will assist in forming the questions to be explored with interview respondents and when analysing documents. Initial macro-level questions based on the concepts within the theoretical framework and applied to the EIB are – what are the EIB’s organisational goals and how are they influenced by economic pressures? Does the EIB have the appropriate

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**Figure 1. Integrated framework. From Crimes of the American Nuclear State: At Home and Abroad, by Kauzlarich and Kramer (1998).**

<table>
<thead>
<tr>
<th>Level of Analysis (history, political economy, culture)</th>
<th>Motivation</th>
<th>Opportunity Structure</th>
<th>Operationality of Control</th>
</tr>
</thead>
<tbody>
<tr>
<td>Institutional environment</td>
<td>Culture of competition</td>
<td>Availability of illegal means</td>
<td>International reactions</td>
</tr>
<tr>
<td>Economic pressure</td>
<td>Economic pressure</td>
<td>Obstacles &amp; constraints</td>
<td>Political pressure</td>
</tr>
<tr>
<td>Organizational goals</td>
<td>Organizational goals</td>
<td>Blocked goals/threats</td>
<td>Legal sanctions</td>
</tr>
<tr>
<td>Performance emphasis</td>
<td>Performance emphasis</td>
<td>Availability of illegal means</td>
<td>Media scrutiny</td>
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<tr>
<td></td>
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<td>Access to resources</td>
<td>Public opinion</td>
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<td></td>
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<td>Social movements</td>
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</tbody>
</table>

**Organizational (structure and process)**

<table>
<thead>
<tr>
<th>Corporate culture</th>
<th>Instrumental rationality</th>
<th>Internal constraints</th>
<th>Culture of compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operative goals</td>
<td></td>
<td>Defective SOPs</td>
<td>Subcultures of resistance</td>
</tr>
<tr>
<td>Subunit goals</td>
<td></td>
<td>Creation of illegal means</td>
<td>Codes of conduct</td>
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<tr>
<td>Managerial pressure</td>
<td></td>
<td>Role specialization</td>
<td>Pervasive structure</td>
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<td></td>
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<td>Task segmentation</td>
<td>Safety &amp; quality control procedures</td>
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<td></td>
<td></td>
<td>Computer, telecommunication, and networking technologies</td>
<td>Communication processes</td>
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<td></td>
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<td>Normalization of deviance</td>
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</tr>
</tbody>
</table>

**Interaction (face-to-face interaction, individual action)**

<table>
<thead>
<tr>
<th>Socialization</th>
<th>Definitions of situation</th>
<th>Perceptions of availability &amp; attractiveness of illegal means</th>
<th>Personal morality</th>
</tr>
</thead>
<tbody>
<tr>
<td>Social meaning</td>
<td></td>
<td></td>
<td>Rationalizations &amp; techniques of neutralization</td>
</tr>
<tr>
<td>Individual goals</td>
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<td></td>
<td>Separation from consequences</td>
</tr>
<tr>
<td>Competitive individualism</td>
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<td></td>
<td>Obedience to authority</td>
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<td>Material success emphasis</td>
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<td>Group think</td>
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<td></td>
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<td>Diffusion of responsibility</td>
</tr>
</tbody>
</table>
means to achieve these goals and what are the external outside constraints or controls which prevent the EIB from doing so? At the meso level this will be translated into questions relating to the EIB’s standard operating procedures - which procedures most influence the project cycle? To what extent may they be deficient? What internal controls exist to offset or contain potential deficiencies? At the micro level this leads to identifying individual EIB officials’ goals and then exploring the possibility of each respondent’s ability to achieve them and identifying the forces may be restrict such actions.

5.3. Crimes of globalization theory

Within the few examples of crimes of globalization research (e.g. Friedrichs and Friedrichs, 2002; Rothe 2010, Rothe, Muzzatti and Mullins, 2006) an adapted version the three-tiered integrated framework used in the state-corporate crime literature is used to guide the analysis of the connections between IFIs, states, corporations in the production of crime and organisational deviance. Where the framework diverges from its use in the state-corporate crime literature is in its repositioning away from concentrating solely on the political-economic structure of the US to include the political economic environment in which the IFIs operate (predominantly in the Global South). The macro level of analysis explores the power relations between the IFI shareholding countries and the locations of operations, the meso level attempts to better understand internal processes of IFIs while the micro perspectives explore the role of individuals employed within IFIs.

The crimes of globalization theoretical framework is also assembled with additional concepts at a level of analysis and catalyst for action. However, these concepts are drawn from previous research on the IFIs, are often vague and it is not clear the extent to which they have guided the research. For example, Rothe (2010) suggests that “organisational cultures” and “reward structures” are important motivations at the meso-organisational level of
analysis that can encourage IFIs to become organisationally deviant. However, it is not clear where these concepts have been used in the research and on what empirical data they are based on. In order to remedy this shortfall, chapter 8 will produce its own conceptual additions to the framework supported by primary data from interviews with EIB officials.

One advantage of the emerging crimes of globalization literature is that it is more upfront about the theories which guide the case studies as compared to the state-corporate crime theorists who display a tendency to conflate conceptual concepts of the framework with its theoretical underpinnings. In the first consolidated work, Rothe and Friedrichs (2015, pp. 57-79) suggest the inclusion of a range of additional theories from criminology and other disciplines that could be included in future criminological analyses of the activities of IFIs e.g. Nollkaemper and Van der Wilt’s system criminality, Foucault’s regimes of truth and neo-realist perspectives. The following table presented below is the first clear indication of the theories which are used at each level.

<table>
<thead>
<tr>
<th><strong>Structural Criminological Theories</strong></th>
<th>e.g., Political Economy; Neo-realism; Anomie; System Criminality; Foucault – regimes of truth and power; and Realpolitik</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Organisational and Criminological Theories</strong></td>
<td>Organisational Theory – culture, ideology, standard operating procedures, internal pressures, legitimacy reward structures, diffusion of responsibilities; Strain; Routine Activities and Techniques of Neutralisation</td>
</tr>
<tr>
<td><strong>Interactional Criminological Theories</strong></td>
<td>Strain; Rational Choice; Learning theory</td>
</tr>
</tbody>
</table>

*Figure 2. Towards theory generation. From Rothe and Friedrichs (2015, p. 63).*
Although more explicit about placing theory within the framework, one concern that arises when addressing this collection of theories is its sprawling nature given that it features the use of a dozen core criminological theories that aim to capture the complexity of IFI activities which inevitably leads to a framework that is inoperable due to such complexity. This raises the question - to what extent can compiling classic criminological theory into an integrated theoretical framework provide additional explanatory power? Moreover, can this combination lead to the creation of tension between competing theories at different levels of analysis? These concerns are noted by the authors (ibid, p. 79) who accept that this inevitably presents problems when empirically testing the theories. The inductive approach to the analysis of this thesis will avoid the need to ‘test’ each theory rather it will use them as guides during the data analysis stage.

### 5.4. Consolidating theoretical developments

This section will unpack the unwieldy theoretical frameworks proposed in the state-corporate and crimes of globalization literature on each level of analysis and discuss how each will be operationalised during the inductive analysis of the EIB.

#### 5.4.1. Macro level of analysis

In the state corporate crime literature, the authors claim that the macro level of analysis is based on a Marxist analysis of capitalist production and the role of the state (Kramer et al, 2002), whereas in the crimes of globalization literature this is often referred to ambiguously in short hand as political economic theories without being explicit as to their Marxist underpinnings (Rothe and Friedrichs, 2015, p. 72). However, in both literatures there is a lack of clarity as to how Marxist theory and/or political economic theories are to be used – rather, authors tend to discuss to the connections between capital accumulation and neoliberalism as the structural forces that form the backdrop to organisational deviance.
The omission of Marxist method and detailed theoretical elaboration from the case studies is criticised by Lasslett (2010) who argues that this limits their reading of events to mere ‘sensory perception’ and therefore case studies fail to properly understand the structural processes that underpin organisational deviance. This perceived weakness of the theoretical framework at the macro level is also questioned by Tombs (2012) and later by Whyte (2014) who suggest that case studies have become overly focused on the spectacular at the cost of understanding the a priori social relationships that produce it, or as per Tombs’ invocation of Mathiesen (2004, p. 37) “to cut the event out of the fabric in which it exists.”

“Such topographies only help us to identify specific forms and exchanges that are of a particularly criminogenic character, they do not help us to understand the substantive social forces that inform these immediately perceived realities.” (Lasslett, 2010, p. 227)

“With few exceptions such analyses focus upon what are essentially forms of discrete joint ventures between corporations and states, either at specific moments or towards specific ends, thus abstracting these from a more generalized set of social relationships, which are ongoing, enduring and more akin, in fact, to a process. In other words, despite the clearly-stated, and genuinely innovative, conceptual intentions of Michalowski and Kramer – that the focus should be on relationships not acts – the work which has utilized and indeed sought to develop this concept has overwhelmingly focused upon discrete acts and paid inadequate attention to the nature and dynamics of state-corporate relationships.” Tombs (2012, p. 175)
“The concept, as is currently formulated and presented in the literature, is both theoretically limited and limiting, in so far as it only captures the state-corporate relation as an immediately observable institutional phenomenon in what are described here as “moments of rupture.””

Whyte (2014, p. 237)

As we will see in chapter 7, this thesis will explore the macro conditions in which EIB lending activities take place – section, 7.2.3., in particular, will position the macro level analysis away from Marxist theory to incorporate financialisation as an alternative concept to neoliberalism and globalization (though interrelated) as a macro level force that influences EIB organisational deviance. It is this analysis that will provide a contribution to the above debate proposed by Lasslett, Tombs and Whyte (returned to in section in 10.2.). In addition, section 7.1.4. will incorporate an additional economic perspectives and theory to analyse the EIB’s lending activities - that of resource dependency theory used within the literature on the sociology of organisations on other IFIs (section 2.4.) - this will also have implications for the meso level analysis (especially section 8.2.5.) that is directed toward the internal world of the EIB.

In addition to economic theories, Rothe and Friedrichs (2015, p. 64) suggest that anomie theory can be used to analyse the behaviour of IFIs. Anomie is the societal state in which conventional normative standards are diminished leading to an environment that is more conducive to organisational deviance and crime. As controls weaken deviant subcultures arise resulting in the normalisation of misconduct. Twyman-Ghoshal and Passas (2015, p. 106), through an adapted version of anomie – ‘dysnomie’ – meaning ‘difficult to govern,’ suggest that that these processes exist at the macro level - globalisation and neoliberalism produce opportunities for transnational crimes and motivates people and organisations to take advantage of them, while at the same time these forces expose weaknesses in social controls that are unable to keep pace. In the context of IFIs, strong emphasis is placed on
the goals of the IFIs but without sufficient regulation and standardized norms that guide the goal achievement. As a result of operating without adequate external and internal regulation anomic conditions are intensified. These observations are relevant for the inductive analysis of the EIB and result in the questions - what are the conditions within which the EIB operates and to what extent could they be dysnomic? This question will influence section 7.3.4. through the analysis of the relationship between EU/member states legal and regulatory frameworks and the connection to EIB organisational deviance.

5.4.2. Meso level of analysis

This thesis will use the EIB as the central unit of analysis and has already signaled that the meso level of analysis is of primary concern. Unlike previous case studies in the crimes of globalization literature, this thesis benefits from access to EIB officials which provide data on the internal organisational processes that lead to the EIB taking decisions on its support for infrastructure projects – data which is thus far been absent from criminological research on the World Bank and IMF. As a consequence, and as will be shown in chapter 8, this access will contribute to the refinement of meso level theory as part of the theoretical framework.

The meso level of analysis in the state-corporate crime is in part influenced by Hopkins (1978) who argues that corporate crime and organisational deviance can occur through organisational structure and deficiencies in organisational procedures. Despite being referred to often in the state-corporate crime the use of this theory is often vague and without sufficient examples from the institution or organisation under study. This is even more pronounced when considering the literature on crimes of globalization that focuses on IFIs (e.g. Friedrichs and Friedrichs, 2002; Rothe, 2010) - if deficiencies in IFI organisational procedures can facilitate organisational deviance, then what are those procedures? In the case of the World Bank and the IMF– which specific directorates of the institution suffer from
procedural deficiencies? Do they arise from the institutions’ appraisal procedures, from the way that decisions are taken within the governance structures of the organisations or as part of ex-post compliance regimes that are designed to ensure funds are deployed in the correct way? Questions such as these are informed by the desire to better understand the organisational setting of the EIB as an original contribution to the current research on IFIs and will be primarily answered in chapter 8 in which a detailed analysis of the EIB appraisal process and governance boards will be presented.

Kramer (1982) underlines the importance of organisations goals at the meso level of analysis and suggests such goals are diluted the further down the corporate ladder one travels – i.e. while the overriding mission of the corporation is the realisation of profit, as one travels through the organisation the profit motive is broken down into smaller tasks which considered separately, may not be directly related to the generation of profit but may do so when assembled with other objectives. Kramer identifies the importance of these sub-goals in the Ford Pinto scandal to show how sub-goals of the engineering department to reach a certain weight threshold meant that safety regulations were eschewed in order to reach pre-defined targets. This conceptual insight will be used when applied to the EIB and generate a series of questions – what are the sub-goals of the main EIB directorates most closely related to the project cycle? Can one directorate’s objectives override others? Can this tension arise to the EIB taking certain decisions on projects which favour the realisation of one directorate’s sub goals over another? To what extent can these tensions be a factor in causing the EIB to engage in organisational deviance as identified in chapter 4?

Another important meso-level consideration relates to the way in which critical decisions are taken within organisations both in terms of personnel and governance structures. Building on the work of Clinard and Yeager (1980), Kramer (1982) places importance on this distance between the site of decision making and that of implementation, arguing that it is often this
space in which deviance can occur. When applied to the EIB this results in
the question - what technical information from the EIB Projects Directorate
is available to the EIB management when making decisions on whether to
approve EIB support? The importance of this link will be explored in
sections 8.1. and 8.2..

5.4.3. Micro level of analysis

The micro/interactional is the most overlooked and underused level of
analysis resulting in a lack of knowledge of how powerful actors who
occupy senior positions in organisations conceptualise their relationship to
the organisation (Kauzlarich and Matthews, 2006, p. 243). However,
within both sets of literature any profound or deep analysis of individuals
within the organisations under study is absent. This is no doubt a result of
the difficulty for researchers in accessing such sites, resulting in a reliance
on secondary data sources (such as court transcripts) for any analysis of the
micro level. This is disappointing considering several classic
criminological studies have accessed such sites in the past (see: Lane,
1954; Clinard, 1983 and Braithwaite, 1984). It should be noted that no case
study thus far in the crimes of globalization literature has used interviews
with employees of World Bank or IMF nor any large financial organisation
as a primary research method.

Secondly, and arguably more importantly, the lack of focus on the
interactional level can be explained by the tension between corporate crime
theory at micro and meso levels of analysis. In the 1970s the study of
corporate crime moved away from interactional/individual level theories
toward concentrating on organisational theory paradigms (Schrager and
Short, 1978; Gross, 1978) with studies emphasising the importance of
organisational rather than individual etiological factors in the production of
crime. Little attention is paid to the benefits on returning to individual level
theories that have faded from the subject in previous research.
Interactional level theories may be a rich data source when analysing the relationships between individuals and their work or explaining corporate crimes that can be more individualistic in nature such as embezzlement or bribe paying (Cressey, 1953) – but when applied to EIB supported projects that involve hundreds of actors operating in concert at multiple levels requiring collective decision making the importance of individual actors in the activities outlined in Chapter 4 seem, at first, limited. Building on Langton and Piquero’s (2007) research into the strain theory and corporate crime, Rothe and Friedrichs (2015, p. 66) suggest that strain theory may be one such interactional level theory to explain the behaviour of individual officials in IFIs as a factor in organisational deviance (one which must be further facilitated by meso/macro factors) – the potential contribution of strain will be explored in section 8.1.4. and its ability to interpret lending pressures within the EIB and influence on how projects are appraised during the project cycle.

5.5. Reassembling the theoretical framework and its application to the EIB

After considering the utility of the theoretical frameworks proposed in the state-corporate crime and crimes of globalization literature and related variations the following schema establishes the version which will form the initial departure point to the inductive research strategy.

The macro level analysis will consider the economic environment of Europe, the political environment of the EU, EU member states (as EIB shareholdlers and as hosts of EIB projects) as well as other international institutions with whom the EIB collaborates. The meso level of analysis will focus on the internal organisational setting of the EIB with a specific focus on the how organisational goals are formed, how internal structures, processes and procedures mediate internal behaviours and the extent to which the potential for the production of organisational deviance can be reined in by internal codes compliance and oversight. Lastly, the individual
level of analysis will focus on EIB officials and the extent to which personal goals can be achieved within the EIB organisational setting and the extent to which internal controls act as effective deterrents. As per the inductive research strategy the concepts within the theoretical framework are intended to assist the analysis phase, it is from this analysis that the theoretical conclusions shall emerge and therefore at this stage of the research process there are no theories attached to the framework below.

<table>
<thead>
<tr>
<th>Level of Analysis</th>
<th>Catalysts for action</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Motivation</strong></td>
<td><strong>Opportunities</strong></td>
</tr>
<tr>
<td>EU level/member states (Macro)</td>
<td>(1) Political and economic interests, resources and ideologies (2) Competition with other EU institutions</td>
</tr>
<tr>
<td>Organisational Level (Micro)</td>
<td>(1) Organisational Goals (2) Sub-goals (3) Sub-unit (departmental) pressures, (4) Reward structures.</td>
</tr>
<tr>
<td>Interactional Level (Micro)</td>
<td>(1) Ideologies definitions of the situation (2) Perceived objectives/reality (3) Normalisation of deviance (4) Obedience to authority.</td>
</tr>
</tbody>
</table>

*Figure 3. The conceptual framework to be used in this thesis. Author's own elaboration.*
5.6. Chapter conclusions

The integrated theoretical frameworks used within state-corporate crime and crimes of globalization produce unwieldy schemas featuring a dozen or so criminological theories plus others taken from related disciplines such as the sociology of organisations and organisation studies. The complexity of studying large, complex bureaucratic entities undoubtedly demands theoretical sophistication but equally there is a need for studies to use viable frameworks that don’t bury studies under the quantity of theory suggested. In order to balance the two needs, this chapter has discarded several theories that are not immediately relevant for this thesis on the EIB and instead has developed a workable basis to begin the inductive approach based on the macro, meso, micro approach identified in the two bodies of literature.
Chapter 6: Researching the EIB

6.1. Research Strategy

Before entering the mechanics of studying an organisation it is first useful to offer some definitions on exactly what constitutes an organisation. Particularly influential is Weber’s (1947) attempt to classify organisations as opposed to other forms of social organisation. As per Weber, the ‘corporate group’ is a site in which individuals interact with the organisation but this specifically includes parts of the population and excludes others – as per this understanding organisations are themselves a type of boundary (Hall, 1991, p. 29). Etzioni (1964, p. 3) also proposes an influential definition of organisations as social units which are deliberately constructed to seek specific goals, while Scott (1964, p. 488) adds that organisations are established to pursue specific objectives on a continuous basis and typically feature fixed boundaries, a normative order, authority ranks and communications systems. According to von Rosentiel (2004, p. 130) organisations are multi-faceted and complex entities within which people, tasks and processes are coordinated and structured in a goal-directed and purposeful way. The EIB shares these qualities and characteristics and therefore can be viewed as an organisation in a similar sense. These definitions are useful to better ground our understanding of the constituent elements that combine together to form an organisation, this rest of this chapter will focus on how research aimed at this type of entity shall be undertaken.

The research questions proposed in chapter 1 call for this thesis to delve into the EIB ‘organisational setting’ (now more clearly defined) to better understand how and why the EIB takes decisions with regard to its support for infrastructure projects in the EU. In order to best answer those questions, this thesis utilises the case study as a research strategy.
Dul and Hak (2007, p. 4) propose a broad definition of what constitutes case study research as a study in which (a) one case or a small number of cases in their real-life context are selected, and (b) scores obtained from these cases are analysed in a qualitative manner. Yin (1994) offers a more precise description and frames case studies as empirical enquiries that investigate contemporary phenomenon within its real-life context and are suitable for undertaking deep, detailed investigations into events, industries and organisational processes. Elsewhere, Skinner (1966, p. 21) suggests that in case study research “instead of studying a thousand rats for one hour each, or a hundred rats for ten hours each, the investigator is likely to study one rat for a thousand hours.” When this research strategy is applied to a single organisation, case studies can be used to explore how they function in substantial detail and have been used to explore health authorities (Pettigrew et al., 1992), the establishment of a new organisation (Hartley et al., 1983) and organisational change (Brown and Hosking, 1989).

Vaughan (2007, p. 17) argues that case studies, unlike other strategies, can be useful in understanding organisations as they “can expose macro-level influences, micro-processes, and cultural influences external and internal to the organisation” or as according to Hartley (2004, p. 209) “can provide analysis of the context and processes involved in the organisation under study.” Other disciplines have a long history of using the case study strategy such as in organisational behaviour studies (Biggart, 1977), psychological studies on individuals in organisations (Symon and Clegg, 1991) and through the emergence of organisation studies (Lee, 1992). When applied to the EIB, the case study strategy will enable this thesis to explore internal processes, inter-departmental relationships, decision making on the governing bodies and the EIB’s relationship with other EU institutions – knowledge which is currently missing from the criminological literature that covers IFIs. The richness and depth of data that the case study can generate in this context is not achievable through other research strategies.
As the EIB is the main focal point of this thesis it is treated as a single case study. Merkens (2004, p. 169) suggests that when undertaking single case studies there must be a sufficient justification as to why it was identified and not studied in comparison with other similar phenomena. In the case of the EIB, it is not possible to find comparable organisations in order to warrant a comparative case study of several organisations as all the other IFIs differ in fundamental ways. No other IFI contains the same composition (EU member states as shareholders) or operates primarily in the same location (Europe). To take the example of the World Bank – although its shareholding is comprised of nation states (and includes EU member states) it does not operate in Europe. The EBRD’s shareholding contains EU countries (plus others including the US and China) but its operations are concentrated in Central Asia. The German Kreditanstalt für Wiederaufbau (KfW), operates in the EU and globally in a similar way to the EIB, but it is not a supranational organisation as it is owned exclusively the German state. Taking the uniqueness of the EIB into account and the difficulty of comparison with other IFIs, the use of the single case study approach is justified insofar as a comparative organisation does not exist, at least when considered on the macro level of analysis. The benefit of choosing the EIB as a single case study means that it is possible to discover complex systems and recount the effect of decisions taken over time within a single research setting (Feagin et al., 1991, p. 10). This facilitates answering the research question insofar as the single case study strategy allows the project to unravel the events and processes that leads to the EIB taking the decisions or courses of action described in Chapter 4 whereas as a comparative study would not be able to achieve the same results.

Case studies have been criticised for their perceived lack of generalisability i.e. that conclusions arrived at do not contribute toward the further development of science as they are unable to be generalised to a wider population. This argument has been refuted elsewhere (Campbell, 1975; Eisenhardt, 1989; Yin 1994) but I will now turn to it using the EIB as an example. While in the previous paragraph I have argued that the EIB is a unique institution in terms of its shareholding and location of operations,
many of its internal processes and its approach to the project cycle are comparable to other IFIs e.g. as a lending institution is appraises projects before disbursing funds, it has Management/Director committees that vote on projects and who are simultaneously representatives of states, and it also monitors how its funds are disbursed in order to check their implementation is consistent with the organisation’s policy objectives. This suggests that at least some of the findings of this study may be generalisable to other IFIs, or at least, may provide suitable starting points for research into those organisations.

Case studies tend to be inductive and this thesis will continue in that tradition. An inductive process allows the researcher to explore issues in depth, in their organisational context with theory emerging organically from the process itself rather than as an a priori theoretical position. Therefore, the theoretical framework as established in Chapter 5 serves to orientate the analysis and is not a hypothetico-deductive framework that is to be tested from the data collected.

6.2. Methodology

6.2.1. Method 1: Semi-structured interviews

The first data collection method used during this project was semi-structured interviews with experts/elites that a) work directly for the EIB or b) work in other institutions that work closely with the EIB such as other EU institutions, a national authority or EIB customers. According to May (2001, p. 120) interviews yield rich insights into people’s biographies, experiences, opinions, attitudes and feelings and, in addition, provide insights into events which the public knows very little, activities that take place behind closed doors or with legal secrecy instruments applied. Interviews also provide detailed information about the experience of employees working in an organisational setting, and therefore, considering these factors it was the ideal method to assist in better understanding internal EIB processes that lead it to taking investment decisions or
engaging in certain behaviours relevant to this thesis. In addition, semi-structured interviews provide the interviewer with a rough idea of the structure and content of the interview but also leaves enough flexibility to engage with new emergent themes. This requires skill on part of the interviewer who must be sufficiently comfortable in covering new subjects to which the interviewer may not be familiar.

As previously stated, by virtue of their employment within the EIB, EIB officials can be considered as experts or elites. Academic studies that interview elites are relatively rare when considering the influence that this group has on the world and research on this group is sparse albeit with some notable exceptions (e.g. Dexter, 1970; McDowell, 1998; Ostrander, 1993). Elites have high levels of both aggregated or specific knowledge about internal organisational processes and interviewing them can reveal much information that is out of public view. Conversely, experts can also deploy strategies to prevent themselves from revealing information or by presenting versions of events that is consistent with a personal agenda. The researcher should take this into account and extravagant claims made during interviews should be certified through other sources. In this study this was done by the secondary method of document analysis (refer to 6.2.6. on document validity).

One additional concern of using interviews as a method relates to the depth and quality of the sampling. This is important as research should not be dominated by one actor’s version of events. In order to counter this charge, a suitable number of interviewees must be found. At the end of the interview stage, 18 interviews with EIB officials were analysed and contributed toward the study’s findings. A further 5 were discarded: 3 contained data which was no longer relevant for the study and were classified as failed interviews, 1 interviewee later requested that their interview be removed from the study while the last was removed due to the possibility of identification - the respondent had a highly specialised job role meaning the person could be easily identified from the discussion of
their work activities. In addition, 13 interviews with non-EIB actors were undertaken e.g. from other EU institutions such as the European Commission and European Parliament as well as representatives from EIB business partners.

Increasing the sampling pool would have improved the study but in the context of a difficult, even hostile, research environment (described in section 6.5.) the number used in this study was deemed sufficient. Perhaps more important to the study was the type of respondent rather than the number – the officials interviewed in the thesis were all senior EIB officials with many years of experience working in the Bank and could offer detailed views on negotiations which had happened in areas of the organisational setting where decisions had been taken. It was also important to secure interviews with EIB officials across a range of directorates in order to avoid gaining an understanding weighted towards a dominant view from one area of the Bank i.e. if interviews had been undertaken primarily with technical specialists over those working in the commercial arm of the organisation then it would have led to the generation of ideas and research inquiries that would have been driven by the views and concerns of such technical specialists. In the end, interviews were sought, and secured, with EIB officials from several directorates.

6.2.2. Organising and undertaking interviews

When contacting experts it is essential to build trust and rapport from the outset – in order to achieve this each interview request was tailored to each EIB official that communicated knowledge of their role in the EIB and the indication that an interview would be directly connected to their specific experience of the EIB. A benefit of this approach is that respondents wouldn’t feel as if they were being ‘cold-called’ merely because of their employment with the EIB but their specific insights were required by the research. In addition, within the initial request the issue of anonymity was addressed and the possibility of discussing the University’s data protection
policy with one of the project’s supervisors was offered. An additional, albeit symbolic, way of building trust in the interview was through the presentation of the researcher - in all meetings a formal business suit was worn in order to ‘blend in’ with the very formal environment of the EIB. An additional benefit to wearing a business suit was that during the interviews I felt more confident and less like an intruder into the formal corporate atmosphere of the EIB or the nearby bars and restaurants of Luxembourg in which some of the interviews were undertaken. The enhanced confidence I experienced from wearing a suit is consistent with some studies which have documented the connection between confidence and formal clothing (Sleipan et al, 2015).

Ahead of the physical interview it was requested that an audio recording of the interview be made in order to ensure accuracy. The majority of respondents accepted the need to record and were trusting of the promises made to uphold anonymity through storing the recording in an encrypted format. 2 interviewees did not give permission to record the interviews – in place of an audio recording extensive notes were taken during the interview. These notes were shared with the interviewee who checked for accuracy and in both cases offered additional information.

Prior to undertaking interviews ample time was spent on researching the interviewee and the subjects within the EIB that the individual was most knowledgeable about e.g. if an interviewee was organised with a motorway engineer then some general reading (industry guidelines, relevant EIB documentation etc) was undertaken on that subject to familiarise myself with some of the specialist vocabulary that might be used by the respondent during the interview. Interviews were primarily semi-structured and involved detailed topic lists, however, due to the complexity of some questions and the technical content, some questions were written out in their entirety on the topic list to ensure accuracy. Although the topic list served as a guide for the interview it was often the case that EIB officials revealed and shared knowledge about other relevant organisational practices and
therefore I had to be flexible enough to explore these new avenues with little prior knowledge or experience. This ability was slow at the beginning of the interview process but grew quickly as my skills at probing the interviewee and reactions to their answers improved during the course of the interviews.

Interviews lasted between 1-3 hours and followed a natural arc i.e. at the start more general questions were posed before building up to the middle part before ending with a ‘cooling down’ period in which more general questions were posed and personal reflections were requested. The first portion of the interview was also the most difficult insofar as it was necessary to establish rapport while finding a balance between asking questions that could be perceived as too simple i.e. boring for interviewee, and not beginning the interview with detailed questions that could feel invasive and out of context. All interviews required finding balance between these two extremities. During some interviews respondents became defensive when talking about certain subjects – when this occurred I tried to probe once or twice more, but if the respondent became exasperated then this line of questioning was paused – however, once rapport grew it was sometimes possible to return to this previous line of questioning and data was gathered in this way. Each case was different and many times this strategy was unsuccessful.

The nature of EIB officials’ knowledge varied – it could be technical in nature (EIB officials involved in the technical appraisal of the project) or involved in the commercial side (EIB officials who manage business relationships with loan counterparties). Much of this knowledge cross-pollinates between EIB officials as each project combines both technical and commercial expertise with discussions between team members from different areas of the bank. This exchange of information also took place on a seniority axis with senior management (Management Committee and Board of Directors) possessing overviews of projects (having had access to the technical/economic studies prior to voting) while technical staff
possessed more technical knowledge but less information with regard to a project’s development through the EIB governance structures i.e. what is known as the political dimension of the project. In all, internal EIB knowledge on specific projects was rather compartmentalised but simultaneously shared and understood by all EIB officials interviewed i.e. all sections of the bank had a sense of which projects were more successful than others and which had invited controversy.

6.2.3. Interview Analysis

When the interview transcripts were completed they were coded using NVivo qualitative data analysis software. In order to code the data several rounds were undertaken. Initially this was done according to the theoretical framework so that ‘macro,’ ‘meso’ and ‘micro’ were three broad categories within which many sub-codes and further distinctions became available. For example, the code ‘meso’ represented anything which was related to internal EIB processes, this was further divided into EIB directorates such as ‘Projects Directorate’ which could then be divided further into ‘Projects Directorate relationship w/ other directorates.’ Concepts that were already included in the theoretical framework established in Chapter 5 were also added. An example of which could be ‘standard operating procedures’ which allowed for the comparison of certain EIB processes from different vantage points by different EIB officials.

After several rounds of coding, links and connections between respondents were isolated and explored further – generating new codes and contributing to the theoretical arguments presented in Chapter 7 and 8. One advantage of coding data from expert interviews is that responses are almost always cogent, well formulated and containing extensive detail. However, this command of data can also be used to obfuscate information or present it in a way which is more amenable to the agenda of the research subject. In some interviews EIB officials used such tactics to avoid answering certain questions. Despite my best efforts to keep the respondent pinned down onto
one subject there comes a point in interviews where respondents will not engage on a particular subject and the researcher must move onto new subjects. This can often frustrate the research process as the researcher is aware that a respondent is acting as a gatekeeper to a cache of new knowledge that could contribute to the project and reveal new insights.

In all, 48 interviews were undertaken throughout the thesis with 20 of those being EIB officials – the rest being from other EU institutions, national authorities and the private sector. Given the difficulty of accessing respondents (as evidenced previously discussed in chapters 2 and 5) who in some cases are violating their employment contracts to participate, the number of EIB officials was adequate, especially given the length of some interviewees and the level of seniority of respondents. When discussing the sample sizes one stubborn question always remains – how many is enough? In the context of this study, interviews with 18 EIB officials were used in which emerged a range of detailed, deep accounts of the EIB organisational setting and gave frank accounts of internal processes. Seen this way, the sample was sufficient because the quality of the data was high. This inevitability could have been extended if access had been easier.

6.2.4. Method 2: Document analysis

Documents serve as records or pieces of evidence and inhibit a prominent position in modern societies through their perceived ability to offer a piece of reality in the form of mutually recognisable artefacts. In this sense, documents are independent of time and place and through shared assumptions perform as informational currency between viewers. The extensive use of documentation nowadays is attributed to the increasing legalisation and organisation of all areas of life (Wolff, 2004, p. 284). The study of documents in qualitative research requires data to be examined and interpreted to elicit meaning with the objective of creating empirical knowledge (Corbin and Strauss, 2008).
Documents can be seen as standardised artefacts in so far as they typically occur in recognisable formats; case reports, contracts, annual reports, judgements (ibid, p. 284) and it is often the case that the format is a legal requirement or is the joint decision of a number of bodies working in cooperation. In addition, documents can be seen as institutionalised traces which means they may be used to piece together the objectives and intentions of the organisations (or individual departments) from which each document is produced. The analysis of documents is relevant to qualitative case studies through their contribution toward the production of rich, authoritative descriptions of a single phenomenon or event that can often take place within an organisational setting (Stake, 1995; Yin, 1994).

The two criminological sub-fields that most inform this thesis (state corporate crimes and crimes of globalization) use documents as a main method, as do studies from outside of criminology that focus on IFIs (e.g. Weaver, 2008; Babb, 2009). The benefit of using documents within criminological studies is that they can ground events or decisions into a chronology that can be used to facilitate the analysis of organisational deviance by revealing the actors and processes connected to events. As a large bureaucratic organisation with over 3000 employees the EIB produces vast amounts of documentation that is the internal language of the organisation used for dozens of functions such as inter-departmental communication, project appraisals, minutes of meetings, internal policy documents and evaluations. Each document is then stored in the EIB archives and together comprises the institutional history of the EIB. The scope of this documentation is vast given the EIB data management system (gestion électronique des données – referred to internally as ‘ged’) which tracks EIB officials’ digital workspace and any collaborative document across departments. Given the abundance and primacy of EIB documentation it is necessary to include it as one of the methods for this thesis.
6.2.5. Document types, access and collection

EIB documents can be divided into two broad groups. The first are those that are used internally and those that are designed to be publicly disseminated. The first type are communicative tools used to work toward the organisation’s goals while the second are composed for the processes of social legitimation and reflect an image of how the executives and public relations officials wish to convey EIB operations to the general public or specific audience (potential customers, political supporters or detractors etc). This thesis analysed both types of documents through the use of a hermeneutic approach that approached the meaning of the documents from the point of view of the creator.

Access to EIB documentation was mainly undertaken via downloading from the EIB website both on standalone pages and through its online database that holds thousands of documents relating to project appraisals, internal policies and standards, evaluations of individual projects or policies, board minutes and guides to internal operating procedures. These documents formed the main document sample for the study. However, it is clear that this amount of documentation is a fractional portion of the total EIB documentation, the majority of which is not for public disclosure. In addition to EIB documentation, the study incorporates documents from other EU institutions and other IFIs (statutes, legal and policy frameworks, annual reports, press releases etc), as well as press articles relating to EIB financed projects and its customers (a full list of the documents used in this thesis is presented in annex 3).

The EIB Group Transparency Policy establishes the EIB’s duty to disclose certain types of information in line with the principle of openness as enshrined in Article 1 of the Treaty on European Union (TEU) and Article 15(3) TFEU which provides for the right of public access to documents. In addition, the EIB is a signee of the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental
Matters (known as the Aarhus convention) which establishes the presumption of disclosure i.e. all EIB documents are subject to disclosure unless there is a suitable reason for them not to do so such as commercial concerns or threat to intellectual property. Tombs and Whyte (2003) argue that as private corporations are not obliged to disclose data in the same way as public bodies, their constitution is designed in a way to limit the transmission of documents to public ownership. In this sense, the EIB operates as a private corporation – its Transparency Policy commits it to certain levels of disclosure, but in practice, it frequently rejected applications for documents (e.g. ex-post reviews of specific projects) citing commercial concerns or client confidentiality. Throughout the process of attempting to request information such rejections often felt arbitrary and without merit, but as a researcher there was no recourse to dispute such a position.

Interview respondents, after a certain level of mutual trust was acquired, were asked if they would share confidential documentation regarding specific projects. All of these requests were denied – interviewees were prepared to breach EIB rules on speaking to researchers but were not prepared to pass over confidential documentation. Combined together, the fraction of EIB documentation accessed and the refusal of respondents to assist in accessing such documentation is a weakness of the thesis. However, this is a mainstay in organisational research in which the researcher can only access partial amounts of documentation and is never given carte blanche to inspect all documents.

The vast majority of documents used during this thesis were downloaded or accessed from institutional sources. This undoubtedly increases the validity of the documents employed given that they have been through internal institutional vetting process before being made available for public consumption – in this sense, they have become organisational artefacts. One document that was used consistently in this thesis (the OLAF report on the Budapest Metro project) was leaked by an OLAF official and was found on the internet. The fact that the document was leaked posed some doubts as to
its validity – however, given the documents length (150 pages), the level of
detail (both of insider knowledge and legal frameworks) and frequent
references to its authenticity in the media it was decided that the document
was sufficiently valid to be used.

6.2.6. Validity of Documents

When selecting documents the researcher must develop a suitable
framework in order that standards on methodological rigour and reflexivity
can be adhered to. Scott (1990) has developed a typology of four criteria for
the use of documents: authenticity, credibility, representativeness and
meaning. Following below is a discussion on how these criteria were used
to increase validity of the documents relating to the EIB:

- Authenticity. In order to use documents the researcher must be
  convinced of their authenticity and attributable to the object of
  research. This proved to be straightforward during the collection
  process as most EIB documentation is published on its website
  allowing the researcher to assume a high level of authenticity.

- Credibility. This refers to the researcher’s capability to adequately
  analyse documents and to be aware for the potential for the
  reproduction of errors in documents. EIB documents produced for
  external consumption were read cautiously in attempt to see beyond
  the filters applied by the EIB press department. Statements made on
  EIB documents without the necessary qualification were ignored e.g.
  “Management Committee pleased with EIB Spain lending in 2017”
  were not considered to be useful source of data.

- Representativeness. If documents are representative then they may
  be part of a series of connected documents. The EIB uses standard
  templates for project appraisals and annual reports. When found on
  the EIB website this increased the validity of the documents.

- Meaning. The intended, received and content meaning of the
  document concerns the potential for the document to be
  understandable to the researcher. Documents produced by the EIB
can be of a technical nature, both in terms of what financial instruments are used by the EIB. To ensure the meaning of technical information was understood adequately by the researcher documents were cross checked with other sources. For example, if documents focus on a specific financial terms such as ‘capital adequacy ratio’ – the meaning of this term was cross checked with other sources in order to increase the researcher’s understanding of the term and its use within the document.

6.2.7. Document Analysis

In order to make sense of the mass of documentation collected, particularly that of EIB origin, a similar coding strategy was adopted to that of the interview stage. Firstly, initial coding was undertaken that separated the document’s contents into three levels. Firstly a ‘macro’ code was used to identify any of the document’s contents that referred to the EIB as a supranational organisation, its position in the EU framework and its role in the European economy. Secondly, a ‘meso’ code was used that included anything relating to internal policies, practices and processes of the EIB. Thirdly, a ‘micro’ category was included that contained any direct quotes from EIB officials.

A second round of coding further sub-divided these concepts in order for new codes to emerge. For example, the macro level of coding came to include codes such as ‘EIB – EU Commission relations,’ ‘EIB in Spain,’ and ‘EIB shareholders.’ The meso level was further developed to include codes such as ‘Role of Projects Directorate’ or ‘Voting on Management Committee.’ While the micro category was subdivided to include ‘Reflections on career at EIB,’ ‘Individual in Project Appraisal.’ This process was repeated until dozens of codes and sub-codes emerged.
6.3. Data Triangulation

Triangulation, in its broadest sense, is the observation of the research subject from at least two differing vantage points. Often in qualitative studies the researcher is expected to draw upon at least two sources of evidence to seek convergence and corroboration through the use of different data sources and methods. Patton (1990) argues that triangulation helps the researcher guard against the accusation that a study’s findings are simply an artefact of a single method, a single source, or a single investigator’s bias.

The concept of triangulation was applied at several stages during the research process. Firstly, it was used to create questions for interview respondents i.e. information from documents or observations made on their content were used as the basis for questions for EIB officials to generate new data on how events, processes were experienced by EIB officials. An example of how this was used to generate data can be seen in the following question put to a high ranking EIB official:

Q. The European Parliament has criticised EIB involvement in the Castor case. How do you and your colleagues react to criticisms form the Parliament on individual EIB financed operations?

The same principle could be used but backwards. If an interviewee remarked on the importance of a particular EIB department with regard to one certain event then that gave the impetus to try and identify EIB documents that a) discussed the same event b) offered a counter narrative. In this sense, both methods were used to generate new data which would have been unavailable or overlooked by the researcher if triangulation hadn’t been used in this way.
Triangulation was also applied when analysing interview transcripts. Often respondents made claims which due to their sensitive nature required to be substantiated elsewhere, either through documentation or additional accounts. Regrettably, some interview data was not able to be used as it could not be triangulated with any other source. This was at times disappointing as often data relevant to the research question had to be omitted in order to maintain the data’s overall validity. With access to more time and respondents this may have been resolved.

6.4. Sampling

Sampling within case study research should be underpinned by the objective of studying a certain sample which most assists in answering the research question. In the case of this study, the research question is not ‘what percentage of EIB projects are controversial?’ and therefore statistically driven, but is centred on a qualitative understanding of how the EIB comes to support certain projects. In addition, this thesis accepts such projects are not the norm and represent rare cases.

As a result of this observation, this thesis chose three vignettes in Chapter 4 as outlier cases which are somehow unique, out of the ordinary or extreme. It is these ‘black swans’ that reveal most information about how an organisation can at times cross lines and engage in activities which are somehow organisationally deviant. Flyvbjerg (2006, p. 229) refers to such instances as “critical cases” insofar as they can have strategic importance in relation to the general problem – the analysis of three infrastructure projects will therefore assist generating a better understanding of EIB organisational processes and the extent to which they can cause organisational deviance.

6.5. Accessing the EIB

As a result of EIB officials’ specialist training and education, high level of remuneration and their ability to take (or at least influence) decisions that can affect the lives of EU citizens - it is right to consider EIB officials as elites or as powerful actors. EIB officials match Lilleker’s (2003, p. 207)
conception of elites as individuals who are in close proximity to power or policymaking. Obviously not all EIB officials possess the same amount of influence and there are clear internal hierarchies in the EIB e.g. senior management (the EIB Management Committee and Directors) are more central to the decision-making process (through voting power) whereas technical specialists (such as those in the Projects Directorate) undertake a different set of tasks which are, nevertheless, essential to the running of the organisation. Then, there are the hundreds of EIB ‘backroom’ staff that maintain the IT infrastructure or process transactions. The central objective of this thesis was to gain access to these EIB officials (across the internal hierarchy) in order to answer the research questions as posed in Chapter 1. This section will describe the process of accessing EIB officials and the institutional response of the EIB to being researched.

Firstly, it is important to consider the reaction of the organisations to being studied as it inevitably affects the outcome of the study and eventually its relative success. If no access at all can be achieved to the institution under study then results will be limited. Large financial organisations such as the EIB can mobilise resources in order to maintain distance between the researcher and institution through a) physical barriers b) officials in the public relations department who can deploy strategies and actions to dissuade, diminish or discredit the researcher and the research process (Thomas, 1995, pp. 5-6). In this thesis the EIB adopted a range of techniques in order to hinder the ability of the researcher to undertake the study to which I will now turn.

On 2 September 2016 my supervisory team made a formal request in writing to the EIB Civil Society to discuss the possibility of the EIB becoming an active participant in the research project. The request sought permission to arrange interviews with EIB officials at the EIB headquarters and inspect EIB internal records relating to its support for specific infrastructure projects. Included in the request was a project proposal and a preliminary research timetable.
On 4 October 2016 a formal response was received from an EIB official from the Civil Society Unit declining participation in the project citing a lack of availability of EIB personnel, as well as referring to the confidentiality of EIB document archives. The officer provided himself as a contact point for the EIB to whom questions could be submitted. It should be noted that this offer fell within the scope of the EIB Transparency Policy and did not represent any additional access for the researcher insofar as this offer could be extended to the general public. The lack of interest shown by the EIB in engaging with the project was, from an academic point of view, disappointing as the results of the study point to areas of the bank’s processes that can be improved. It is also the case that outside analysis may bring new perspectives to organisations from which they could learn and use the knowledge to improve their performance.

As the official approach through the ‘front door’ was blocked, the decision was taken to go for ‘plan B’ and contact EIB officials through other channels. This was done directly through the business social media platform LinkedIn and by official EIB email addresses found online. Identifying EIB officials on LinkedIn proved to have several advantages: firstly hundreds of EIB officials have public LinkedIn profiles, officials publish substantial biographical information (education, photos, age etc) and details about their careers within the EIB (past and present departments, tasks, specific projects, expertise). This information was used to identify respondents that most corresponded to the requirements of the research question i.e. EIB officials working in the Projects and Operations Directorates who work on the project cycle were contacted whereas backroom staff such as officials in the IT department were not.

Finding relevant EIB officials on LinkedIn gave no guarantees as to their participation in the study. Firstly, I sent brief connection requests to potential respondents introducing myself as a researcher from Utrecht University asking if I could become a contact on the platform in order to send a more detailed proposal after. This process was repeated for all of the
relevant potential respondents that were identified. To assist this process I kept a database of all connection requests in order to prevent repeat requests being sent. Once contact requests were accepted a more detailed project proposal was sent along with additional information about the study and the respondent’s potential role in it. At this stage the majority of respondents declined to participate while the ones that accepted then agreed to be interviewed. The response rate for contact requests was around 50% while the amount of people that participated in interviews compared to the number of contact requests made was around 1%. On considering the potential for any strong selection bias among this 1% I was encouraged by the sample being comprised of EIB officials from several directorates (e.g. Projects Directorate and Operations Directorate) but also from several different positions in the vertical hierarchy encompassing officials high up in the governance structure but also those from medium seniority which comprise the ‘rank and file’ of the EIB.

The extremely low rate of interviews organised in this manner was disappointing but emphasised the ‘numbers game’ that research of this type entails – hundreds of requests must be sent in order to secure the participation of very few respondents. Once interviews were undertaken or a definite ‘no’ was received the publicly viewable connection on LinkedIn between researcher and respondent was deleted in order to contribute toward preserving the respondent’s anonymity.

Interview respondents were also identified through their appearance on specific EIB documents related to the study’s focus (e.g. technical experts and loan officers). Documents were obtained from the EIB website and if they contained names of individual EIB officials carrying out functions that were related to the study’s objectives then they were also contacted. In addition, many EIB officials give public presentations regarding their work at the EIB that includes their contact details. Often conference organisers leave such PowerPoint documents on the internet creating another potential avenue to identify and contact EIB officials. Many EIB officials ignored the
requests, some responded citing confidentiality concerns preventing them from doing so, while some officials sent rejection emails and then contacted me through their personal email addresses to arrange interviews.

On learning that the research process had continued outside the reach of the EIB Civil Society Unit a communiqué was sent to all EIB officials requesting that they should not participate in the research process, reminding them that doing so would represent a breach of their employment contract. The message, which should be considered as a thinly veiled threat by an EIB manager to its staff, was posted on the EIB’s internal internet system but was leaked to me from an anonymous source (see appendix 1). The effect of this warning was mixed: many interviews that had been arranged were suddenly cancelled by EIB officials who were understandably weary about participating in the context of such threats, but simultaneously, some EIB officials previously uncontacted were frustrated by the official position of the EIB to not participate and made themselves available for interviews as a show of support for the academic aims of the study.

Finally, and despite the best efforts of the EIB Civil Society Unit to subvert the research process, 18 interviews were conducted with EIB officials. Between November 2016 to June 2017 interviews were held in EIB headquarters, in bars and restaurants in the city of Luxembourg, in respondents’ homes and in some cases via Skype (see appendix 2 for the interview list).

This study managed to access EIB officials despite the best attempts of the EIB Civil Society Unit to reduce the scope of the study by preventing participation. However, what was highlighted by this attempt was that organisations are porous, contain individuals with contrasting worldviews and attitudes toward academia and are unable to be controlled completely by one organisational department – particularly one which is not on the upper
tier of management. This conclusion should offer some encouragement to other criminologists attempting to undertake similar research in the future.

6.6. Ethical framework

6.6.1. Ethical approach

Commonly used ethical frameworks for conducting research in the social sciences are, according to (Schrag, 2010), historically rooted in the governance of institutionalised bio-medical research and its development of ethical frameworks that sought to prevent conflicts of interest between professionals’ clinical responsibilities and the requirements of research. Following this argumentation, these early codified ethical concerns were then transposed directly into the social sciences with little consideration for fundamental differences between the two disciplines (Emmerich, 2016). This, in turn, has produced a series of unresolved tensions that come to the fore when undertaking research on actors/institutions that defy the normal balance of power between the researcher and the researched.

The majority of criminological research focuses on street level crime and as a result, ethical frameworks are underpinned by a duty of care toward the research subject who can be vulnerable in several different ways and can become rendered even more so through participation in research. However, within this thesis on the EIB, the power relationship between researcher and participant is turned on its head. It is this reversal that pushes this project to reconsider what ethical behaviour might be required of the researcher when assumed power dynamics are no longer valid. Therefore, this section will outline the steps taken during the research process that were in line with an understanding of what may constitute research ethics outside of commonly accepted social science frameworks.

The ethical orientation of this thesis is influenced by Alvesalo-Kuusi and Whyte’s (2017, p. 5) call for a reconfiguration of research ethics that addresses the paradox in applying widely held ethical codes to undertaking
research on powerful institutions and/or actors i.e. when ethical codes are applied evenly to individuals from all social groups to address the balance of power, such codes in practice protect relatively powerful individuals. To place this paradox into two questions concerning the EIB – should the same ethical standards and rules be applied when conducting research on the world’s largest public lending institution to that of a victim of street crime? Can the invocation of the public interest override the EIB’s right to privacy? Underpinning existing frameworks is a view of research as being undertaken in a synthetic research environment (a legacy of its conception in bio-medical research) that does not take into account power relationships outside of the experiment setting – and it is here that we see the world of difference between the potential of the EIB to affect the lives of European citizens through its lending activities compared to the victim of street crime. Therefore, any research ethics that guide research on the EIB should be able to account for its relative power compared to the researcher.

Alvesalo-Kuusi and Whyte do not call for the abandonment of research ethics for when researching powerful per se, rather a for a radical re-conception that is based on the public or common interest. This provided the initial ethical starting point for this thesis on the EIB and posed a series of questions that guided the ethical concerns of this project in the context of the EIB’s decision not to participate in the project: should academia’s desire to study the EIB take priority when the EIB as an institution resists being studied? Given that the EIB is an institution which is at some level accountable to European citizens then this research took the position that it should be researched irrespective of the institution’s refusal to participate.

6.6.2. Revisiting the three ethical pillars of social science research

Alvesalo-Kuusi and Whyte (ibid, p. 6) suggest that in order create a more suitable framework three key ideas from the social sciences that form the bedrock of ethical codes should be revisited when undertaking research into
the powerful. I will now establish how I used these concepts to organise the ethical framework I operationalised when undertaking research on the EIB.

The harm principle

The harm principle is a core concept at the centre of established ethical codes and is commonly seen as inviolable. The principle is anchored in the notion that steps must be taken to minimise ‘harm’ to participants in the research process. When applied to this research on the EIB it establishes the dilemma – how can critical research on an organisation be conducted that does not damage the institution or its employees in any way? Firstly, the results of this study will not constitute an existential threat to the EIB beyond the potential for a public criticism of the institution that may pose a certain level of reputational risk. Secondly, this thesis has taken several steps in line with best practice to guarantee the anonymity of individual EIB officials who have participated in the study in order to prevent harm occurring to them as a result of such participation.

Invasion of privacy

During the research process anonymity and confidentiality guarantees were given unconditionally as a prerequisite for participation in the research. Given the sensitivity of this research, this ethical concern was a priority throughout the research process. On contacting respondents, reference was made to the study’s compliance with two documents: Utrecht University’s Policy Framework for Research Data and the Netherlands Code of Conduct for Academic Practice. The first document commits the researcher to establish safeguards to ensure research data remains confidential while the second ensures the researcher adheres to 6 concepts during the research process: honesty and scrupulousness, reliability, verifiability, impartiality, independence and responsibility.
Particular attention was paid to preserving anonymity in interview transcripts. In some cases, respondent’s answers were specific to such an extent that publication of those answers could lead to identification and censure of the respondent. For example (and hypothetically), if an EIB interviewee made reference to being a water engineer working in one smaller EU country, then this information could potentially compromise the interviewee as it would mean a very small pool of potential EIB officials who share this professional profile. All transcripts were checked for such indications and regrettably, many insightful pieces of data had to be omitted from the study in order to preserve the anonymity of the respondent. At times, such information was clearly in the public interest to be disseminated in this research but respondent’s anonymity was prioritised – as the granting of anonymity had been a pre-requisite for participation this initial agreement overrode concerns that information disclosure was in the public interest.

Prevention of deception

This concept centres around the concept of giving the respondent as much information as desired on the research project in order to make an informed decision about their participation. While the last two sections display an observance of accepted ethical behaviour, adherence to this point when applied to researching the EIB was complicated and deviated somewhat from the standard behaviour.

On contacting EIB officials the broad research aims of the project were disclosed but the theoretical orientation of the study was not. When establishing contact with institutions using heavily laden terms such as ‘state-corporate crime’ and revealing the institution to be the research subject do not assist the researcher in gaining access. Therefore, when contacting EIB officials such terms were not used however it was made clear that the research centred on trying to understand EIB financed projects that were obviously controversial and often these projects were named in interview requests. This type of disclosure revealed the critical nature of the
research but was framed in language that was more amenable to EIB officials. This position, I felt, was consistent the need of academia to study the EIB based on public interest concerns, even though it meant having to alter the framing of the research project in order to assist in securing access.

Contact emails generally followed a formula using three paragraphs containing the following information:

Paragraph 1:
- Declaration that doctoral research on the EIB is being undertaken by the Utrecht University.
- The university department supporting the study is the Utrecht Centre for Regulation and Enforcement in Europe (RENFORCE).
- The source of funding for the project as the European Commission.

Paragraph 2:
- The broad objectives of the thesis plus reference to specific EIB financed infrastructure projects.

Paragraph 3:
- The connection between the research project and the specific EIB official.
- Reference to the University’s ethical framework.
- Meeting request.
- Offer to explain the research in more detail.

In order to stand the best chance of access and to balance openness, the above contact letter was seen as occupying a sufficient balance of the two needs. If the contact letter had revealed the study’s theoretical orientation then access would have been much reduced. While if the contact letter had not made reference to the study’s critical position then interviews would inevitably be suspended when EIB officials believed they had committed to undertake interviews under false pretences. This led to the situation in
which respondents who agreed to be interviewed knew that the research would adopt a critical standpoint to the EIB and were not led to believe otherwise.

6.6.3. Research ethics and researching the powerful

The reconsideration of research ethics in this section should not be seen as a call for their abandonment, but rather their reconfiguration in order so that they not act as an obstacle for academics when undertaking research on the powerful. In this section I have demonstrated a possible path for other researchers that has a) committed to core concepts of existing ethical frameworks b) showed examples of when such commitments can be deviated from by invoking the public interest. Other researchers have elsewhere focused on the need for a ethically underpinned form rule-breaking and deception when researching the elite (e.g. Spencer, 1982; Lilleker, 2003) however, in this research on the EIB, and despite the official rejection of participation, an open and transparent commitment to certain ethical principles assisted in securing access to a number of EIB officials whose participation was predicated, in part, by that ethical commitment. Whilst it may be true that a different strategy could have yielded more, or less, access to EIB officials – this strategy meant that interviews were conducted in an open and transparent manner and contributed to the increased validity of the interviews as a data source.

6.7. Reflections on researching the powerful

Reluctantly, this study accepts that the refusal of the EIB to participate weakened the results of this thesis. The reduced access to the EIB as result of what can only be described as blocking tactics employed by the EIB Civil Society Office is a limitation to the project and is illustrative of the mechanisms that large organisations such as the EIB can deploy in these types of situations in order to evade being the subject of academic research. However, it is also worthy to consider here the counterfactual - what if the
EIB had granted extensive access? Other researchers have found that access can come with the imposition of caveats and stipulations relating to interview lengths and potential subject matter and organisations may even attempt to influence the final publication (Bradshaw, 2001; Lee, 1993; Welch et al, 2002), in general, studies of this kind, even when approved, are likely to be kept on a short leash (Jackall, 1988, pp. 13-14) and can imply the ‘capture’ of the project.

The position adopted by the EIB Civil Society Office is cause for concern given that the EIB is an EU institution and is ostensibly accountable to European citizens. As the world’s largest public lending institution, and as an EU body that provides capital for thousands of investments projects across the continent, EIB financed infrastructure projects have a profound effect on the lives of European citizens and therefore there is a strong public interest underpinning this study’s attempts to better understand how and why some of these projects result in disastrous consequences for the communities that host them. In this sense, the EIB’s refusal to cooperate with this research is indicative of the view of the EIB as an institution that sees itself as being disconnected from forms of public accountability. This is a mistake and during a period in which the European project itself is facing existential challenges it is essential that EU institutions are accountable to the citizens to whom they are intended to serve.

To end this chapter on a personal reflection of the research process - undertaking a project of this type involving close to a year of living in and around Luxembourg with extensive travelling to Brussels was a challenging experience, both professionally and personally. Sustained field work spent researching a single institution is demanding, but this project demonstrates that with sufficient time and resources criminologists can research powerful institutions and that barriers to access can be overcome. It is hoped that the findings of this project (both theoretical and the methodology employed) can serve as examples for future researchers preparing to undertake similar assignments.
Chapter 7: From EU policy objectives to EIB lending activities

7.1. From EU policy objectives to EIB lending activities

7.1.1. Introduction

This chapter aims to explore the international level forces that influence EIB lending activities, the legal frameworks into which such activities are directed and the external control functions that govern them. The chapter is structured in this way to match the catalysts for action as detailed in the theoretical framework (motivation, opportunity structure and control) with a chronological view of EIB activity focusing firstly on how it results in supporting projects (section 7.1.), the legal environment into which EIB investments are made (section 7.2.) and the control regime at EU level that regulates EIB activity (section 7.3.).

Section 7.1. begins by posing the question - what forces bring the EIB toward supporting infrastructure projects in the EU? This section will use the conception of motivation as used in the state-corporate crime literature (Kauzlarich and Kramer, 1998; Kramer, Michalowski and Kauzlarich, 2002 etc) as a catalyst for action to unpack the macro level forces that direct EIB lending activities.

This chapter will propose that the operational independence of the EIB can be strained by member states that seek to influence individual credit decisions taken by the EIB – behaviour which will be observed through the prism of research dependency theory. This pressure can then lead to the EIB supporting projects that contravene the bank’s normative commitments encouraging it to become organisationally deviant. The chapter will also explore the role of financialisation and dysnomie in providing the opportunities and lack of controls that facilitate such behaviours.
7.1.2. From statute to lending objectives.

As established in section 3.2., the EIB statute contains the long-term objectives of the EIB. Despite being originally drafted in 1958 it has survived EU expansion to 28 countries and an increase of policy areas (e.g. climate and ICT), but, its primary mission remains unchanged i.e. to grant loans and guarantees to facilitate the financing of EU priority projects (European Investment Bank, 2013, p. 15).

The statute establishes the EIB’s core tasks but the EIB’s function as an EU financial tool means it is constantly being directed toward more specific lending activities (i.e. sector specific or to reach specific policy targets) that are responses to EU policy initiatives which are in turn reactions to macro level events. For example, if unemployment rises in one member state then the EIB may be directed to search for projects which support job creation in a specific territory and sector.

This process is driven by the EU policy cycle and the EIB Board of Governors:

1. The EU policy cycle – the European Commission develops strategies, initiatives, instruments in response to macro level political-economic and social events (financial crisis, EU expansion etc) or toward achieving specific targets (emission reductions, job creation etc). Commission proposals are submitted to the Council and Parliament for approval under the ‘ordinary legislative procedure’ and once passed into EU legislation, the EIB is instructed to identify projects that contribute toward achieving the initiative’s objective.

2. The EIB Board of Governors - the body comprising the EU 28 finance ministers meets annually to negotiate the EIB’s concrete lending policy framework, approve the EIB’s annual accounts and
decide upon any capital increase (European Investment Bank, 2013, p. 9). It is the direct interface between the EU member states and the EIB Management Committee insofar as it is a forum in which the views of the member states are communicated directly to the executive arm of the Bank.

The objectives created as a result of the above processes are operationalised in the EIB Operational Plans that present detailed targets for 3 year periods outlining how much the EIB is to lend, in which sectors, in which locations and in support of which EU policy objectives. The Operational Plans are snapshots of what is happening in the EU and the global economy at any one time and communicate how the EIB intends to undertake lending activities in support of EU policy objectives. Recent examples have been the financial crisis of 2007/2008 and the EU’s commitment to reduce carbon emissions. The plans are used by EIB loan officers as a framework to assist in the identification of projects that could potentially receive EIB support (this is described in more detail in section 8.1.5.).

In sum, the EIB statute provides the broad scope of its mission but it is through continual input from the EU policy cycle and from the Board of Governors that the EIB’s actual lending activities are refined and updated in response to the evolving political and economic needs of the EU. This arrangement underlines how the EIB should operate according to its institutional design and location within the EU landscape. However, and as the following sections will attest, these relationships are not guaranteed and can be interfered with or undermined by EU member states acting in their capacity as EIB shareholders in pursuit of their own objectives.

7.1.3. Member states as EIB shareholders

The EU member states are the owners of the EIB through their position as shareholders i.e. the financial backers of the EIB. On accession to the EU, member states become shareholders in the Bank through a capital
contribution in accordance with the size of the country’s GDP relative to Europe’s. Germany, France, Italy and the United Kingdom each own 16% of EIB shares worth €39 billion while Spain possesses 9.6% (the 5 biggest shareholders own 74% of the EIB’s total capital) (European Investment Bank, 2013, p. 8).

Capital contributions are divided into subscribed capital (financial commitments made by the EU member states to the EIB) and paid-in capital (amounts deposited with the Bank). The subscribed capital is, in effect, guaranteed by the member states but is not deposited allowing the EIB to leverage the amount on its balance sheet to fund its activities without needing member states to deposit it. As of 2016, the EIB had €243 billion in subscribed capital and €21 billion in paid in capital equating to an 8.9% ratio between deposited funds and guaranteed funds (European Investment Bank, 2016, p. 109). As per Article 16 of the EIB statute, the bank limits its gearing ratio to 250%, i.e. it can lend two and a half times its subscribed capital thereby creating a lending ceiling, or maximum to EIB lending activities, relative to capital contributions (European Investment Bank, 2013, p. 16).

As the EIB is a non-profit institution, income from interest on loans builds up on the EIB balance sheet in the form of reserves. As these reserves accumulate it allows the EIB to extend its capital base and therefore the total amount of loans it can extend whilst at all times remaining within the 250% gearing ratio. The EIB capital base can also be extended through special capital increases – in 2012 the European Council requested EU27 governments for a €10 billion contribution to leverage €60 billion to finance additional EIB lending as counter-cyclical response to the financial crisis (European Commission/European Investment Bank, 2013).

This section has demonstrated the substantial financial commitment to the EIB made by the EU member states. Now I will turn to what member states come to expect in return.
7.1.4. The EIB as a resource dependent organisation

The two previous sections have demonstrated that the EIB is dependent on the member states for: a) developing its lending objectives that are decided by negotiations within EU institutions (7.1.2) and b) its financial backing through capital contributions and guarantees (7.1.3).

In this section I will argue that this dependence on its shareholders for resources (both financial and its policy objectives) can lead to tensions with the institutional independence of the EIB as evidenced by interferences in individual credit decisions taken by the bank. The consequence of which is that investment decisions are made on political grounds rather than through being consistent with the Bank’s objectives, statute, operational plan and internal policy commitments. In other words, investment decisions may be taken that are inconsistent with the bank’s lending criteria – these decisions are viewed as a form of organisational deviance in accordance with the definition proposed in section 4.2.4..

Rothe and Friedrichs (2015, p. 78) suggest that, in the case of the World Bank and IMF, the main macro level theories which explain the relationship between major funding donors and decision making within IFIs is underpinned by a combination of international relations and the practice of real-politik. Here I will advance a different view of the EIB – one which I contend can be usefully explained by the view of organisations as resource-dependent entities and by resource dependency theory (as introduced in section 5.4.1.). The theory, used within organisation studies and the sociology of organisations, emphasises organisations’ reliance on external environments to survive as they are unable to generate all the resources (e.g. raw materials, finance, personnel) needed to ensure their own survival (Aldrich and Pfeffer, 1976; Pfeffer and Salancik, 1978; Schreyögg, 1980). As per the theory, decisions made within organisations are strongly influenced by environmental concerns and the need to access external
resources that the organisation itself is not capable of producing (Hall, 1991, p. 278). The theory is underpinned by a focus on power and less on efficiency as used within transaction cost economics (Scott and Davis, 2007). In addition, the external resources needed by organisation are almost always obtained from other organisations – a result of which is that the resource dependence model should be viewed as a chain of organisational interdependencies.

In this sense, decisions taken within the organisational context are underpinned by the strategic need to be adaptive to the organisations (or environments/actors) on which the organisation depends. Pfeffer and Salancik’s (1978) used the theory to explore 5 streams of organisational behaviour (mergers and acquisitions, joint ventures and other interorganisational relationships, the modification of board of directors composition, corporate political action, and the management of executive succession) that were engaged in by organisations in order to manage and or mitigate such dependences – however, they conclude that such actions are inevitably never entirely successful and lead to the creation of new patterns of dependence and interdependence. The theory, however, is not a form of environmental determinism and highlights the concept of strategic choice – that organisations take a decision on a course of action among a set of alternatives (Hall, 1991, p. 278).

Consistent with resource dependence theory, an organisation’s management works to ensure the organisation’s survival, enhance its own autonomy while attempting to maintain stability in its interactions with other organisations. It is these factors which are the drivers behind the organisation’s actions (Davis and Cobb, 2009, p. 5). Vaughan offers an additional useful perspective that brings resource dependency theory from the realms of organisation studies into criminological territory. She suggests that an organisation’s resource dependency can result in it engaging in illegal or organisationally deviant behaviour through the creation of
structural pressures for organisational members to violate laws, rules and regulations:

“In order to survive, each organisation must secure the strategic resources that it needs. However, resources are scarce for many reasons. Therefore, firms must compete, not only for the resources, but for the ends that resources represent: power, economic success, or symbolic representations of achievement.” (Vaughan, 2002, p. 126)

Resource dependency theory has elsewhere been used to explain the behaviour and activities of other IFIs. In section 2.4, I cited Babb’s (2009) exploration of the reliance of the World Bank on Washington congressional politics in order to secure adequate financial support and political backing from its most influential shareholder which rests on the resource dependency prism. However, Babb (ibid, p. 230) also emphasises that consistent with resource dependency theory, organisations are not rendered as passive entities and outlines a range of techniques that IFIs possess in order to pursue organisational goals that may at times run counter to shareholder demands. Weaver (2008, p. 27), also writing from this perspective, uses the theory to explore the World Bank’s reactions to dilemmas that are created by a need to manage inconsistent expectations from different shareholders and stakeholders, arguing that when this occurs, organisations are likely to “decouple, disconnect and build gaps between their formal structures and actual work activities.” (ibid, p. 28).

This leads to the question - if resource dependency theory has been used to explain the activities of the World Bank – to what extent can it be used in this analysis of the EIB? And secondly, to what extent can the theory be useful as part of a criminological analysis?

Firstly, I contend that the EIB’s resource dependence on its shareholders is more tangible, immediate and direct than at the World Bank. This is underpinned by Gutner’s (2002, p. 67) critical distinction between the
The donor/borrower relationship at the World Bank/IMF and that of the EIB – the EIB’s principle lending activities are in countries that are simultaneously its major shareholders whereas the World Bank/IMF do not operate in the territories of its primary shareholders. This can be evidenced in the straightforward correlation between EIB shareholding and the location of lending activities in the EU – the biggest shareholders receive the biggest percentage of projects (Clifton, Díaz Fuentes and Gómez, 2017).

This is an important distinction as in the case of the World Bank, Babb (2009, p. 36) observes that donor governments expectation from their capital contribution cannot be measured in “dollars and cents” - World Bank projects are concentrated in non-major shareholding countries and are usually in support of more abstract, less defined policy objectives such as poverty alleviation and development. However, and as per Gutner, the relationship between the EIB and its shareholders can specifically be measured quid pro quo or in ‘dollars and cents’ and is more analogous to a private corporation in which shareholders measure their return on investment in the form of dividends. This expectation of a quantifiable return on their commitment to the Bank, therefore, results in the EIB being more straightforwardly resource dependent than the other IFIs. Shareholders expect a quantifiable return on their capital contribution to the Bank in the form of EIB finance for projects in their countries. This is by no means limited to EIB contracts signed with national authorities but also extends to private companies receiving EIB loans (as a form of inward investment) that lead to indirect, but equally beneficial, rewards such as job creation and increased tax revenues within member states.

Then, if the EIB can be viewed as a resource dependent organisation – what is the criminological relevance of this finding?

This question is particularly pertinent to better explain why the EIB supported the Passante di Mestre project twice (in 2013 and 2016) despite the ongoing judicial investigations surrounding entities and individuals
related to the EIB counterparty (as described in section 4.3.2.). Why did the EIB support a project it knew to be affected by corruption in breach of its own anti-fraud policies? During interviews with EIB officials it was claimed that EIB support for such projects was made on the condition that when a major shareholder such as Italy requested EIB financial support for specific projects, the EIB was not able to reject such requests and therefore at times it approved projects which went against its lending criteria – in this case even though the project was in violation of its anti-fraud policies.

Respondents viewed such projects (and EIB support) as ‘mistakes’ that however regrettable, were the collateral cost of securing an even more important objective – the continued support of one of the EIB’s major shareholders and as a result the continued existence of the institution:

“If the Bank doesn't have the support of the owners of the Bank - what is it going to do? This is the trade-off. To put it in blunt terms, an entity of this type has to make a fair amount of mistakes in order to survive. If it doesn't make the mistakes, it disappears. It has to make a certain number of mistakes in the sense that it has to please some of the powers that represent the ownership of the Bank. Otherwise it will not survive. In any entity that has owners, if your owners are not happy you are always at risk - whatever characterization, be it public or private. And in order to have your owners happy you have to please them to a large extent with the institutional goals that were established in our statute. And beyond that, in a more informal way - with the specific request that they may raise. And they all do. And they all will. And if you always say 'no' to these people - as an institution, as an entity, as a body - at some stage they will say "I don't get much out of these people so why should I still support them?" So, you will disappear.”

EIB Official 11
“In the case of Passante di Mestre it is clear that we should stop everything. I understand the political difficulty, Italy is a member state, and of course, Italy does not want to stop, so the Bank is obliged. But then they need to invent good reasons to maintain it.”
EIB Official 9

“When you have member states saying "this is a very important project for me, so do everything you can to look after it." Then it is much more likely that the structures of the Bank would be invited, or pressured, to squeeze all the positive elements, anything that can be used to say it's justified before dropping it. And if you manage not to drop it, you are responding to the political need of one of your owners or shareholders.”
EIB Official 12

“Generally, the idea at the EIB is that if the project is really questionable, the best thing is to kill it as soon as possible as far as EIB involvement is concerned. That is the principle. Having said that, there are projects that have very strong pressures to support them. Remember that in the EIB, the shareholders are the member states.”
EIB Official 4

Requests such as this, I argue, point to the existence of two levels, or tracks, of resource dependency that exist simultaneously within the EIB. The first type, is seen in the EIB’s activities that go toward supporting the objective set by the Bank’s owners as established in sections 7.2. and 7.3. – insofar as it develops its Operational Plans as a result of the EU policy cycle and input from member states. This is the type of standard, or vanilla, resource dependence and is a natural result of the EIB’s position in the EU landscape as the EU’s ‘in-house bank.’
The second track of dependency, and the one that is of criminological relevance, entails acquiescence to requests made by member states to finance individual projects that are in some way in violation of the EIB’s lending criteria. This second track of resource dependence lends support to Weaver’s (2008, p. 28) study on the World Bank and the observation that organisations can at times “decouple and disconnect” in the sense that gaps can appear between formal objectives and actual activities – particularly evidenced in the case of Passante di Mestre when the EIB was asked to finance the project knowing that it was in violation of its anti-fraud policies.

From a criminological standpoint, when this second track of resource dependency entails the EIB financially supporting projects that it knows contain fraud and corruption risks as a result it becomes organisationally deviant. The consequence of which is that it can become a facilitator of corruption through the provision of its funds to projects that are affected by fraud risks and infiltrated by organised crime groups (as established in detail in chapter 4). In the case of Italy and the Passante di Mestre project, the result is EU funding for costly and delayed infrastructure projects that are infiltrated by organised crime groups and corrupt politicians, with the debt created being transferred to Italian tax payers.

The effects of such resource dependence within the EIB organisational setting are discussed further in section 8.2.5..

7.1.5. Interim conclusions

The EIB, although operationally independent, is dependent on the EU member states for setting its institutional objectives and for providing the financial resources it needs in order to function.

When member states request the EIB to finance individual projects that violate the EIB’s lending criteria, this dependence puts pressure on the EIB to support such projects. From an internal perspective, this is seen as a
compromise in order to satisfy the needs of the shareholders. In other words, the short-term sacrifice of supporting projects that are ‘mistakes’ is beneficial to the EIB insofar as it contributes toward the long term future of the institution.

The consequence of this trade-off is that the EIB, by virtue of committing to lending activity that is in violation of its rules and standards, becomes organisationally deviant in line with the definition proposed in section 4.2.4..

This section has provided an account of the motivation to support such projects arguing that resource dependency theory (a theory taken from the sociology of organisations) can provide a useful explanation for the way the EIB approaches projects. However, in order for the EIB to become organisationally deviant there must be suitable opportunities and a lack of control – therefore the conclusion of this section should be considered in tandem with sections 7.2. and 7.3..

7.2. EU and EIB finance and member state legal frameworks

7.2.1. Introduction

In order for organisational deviance occur, it must be presented with an opportunity. Coleman (1987, p. 409) in his integrated theory of white-collar crime defines opportunities as “a potential course of action, made possible by a particular set of social conditions.” This chapter will conceive of opportunity structures as the legal and regulatory frameworks that establish the set of legal circumstances in which EIB lending takes place in EU member states.

Legal and regulatory frameworks can underpin lending (i.e. by passing laws to support specific projects, sectors or industries) or through performing as control functions (i.e. defining the scope and limits to lending activities, compliance measures or regulatory standards). This section will, therefore,
examine the relationship between EIB lending activities and such national frameworks.

The second focus of this section is to better understand how these opportunity structures can also simultaneously create spaces which encourage organisational deviance i.e. how can the regulatory and legal frameworks provide the opportunities for the controversial activities described in Chapter 4 to occur? However, and as per Rothe and Friedrichs’ insistence (2015, p. 63), it is important to consider that opportunity structures must be combined with motivation and an absence of control and therefore the findings of this section cannot be divorced from those of section 7.1. nor 7.3 and should be considered together.

This section is based on two types of EIB lending: section 7.2.2. will examine the Budapest Metro project in which the EIB signed contracts directly with the Hungarian State and the Budapest Municipality. Whereas section 7.2.3. will examine EIB support for two projects through a bond financing instrument used in partnership with the European Commission – the Project Bonds Initiative. This second type of lending is evaluated more closely as an example of the increasingly common way infrastructure projects are financed through financialised means i.e. the role of financial instruments and market dynamics in the provision of infrastructure. Section 7.2.3. will argue that the financialised instrument the EIB used to finance the project was itself a factor in the Castor disaster.

7.2.2. EU finance and Budapest line 4 metro project

Discussions in Hungary to extend Budapest’s metro had taken place during the 1990s but it was not until 2003 and 2005 that the Hungarian state approved 2 laws – Act LV of 2003 known as the “first metro act,” later extended in 2005 under Act LXVII, that established the legal basis for the line 4 metro project.
In 2007 the General Assembly of Budapest submitted a project proposal for the metro extension to the Hungarian state which after gaining approval was submitted to the European Commission to be considered for EU financial support. As per the Commission decision No. B (2009)6793 of September 2009 the Budapest Metro Line 4 was approved as a major project leading to EU grants of €696 million in EU structural funds (European Commission, 2015). At the time it was to be largest EU supported project in Hungary to date.

With regard to EIB support for the project, in 2005 the EIB signed two loan agreements with the Hungarian state and the municipality of Budapest for the first and second sections of Line 4 (10.5km, 14 stops). The amount eventually disbursed was €530 million with €472 going to the Hungarian state and €58 million to the Budapest municipality (European Investment Bank, 2005).

The total project cost was originally estimated at €1.7 billion and saw 100 contracts signed between the Hungarian authorities and contractors, of which 20 were considered as large works contracts. The 2016 leaked OLAF report into the project concludes that out of these contracts a total of €1 billion (more than half) were affected by irregularities (conflicts of interest, fraud) - of which €227 million were Commission cohesion funds and a minimum of €20 million in EIB financing (OLAF, 2016, pp. 100-101). However, the total amount of EIB loans affected is not able to be identified accurately given that its contracts were with the Hungarian authorities which then signed its own contracts with other parties.

The entirety of the corruption surrounding the project (bribery, fraud, bid-rigging, artificial contract inflation) falls out of the scope of this thesis and involved a diverse roll call of actors; individuals in public bodies at both state and municipal level, local contractors, subsidiaries of foreign multinationals and members of Hungarian political parties. Instead, this section
will focus on the role played by the Hungarian subsidiary of German conglomerate Siemens.

In 2006 Siemens announced it had signed an €108.8 million deal with the Budapest public transport company (Bkv Zrt) to supply the power supply system for the Budapest Line 4 project as part of the largest single contract of the Metro project (Siemens, 2006). At the same time as the agreement, a number of accusations were levelled against Siemens by judicial authorities in multiple jurisdictions that would eventually coalesce into an international bribery scandal resulting in Siemens paying €1 billion to US and German authorities (“Siemens to pay €1bn,” 2008).

In response, Siemens commissioned the law firm Debevoise and Plimpton to investigate the allegations of corruption within its subsidiaries including the Hungarian entity - Siemens Zrt. The law firm found that during the bidding stage of the Budapest Metro project Siemens had paid key decision makers for inside information during the procurement process. In addition, it had paid commissions to several consultancy and advertising firms owned by individuals connected to Hungarian political parties. The largest commission, €1.2 million, was paid to Media Magnet KFT – an advertising company owned by the treasurer of the Hungarian Socialist Party (MSzP) that was also used as a vehicle to channel party funding (OLAF, 2016, p. 41).

The Debevoise and Plimpton report was sent to OLAF and the German and Hungarian authorities which both initiated judicial investigations. In addition, the EIB Fraud Investigation Division also opened its own investigation. At a January 2009 meeting held between OLAF and the German authorities investigating Siemens it was agreed that OLAF would temporarily halt its investigation in Hungary in order not to duplicate the investigation. However, the scope of the German investigation changed to exclude Siemens’ conduct in Hungary and concluded with Siemens paying €395 million settlement with the German authorities. This prompted OLAF
to reopen its investigation into the activities of Siemens’ Hungarian subsidiary (ibid, p. 14) which was finalised in 2016 and subsequently leaked to the media.

During the course of the Hungarian authorities’ investigation the witnesses that contributed to the original Debevoise and Plimpton report refused to repeat their earlier accounts. This led to the investigation being terminated due to a lack of evidence. As a consequence of the reliance of the EIB fraud investigations division on cooperation with national authorities it also terminated its investigation.

The affair was resolved in stages. In 2013 Siemens reached an agreement with the EIB and paid a €13.5 million fine for violations of the EIB’s anti-fraud policies (European Investment Bank, 2013). The 2016 OLAF report concludes by recommending the repayment of the Commission and EIB funds affected by the irregularities. According to the media reports in February 2018, these repayments were still yet to be made pending the results of an inquiry established by Hungarian authorities (Rankin, 2018).

Returning to the theoretical component of this section – what were the opportunity structures that allowed for the fraudulent acts by Siemens employees in Hungary to take place?

Firstly, the bribes paid by Siemens during the procurement process were not interpreted by the Hungarian authorities as being in violation of Hungarian or EU law - a fact strongly disputed by OLAF in the findings of its report. OLAF cites Article 14 of Regulation (EC) 1083/2006 and the principle of sound financial management should be applied to any project receiving EU Cohesion Funds also in accordance with Article 48(2) of Regulation 1605/2002. In addition, OLAF contends that Article 10 of Law CXXIX 2003 Hungarian Public Procurement Act is applicable in the case of the payments made by Siemens to public officials.
The differing interpretation of Article 14 of Regulation (EC) 1083/2006 by OLAF and the Hungarian authorities underpins the argument of Passas (1999, p. 411) that transnational institutions’ guidelines can often be “occasionally and inconsistently followed by national governments” which have their own legal traditions, economic and political outlooks. These inconsistencies, argues Passas, generate a series of asymmetries or mismatches in laws that provide spaces in which transnational crime can occur. According to Passas this process is amplified by globalisation which brings nations into close contact through increased political and economic connections – within the EU this results in an “uneven process of European integration, piecemeal controls and regulatory inflation” (ibid, p. 411).

In this case, EU law should have been sufficient to be used to control the activities of Siemens, yet the Hungarian authorities chose not to prosecute – therefore it is less a case of mismatches in laws, rather than existing laws being only occasionally followed. Therefore, gaps in enforcement between EU and member state laws should be considered as opportunity structures in which criminal behaviour can occur (this point is re-examined in section 7.3. in the context of a discussion on the role of controls on EIB lending activities).

This next section will explore this conclusion further but will concentrate on the EIB as an agent which takes an active role in influencing such opportunity structures.

7.2.3. The EIB, financialised instruments and legal frameworks: the Project Bonds Initiative

EIB financing for Project Castor and Passante di Mestre differed from that of the Budapest Metro insofar as it was undertaken through a financial instrument - the Project Bond Initiative (PBI herein) – rather than through signing loans directly with a state or municipal authorities. At the outset, this section is informed by the argument of Braithwaite (1989, p. 338) that, rather than relying on existing opportunity structures, organisations may act
in a way to produce their own structures to facilitate the achieving of their organisational goals. It is this observation that leads this section to pose three questions: (1) what is the significance of the PBI instrument used by the EIB in the Castor and Passante di Mestre projects? (2) How did the EIB through its use of the PBI instrument influence the opportunity structure that allowed the Castor project happen? (3) What is the connection between this opportunity structure and the outcome of the project? Firstly, I will offer an outline of the instrument before returning to the above questions.

At its heart, the PBI instrument was developed by the European Commission to use EU funds as a risk sharing mechanism to stimulate private investment (pension funds, insurance companies etc) toward infrastructure projects across Europe in difficult post-crisis financing conditions and the drying up of traditional sources of infrastructure finance (Ernst and Young, 2015, p. 3). During the pilot phase the EU committed €230 million which was hoped would leverage €4.5 billion of private sector investment with the objective of boosting growth and addressing Europe’s “infrastructure finance gap” (European Commission, 2016, p. 4). In 2012 the Commission and the EIB signed a cooperation agreement to begin the pilot phase. Under the terms of the agreement, the Commission defines the sectoral eligibility (e.g. transport, energy and ICT) and provides a capital contribution. The EIB’s role, in turn, is to select, appraise and monitor the implementation of projects (ibid, p. 4).

The instrument is based on bond issuance to raise capital for infrastructure investment. Project promoters issue bonds on the markets to finance the costs of construction - a long term debt is created which the promoter repays (with interest) over a fixed period of time. Under the PBI instrument, the EIB purchases a significant amount of the bonds which in turn raises the bond’s rating by the credit rating agencies to a rating threshold that is considered investment grade by other investors. The EIB’s commitment to the project as a major investor sends a signal to market actors that increases their willingness to commit to the project. A further guarantee is offered
through the Portfolio First Loss Piece (PFLP) feature of the PBI instrument that means in the event of the project generating losses, the first tranche of these losses would be covered by EU/EIB funds (ibid, p. 4).

The PBI instrument is an example of the process of financialisation – a concept which seeks to trace the “increasing role of financial motives, financial markets, financial actors and financial institutions in the operation of the domestic and international economies” (Epstein, 2005, p. 3) or as “a pattern of accumulation in which profits accrue primarily through financial channels rather than through trade and commodity production” (Krippner, 2011, p. 174). When applied to the financing of infrastructure, the concept of financialisation is used to observe the way in which financial instruments are developed which converts the ownership of bricks and mortar infrastructure projects into liquid assets that are then exchanged on markets by investors around the world (who, significantly, are not bound to the construction itself but receive revenue from the asset which is often protected irrespective of the performance of the project). The concept of financialisation has received little attention in criminology (except Pemberton (2015) and Michalowski (2018)) despite it representing a significant alteration to the configuration of the global economy and its role in the sub-prime mortgage crisis of 2008 that provoked the global financial crisis. What is consequential about the PBI instrument, and to answer the question (1) posed above, is that the core of the instrument is the promise of socialisation of risk by EU institutions to encourage private investors to commit to financing infrastructure projects. When this risk sharing is extended to infrastructure projects it means that the projects are subjected to the changing winds of the market – profits and interest payments are contractually guaranteed to investors but when losses are incurred, it is public bodies who are left to pay - phrased differently, this is the socialisation of risk and the privatisation of profit, a central aspect to financialisation in which revenue streams are guaranteed through new laws and regulations.

Returning to Castor and Passante di Mestre, the timing of EIB involvement using the PBI instrument is significant. Both projects were in fact a
refinancing of projects already in financial distress and therefore represented *de facto* rescues – a far cry from the PBI promotional material that refers to unlocking investment for new projects (European Investment Bank, 2012, p. 4). In the case of Castor, the bank loans taken out by the project promoter (a subsidiary of Spanish conglomerate *Grupo A.C.S.*) were reaching maturity and the project was facing a default (Ernst and Young, 2015, p. 86). More seriously, the parent company had a debt twice the market value of the entire company, and due to its size, posed a systemic risk to the Spanish economy (Landon Thomas, 2012). EIB involvement allowed the project promoter to restructure the debt and extend repayments until 2034 (Ernst and Young, 2015, p. 88). From the Spanish perspective, it also *Europeanized* the debt insofar as the potential systemic threat to the Spanish economy would now be underwritten by EU/EIB funds, in effect diluting the risk to the Spanish economy by transferring it to EU level.

In the case of Passante di Mestre, the construction phase had long since finished before the EIB’s first €350 million loan to the project in 2013 and 7 years before the 2016 €166 million guarantee the EIB issued as part of the PBI. The project was suffering from significant cost overruns – estimated at 64%, by Locatelli et al (2017). Therefore, EIB involvement in both projects was to relieve the burden of interest payments on the project promoters by restructuring their existing debts onto more favourable terms.

Now that I have established how the PBI instrument functions and the significance of the timing of its use, I will turn to its relationship with the national legal framework in which it was deployed. In order to do so, I will connect the PBI instrument to the Spanish legal framework surrounding the Castor project in order to answer questions (2) and (3).

The Castor project benefitted from a series of Spanish laws that created a compensation framework for project promoters willing to commit to the project. Article 5.3 of the Spanish Royal decree ITC/3995/2006 established the provisions leading to compensation in case the concessionaire returning the project to the state. This was expanded upon in Article 14 of the royal
decree 855/2008C that additionally affirms that compensation would also be paid even in the event of cases of fraud or negligence on the part of the concessionaire. The two decrees combined created a set of guarantees for the concessionaire that no matter the outcome, the Spanish state would guarantee the investment of the project promoter. When the project was halted by the Spanish government after producing earthquakes the concessionaire relinquished the platform in line with royal decree 855/2008C and within 3 months was compensated by €1.35 billion - of which the bondholders including the EIB’s €300 million was returned (European Investment Bank, 2014).

What was the significance, therefore, of the two rival safety nets – the first promised as part of the PBI instrument and the second enacted by the Spanish state? As per the EIB internal report into the project it is made clear that the EIB appraisal process took into account the Spanish regulatory framework when the EIB’s services were undertaking its due diligence (European Investment Bank, 2018). This point was discussed in interviews with EIB officials who confirmed that the bank’s support for the Castor Project was on the basis that the Spanish legal framework effectively guaranteed the EIB’s investment whatever the outcome.

“The concession agreement - a royal decree - it was a law. It was a law that settled that right. And this was indeed an element of comfort for the lenders, and the Bank, to support the project.”
EIB Official 14

“The law that launched the Castor Project had a clause by which if everything failed - the government would bear the cost. It is very easy for a project to fail - nobody has any incentive to fix anything along the way because if everything fails then it's public money which is going to bear the cost. Why was this clause here? It was written in law...the EIB saw a chance of making a profit. And when the time came to
The fact that EIB falsely claimed to be assuming a large portion of the financial risk of the project was unknown to the other bondholders (smaller investors such as insurance companies and pension schemes) who invested in the project as a consequence of EIB involvement. This point is established in the European Commission sponsored review of the pilot phase of PBI instrument undertaken by the consultancy firm Ernst and Young:

“There is unanimity that most, if not all, of these investors would not have considered buying the bond without the PBCE and EIB involvement.”

(2015, p. 88)

This lack of awareness of the Spanish legal framework extended to the Commission – in interviews with officials it was confirmed that it was only aware of the Spanish compensation framework after being alerted by Spanish NGOs as part of a petition they submitted to the Commission claiming a breach of EU state-aid rules for the compensation (European Parliament, 2014).

Returning to the assertion made by Braithwaite at the beginning of this section and to answer question (2) – how did the EIB influence the opportunity structure that enabled the project to happen? By convincing the other investors to commit to the project on the basis of extensive EU support (through the Portfolio First Loss Piece (PFLP) element of the PBI instrument), the EIB actively influenced the opportunity structures by creating the conditions in which investors would purchase the emitted bonds. This was critical in convincing the other investors to commit to the project. This consequence of this (and as the answer to question (3) posed above) is that the project was able to get the necessary finance required in
order for it to reach the gas injection stage leading to the series of earthquakes and the suspension of the project. The findings presented here also adds support for the use of resource dependency theory as established in section 7.1.4. – the EIB attempted to deal actively with its environment by the deployment of the PBI instrument which assumes a certain degree of financial risk with the objective of encouraging other investors to commit to the project. As the Spanish compensation framework already existed, the EIB could manipulate the investment landscape, albeit in a superficial capacity, knowing that whatever happened to the project its investment would be secure.

7.2.4. Interim conclusions

Opportunity structures have been discussed in section 7.2. as the legal and regulatory environment in EU member states into which EIB investments are made. As the Budapest metro case shows, these regulatory environments (combining both EU and national level legal frameworks) are not infallible and when they are fused together they create asymmetries or gaps in which crimes and organisational deviance can occur.

Such structures are not static, and as the case of Castor and the EIB’s lending through the PBI instrument shows, can be modified by the EIB in search of its organisational goals. This conclusion overlaps with the view of the EIB as a resource dependent organisation which intervenes in its environments in the hope of creating demand for its services.

It is important to note that opportunity structures must be considered simultaneously with the motivation and control catalysts for action. These structures provide spaces, but it takes actors or organisations to possess the motivation to enter them and there must additionally be an absence of control within them. As consequence, the findings of this section should be viewed in relation with the concepts of motivation and control as per sections 7.1. and section 7.2..
7.3. External control and EIB accountability

7.3.1. Introduction

Within the state-corporate crime framework the idea of control is framed as the potential for external oversight and restraint on organisational deviance. As such, societies with higher operationality of social control produce organisations with corporate cultures that favour compliance with laws and regulations (Kramer et al, 2002, p. 275). The absence of control, therefore, will lead to the increase in organisational deviance.

This understanding of control is also present in the crimes of globalization literature. When applied to IFIs (and the World Bank specifically), Rothe and Friedrichs (2015) conceptualise controls on their activities as:

- International law (UN treaties and resolutions) and international agreements (e.g. OECD Guidelines for Multinational Enterprises etc).
- National legal frameworks of the countries hosting IFI activities.
- The role played by civil society groups in applying pressure on IFIs through political and media campaigns.

The objective for this section is to consider and assess the external controls (internal controls are explored in Chapter 8) that act as constraints on EIB lending activities.

In order to do so, first, I propose splitting the idea of ‘social control’ proposed in the state-corporate crime and crimes of globalization literature into two: control and accountability.

Control is defined as any legal power that any EU institution has to influence EIB decisions. This could be seen in the inspection powers of OLAF and the ECA to analyse EIB project documentation, or through institutions
undertaking actions that have legal consequences for the EIB such as rulings made by the ECJ.

Accountability is viewed as instances when the EIB explains its policy goals and actions to external actors and stakeholders. This is understood, for example, in the EIB’s voluntary annual appearance at the European Parliament or in its annual meeting with civil society groups.

This section will evaluate the extent to which external controls and demands to be accountable can act as constraints on the EIB to prevent it from engaging in organisationally deviant behaviour. This section will draw on the concept of *dysnomie* proposed by Passas (1999, 2000) that will be used to explore the extent to which EIB lending activity is ‘difficult to govern.’

7.3.2. EU institutions as control functions over EIB lending activities

The EIB exists within the complex legal architecture of the EU and is subject to varying legal competences and powers. Here I will consider each relevant EU institution in turn.

*European Commission*

The European Commission possesses the most direct control functions over the EIB in three ways:

Firstly, as the EU’s executive body it develops and proposes EU legislation that when approved by the Council and Parliament defines the legal framework in which the EIB operates. This has been outlined in section 7.1.2..

Secondly, the Commission can directly intervene in the EIB project cycle before loan disbursement occurs as per the Article 19 procedure of the EIB statute. In effect, this gives the Commission the ability to intervene in EIB projects before decisions are taken on loan disbursement. Under this procedure the EIB must consult with the Commission on projects during the
appraisal stage in order that the Commission assess the conformity of the projects with current EU legislation and policies laid down in EU rules in particular on public procurement and environment (European Commission, 2017, p. 3). This does not represent another round of technical due diligence which is the responsibility of the EIB. Once the EIB submits an application to the Commission it must respond with an opinion within 2 months, failure to do so will mean the EIB assumes the Commission has no objection (European Commission, 2017, p. 2). A favourable Commission opinion can only emerge when all departments with an interest in the project have been consulted and agreement has been reached with the Commission’s Legal Service (ibid, p. 5). In effect, this gives the Commission a veto on EIB projects during the appraisal stage.

Thirdly, through having a vote at EIB Board of Directors level, the Commission can influence the final decision on whether the EIB will support individual project after the appraisal process has been completed. The Commission is the only EU institution which can intervene in such a way to prevent the EIB from supporting individual projects.

**OLAF**

OLAF has the legal competencies to investigate, as an administrative office, EIB staff and project promoters for possible fraudulent activities that effect the EU budget/EIB financing and other prohibited conduct, as related corruption and money laundering. Initially, when OLAF was created in 1999 the EIB’s Management Committee sought to deny OLAF inspection rights on EIB lending activities which resulted in a case before the ECJ (Case C-15/00) between the EIB and the Commission. The EIB argued that granting OLAF inspection rights over EIB financed project was in violation of its operational and institutional autonomy (as established in section 3.2.) and attempted to reserve the right to conduct any fraud investigation internally. In response, the ECJ ruled in favour of the Commission citing the applicability of regulation 1073/1999 and 1074/1999 to EIB operations – a position which the EIB had argued against. As a result of this case, the EIB
and OLAF now collaborate on fraud investigations that affect EIB financing operations even if they do not contain EU budget funds.

If OLAF receives information alleging prohibited conduct in EIB operations or by EIB staff members or EIB counterparties, OLAF’s Investigation Selection and Review Unit gather information and consider the possibility of violation of EU Regulations and Inter-institutional Agreements and draft an initial report which is delivered to the Director-General who decides whether or not OLAF shall open a full investigation within the scope of the Investigative Policy Priorities (IPP) (OLAF, 2013, p. 4). The number of OLAF investigations undertaken into EIB projects per year is not disclosed – although in the EIB Anti-Fraud report of 2016 the EIB disclosed that 14 of its fraud investigations of that year involved “contact and cooperation with OLAF” (European Investment Bank, 2016, p. 11).

During the course of its investigations OLAF has the authority to collect documents and information from the EIB and EIB counterparties, conduct on the spot monitoring missions, inspect premises and undertake digital forensic operations. OLAF has no judicial investigative, neither prosecution powers and its reports that contain reference to EIB supported projects are limited to making recommendations to the relevant authorities and EIB management (OLAF, 2015, p. 11) in relation to disciplinary, administrative, and judicial follow-up and to recovery procedures.

European Court of Auditors

The ECA, the Commission and EIB are signees of a tri-partite agreement between the 3 institutions (Article 287 (3), of the Treaty on the Functioning of the EU) that establishes ECA audit rights on any operation managed by the EIB that contains EU budgetary resources or under EU mandate (such as EIB operations in ACP countries). The agreement was first signed in 1989 and was updated periodically with the latest version being agreed in 2016 (European Investment Bank, 2016). As part of the agreement the ECA can
request EIB project documentation and undertake audits into EIB financed operations.

The agreement, however, is limited insofar as the majority of EIB operations are mainly funded by its own resources (borrowing on capital markets) and therefore fall outside of the scope of the agreement which only includes EU budget funds. EIB lending which can be audited by the ECA are initiatives in which it administers EU budget funds such as in the case of ACP lending (African, Caribbean and Pacific Group of States) through the EU’s external mandate, and joint EIB/Commission initiatives such as European Fund for Strategic Investments (known as the ‘Juncker Plan’). Cumulatively, this type of lending comprises a small minority of total EIB lending and therefore the majority of EIB activity is not subject to audit by the ECA.

**European Court of Justice**

The EIB falls within the jurisdiction of the ECJ. Article 271 of the Treaty on the Functioning of the European Union provides the ECJ with jurisdiction to rule on:

“**Measures adopted by the Board of Governors of the European Investment Bank. In this connection, any Member State, the Commission or the Board of Directors of the Bank may institute proceedings under the conditions laid down in Article 263;**

“**Measures adopted by the Board of Directors of the European Investment Bank. Proceedings against such measures may be instituted only by Member States or by the Commission, under the conditions laid down in Article 263, and solely on the grounds of non-compliance with the procedure provided for in Article 19(2), (5), (6) and (7) of the Statute of the Bank.**”
As a consequence, this prevents individuals or private companies from applying for judicial review of EIB activities at the ECJ. This can be evidenced in the Court of First Instance’s (CFI) 1993 decision to dismiss an action brought by a group of French citizens to overturn a decision taken by the EIB Board of Directors to support a loan to the Lyon Council to be used for the construction of a ring round around the city (CFI, Case T-460/93, Etienne Tête et al. v. EIB, [1993], ECR 1993, p. II-01257.). The court ruled that the challenge was inadmissible. This lack of the ability of individuals to seek a judicial review at IFIs has elsewhere been characterised as a type of democratic deficit (Head, 2003).

7.3.3. The EIB and external accountability

The EIB is nominally accountable to external stakeholders insofar as it engages in voluntary efforts to explain its policy goals, actions and operations.

*European Parliament*

The European Parliament acts as a lobbying group in the sense that in the absence of any inspection or supervisory powers over the EIB, it attempts to influence the EIB’s lending activities through the application of political pressure through several avenues:

Firstly, individual MEPs by liaising with their constituents and civil society organisations can pose questions in Parliament that are (voluntarily) answered by the EIB.

Secondly, Parliament monitors EIB activity through two lead committees: the Economic and Monetary Affairs Committee (ECON) and the Committee on Budgetary Control (CONT). The committees propose non-binding resolutions in response to the EIB’s annual report calling on the EIB to adopt specific measures. The committees have no powers to force the EIB to individual project documentation and rely on the voluntary disclosures of information from the EIB.
Thirdly, Parliament hosts a petitions function. Article 227 of the Treaty on the Functioning of the European Union underpins the mechanism by which EU citizens can submit petitions to the Parliament concerning EU activities. Petitions cannot be directed at the EIB itself but at the Member State, local authorities or other institution that hosts an EIB activity or is a direct EIB loan counterparty.

*European Ombudsman*

The European Ombudsman forms the second, external tier of the EIB complaints procedures (the internal, first tier is discussed in more detail in section 8.3.6). The body, which is elected by and reports to the European Parliament, conducts investigations into possible ‘maladministration’ by the EIB, i.e. its failure to comply with human rights, with applicable law, or with the principles of good administration during the course of its activities. Investigations are based on a memorandum of understanding between the two institutions which is used as a framework for cooperation (European Investment Bank, 2008).

When reporting the Ombudsman may make recommendations to the EIB to improve its administrative capability. These reports are non-binding and do not produce any legal effects on the EIB. One such instance involves an Italian company (Pizzarotti and C. SpA) that was denied from a public tender involving an EIB financed project in Bosnia and Herzegovina. The company submitted a complaint to the EIB Mechanism whose findings were then rejected by the EIB Management Committee leading to the company to escalate the complaint to the Ombudsman. The Ombudsman then inquired into the issue and found maladministration in the way the EIB had excluded the company which amounted to a legal error. As the Ombudsman’s report had no legal effects on the EIB it is unclear which, if any, of the Ombudsman’s recommendations were implemented by the EIB.
**NGO groups**

The main watchdog that monitors EIB operations is a coalition of NGOs from across Europe is known as Counter Balance. The function of the NGO is to monitor EIB projects, undertake research on EIB policies and to launch campaigns against EIB lending activities which run counter to the NGO’s political agenda that is focuses on environmental protections and increased EU institutional transparency.

**Summary**

As per section 7.3.1 and 7.3.2, the EIB exists in complex architecture of control and accountability with a number of institutions possessing a range of legal competences and inspection powers over EIB operations. The EIB is also accountable to EU institutions and civil organisations.

7.3.4. Governance and dysnomie

Now that I have established the EIB’s relationship with other institutions and actors in terms of control and accountability, I will now explore and assess the extent to which they had an impact on EIB lending activities as described in chapter 4.

Before doing so, it is worth laying out an initial paradox between the crimes of globalization literature and this study on the EIB. The case studies within the crimes of globalization literature point to the absence of an international legal framework as a driver in the production of organisational deviance and crime involving IFIs. The EIB, however, exists within the complex EU legal framework as described in sections 7.3.2 and 7.3.3. Therefore, this section will assess the extent to which other EU institutions can prevent the EIB from undertaking lending activities which are in violation of its normative commitments.
Here I will argue that the EU legal framework, despite being extensive, also contains failings or ‘gaps’ that prevents the EIB from engaging in organisational deviance (this further develops the argumentation from section 7.2.2. on the Budapest metro case and the gaps between Hungarian and EU law). Passas (1999, 2000) proposes the concept of *dysnomie* (meaning ‘difficult to govern’) to describe an “ineffective regulatory patchwork and fragmented controls, which make possible the commission of ‘crimes without lawbreaking.’” *Dysnomie* is a product of globalisation and neoliberalism on the weakening of normative orders and has been further developed to conceive dysnomie as *challenged governability* which is a consequence of:

- Lack of adequate international standards.
- The existence of multiple diverse and at times contradictory legal provisions
- Inconsistent enforcement of existing international norms which result from: the lack of cooperation and extra-territorial application of domestic standards, or ad hoc and discriminatory applications of the law (Twyman-Ghoshal and Passas, 2015, p. 108).

Passas (2000) used the concept to describe the ways in which the transition of the Russian economy at the end of the Cold war into a market-based system triggered a wave of crime and corruption as state industries and entities were hastily privatised. Later, Twyman-Ghoshal and Passas (2015) proposed dysnomie to explain the rise of Somali pirates within the context of lack of governance at state-level. These examples, while being extreme compared to the case of the EIB, nevertheless suggest that a lack of effective governance at the supranational level leads to the production of crime and organisational deviance. The question that arises is, to what extent did a lack of effective governance, or dysnomie, play in the vignettes of EIB projects outlined in Chapter 4? Here I will re-examine each of the projects from a governance/external control perspective.
The Castor Project

In the case of Castor, the Commission influenced the project at multiple stages during the project’s history both at *ex-ante* and *ex-post* loan disbursement stages. Firstly, the Commission accepted Spain’s submission of Castor as an EU ‘Project of Common Interest’ (European Investment Bank, 2018, p. 12) and therefore its eligibility for priority EU/EIB financing. Secondly, it was responsible for developing the PBI financial instrument used to finance Castor as part of the wider Commission Connecting Europe initiative (European Investment Bank, 2012, p. 1). Although the project was identified and proposed by the EIB to be funded through PBI, if the Commission had objected it could have done so in the appraisal stage as per the Article 19 procedure and a second time at Board of Directors level if it had changed its view of the project. However, the Commission’s role is not to inspect the technical due diligence of the project rather it is to ensure compliance with the EU legal framework. Given that the seismic risks that the project posed did not feature in the project’s technical appraisal at no point would the Commission have been able to object to it on these grounds.

In the post-disbursement stage (and after the project was suspended) the Commission was requested to arbitrate on whether the compensation paid to the project promoter was in violation of EU state-aid rules. A petition was lodged with European Parliament Petitions Committee by a Spanish citizen which was subsequently rejected by the Commission. It interpreted the Spanish law (Article 5.3 of Order ITC/3995/2006) as not being in violation of EU state aid law.

In the aftermath of the project Parliament passed a resolution in April 20 (E-005261-14) in which it “regretted the role played by the European Investment Bank (EIB) and the Commission in the Castor project.”
Several Spanish citizens and NGO groups made formal complaints to the EIB complaints mechanism (the report is described in more detail in section 8.3.6.) which resulted in an investigation of the claims of maladministration by the EIB. The first of two reports written by the EIB Complaints Mechanism was published 5 years after receiving the complaints (European Investment Bank, 2018). The EU Ombudsman has opened its own investigation and is due to report in late 2018.

As no EU budget was used in the Castor project the ECA did not have the competences to audit the project. Whilst it is not possible to predict how an ECA audit of the project may turned out – the project’s main failing was due to the handling of the technical risks and not as a result of how funds were spent – therefore, an ECA audit would not have addressed the main issue affecting the project.

Passante di Mestre

In January 2014 European NGO groups called on OLAF to open an investigation into the 2013 EIB loan to ANAS SpA (“EU-funded project in Italy,” 2014). In March of the same year OLAF responded to the NGOs confirming that after undertaking a preliminary analysis (case file OF/2014/0103/01) it could not find any connection between the Italian judicial authorities’ investigation and the EIB counterparty.

Ahead of the second round of EIB support for the Passante di Mestre project through the PBI instrument in 2016, Parliament approved a motion on 30th April 2015 which called for the suspension of any further EIB support to the project in light of the arrest of the CEO of the main subcontractor for fiscal fraud. In response, Commission Vice-President Katainen replied to a specific parliamentary question and repeated the conclusion of OLAF that no connection between the EIB loan and the fraudulent activity could be found.
Individuals and organisations cannot complain to the EIB Complaints Mechanism about the possibility of fraud in EIB operations (European Investment Bank, 2010, p. 5) Instead, any reports of fraudulent activity can be made to OLAF, which in this case, refused to open an investigation.

Once again, as no EU budget was used in the project the ECA would not have had the competences to audit the operation. In contrast to Castor, an ECA audit of the contracts signed between the EIB and project promoters could have provided a forensic account of how EIB funds were used, and the connection between those funds and the organised crime networks referred to in section 4.3.2. – given the refusal of OLAF to investigate the project this could have represented a valuable investigation into the how EIB funds were used after disbursement.

*Budapest Metro*

This case demonstrates the strength of the ECA’s auditing work and its potential to prevent fraud and corruption in EU financed operations that was absent from Passante di Mestre case. In 2012, after reviewing project documentation the ECA notified OLAF regarding serious concerns in relation to the implementation of the project (OLAF, 2016, p. 8.). In addition, the Commission Directorate General for Regional and Urban Policy (DG-REGIO) also informed OLAF about serious irregularities.

This information, alongside additional evidence provided by the local press articles provided the basis for the extensive OLAF investigation into the project. However, as the ECA would not have had audit rights over the EIB loans it was only through the OLAF investigation did the irregularities affecting the EIB loans come to light. This demonstrates that EIB loans, at least in this case, were much more susceptible to fraud and corruption given the absence of any potential audit from the ECA.
7.3.5. Interim conclusions

On considering these three projects and their interactions with EU institutions the following conclusions emerge:

1) The Castor project shows that although the Commission works closely with the EIB (and has the potential to intervene directly at 2 points during the project cycle) its lack of technical knowledge of EIB proposed projects means that this closeness does not represent a familiarity that is sufficient enough to identify instances in which EIB due diligence during the project appraisal may be limited.

2) Political pressure exerted by the Parliament on the EIB through its annual resolutions is insufficient to prevent the EIB from supporting projects.

3) Potential ECA involvement in EIB own budget financed operations could lead to better identification of fraud and corruption in projects during the implementation stage.

4) OLAF’s thorough investigation into the Budapest metro case shows it has the organisational capacity to adequately investigate fraud and corruption in EU/EIB financed projects – however, as its refusal to open investigations into the Passante di Mestre project shows, its threshold for opening even preliminary investigations is too high and should be lowered.

Referring to the initial paradox established at the beginning of section 7.3.3. and the theory of *dysnomie* – the EIB exists in the complex EU governance framework but as this section has demonstrated, each EU institution’s competences are limited by lack of technical detailed project technical knowledge, lack of competences to inspect EIB project documentation, or lastly in the case of OLAF – an unwillingness to open investigations. This situation, I contend, can be seen as fitting the criteria of dysnomie or challenged governability as proposed by Twyman-Ghoshal and Passas.
7.4. Chapter conclusions

This chapter has arrived at three main conclusions:

1. The EIB can be seen as resource dependent organisation. This dependence has two tracks: the first is underpinned by the EIB’s lending activities undertaken to achieve EU goals. The second track is through individual member states acting in their capacity as shareholders to request the EIB to support projects that can violate its normative commitments – this can push the EIB to become organisationally deviant.

2. Organisational deviance can be facilitated by gaps or spaces between the EU legal framework and member state legal frameworks. In the case of Castor, the EIB took advantage of the Spanish compensation framework to influence to encourage other investors to commit to investing into the project. In addition, these gaps or spaces can be further exploited by financialised instruments which rely on public guarantees in order to function. In the case of Budapest project, such gaps in the normative environment or asymmetries allowed EIB partners to engage in illegal behaviours.

3. The EIB exists in a complex governance web (in contrast to the other IFIs), yet the extent, scope of monitoring and control played by other EU institutions is partial and does not adequately influence EIB behaviour in the context of individual projects. Where the Commission has opportunity to intervene in EIB projects before loan disbursement, it is not in possession of the technical knowledge needed on which to base such interventions. The ECA’s limited scope to inspect EIB projects means it is a useful tool to identify fraud and corruption risks but is not utilised enough. In the case of OLAF, it should be more active in this area but declines to open investigations despite substantial warnings that EIB projects may be affected by fraud and corruption. The patchwork of supervisory mechanisms at this
level can be usefully explained by the theory of dysnomie as the proliferation of normative frameworks that in turn produce asymmetries.

How do these conclusions combine with the conceptual framework as proposed in Chapter 5? Firstly, this chapter has attempted to organise its analysis through a chronological understanding of EIB from the creation of policies that set the framework for individual projects to the governance of such projects during and after the implementation stage. The main conceptual conclusions are added to the schema on the following page:

<table>
<thead>
<tr>
<th>Level of Analysis</th>
<th>Motivation</th>
<th>Opportunities</th>
<th>Constraints/Controls</th>
</tr>
</thead>
<tbody>
<tr>
<td>Macro</td>
<td>(1) EU policy objectives</td>
<td>legal/regulatory frameworks</td>
<td>(1) EU institutional framework</td>
</tr>
<tr>
<td></td>
<td>(2) Statutory commitments</td>
<td>(2) National frameworks</td>
<td>(2) Banking restrictions/regulations</td>
</tr>
<tr>
<td></td>
<td>(3) Shareholder needs</td>
<td>legal/regulatory frameworks</td>
<td>(3) Credit rating agencies</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(3) EU instruments</td>
<td>(4) NGO/civil society pressure</td>
</tr>
</tbody>
</table>

*Figure 4. Conceptual framework for macro level analysis.*

Consistent with these results, EIB organisational deviance can be incubated in the tension between the objectives established in its statute/EU policy objectives and the objectives of individual member states acting in an individual capacity as shareholders. This deviance, and that of project promoters, is allowed space in which to occur through the asymmetries between EU and national legal frameworks which allows both the EIB and project promoters possibilities to exploit gaps. Then, this is deviance is failed to be controlled by other EU institutions that have partial, or incomplete, powers to intervene.
Chapter 8: Inside the EIB

8.1. The EIB appraisal process and its limitations

8.1.1. Introduction

The objective of this chapter is to enter into the EIB organisational setting to better understand the internal processes and stages that lead to the EIB financing infrastructure projects in the EU.

The chapter takes the main organising concepts from the theoretical framework (motivation, opportunity structure and control) and uses them to sequence the chapter in synchronicity with the EIB project cycle.

‘Motivation’ becomes an analysis of how the EIB appraises projects in section 8.1., ‘opportunity structure’ examines how the two main EIB governing bodies take decisions on loan disbursement in section 8.2., while ‘control’ analyses the internal mechanisms available to the EIB to monitor and control how projects are implemented ex-post loan disbursement in section 8.3..

This chapter will argue that internal EIB processes and norms during the project cycle can be violated, bypassed or ignored by EIB officials as a response to a) internal pressure to meet lending targets or b) external pressure from member states to approve projects (as a continuation of the argumentation proposed in section 7.1.4.). From a theoretical perspective, this chapter will explore the effects of resource dependency theory within the EIB organisational setting while strain theory will be used to interpret the conduct of individual EIB officials. The results of these behaviours can then become institutionalised when projects affected by such conduct are approved on the two main EIB decision making boards – these connections will provide links between the meso and micro elements of the theoretical framework.
The first section will analyse the EIB’s project appraisal process from the first interaction with the customer until the financing proposal is submitted to the Management Committee.

8.1.2. First interactions with the customer

When a potential EIB customer makes the first informal contact with the Bank it is likely that it will be done so through an EIB loan officer based in the Operations Directorate – the main commercial directorate of the EIB that is responsible for generating the Bank’s turnover through identifying potential investible projects. In effect, loan officers are the EIB salesforce (section 3.4.4. identifies different types of EIB customers).

Loan officers are assigned country and sectoral responsibilities within divisions in the Operations Directorate. For instance, a loan officer could be part of a team that is dedicated to lending activities in the transport sector in the Baltic region. This specific geographic and sector focus allows loan officers to better track market developments and to maintain relationships with customers, project promoters, local banks, public authorities, government ministries and other stakeholders thereby encouraging the EIB to be part of the project finance landscape within a certain location and market.

Customers, herein referred to as project promoters, make contact with an EIB loan officer who then undertakes an initial, informal screening of the project. This process is known as the ‘Project Identification and Selection’ stage (European Investment Bank, 2013, p. 104) and is, in effect, the first general filter of the Bank to ascertain if a project broadly fits within its lending criteria. At this stage, the loan officer must ask him/herself – ‘what are the chances of this project passing through the Bank’s appraisal mechanisms and being approved?’
This initial screening is done informally and is left to the discretion of the loan officer although it can be done in consultation with colleagues in other sectors of the Bank such as technical staff and lawyers familiar with the potential regulatory issues in the host country (ibid, pp. 103-4). If the loan officer decides to go forward to a full appraisal, a confirmation letter is sent to the project promoter confirming the initiation of the formal appraisal process.

8.1.3. EIB appraisal process

When deciding to become involved in projects the EIB undertakes a number of due diligence and risk assessment tasks which are designed to mitigate any potential environmental effects, negative economic implications of the project and any reputational risk issues. These checks are necessary as corporate entities such as the EIB must show they have undertaken their business affairs with ‘due diligence’ and have established a safe system of operations that will ensure compliance with applicable laws and prevent violations of such frameworks from occurring (Gobert and Punch, 2003, p. 205). This section will first establish the scope of EIB checks then 8.1.4. and 8.1.5. will explore two weaknesses of the EIB appraisal process.

Pre-appraisal

During the pre-appraisal stage a Project Identification Note (PIN) is created and an EIB team is assigned to the project. The team consists of the EIB loan officer from the Operations Directorate and technical specialists (an engineer and an economist) from the Projects Directorate. The technical specialists undertake a pre-screening of the project against a checklist that identifies whether a project is consistent with EU environmental policy, EU law (e.g. environmental standards) and legislation of the host country (e.g. whether the correct permits have been acquired) (European Investment Bank, 2013, pp. 105-107).
The objective of pre-screening projects is that it allows the EIB specialists to identify areas of a project that pose specific issues or risks (technical, compliance or regulatory) that will need to be resolved during the full appraisal e.g. if a motorway construction project is proposed in proximity to a residential area, has a strategy been identified to mitigate the environmental risks to the inhabitants? In this way, appraisals can be targeted to the specifics of each project. This stage represents the first screening for risk in EIB projects and is done through inspecting the project paperwork provided by the project promoter and also through the EIB official’s experience in the country, sector or with the promoter (ibid, p. 103).

The results of the pre-screening form part of the basis of the ‘Opinion for Appraisal document’ (PJ OA) that is used by the Operations Directorate to generate an internal ‘Agreement to Appraise’ document (ibid, p. 108). This document is submitted to senior management for authorisation in order to proceed to the full appraisal stage. In addition, in accordance with the Article 19 procedure of the EIB statute (previously discussed in Section 7.3.2.) a project note is created which is submitted to the European Commission’s Directorate-General for Environment (DG ENV) in order to be assessed for coherence with EU policy (ibid, p. 113). As already established in section 7.3.2., if the Commission is preparing to adopt a negative position on the project, this is relayed informally to the EIB which will then either terminate the appraisal process abandon the project or seek to modify it.

At this stage the project is given an initial environmental and social risk categorisation between A (minimal impact) and D (not acceptable for EIB support). This preliminary analysis should appear in the PJ OA document and later subsequently confirmed or modified in the final PJ Appraisal Report. (ibid, p. 108). It is later revised in the full appraisal.
Appraisal

The EIB appraises projects in order to evaluate whether a project complies with European and national law of the host country and to assess the main characteristics of a project on an economic, environmental and financial basis i.e. what is the business rationale for undertaking the project? Is the project consistent with EU environment and climate policy? How is it going to generate revenue? Who is the project promoter and does it have the capacity to implement the project? I will now establish an overview of the EIB appraisal processes from technical, economic and compliance standpoint.

Environmental Appraisal

The environmental appraisal of projects in the EU by the EIB is underpinned by Articles 191-193 TFEU (ex arts. 174-176 EC) that establish the requirement for EU bodies to commit to environmental principles in all operations. The EIB operationalises its treaty requirement and its obligations to meet EU environmental *aquis* through a series of Environmental Statements first made in 1996 (later revised in 2000 and 2004) that establish and define the environmental standards of projects it finances. The latest version - the Environmental and Social Handbook (published in 2013) – provides an overview of the checklists EIB officials use when undertaking appraisals.

Of particular relevance during the appraisal process is EU Directive 2011/92/EU as it identifies which types of projects require full environmental and social impact assessments (ESIAs). Major projects such as bridges, railways, power stations are all classified as Annex 1 projects and require full ESIAs whereas smaller projects, Annex 2, are left to the discretion of the authorities of the host country. ESIAs are central to the EIB appraisal process (section 8.1.5. will explore the importance of ESIAs in relation to the Castor project) as they establish the potential environmental and social impacts and the responsibilities for project promoters to develop
and implement mitigation strategies. ESIAs are undertaken by the project promoter and submitted to the public authorities which then decide on the permission to grant permits for the operation.

During the appraisal process the EIB decides if the ESIA has been performed satisfactorily ensuring that provisions on holding public consultations, drafting suitable environmental management/action plans and ensuring the communities that host projects are informed of the decision to go ahead (European Investment Bank, 2013, p. 119). The results of the ESIA are translated into specific conditions of the finance contract that is signed between the EIB and the project promoter. The EIB’s responsibility is to verify that the project has been implemented in accordance with the environmental and social impacts that are identified in the appraisal process.

**Economic Appraisal**

Each proposed EIB project must be submitted to an economic assessment in order to better understand the economic justification and anticipated performance of the operation. The assessment is designed to understand the broad questions of – is there a convincing underlying business rationale for the project? Will EIB finance contribute to this objective? Is this a sensible investment for EU-derived funds? In addition to purely financial concerns, the EIB, as per its Guide to Economic Appraisals, claims that its methodologies include a calculation on the “returns of a project to society” and suggests its economic appraisal is “synonymous with sustainability, cohesion and growth” (European Investment Bank, 2013, p. 8).

**Customer due diligence**

A process that runs in tandem to the appraisal undertaken by the Projects Directorate is that done by the EIB’s Office of the Chief Compliance Officer (herein OCCO) - an independent EIB directorate that reports directly to the Management Committee. Its function is to screen all
counterparties during the appraisal process. OCCO performs integrity due diligence checks on customers in order to assess money laundering and financing of terrorism risks, tax evasion/avoidance risks and the potential reputational risks associated with doing business with that customer i.e. if there is any open legal proceedings or past records of breaches of administrative or criminal law (European Investment Bank, 2011, p. 8).

The EIB counterparty due diligence responsibilities ahead of loan disbursement are established in the Bank’s Anti Money Laundering framework based on EU directive 2015/849 (Art. 13). In addition, the EIB has agreed to implement standards pursuant with the United Nations Convention Against Corruption, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the Financial Action Task Force Recommendations and the International Financial Institutions’ Anti-Corruption Task Force’s Uniform Framework Agreement (European Investment Bank, 2013, p. 2).

During the EIB appraisal process a project team leader in the Operations Directorate will request OCCO to conduct due diligence and to screen counterparties with the objective of understanding the identity of the beneficial ownership, investigate the connections between identities of the borrower, legal entities, sub-contractors and other stakeholders for potential conflict of interests and compliance risks (European Investment Bank, 2014). This is all done to ensure the EIB has an accurate picture of entities involved in projects it finances, even if they are not the direct beneficiaries of EIB loans.

Ahead of an EIB decision on disbursement, the work of the sub-unit Compliance Operations Division (OCCO-OPS) is relevant as it drafts opinions to be discussed at board level where a final decision on disbursement is taken. It is important to note that OCCO opinions are not binding and have no veto power, and therefore information given to colleagues is presented on an advisory basis. In addition, OCCO monitors
staff behaviour to ensure it is consistent with the Staff Code of Conduct and is responsible for developing the overall EIB compliance policy (European Investment Bank, 2014, p. 5).

Appraisal Completion

After the project has been assessed on the above criteria, a Project Directorate Appraisal Report is created that includes summaries of the all the major environmental and social impacts of the project and ends with a specific opinion from the Projects Directorate on the viability of the project (European Investment Bank, 2013, p. 161). This is combined with the project proposal generated by the Operations Directorate to become the basis for the main financing proposal. To get to this stage, the Director-General from the Projects Directorate and the Operations Directorate must sign off on the project, this in theory represents an agreement from the technical and business wings of the EIB that a project is supported by both areas of the Bank. Only then can the financing proposal be submitted to the Management Committee for the first vote. The entire EIB appraisal process was tidily summarised by one EIB official:

“When projects are developed on the ground, they are looked at by the services through filters. So they must meet those different characteristics. And, then they are filtered, you have a loan officer who is developing it, you have a head of division who is supervising it. You have a head of department who is reviewing it. You have the head of Directorate, who again sifts to make sure he is comfortable with this project to bring to the Management Committee. And then you have the Management Committee reviewing it, knowing he’s going to have to bring it to the Board.”

EIB Official 7
8.1.4. Lending targets and the incentive to lend

EIB loan officers’ primary function is to identify business opportunities that work towards the EIB’s lending targets as per defined in its Operational Plans (described in section 7.1.2). These documents establish the EIB’s lending targets with regard to how much the Bank wants to lend (total lending volumes), in what sectors (e.g. energy or transport), and toward what specific policy objective (climate, SMEs etc). In turn, each geographic division in the Operations Directorate is assigned lending targets on an annual basis to which each loan officer contributes. The aforementioned hypothetical loan officer working in transport in the Baltic region is therefore responsible for identifying investible projects that will contribute toward achieving these targets. When divisions are faced with lending targets each loan officer is therefore under pressure to meet them. Two EIB officials described the situation in which the loan officers work:

“OPS has an annual mandate, an operation plan that has to be fulfilled. You need to lend so much money in these areas and these sectors and so on - the sales objectives. OPS being the sales force is under a lot of pressure to achieve that business plan.”
EIB Official 12

“OPS has a target defined ex-ante every year - so for X country there is a number, we have to lend X million this year - it is set by the management of the Bank.”
EIB Official 14

According to internal EIB research, the need for loan officers to reach lending volume targets influences their behaviour during the project identification stage even before the appraisal has begun as loan officers display a strong preference for large projects that will help them to meet lending targets at a faster rate than support for smaller projects (European
Investment Bank, 2002, p. 18). In banking terms, this means projects with a low ‘cost to volume ratio’ – i.e. the maximum return on the resources assigned to the project, also known as the ‘bankability’ factor. Indeed, why spend organisational resources on approving small projects when similar effort could be rewarded with a much larger loan volume?

The effects of lending targets feature prominently in literature on the other IFIs and especially the World Bank. In 1992, an internal report written by the then Vice President, Willi Wapenhans, gave an excoriating analysis of the deterioration in the Bank’s portfolio – the level of projects the World Bank deemed as unsatisfactory had increased from 15% in 1981 to 37.7% in 1991 (Rich, 1994, p. 256). Wapenhans revealed that the introduction of lending targets was one of the primary drivers for the Bank’s overall poor and worsening performance. Loan officers who were incentivised to meet lending targets were being subjected to lending pressures which, in turn, created an ‘approval culture’ within the Bank. This translated into the World Bank supporting ever larger projects that were increasingly disconnected from the Bank’s lending policies. The report includes surveys of World Bank staff that revealed a culture in which the pressure to lend to meet targets outweighed all other considerations during the appraisal process.

From a criminological perspective, Rothe and Friedrichs (2016, pp. 66; 78-79) identify the creation of lending pressures and a culture of approval within the World Bank as a driver in causing it to become organisationally deviant which the authors propose can be explained by strain theory:

“For actors within the organisational setting of international financial institutions, such strain can occur due to pressure to lend policies that puts priorities in approving loans that should be rejected.”
Strain theory, first developed by Merton (1938), suggests that strain occurs when attempts to achieve goals or objectives are blocked which then pushes individuals to look for alternative means. Later, strain was used to explain organisations’ predisposition to organisational deviance as a result of intense pressure to satisfy shareholders (Cohen, 1995). More relevant for this thesis, it has been used to interpret corporate offences with some success (Langton and Piquero, 2007).

As a consequence, two questions arise in this section: to what extent does lending pressure influence the appraisal process in the case of the EIB? Can strain theory help us to better understand this process and individual actors’ behaviour within it?

Firstly, the objective of the loan officer to push for projects to meet lending quotas is a built-in assumption in the design of the EIB organisational structure. The role of the Projects Directorate is to act as a brake on that commercial pressure in order to achieve a project appraisal that balances the commercial objectives of the Operations Directorate to meet lending targets with the technical assessment of the Projects Directorate on a project’s soundness from economic, environmental, social, compliance and reputational risk points of view. The tension that these competing objectives create during the appraisal process was described in one interview by an EIB official as desirable, and as a mechanism that worked toward better overall appraisals:

“The Operations Directorate is playing football and the Projects Directorate is playing badminton. There is lot of tension in that, but, the two things have to combine into the sports academy. They have different roles. You want the mechanisms of checks and balances to exist to create the tension - because then the likelihood of things going wrong is reduced, and this is what you want from a governance point of view. It is not that OPS doesn’t care about the projects. They know that they have to be there”
next year, and if you have disasters one after the other, there is a
deterioration in your assets, then you’re going to have problems.
Nevertheless, the inclination of sales people to take some type of
risk is different to the inclination of people who are there to
evaluate and try to stop taking any risk that you are not
comfortable with. So, there are two different attitudes.”
EIB Official 11

By creating an organisational structure that aims to produce this tension a
series of questions arise that should be answered in order to assess the
integrity of the EIB appraisal process: does the system of checks and
balances function as it is intended? Can it be bypassed or influenced in any
way? To what extent do risk considerations from the technical specialists
mitigate the pressure to lend exerted on the loan officers in the Operations
Directorate? Two EIB officials described the process of how loan officers
and technical specialists negotiate the competing concerns within the
appraisal process:

“We are the guardians of the implementation of the application
of the standards. They are not our standards, they are
institutional standards. You first remind them of that in your
conversation with the loan officer - and if they disagree,
especially in difficult cases, if there is a pushback from the loan
officer then we may escalate it to their supervisor and our
supervisor. And it can escalate because if I insist, if I'm
absolutely sure based on my professional judgement that this is
needed, then I don’t want to sign off on a project if I don’t think
that it complies. So they need us, and we need them.

If I absolutely don’t agree that the project is meets the standards
then I don’t sign...and I go and speak to my manager and say
"my opinion is such and such because of this and this...." then
they have to defend it further up. And at the top, it can come to
Director General level, the Director General of the Projects Directorate! We usually resolve it before. In most cases, we are able to agree to it at project team level...or at most at division head level. But there are cases when Director General's interfere...rarely, but it happens. Management Committee has asked...they want the Director Generals to agree before it comes to them. They want Director Generals to find a consensus before presenting it to them.”

EIB Official 18

“You get the drafts and opinions then you call up the colleague and say "I read your text, but, could you please discuss because I know this is...but, what about this? And what about that?" And you seek to discuss it, let's say, in a consensual manner. You can get the other person to somehow smoothen the type of initially very harsh comment. And the person may say "well, yes" and the other will say "because you know the other project you mentioned, well, this doesn't seem to be worse” and so on, and you discuss it and they say "Ok on this, I could leave this out...this adjective here but the rest will stay. I will smoothen it but the rest will stay and my opinion remains negative." Some people may erase everything and write 5 nice sentences praising everything and throwing away their analysis and what they really think about it. And other people will say "yes you're right. It would be nice but unfortunately this is the reality and this is my view and I will not move it."

EIB Official 11

From these accounts, the mechanism can be observed as functioning correctly. Loan officers attempt to encourage technical specialists to soften their appraisal. But, in response, this can result in varying levels of success given that the technical specialist may agree, or, may retain the negative conclusions. Therefore, at this stage the EIB structure that intends to
manage these tensions gives the impression of functioning as it was designed. However, problems begin to emerge when the divergences of opinion between the loan officer and technical specialist are not decided within the project team, and are relayed up one level in the organisational hierarchy to the head of division and then the head of the directorate. EIB officials claimed that when pushing the issue higher into the EIB organisational hierarchy such identified risks could be diminished or removed altogether:

“When proposals are submitted to the Management Committee they are normally signed by the Director General. So the areas of disagreement are already suppressed at that level. So the Management Committee usually doesn't see most of the potential areas of disagreement. If there is an opinion at service level - by the social experts, by the environmental experts...if they exercise their professional judgement and say "this is dangerous" - we should not support this project then usually, this does not get to the top level of management. It is buried somewhere.”

EIB Official 10

Some EIB officials offered accounts of instances when the Management Committee had overridden the concerns of the Projects Directorate while others offered more stark accounts of how senior management can interfere in the appraisal by issuing threats to technical specialists in order to ensure that the project passes the appraisal stage:

“Sometimes the problem to resolve was that a project wouldn't get to the Management Committee. I remember some occasions when the projects directorate weren't happy with a project, or the risk people weren’t happy but it came for a discussion at the Management Committee anyway.

The Management Committee could decide if the fear of PJ, or the fears of the Risk weren't justified and the project really
should go to the Board of Directors."

EIB Official 2

“Sometimes the technical concerns are suppressed even beneath that. Exercises in manipulation of individuals to not express themselves in a purely professional way have become much more frequent. If you are participating in a team and you have to deliver an opinion on the project as to whether it should go ahead or not, or under which conditions and somebody from the top level wants it to go ahead, you may be very sort of diplomatically, or less diplomatically, called in - implicitly saying "if you say no, your career is over. If you say yes, you might have the chance to go further."

EIB Official 11

The interference by management into the appraisal process shows that despite the organisational design that attempts to mitigate the competing interests of the Operations and Projects directorates, the appraisal process can be subverted altogether when management is involved. In effect, the system of checks and balances that is designed to ensure successful appraisals can be bypassed. This conclusion supports the use of strain theory as proposed by Rothe and Friedrichs (2016, p. 66) within IFIs to understand how approval cultures work. In order for a project to be passed that may feature a negative assessment by the technical specialist, a loan officer can attempt to influence the assessment project at team level. If this is not successful, the conflict is elevated and is resolved at a higher level in the EIB organisational structure.

Strain theory has been used to explain corporate offences (Agnew 1992; Langton and Piquero, 2007) and supports the accounts offered by EIB officials on how the Bank’s appraisal process can be interfered with. Agnew (2001, p. 343) suggests that when an extreme desire for money becomes a core goal, this form of strain is likely to result in organisational deviance. In
the case of the EIB, the desire to meet lending targets or secure political objectives (this is described in section 8.2.4.) produces strain that drives officials to interfere with the appraisal process. This strain can also be seen as the internal manifestation of resource dependency as described in 7.1.4. – the pressure to secure objectives (lending targets or to secure finance for individual projects) creates tension between EIB officials who are caught between upholding the EIB’s project standards and by the need to meet these external objectives. This section has shown through first-hand accounts the type of internal strain that these tension cause within the appraisal process.

8.1.5. Limitations to the appraisal process

In addition to the above account of the susceptibility of the appraisal process to interference it can also be undermined by the process’ limited scope and over reliance on the information supplied to the EIB by the project promoter. For projects within the EU, the appraisal process is underpinned by the EIB’s application of the ‘presumption of legality’ – i.e. during the appraisal process it is the project promoter who is responsible for undertaking the ESIA (as described in section 8.1.3.) The EIB, in turn, presumes that this has been done in accordance with EU and member state law and checks the compliance between the ESIA and the legal framework and its own standards. In effect, the EIB supervises the compliance but it does not undertake the ESIA itself and presumes its legality. This stance makes sense from an organisational perspective as if the EIB were to undertake its own ESIAs for all projects, it would need to employ thousands of additional technical specialists. Instead, project promoters undertake the ESIA and the EIB runs a compliance check. This section will contend that the EIB’s application of the presumption legality was one of the main drivers behind the failure of the Castor project.

The ex-post investigation into the Castor disaster conducted by the EIB observes that the strict application of the presumption of legality, paradoxically, exposed the Bank to additional risk relating to the seismic
risks. When the project promoter undertook the ESIA in 2008 there were no clear industrial standards or guidelines relating to seismic risks in underground gas storage installations. In addition, there was sparse scientific literature available in what was considered ‘an evolving field.’ (European Investment Bank, 2018, p. 8) As a consequence of the lack of a technical framework, the EIB’s appraisal documents did not include any analysis relating to seismic risk. The resulting paradox is that the EIB did not contravene or violate any industrial guidelines or legal framework (ibid, p. 46) simply because such guidelines or framework did not exist. The same report reveals that EIB services claim that an analysis of the seismic risk was performed but was considered to be insignificant, but also notes contrarily, that the results of this analysis were not documented (ibid, p. 33).

The report, in addition, identifies that there were no negotiations with the project promoter over the seismic risks identified during the consultation period and flagged by several Spanish NGO groups (ibid, p. 42). This clearly shows that possibility of Castor inducing earthquakes was never taken seriously by the project promoter when conducting the ESIA, nor by the EIB when undertaking its technical appraisal. Therefore, by relying on checking the compliance of the ESIA with the limited legal framework/industrial guidelines the seismic risk never received serious attention from the EIB during its appraisal. One EIB official confirmed that the appraisal team’s focus had been to ensure compliance with all legal frameworks, but in addition, had faced certain time pressures during the appraisal process:

“We have to take into account that the environmental studies are like the bible in terms of volume. They are long documents, and it's materially impossible that the projects directorate can review every part of that report.

So, what they do is that they ensure things are done in accordance with the laws, and EU directives - and in this respect, Castor was checked. They looked at the environmental
Gutner (2002, p. 124) has previously reached similar conclusions regarding the EIB appraisal focus, concluding that it is over reliant on compliance with standards that results in it losing sight of broader questions regarding technical risks. This was one of the main conclusions of the EIB investigation into Castor – namely that despite whether or not the Castor project complied with the limited legal framework covering such an operation - at no point were broader questions considered over the safety of injecting huge quantities of gas into the seabed in close proximity to geological fault lines.

Given the lack of knowledge of operations relating to underground gas injection, the report contends that the EIB appraisal should have sought to better understand the risk in line with the precautionary principle as per detailed in Article 191 of the Treaty on the Functioning of the European Union (European Investment Bank, 2018, p. 8) that recommends additional risk-mitigation strategies for complicated projects such as Castor. The report confirms that the EIB did not seek specialised expertise in accordance with the precautionary principle but instead relied on the Lender’s Technical Advisor – an engineer appointed by the project promoter. The closeness of the relationship between the project promoter and the technical advisor is an additional area of concern and was commented on by one EIB official in the case of Castor:

“Most of the engineers sit within the company so there is quite often a conflict of interest. The companies that do this work are too close to the project promoters.”

EIB Official 10
It is evident from the EIB’s handling of the Castor appraisal process that it underestimated the seismic risk despite being warned by Spanish NGO groups during the public consultation, and put too much faith in the technical studies undertaken by engineers paid for by the project promoter. However, this must be considered in tandem with the points identified in section 7.2.3. on the macro level pressures for the project to go ahead, both at Spanish state level and at EU level as the project’s identification as the first in the Commission/EIB’s Project Bond Initiative. Therefore, all actors pushed hard for the project to go ahead, but simultaneously this resulted in the seismic risks the project posed being overlooked by all of the actors in their rush to approve it. Reflecting on what went wrong, one EIB official relayed his dismay at the number of actors who failed to spot the risk the project posed:

“I cannot imagine that the pile of engineers that were looking into that never considered the type of seismic risk that could have been involved. Engineers are too intelligent, too smart and too experienced not to think about that. None of their technicians, none of their experts saw that this was possible. How can you believe that? I mean, it's possible to make mistakes, and typically an investment the likelihood that you make some amount of mistakes is guaranteed. Investment is a difficult thing, it's not a magic wand. You're taking a lot of risk”

EIB Official 11

8.1.6. Interim conclusions

This section has sought to better understand the EIB appraisal process concluding that elements of it can be ignored, bypassed or violated in response to pressures to meet lending targets or to comply with outside demands of member states to approve individual projects. When this occurs, individuals acting under strain attempt to intervene in the appraisal process in order to secure objectives – however, as a consequence, spaces or gaps
begin to appear between projects’ standards and those of the EIB – this can be seen as an initial driver of EIB organisational deviance as projects’ technical aspects (those on paper) begin to be altered in line to fit standards, rather than the standards themselves defining which projects should be approved.

The next section will move into the governance structures of the Bank and will demonstrate how such interferences can be exacerbated or facilitated by the EIB’s management boards leading to bad projects being approved.

8.2. EIB decision making and governance structures

8.2.1. Introduction

After the EIB appraisal process is completed projects must pass two rounds of collegial voting on the two main EIB governance bodies - the Management Committee and Board of Directors. Only after a project has been passed by both boards can EIB funds be disbursed and therefore these two bodies represent the main venues in which EIB support for projects is decided.

This section will begin by establishing the composition and functions of the two main governance bodies. After, I will argue that the dual board structure of the EIB a) leads to an unfamiliarity with the technicalities of projects for those that take the final decision on their approval b) insulates the main executive arm of the Bank from accountability. Combined together, these factors create an opportunity structure for EIB organisational deviance identified in the appraisal process in section 8.1. to become institutionalised as projects are approved and readied for loan disbursement.
8.2.2. Management Committee

The Management Committee is the EIB’s executive body in charge of the administration of the Bank’s daily business, internal policies, strategies and codes of conduct and is therefore the most powerful body in the Bank. As per Article 11 of the EIB statute, the EIB President and 8 Vice Presidents that form the Management Committee are appointed on 6 year terms by the EIB Board of Governors (European Investment Bank, 2013).

In addition to this executive function, it is the first EIB body that votes on project proposals. This is done by a simple majority and in the case of a draw between the 8 Vice Presidents, the EIB President casts the final vote. When the Management Committee votes in favour of projects they are elevated to the Board of Directors where a final vote results in the project being formally approved.

The 9 members of the Management Committee reflect the distribution of the EIB’s shareholding. Larger shareholders (France, Germany, UK and Italy) have their own Vice-Presidents while smaller shareholders form clusters which are represented by a single Vice-President. For example, the British Vice-President is responsible for operations in the UK, Cyprus and Greece whereas Denmark, Estonia, Finland, Latvia, Lithuania and Sweden share representation. Vice-Presidents are also assigned several non-EU countries in which the EIB is active. For instance, the Italian Vice President is responsible for projects within his/her own country plus the Balkan region and Egypt, Israel, Jordan and Lebanon. Any proposed project within, or involving, those countries becomes the responsibility of the Vice-President insofar as during the committee meetings it is the role of said Vice President to speak in favour of the project prior to the vote.

In addition to geographical responsibilities, each Vice President supervises a specific directorate of the Bank, a set of EIB policies and is in charge of relations with external partners (European Investment Bank, 2016, pp. 24-
25) - a Vice President could be responsible for the Operations Directorate, financing in the ACP countries and SME lending. Combined together, the geographic, policy and directorate responsibilities of each Vice-President affords the appointee substantial executive power over EIB operations.

Vice-Presidents travel extensively within their territories to discuss potential projects with clients. In contrast to EIB loan officers (as described in section 8.1.2.), Vice-Presidents liaise with the most senior civil servants, government representatives and business leaders and can be seen as an executive level salesforce. Vice Presidents are supported by the EIB’s network of satellite offices in EU countries that liaise with dedicated units in member states’ civil services that work specifically on EIB projects (“Our offices,” 2018). The combination of Vice Presidents’ contacts and permanent regional EIB presence can be seen as an interface between the member states and the EIB. When potential deals are floated, the EIB Vice-President brings back the project to the EIB in the sense that he/she instructs the officers to initiate the formal EIB appraisal process (as described in 8.1.2./8.1.3.).

The President and 8 Vice-Presidents must adhere to the Management Committee code of conduct on appointment to the Bank that is upheld by an independent Ethics and Compliance Committee – a body established by the four longest-serving directors plus the Chairman of the Audit Committee, and is chaired by the longest-serving director. The code introduces provisions to ensure individuals do not profit individually from EIB transactions as well as for ensuring the independence of the members from taking instructions from governments (European Investment Bank, 2011). This last point is significant and the extent of the Management Committee’s independence in practice is explored in 8.2.5..
8.2.3. Board of Directors

The EIB’s Board of Directors is a non-resident board consisting of 29 directors (one Director nominated by each Member State and one by the European Commission - see section 7.3.2.) complemented by 19 alternate directors appointed by the Board of Governors on a 5-year term. The main function of the Board is to ensure the Bank is administered accordance with the provisions of the EU Treaties, the EIB statute and with the general directives laid down by the Board of Governors. In this sense, it is a non-executive supervisory board. EIB directors travel to Luxembourg to attend 10 board meetings per year in which votes on loan disbursements are taken usually amounting to between €5-10 billion per meeting and also several EIB policy issues. If a project is approved by this body then funds can be disbursed.

The four largest EIB shareholders (Germany, France, UK and Italy) each have a Director plus two alternate directors while smaller shareholders share alternates in clusters such as Spain/Portugal or Belgium/the Netherlands/Luxembourg (European Investment Bank, 2013). This system allows every member state to be represented by a director, but simultaneously gives the bigger shareholders greater voting power through having more alternate directors. As per the EIB Rules of Procedure, in order for a project to pass a vote it requires at least one-third of voting members representing 50% of the subscribed capital of the Bank (European Investment Bank, 2016).

Despite EIB Directors being full-time career civil servants appointed from the member states there is, according to Article 9 of EIB Statute and the EIB Code of Conduct for Directors, an expectation that Directors shall remain responsible only to the Bank when exercising their duties (European Investment Bank, 2011, p. 2).
8.2.4. The EIB governance structure and EIB governance in practice

The EIB corporate governance structure mirrors that of the German/Dutch tradition of the two-tier, dual body system in which the executive body is supervised by a board. This system formally separates executive from non-executive directors into two boards. This is distinct from the US/UK tradition in which both sets of directors sit on the same board (Maassen and Van Den Bosch, 1999). There is a sizeable body of literature on corporate governance theories on the efficacy of each model of governance structure which will not be addressed here (see: Sheridan and Kendall, 1992; Demb and Neinbauer, 1993). Instead, this section will focus on how the EIB governance structure works in practice, and its influence over the way projects are approved for EIB finance.

During the course of interviews many EIB officials disclosed that the Board of Directors rarely votes against projects that are proposed to it by the Management Committee. At this stage, projects have passed through the Bank’s filters in the appraisal process (as described in section 8.1.3) and have been approved by the Management Committee by a consensus vote. In practice, this results in the EIB directors working to the assumption that projects are coherent with EIB lending policies and all of the Bank’s checks identified in section 8.1. have been applied. Two EIB Officials explained how this assumption worked in practice.

_**I:** How often do the Management and the Board disagree over projects?

_R: Very, very rarely. Which is not surprising really, given the way it's done. I would say 99% of the time they bring a projects to the Board it gets through. But it gets through, not because the Board lacks control, it's because all the control in bringing it up to Board means that they aren't many controversial projects_
brought to the Board. They are normally sitting very well with all the requirements of the Board before they arrive.

EIB Official 7

“The role of the Board is looking at how the Bank's finances are getting on, where the Bank is going, whether the policies that have been agreed are being implemented rather than being a Board that is going to scrutinise every project to have a detailed discussion. Most of the projects went through the Board without any discussion at all.”

EIB Official 2

The lack of challenges to projects at board level on any detailed technical criteria can be explained by the EIB Directors’ limited time to read the project proposals in their entirety before casting their votes in the monthly board meetings. In interviews with EIB officials it was accepted that as a consequence of having full time positions in their home institutions, directors did not have sufficient time to read the project documentation prepared for them prior to each board meeting and often took the project’s soundness on trust rather than through their own analysis. In the context of the World Bank, Ascher (1992, p. 86) contends this contributes toward a distance and unfamiliarity between the Directors and the intricacies of projects they vote on. Rich (1994, p. 194) and Weaver (2008, p. 70) voice similar concerns and argue that this encourages Directors to seek reassurances that projects are under control rather than checking the complex and lengthy project appraisal documents for themselves.

This distance between the EIB Directors and intricacies of the Castor project was one of the drivers for its failure. The Bank’s approval process was complicated given that approval by the Board of Directors was done in stages over 3 years. The technical appraisal was conducted by the EIB in 2009 with the project being approved in 2010 for a funding facility of a maximum of €600 million (European Investment Bank, 2018, p. 16). When
the project was identified as a candidate for the Project Bonds Credit Enhancement initiative (as described in section 7.2.3) it went through another round of approvals in the Management Committee and the Board of Directors. The last of these approvals was undertaken in 2013 but was based on the original 2009 technical appraisal and did not include any additional project assessment or update of the original technical assessment. As established in section 8.1.5., the issue of seismic risk was not considered by the EIB as part of its appraisal. Therefore, by the time the final approvals were made the seismic risks had not been considered at any point by the Board of Directors, creating a clear distance between the intricacies of the project and the Board of Directors’ knowledge of it.

The lack of knowledge of the Directors within the board setting was observed by two EIB officials who identified the lack of time to analyse the projects as the main reason why the Directors were unfamiliar with the technicalities of projects:

“It's very difficult to approach individual projects when you only have them on your table some weeks in advance of the Board, you don’t have time to read them. Even if you do read them, you don't really have an accurate idea because you haven’t followed the project from the beginning. It's only on paper.”
EIB Official 13

“If you look at the list of projects going through the EIB board any month, whether it be 50 projects - you say "my god - did this guy read all 200 pages of all 50 projects?" Well, no. But he has systems to identify where the problems are and hone in on them.”
EIB Official 7

“The main body that has the final responsibility is the Board of Directors, but it isn’t a technical body so it is the responsibility of someone technical, or financial specialists to flag risks. But
The inability of the EIB Directors to read the project documentation and the resulting tendency of the Directors to vote in favour of projects are characteristics of what Hage (1980, p. 95) describes as a “weak board” insofar as projects proposed to it by the executive go largely uncontested. In the case of the EIB, the lack of challenges to individual projects at board level results in projects being rubber stamped for approval, rather than being properly scrutinised. The consequence of this dynamic is that within the EIB organisational setting the two-tier board structure results in the balance of power between the supervisory and executive boards is firmly weighted toward the Management Committee.

8.2.5. Independence of the Management Committee

Having established the Management Committee as the dominant force within the EIB organisation structure it is important to consider the extent to which its members are independent from the member states responsible for their appointment. As per Article 11 of the EIB statute, Vice-Presidents should be responsible to the EIB and prioritise its interests over those of the member state in charge of their appointment (European Investment Bank, 2013). From one vantage point, Vice-Presidents are appointed to the EIB to capitalise on their extensive contacts in specific regions and knowledge of companies and markets – as Lewenhak (1982, p. 11) contends, they are very much from the ‘establishment’ of their countries having had experience in institutional affairs, government ministries or from the private sector. Simultaneously however, Vice Presidents as per the EIB Statute and code of conduct are prohibited from accepting instructions from any government. Therefore, Vice-Presidents are expected to be close enough to make use of their contacts, but always independent from the authorities in charge of their appointment. One EIB official described how the close relationship between
the member of the management committee and the member states functions, while another compared it to the separate configuration at the World Bank:

“The EIB works through very close contacts of the Board members. So the Board members are in very close touch and travel all the time and meet people in their geographical arenas. So, someone from Central and Eastern European countries travels there, meets the Ministers of Finance and other people they know, but it’s really sort of - "here’s something, we will build this bridge, is the EIB interested?" This is how the business works. And then, those deals get investigated - this is how it generates the volumes. The EIB really expects people to be very close to stakeholders of all kinds. There are pros and cons - it's a tricky role. It certainly not spelled out too clearly.”
EIB Official 8

“There is a difference between the EIB and the World Bank. If you are in the Management it is absolutely clear that you can’t have any specific promotional roles, you can’t even be in charge of the country or the area where you come from. A swede cannot be responsible for the Nordic countries in an institution like that. Or an Indian can’t be in charge of India... it’s to avoid any potential conflicts of interest. But at the EIB, it’s a more pragmatic approach.”
EIB Official 6

This raises a conflict of interest when the authorities in charge of appointment can also be EIB customers when projects involve the same government institutions. This is acknowledged in EIB sanctioned research undertaken by the NGO Transparency International that identifies this link between the member states and the Management Committee as a threat to the independence of the institution (Ban and Seabrooke, 2016, pp. 10-12) – this poses the risk that members of the Management Committee could lobby
for projects proposed by member states which are not consistent with the Bank’s lending criteria.

When this point was discussed in interviews with EIB officials it was seen as an undesirable yet inescapable situation that members of the Management Committee act on instruction form the member states in order to achieve the objectives of the member states i.e. to secure EIB finance for projects within their territories. One further consequence that emerges from the close relationship between the appointing authorities and members of the Management Committee is that committee meetings become venues in which member states can undertake political bargaining or lobbying in order to attract enough votes to secure support for their projects. This is done through relaying instructions to Vice-Presidents who then enter into informal negotiations with other Vice-Presidents. Two EIB officials discussed Management Committee decision making as a venue for such political bargaining between member states:

“You have 9 guys making the decision. If the project under discussion is looking increasingly bad, it will start with more questioning and more demands, and then at some stage they may well say "we don't share the view that this needs to go ahead." But at the same time, the other member may be horse-trading and say "well, if you agree with me on this, I will agree on your other thing over there for you. Otherwise I'm going to be opposing your project to the end and raising all possible difficulties” and so on. There is an amount of horse-trading.

All of this is the mediation - the checks and balances and the collegial decision - that's where it comes. And it helps the individual under pressure - he will say to his Minister "Look, I'm trying to do my best but these guys don't want it at all." And then you might have Ministers calling the other peers and telling them "this has to go ahead" and the other ones saying "of course it
will go ahead” and then calling their people here and say “don’t let it go ahead.” Politics is made up of a lot of these things all the time. They say one thing and do the other.”

EIB Official 11

“The kind of tension in an organisation like the EIB is political. So, when things move up the ladder, and reach a place like the Management Committee, there is a much broader political horizon that emerges so there is a lot of give and take in terms of accommodating views of member countries, because don’t forget these people are appointed by member countries, and even though they are 100% there, and their loyalty is in theory to the institution, in practice they do come from member countries and they are very close to member country interests. So, in that level already there is a lot of give and take as to whether if we take a project we might displease the Minister of Finance of X country.”

EIB Official 1

Therefore, the close relationship between the Vice Presidents in charge of their appointment is another internal, organisational manifestation of the interdependent relationship between the EIB and its shareholders as explained by resource dependency theory in section 7.1.4..

Aldrich and Pfeffer (1979, p. 83), writing from this theoretical perspective, state that “administrators face the task of ensuring a continued supply of resources and performances and ensuring the satisfaction of powerful groups in their environment.” In the case of the EIB, this means that Vice-Presidents are responsible for the continuing supply of resources (in this case the approval of loans) to the Bank’s shareholders who are also in effect their bosses. The results of this dependence transmits through the EIB organisational structure from the shareholders to the Vice Presidents, and then further into the Bank’s structure where it manifests itself as pressure on
the EIB technical specialists to modify their assessment of projects as described in section 8.1.5. Two EIB officials observed how the chain begins to emerge from the application of pressure by the member states onto the Bank’s Management which then must try to influence the appraisal process to highlight the best features of the project:

“Sometimes when there are requests, you interpret them as having high political value - and you know that it comes from an important constituency of your owners, like with any organisation - you would pay a lot of attention before saying "no" - you try to say "what can I do in order to say yes" – but still keeping the balance with the whole activity of the Bank without compromising it.

When you have member states saying "this is a very important project for me, so do everything you can to look after it." Then it is much more likely that the structures of the Bank would be invited, or pressured to squeeze all the positive elements, anything that can be used to say it's justified before dropping it. And if you manage not to drop it, you are responding to the political need of your owners or shareholders.”

EIB Official 11

“The in-house political promoter of the project will say "ok, who's involved?" and you say "x, y and z" - these are the people involved." "What is the problem?" "The problem is here and here." And they will think, how can I access these people with a view that has authority and may help them to change their view? And then you say "this guy is Dutch, let me speak to the Dutch Vice-President because I know what I have as ammunition to talk to him, to persuade him, and see if he could address the other guy and call him and say "Look, I know you're looking at
In summary, resource dependent actors on the EIB Management Committee must attempt to satisfy the owners of the Bank by influencing the appraisal process as evidenced in section 8.1.5. or performing the role of negotiators with other actors in the Management Committee in order to win support from other members. This behaviour is meant to be controlled by the EIB Management Committee code of conduct but in practice is in unavoidable consequence of the Management Committee members being political appointees from the member states.

8.2.6. Accountability of the Management Committee

The previous sections have established the Management Committee as the executive board that holds the most influence over the development of projects within the EIB organisational structure. If that is the case, to what extent can decisions made by the Management Committee fall under any external control?

Hachez and Wouters (2012, p. 88), in their review of the EIB’s external accountability principles, explore examples in which individuals and groups have attempted to bring cases before the ECJ to challenge finance decisions made by the EIB (as mentioned in section 7.3.2.). One element of the authors’ analysis (ibid, p. 90) affirms that because the EIB Management Committee is technically limited to preparing decisions for the EIB Board of Directors to vote on, the decisions made by this body are not open to judicial review. This is important in the context of this study as by using the two-tier board system, the decisions taken by the Management Committee, as the executive body of the EIB, are not subject to judicial review by the ECJ. In other words, the body that makes the real decisions within the EIB organisational structure as established in section 8.2.4. cannot be
accountable as from a legal standpoint EIB decisions are taken elsewhere by the Board of Directors. One EIB official observed how this situation created an accountability deficit within the EIB:

“The only thing that there isn't at the EIB is a sense of hands on responsibility because everything they do, in a sense, is being rubber stamped further up. What I'm describing is weak accountability. The people who make credit decisions are, at the end of the day, the governments. Nobody is responsible for it except for the political authorities - for all the credit decisions in this Bank. You cannot hold anybody accountable for this.”

EIB Official 3

Therefore, the limited ability of an external control function (in this case the ECJ) to challenge EIB Management Committee’s decisions provides further support for the point made in section 8.2.4. about the dominance of the Management Committee’s role within the EIB. This results in the most important chain in the EIB decision making process also being the one that is least accountable to outside control.

8.2.7. Interim conclusions

In summary, the EIB Management Committee and Board of Directors function as sites in which project appraisals which contain severe shortcomings can still be approved and readied for loan disbursement.

Firstly, when projects are raised to the Management Committee they can be approved, not on their own merit, but as a product of bargaining between member states using their representative on the Management Committee.

Secondly, when projects arrive at Board of Directors level, directors may take decisions that lead to final approval with limited or incomplete knowledge of the technical aspects of projects.
This set of circumstances related to the approval of EIB projects should be seen as an opportunity structure insofar as the decision-making process on these two boards can fail to exclude problematic projects and therefore exist as sites in which EIB organisational deviance becomes institutionalised through the approval of projects that should be rejected. From a theoretical perspective, this section has demonstrated that external resource dependency manifests itself as internal strain within the organisational setting as individuals seek to modify, alter, manipulate the appraisal process in order to better fit with their own objectives.

8.3. Internal control functions in the EIB organisational setting

8.3.1. Introduction

This section focuses on the range of internal controls the EIB has at its disposition once EIB funds have been disbursed. Sections 8.3.2. and 8.3.3. establish the EIB mechanisms, sections 8.3.4. and 8.3.5. analyse how these mechanisms are used in practice, while 8.3.6. examines the effectiveness of the EIB complaints mechanism as an internal control function accessible to individuals and groups from project affected communities.

The main argument presented in this section is that weak monitoring of project implementation leads to a lack of knowledge of how EIB funds are being used by project promoters. This in turn represents a vulnerability for fraud and corruption risks and even when such risks are identified the EIB’s potential to intervene is limited.

8.3.2. Auditing Activities

Audit Committee

The Audit Committee is an independent EIB body reporting to the Board of Governors that verifies that the EIB’s financial operations have been
conducted in line with the principles of the EIB’s best banking framework – based on auditing responsibilities as per EU Treaty, the Bank’s statute, EU directives, recognised international standards and guidance issued by regulatory bodies (European Investment Bank, 2015).

The Committee does not undertake the EIB audit itself, rather it is the coordinating body that organises the EIB’s external audit by an externally appointed accountancy firm. The Committee approves the external audit and reports the findings to the Board of Governors and Board of Directors. The Committee publishes its annual report on the EIB website and gives summaries of all EIB auditing activities and reviews the implementation of its previous recommendations. The Audit Committee receives updates from the Office of the Chief Compliance Officer on its progress in closing previously identified compliance gaps (ibid, p. 10).

Internal Audit Department

The internal auditing of the EIB is undertaken by the Internal Audit Department housed in the Inspectorate General (IA herein) that is responsible for assessing and evaluating the effectiveness of internal control systems and functions relating to how the EIB mitigates risk in its operations. The scope for such audits can include finance and treasury activities, and IT systems. IA conducts audit missions and reports directly to the EIB President its findings and recommends areas for improvement to such systems (European Investment Bank, 2017).

8.3.3. Inspectorate General

The Inspectorate General (IG/IN herein) is responsible for the ongoing evaluation of EIB projects after loan disbursement. It undertakes this work from a several vantage points containing 4 sub-units: the Fraud Investigations unit, the Complaints Mechanism, Operations Evaluation and the Internal Audit department. The IG/IN was established in 2005 and is
independent of the EIB organisation structure reporting directly to the EIB President and Audit Committee:

*Fraud Investigations unit*

The Fraud Investigations unit assesses all allegations of prohibited conduct in EIB operations relating to both EIB counterparties and EIB staff. If allegations are deemed as admissible the unit opens an investigation in accordance with the IG/IN Investigations Procedures. The unit works in close cooperation with OLAF on investigations (OLAF activities are discussed in section 7.3.2.). During investigations the unit has the right to access all the relevant documentation of project related parties as well as all internal EIB documentation (European Investment Bank, 2017). In addition to targeted investigations the unit undertakes *ex-post* Proactive Integrity Reviews which are detailed investigations into specific projects (European Investment Bank, 2013, p. 6).

The unit is also the coordinating body that ensures all of the EIB’s anti-fraud policy commitments are operationalised including the EIB Anti-Fraud Policy, IG/IN Investigation Procedures, EIB Whistleblowing Policy and the Uniform Framework for Preventing and Combating Fraud and Corruption (European Investment Bank, 2017, p. 3).

*Complaints Mechanism*

The Complaints Mechanism (IG/CM herein) is the first point of access to remedy that individuals or groups can use to make official complaints to the EIB regarding projects it finances both in the EU and globally.

The IG/CM investigates the extent to which the EIB undertakes its operations in line with its legal and policy responsibilities relating to the project. When the IG/CM finds that the EIB has not acted in accordance
with the rules and regulations to which the Bank adheres, it will conclude that the Bank has failed in its administrative duties.

In 2008 the IG/CM signed a memorandum of understanding with the European Ombudsman that creates a two stage complaints process. If complainants are not satisfied by the conclusion of the IG/CM then the complaint can be passed to the Ombudsman (European Investment Bank, 2008).

Operations Evaluation

The Operations Evaluation (EV herein) is a sub-unit that undertakes independent thematic reviews of EIB lending across sectors, mandate or financial product. The reviews tend to be long term overviews of lending activities such as EIB lending performance in new member states prior to accession or EIB financing of urban infrastructure projects within the European Union. The objective of the reviews is to compare EIB performance in its management of the project cycle against a policy commitment. The long-term approach allows the EV to reflect on projects over the complete project cycle that in some cases can be several years or decades of implementation.

The main task of the EV team is to undertake independent audits of EIB operations, identify strengths and weaknesses at all points in the EIB project cycle (pre-appraisal to post loan disbursement monitoring) and to publish recommendations. The publications made by EV are an attempt to build institutional memory in order that identified mistakes may not be repeated in the future.

8.3.4. Monitoring at project level

The EIB’s monitoring activities at individual project level are undertaken by the project teams in charge of the appraisal process as described in section
8.1.3. As per point 257 of the EIB Environmental and Social Handbook, ahead of loan disbursement project monitoring responsibilities are agreed between the EIB projects directorate in discussion with the Operations Directorate based on technical, environmental or social aspects of the project. These indicators are then itemised by the EIB legal directorate (internally known as JU) and transposed into the master finance contract between the EIB and the counterparty (European Investment Bank, 2013, p. 98).

During the implementation stage project promoters provide the EIB Projects Directorate with periodic progress reports and documentary evidence that the environmental and social conditions inserted into the finance contract are being adhered to (ibid, p. 98). If the EIB is not satisfied with such information it can carry out on-site missions to physically monitor the projects. If a project deteriorates markedly during implementation it is added to a Project Watch List and reported to the Management Committee (ibid, p. 149). EIB project teams decide the level of monitoring for each project – broadly categorised into A and B projects in which the first require no physical EIB monitoring whereas the second due to the elevated risk require periodic physical site visits during the implementation stage. The previous performance of the promoter is also considered (ibid, p. 145). One EIB official described the evaluation process as thus:

"Let’s use a very simple vanilla example - you loan money in order to build a motorway. You could ask, was the money used to build the highway? That’s a sort of level 1 check and you can do that with traditional audit techniques. The next step up is, was the highway built correctly? You can have your engineers go out and say "Yes, this is how it was supposed to be."

Even though the clauses in the loan didn't require for that to be done, it was built correctly. And then the last check is - is anybody using the highway? And did building the highway
From a compliance perspective, if throughout the course of the periodic monitoring any EIB official from the project team or the legal directorate is alerted by a red-flag then the Office of the Chief Compliance officer (OCCO) can be consulted to investigate any change in the compliance of the promoter. As per principle 7 of the 2005 Basel Committee on Banking Supervision’s policy Compliance and the Compliance Function in Banks agreement to which EIB is a signatory, OCCO must make mandatory reports to EIB management based on any identified breaches. Post-disbursement events that can lead to OCCO involvement at this stage include changes in the beneficial ownership of the counterparties, supervening integrity concerns or reputation risks, judicial decisions imposed on entities suspected of being infiltrated or having been awarded contracts to companies linked to organised crime, NGO reports or media coverage (European Investment Bank, 2014, p. 10). The EIB audit committee has as recently as 2016 drawn attention to the gaps in the EIB’s implementation of the EIB’s AML-CFT requirements (as detailed in section 8.1.3.). A 2017 report identified a series of EIB projects in which the ‘know your customer’ (KYC) information had not always been consistently obtained or maintained. These gaps have led to the establishment of the 2016 ‘legacy project’ in which a comprehensive revision of the KYC records of all existing EIB counterparties was initiated (European Investment Bank, 2017, p. 10).

According to reports written by the EIB Operations Evaluation directorate, monitoring culture within the EIB with regard to individual projects is weak to non-existent, even in instances when projects require enhanced monitoring and can even result in projects being left unmonitored (European Investment Bank, 2005, p. 25). Promoters transmit limited monitoring reports to the EIB services which are handled by EIB staff who possess a lack of incentive to generate meaningful reports, and in some cases all contact between the promoter and the EIB ceases. More seriously,
Operations Evaluation reports claim that potential violations of the finance contract generate little response from senior management (ibid, p. 28). Weaver (2008, p. 88) using the example of the World Bank as a comparable IFI, suggests that lack of project monitoring is the result of loan officers working to achieve lending targets (as explored in section 8.1.4.) that creates a disincentive to monitor projects and are seen as a burdensome and unwarranted administrative task. Loan officers drift away from monitoring responsibilities in order to begin the search for new projects that can generate further lending volumes. In the case of the EIB, the result of a lack of project monitoring can be evidenced in the Project Completion Reports (PCRs) that contain insufficient information that, as a consequence, prevents the EIB from obtaining a proper understanding of the performance of each project (European Investment Bank, 2011, p. 26).

In conversations with EIB officials regarding project monitoring it was suggested that when project teams did monitor projects and identified areas of concern that went against the provisions of the finance contract, these concerns were not acted upon by the legal directorate. One EIB official claimed that this was due to the close relationship between Legal Directorate and the Operations Directorate:

“We tell the legal department "look, the promoter is violating the contractual conditions. You need to do something." I'm not saying that you recall the loan, but you can threaten. The promoter is obliged to follow the contractual conditions. And the typical response from legal is "Yeah but this is very difficult, we don't want to....we cannot use this clause..." So why put it there? Why are there contractual clauses if you don't want to use it afterwards? This happens because the Legal Directorate is subordinated to the interests of the Operations Directorate. Otherwise with a normal legal directorate that should be their role."

EIB Official 10
Gobert and Punch (2003, p. 81) point to the significance of establishing proper monitoring systems by corporations in order to avoid organisational deviance - this was absent in the case of EIB project monitoring during the implementation phase of the Budapest Metro project. The leaked OLAF report into the systematic fraud perpetrated by numerous Hungarian state and private sector actors, as well as several multi-national corporations, outlines situations in which the EIB conditions of the finance contract were violated by the project promoters without the EIB’s awareness. Clause 6.09 of the finance contract between the EIB and the Metropolitan Government of Budapest, and clause 6.10 of the contract between the EIB and the Hungarian State require an independent ‘FIDIC’ engineer to support the project directorate. The role of the FIDIC engineer in large infrastructure projects is important as he/she verifies that requests for payment from subcontracting companies are in accordance with works done (OLAF, 2016, p. 66). In this case, the engineers in place had clear conflicts of interest with several of the works contractors, this was not identified by the EIB project team during its monitoring activities. The conflicts of interests led to OLAF to conclude that the contracts were irregular and led to repayments being made to the EIB (ibid, 2016).

In interviews with EIB officials, the breakdown in project monitoring was observed as a consequence of outsourcing of monitoring tasks to the project promoter and the limited mandates of the engineers. These factors combined together to diminish the EIB’s control over how its funds were spent in the implementation stage as one official stated:

“The Bank's management will hide behind those companies and say “it's not our responsibility while monitoring, but we have outsourced monitoring so the company is responsible.”

The company, the independent engineer, will tell you "I'm just here, I have very limited mandate, I don't have time to look into
EIB Official 9

Overall, the EIB has a poor history of project monitoring both from compliance and anti-fraud perspectives. As EIB research has noted, the lack of incentive to undertake such activities can result in EIB officials taking little interest in the monitoring tasks. However, monitoring can safeguard EIB loans through effective interventions. I will now turn to the possible interventions the EIB can make in the project implementation stage.

8.3.5. EIB Intervention: recalling the loan and debarment

Informal negotiation and recalling the loan

What happens when EIB staff throughout the course of monitoring activities (either through the activities described in section 8.3.4. or in response to media/NGO reports or judicial proceedings) observe that the project promoter is not implementing the project in accordance with the finance contract? The EIB has several options available of increasing severity; firstly it can request the project promoter to clarify its stance, request additional documentation and come to an arrangement with the promoter that it should modify or replace the particular aspect of the project generating concern. This could either be failure to meet one of the environmental and social provisions of the finance contract or by fraudulent actions of a member of staff of the counterparty or of a subcontractor. Then if the behaviour continues, the EIB can request partial or full repayment of the loan before moving on to full debarment as a last resort for the counterparty concerned.
In interviews with EIB officials it was established that the preferred method of dealing with such instances is through informal negotiations with the project promoter. It is only when these fail do the EIB consider more serious measures:

“Where we identify there is fraud, we will tell them that this is not possible and there may be an early repayment. We will agree with the company that this can't happen again and that the company may not be involved in the future and maybe reviewed in terms of management. We agree on that on the basis of firm evidence and decisions from reliable tribunals and on the basis of what is published or recognised by the company itself - we try to pass the message that this is not acceptable and in certain cases we have contractual provisions saying that if some suspicions which are known by the time we lend are confirmed, the people who are accused of malpractice should be excluded. There are certain actions which are taken before going to full debarment.”

EIB Official 17

This position was questioned in interviews with OLAF officials who saw the EIB’s reluctance to recall loans as being primarily commercially driven, as to do would create lost payments from the interest on loans. It was suggested that the EIB should consider suspending loans pending the results of OLAF investigations into possible fraud risks. This in turn was contested by other EIB officials who emphasised the impatience of the EIB to avoid interrupting projects:

“OLAF is too slow - you can't wait for it because the implementation of the project - you can't stop that in the middle. And if it takes 2 years to come to a conclusion, the project may be finished already.”

EIB Official 16
The different approach to safeguarding EIB loans from fraud risks can be explained by the institutions’ statutory objectives and mission. The EIB’s commercial instincts push it to explore all other avenues before recalling the loan, whereas OLAF has no such commercial pressures.

**Debarment**

In serious cases of fraud or corruption the EIB can chose to debar companies from future projects either on a temporary or permanent basis. During the process of writing this thesis the EIB launched a formal Exclusion Policy in February 2018 to replace the informal internal blacklist of companies with whom it would not enter into business relationships (European Investment Bank, 2018). In order to clarify the recent history of EIB exclusion policy I will briefly set out the main recent developments.

Since 2010, IFIs (excluding the EIB) have operated the Agreement on the Mutual Enforcement of Debarment Decisions that harmonises sanctions policy across the African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank and the World Bank. Despite being party to the development of the cross-debarment system through its place on the International Financial Institutions’ Anti-Corruption Task Force, the EIB was unable to enter the agreement - as an EU body, any debarment decision it made, or made by another IFI, could be subject to challenge in courts (Seiler and Madir, 2012) whereas the other IFIs are protected by jurisdictional immunity. Under such an agreement, the EIB could face financial penalties incurred in EU courts by debarment decisions made in the other IFIs. As a result it did not sign up to the Agreement.

During this time the EIB has attempted to develop a debarment system that could function within the EU legal framework and in tandem with the Commission’s Central Exclusion Database. In 2013 the EIB incorporated art. 45.1 of EC Directive 2004/18 and art. 54.4 of Directive 2004/17 (both subsequently repealed and replaced by Directive 2014/24/EU and Directive 2014/25/EU) into its revised Anti-Fraud policy. These directives establish
the legal basis for the EIB to exclude criminally convicted candidates or tenderers from participation in a Bank-financed project for chosen periods of time (European Investment Bank, 2013, p. 7). As per the directives, public contracts should not be awarded to project promoters that have participated in a criminal organisation or have been found guilty of corruption relating to EU funds, money laundering or terrorist financing. At the time of writing in November 2018 – the EIB has published the names of 3 corporate entities plus one individual on its public exclusion list on its website which also contains information on the length of the exclusion plus the type – all are listed as ‘voluntary settlement.’

A complication to the EIB debarment procedure (both when considering the previous unofficial policy pre-2018 and the introduction of the new policy) is the structure of the entity it wishes to debar insofar it must be decided whether to exclude one specific business unit, or the entire corporation. In the case of the EIB-Siemens settlement of 2013, Siemens agreed that one specific business unit would voluntarily refrain from bidding on EIB projects for 18 months. In interviews with EIB officials, it was accepted that the EIB’s anti-fraud capability was undermined by the complicated structures of multi-national corporations:

“When you run those investigations you are confronted with a fundamental problem - a bank is not a public authority. It is not a policeman. You don't have the capacity a policeman has to investigate things you have, that you don’t want to disclose. You can only rely on local public investigation capacity. And quite often, it is not competent enough, and even if it is, it takes a lot of time. If you have a look at what is debarred by the IFIs it is the subsidiary of Siemens in Egypt or the subsidiary of....a tiny company in Mauritania. Come on, are you sure that these subsidiaries are the only players in the black-market abuse in whatever country? The fundamental problem is at the birth of the initiative. You want to make policeman out of bankers? Without giving them the capacity a policeman has by law - it's like if you
want to obtain apples from peaches. We have built a certain capacity of anti-fraud which I think is good - but we have to be realistic."

EIB Official 17

The lack of EIB investigative resources is emphasised in the OLAF report into the Budapest Metro corruption scandal - the EIB was dependent on the Hungarian national authorities’ investigation into the activities of Siemens in Hungary, but when this investigation was dropped the EIB was forced to suspend its own investigation. In interviews with Siemens officials, the fact that the EIB managed to reach a financial settlement with Siemens despite dropping its own investigations was claimed to be more related to a Siemens public relations strategy:

“They didn't have any good evidence. They hadn't done a good investigation. After the German prosecutors descended on Siemens and did all the work and had all this stuff - every single law enforcement agency in the world decided they needed to get a piece of the action. So we had people lined up outside - the Nigerians were insisting that they were entitled to all kinds of penalties which was pretty amusing. So we said "we’ll give you a piece when you put someone in jail!"

The EIB got in line with everybody else and was looking for some project they could hang their hat on so they could get a piece of the action.”

Siemens Official

To conclude, the EIB debarment system is weakened by the constraints placed on its anti-fraud potential in terms of the lack of legal authority and resources to investigate complicated cases across national borders – in effect it is prevented from chasing geographically nimble multi-national entities across borders by the lack of investigative resources. This is very much
similar to Passas’ (1990) observation that non-comprehensive normative frameworks create a global village controlled by regional frameworks – it is this state in which much transnational crime can occur as actors can take advantage of the different speeds in which institutions can cross such divides. In the case of the EIB’s investigative power, these processes prevent it from realistically being able to carry out meaningful investigations involving dozens of actors and agencies in multiple jurisdictions.

8.3.6. Complaints Mechanism

The EIB Complaints Mechanism (IG/CM herein) was established in 2008 to act as an independent body within the EIB structure to receive and assess complaints made by individuals and groups perceived to be negatively affected by EIB financed projects.

The IG/CM is ‘compliance focused’ – meaning that it assesses the extent to which the EIB has operated in accordance with its obligations under EU treaties, EU law, national legal frameworks of the countries that host the project and its own standards in projects that it finances. The IG/CM examines projects to see if projects suffer from administrative irregularities, unfairness, discrimination, abuse of power, refusal of information and unnecessary delay (European Investment Bank, 2010). Complaints can be deemed admissible even in the earliest stages of the project cycle at the PIN stage (described in section 8.1.2) that allows complaints to be made before the implementation stage. It is worthy to note here that complaints cannot be submitted on the basis of allegations of fraudulent behaviour as these are handled by the EIB fraud investigations team (as described in section 8.3.3). When the EIB’s performance is concluded to have been below the standards required, the IG/CM can conclude that there was maladministration on the part of the EIB – however, these decisions are infrequent and between 2015-2017 this only occurred twice (European Investment Bank, 2017, p. 9). On
concluding its investigation, the IG/IN can propose mediation between parties or propose recommendations for internal procedural changes.

The main policy document that guides the work of the IG/CM is the Complaints Mechanism Principles, Terms of Reference and Rules of Procedure that establishes its broad function, sets the scope and limits for IG/CM involvement and formalises the investigative practices of the IG/CM when handling cases. (European Investment Bank, 2010). During IG/CM investigations its officers have the right to access all EIB project documentation held on EIB officials’ computers or on the internal GED IT network (gestion électronique des données – the computer software used by the EIB that logs all additions to shared working documents). EIB staff members have the duty to cooperate with the IG/CM and must promptly supply all documentation requested by the IG/CM to carry out its investigation.

On receiving a complaint the IG/CM undertakes an initial screening to check whether the complaint is admissible within its scope as per the IG/CM terms of reference. If deemed admissible, a IG/CM officer gathers information from EIB officials, project promoters and other stakeholders before proceeding to a consultation stage and organising physical inspections of the site of the project. The IG/CM produces an internal draft report of its conclusions which is circulated with the EIB services and Management Committee. Once an agreement between the IG/CM and the Management Committee on the conclusions has been arrived at a reply will be given to the complainant detailing the findings. If the conclusion is maladministration the IG/CM will produce recommendations to modify existing EIB practices. These, however, are made in an advisory capacity and are not binding on the EIB. If the complainant is unsatisfied with the report’s conclusions it can escalate the complaint to the EU Ombudsman (as described in section 7.3.2.)
The first immediate deficiency of the IG/CM is the extent to which it is truly an independent body. Despite being within the Inspectorate General, its independence is not guaranteed in practice. During the reporting process the Management Committee has ample opportunity to offer comment on the draft reports, then it must sign off on the conclusions before the report can be released to the complainant and published on the EIB website. In effect, the Management Committee simultaneously arbitrates over the complaints that relate to decisions it has taken previously, therefore it is simultaneously judge, jury and defendant – an organisational structure which NGO groups claim is the least independent of all the IFI accountability mechanisms (“Civil Society Joint Paper,” 2017). The involvement of the Management Committee in the reporting process is expected to become further entrenched after the EIB approved its new Complaints Mechanism policy in November 2018. (European Investment Bank, 2018).

This lack of independence can be evidenced in the way the IG/IM handled its investigation into the Castor project. The unit received multiple complaints regarding the Castor project focusing on environmental and social impacts of the project, the handling of the public consultation, the risks associated with the induced seismicity of the project, the market projections, the economic analysis and the regulatory framework. In response the IG/CM opened two investigations, case number SG/E/2013/12 focused on the environmental and social impacts and industrial risks of the project, allegations related to governance aspects examined in SG/F/2014/01 (European Investment Bank, 2018).

Even considering the complexity of the Castor case and the investigation undertaken by the IG/CM including external consultants, the report was published in 2018 - 5 years after the complaints were received and a year after the EU Ombudsman opened a file on the EIB’s delay. It should be noted that the IG/CM report on the governance issues of the project that touch upon decisions taken by the Management Committee remains unpublished (at the time of writing – April 2019 – this was accurate).
The lack of independence of the IG/CM from the EIB Management Committee further supports the arguments made in section 8.2.4. regarding the concentration of power within the EIB structure in the Management Committee.

8.3.7. Interim conclusions

As a result of the lack of access to the institutions under study (namely the World Bank/IMF) in the crimes of globalization literature the case studies thus far do not make any claims as to the function and performance played by internal controls within the IFIs as a brake on their activities (Friedrichs and Friedrichs, 2002; Rothe, Muzzatti and Mullins 2006; Rothe, Mullins and Sandstrom, 2008).

In sections 8.3.2., 8.3.3. and 8.3.4. I have attempted to address this shortfall in knowledge by establishing the scope and range of such control functions, concluding that the EIB possesses sufficient tools in order to control the way its funds are spent through project level monitoring mechanisms. Perhaps a greater concern is that EIB control functions are regular underused or ignored - section 8.3.4. identified a strong disincentive for EIB loan officers to monitor projects, section 8.3.5. outlined the lack of willingness for the EIB to recall the loan during implementation. With regard to anti-fraud activities, the EIB’s control function is weak insofar as it does not have the resources to operate multi-jurisdiction investigations and must rely on the institutional support of other institutions (OLAF and national authorities).

Combined together, and in reference to the theoretical framework, control at the organisational level (meso) of analysis is weakened by gaps and spaces in between policy and/or organisational commitments (i.e. project monitoring) and actual EIB performance. The EIB’s project monitoring exemplifies this divide – EIB officials have the processes and resources
needed to monitor projects and form the first line of defence against the misuse of the EIB funds but in practice can fail to do so.

Therefore, in contrast to the crimes of globalization literature, it is not the absence of control over the activities of the EIB, but rather the gaps, spaces between frameworks and the lack of will on the part of EIB officials to properly monitory how EIB funds are spent.

8.4. Chapter conclusions

This chapter has used insider EIB accounts and documents to enter into the EIB organisational setting to better understand the EIB project cycle from the appraisal process to ex-post monitoring and has provided detailed inside knowledge of the institution under study which is thus far absent from the state-corporate crimes and crimes of globalization literature at meso and micro levels of analysis.

Section 8.1. explored the EIB appraisal process and established that the assessments undertaken can be influenced by a) pressures to reach lending targets and b) external pressure from member states to approve individual projects. This pressure can result in EIB officials modifying appraisals to meet the EIB’s standards resulting in the first disjuncture between the project’s actual qualities and the EIB’s standards - this process begins to shape the process of EIB organisational deviance. The tension between individuals and internal pressures during the appraisal process can be usefully explained by resource dependency and strain theory.

Section 8.2. explored the functioning of the two EIB decision making bodies as sites in which flawed project appraisals can be approved by a) the Board of Directors which is unfamiliar with the technicalities of individual projects and b) the Management Committee which is insulated from any serious degree of accountability. Combined together, these factors create an opportunity structure for EIB organisational deviance to become
institutionalised as projects that are in some way in violation of EIB standards are approved and readied for loan disbursement.

Section 8.3. concluded that the EIB’s internal controls, project monitoring and compliance commitments are weakened by gaps and spaces in between policy and/or organisational commitments (i.e. project monitoring) and actual EIB performance. These weaknesses mean that bad projects can be badly supervised.

Here in the table below the conceptual contributions to the theoretical framework resulting from this chapter have been added:

<table>
<thead>
<tr>
<th>Level of Analysis</th>
<th>Motivation</th>
<th>Opportunities</th>
<th>Constraints/Controls</th>
</tr>
</thead>
<tbody>
<tr>
<td>Organisational Level (Meso)</td>
<td>(1) Organisational Goals</td>
<td>(1) Organisation structure</td>
<td>(1) Internal oversight/accountability</td>
</tr>
<tr>
<td></td>
<td>(2) Directorate/division goals</td>
<td>(2) Lack of resources</td>
<td>(2) Internal Codes of conduct</td>
</tr>
<tr>
<td></td>
<td>(3) Sub-unit/departmental pressure</td>
<td>(3) Lack of independence/accountability</td>
<td>(3) Monitoring activities</td>
</tr>
<tr>
<td></td>
<td>Reward structures</td>
<td>(4) Defective SOPs</td>
<td>(4) Debarment mechanism</td>
</tr>
<tr>
<td>Interactional Level (Micro)</td>
<td>(1) Individual goals</td>
<td>(1) Integrity of the appraisal process</td>
<td>(1) Internal codes of conduct</td>
</tr>
<tr>
<td></td>
<td>(2) Incentives to lend</td>
<td>(2) Diminished accountability</td>
<td>(2) Voting dynamics on executive boards</td>
</tr>
<tr>
<td></td>
<td>(3) Individual loyalties</td>
<td>(3) Monitoring commitments</td>
<td></td>
</tr>
</tbody>
</table>

*Figure 5. Conceptual framework for meso and micro level analysis.*

This chapter has also presented evidence which makes several connections between the meso and micro layers of analysis. Organisational goals defined at the meso level create lending pressures which affect the role of individuals at the micro level. At the opportunity catalyst for action, defective SOPs can result in project monitoring commitments being left alone, while at the control catalyst internal codes of conduct and policy documents fail to prevent EIB officials from engaging in bargaining over projects instead of approving them on the technical/economic merits of each
project. These combinations of levels and analysis and catalyst for action
demonstrate just how the EIB can become organisationally deviant and
undertake courses of action which in some way violate the legal, normative
and policy commitments it promises to uphold.
Chapter 9: Reconsidering the state-corporate crime framework

9.1. Introduction

In Chapter 5 I disassembled then reconstructed the conceptual and theoretical frameworks commonly used within the state-corporate crime and crimes of globalization literature in order to build an exploratory frame suitable to support an inductive analysis of EIB organisational deviance.

As a result of taking the inductive approach I did not seek to test the framework through a hypothetico-deductive process, instead, the levels of analysis (macro, meso, micro) and catalysts for action (motivation, opportunity, control) were used to underpin an analysis of the EIB grounded in the idea of its project cycle i.e. how the EIB takes decisions on undertaking lending activities (as established in section 5.5.). This approach provided the underlying framework for the main analysis presented in chapters 7 and 8 from which the conceptual and theoretical ideas emerged. In this chapter I will consolidate those findings into a new framework.

9.2. Conceptual conclusions

The main conceptual conclusions that emerged from the data analysis in chapters 7 and 8 are inserted into the framework below at a level of analysis and a catalyst for action. Each concept is in a broad form and is summarised for convenience – e.g. the opportunity structure at the interactional level includes a reference to the ‘integrity of the appraisal process’ – this refers to the extensive discussion in sections 8.1.4. and 8.1.5. regarding the ways in which the EIB appraisal process is vulnerable to interference.
As per the results of the table, EIB organisational deviance is more likely to occur when EU policy objectives and shareholder needs combine to create conflicting motivations to support/reject individual projects (7.1.4.), EU legal and regulatory frameworks give spaces or opportunities structures for such deviance (7.2.2./7.2.3.), while deviance is failed to be restrained by weak external controls from other EU institutions (7.3.4.). At the meso level, organisational goals and sub-unit/pressures (8.1.4.) combine to create competing motivations which can be amplified by defective SOPs (8.1.5.) and intensified by aspects of the EIB’s governance structures (8.2.4./8.2.5./8.2.6.). While at the micro level, individuals are subjected to lending pressures (both to achieve lending targets and to approve projects

<table>
<thead>
<tr>
<th>Level of Analysis</th>
<th>Motivation</th>
<th>Opportunities</th>
<th>Constraints/Controls</th>
</tr>
</thead>
<tbody>
<tr>
<td>EU level/member states</td>
<td>(1) EU policy objectives</td>
<td>(1) EU instruments</td>
<td>(1) EU institutional framework</td>
</tr>
<tr>
<td>(Macro)</td>
<td>(2) Shareholder needs</td>
<td>(2) EU legal/regulatory frameworks</td>
<td>(2) Banking restrictions/regulations</td>
</tr>
<tr>
<td></td>
<td>(3) Statutory commitments</td>
<td>(3) National EU legal/regulatory frameworks</td>
<td>(3) Credit rating agencies</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(4) NGO/civil society pressure</td>
</tr>
<tr>
<td>Organisational Level</td>
<td>(1) Organisational Goals</td>
<td>(1) Organisation structure</td>
<td>(1) Internal oversight/accountability</td>
</tr>
<tr>
<td>(Meso)</td>
<td>(2) Directorate/division goals</td>
<td>(2) Lack of resources</td>
<td>(2) Internal policy documents</td>
</tr>
<tr>
<td></td>
<td>(3) Sub-unit departmental pressures,</td>
<td>(3) Lack of independence/accountability of executive</td>
<td>(3) Monitoring activities</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(4) Defective SOPs</td>
<td>(4) Debarment mechanism</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(5) National legal frameworks</td>
</tr>
<tr>
<td>Interactional Level</td>
<td>(1) Individual goals</td>
<td>(1) Integrity of the appraisal process</td>
<td>(1) Internal codes of conduct</td>
</tr>
<tr>
<td>(Micro)</td>
<td>(2) Incentives to lend</td>
<td>(2) Diminished accountability</td>
<td>(2) Voting dynamics on executive boards</td>
</tr>
<tr>
<td></td>
<td>(3) Individual loyalties</td>
<td>(3) Monitoring commitments</td>
<td></td>
</tr>
</tbody>
</table>

*Figure 6. Main conceptual conclusions built on findings from chapters 7 and 8.*
(8.1.4./8.2.5.) that can affect the integrity of the appraisal process (8.1.5.) and the boards can fail to block projects due to voting dynamics on the main management boards (8.2.4). When combined together, these factors all contribute toward the EIB becoming organisationally deviant.

Some of the concepts within the framework (especially at meso/micro level such as ‘defective SOPs’) have been proposed throughout the state-corporate crime and crimes of globalization literature but there has been almost no verification of their importance within the internal organisational worlds in terms of: a) the SOPs used within IFIs b) how they work in practice c) their relationship to organisational deviance. This has been rectified in the above framework as only concepts based on empirical results from chapters 7 and 8 are included. The addition of these concepts represents an original contribution to the current body of research as evident in the substantial differences between the framework’s contents in section 5.2. and the version presented above.

In addition, the above framework is leaner and less sprawling than the original proposed in section 5.5. but it is based on a solid empirical foundation. This was an objective of this thesis to remedy previous studies which have too often ended in attaching concepts to the frameworks in the hope that some will eventually stick in future empirical works. Here I have presented a much more stripped-back version that is based on primary data from EIB officials and documentation. In response to the dilemma presented in section 5.6. between the sophistication of the model and the possibility of it being used, I have chosen the latter with the result being suitable for use as the basis for future studies on other IFIs.
9.3. Theoretical conclusions

In chapters 7 and 8 I presented the main theoretical findings of the thesis which I will now consolidate into a single theoretical framework.

Macro level of analysis

As an alternative to Marxist political-economy theory often used within the current literatures, this thesis has proposed the use of resource dependency as a macro-level etiological theory which offers a convincing macro level explanation as to the underlying causes for EIB organisational deviance through its focus on the need for the EIB to undertake courses of action in order to satisfy its shareholders. However, the theory has been modified in order for it be applicable within a criminological context through the addition of a ‘second track’ (detailed in section 7.1.4) of resource dependence which hones in on the need for the EIB to support individual projects that can be in violation of its normative framework and lending criteria as a result of its reliance on its shareholders for financial and political support. The benefit of using this theory is that it concentrates on the critical juncture between the ownership of the EIB and the activities of its management boards with objective of tracking external dependencies into the EIB organisational setting and making connections between patterns of dependence and courses of action it undertakes.

Resource dependency theory, however, does not easily fit within the levels of analysis (macro, meso, micro) of the theoretical framework as proposed in Chapter 5 in which I divided the macro/meso levels as everything external to the EIB (macro) and the internal world of the EIB (meso). The theory, in this sense, is both a macro and a meso level theory insofar as it explains the forces external to the EIB that push it toward taking decisions but it also accounts for internal effects within the organisation as discussed in section 8.1.
If resource dependency is the main etiological theory that explains EIB organisational deviance, such motivation to engage in organisational deviance must be offered the opportunity to occur. Section 7.2.2. and 7.3.4. explored how mismatches or asymmetries between EU law, EU instruments, member state laws and regulatory frameworks provided spaces for such organisational deviance to materialise – phenomena that I argued can be explained by presence of dysnomie. In addition, I argued throughout section 7.3. that dysnomie could explain the weak ‘control’ catalyst on the EIB in the sense that EU institutions’ abilities to constrain EIB activities are critically undermined due to a lack of competences (e.g. ECA), an unwillingness to intervene (e.g. OLAF) or lack of any legal powers (e.g. Parliament) and in the case of the Commission, it simultaneously can supervise (through its position on the EIB board) and partner the EIB (as in the project bonds initiative) thus adopting contrary roles. Combined together, dysnomie can be seen as a state which works to amplify the effects of EIB resource dependency by providing opportunities in which EIB organisational deviance can occur. Such opportunities are further accelerated by the process of financialisation (as explored in section 7.2.3.) through the development of new financing instruments that are based on new regulatory architecture that favours investors over the public leading to the generation of debt (as explored specifically in the Castor case in section 4.3.3.).

*Meso level of analysis.*

During this thesis at several points I have drawn attention to the lack of detailed knowledge of the organisational features of the institutions under study, most apparent when discussing the World Bank and the IMF which has stifled the development of theory at the organisational level of analysis. Furthermore, this level suffers the most from the blurring between conceptual and theoretical findings. For example, Rothe and Friedrichs (2015, p. 66) refer to the possibility of ‘organisational theory’ to explain the meso level of the framework - when this theory is later unpacked (*ibid*, p.
74) it consists of concepts such as “rationality, sub-units, goals, culture, system of awards, external pressure.” However, these are concepts and not types of organisational theory per se and the contents of such ‘organisational theory’ remain elusive (also a recurring problem within the state-corporate crime literature e.g. Kauzlarich et al, 2003; Mullins and Rothe, 2008). At the beginning of the thesis these concepts were treated not as theoretical contributions but as possible conceptual pointers that served to direct the data collection and analysis stage.

At this level of analysis, my contribution has also been more of a conceptual nature rather than theoretical insofar as I have identified several critical internal factors within the EIB which facilitate organisationally deviant behaviours: section 8.1.4. explored the effect of lending targets on EIB loan officials in the appraisal process that creates a disincentive to monitor projects as observed in section 8.3.4., section 8.1.4. discussed the vulnerability of the EIB appraisal process to interference from senior management, section 8.2.4. examined the distance between technical knowledge of projects during the appraisal process and the decision-making bodies, section 8.2.5. underlined the closeness of the EIB management committee to the member states in charge of its appointment and also, significantly, in 8.2.6. its lack of accountability for the decisions it takes on individual projects.

Connecting these ideas back to the theoretical framework in chapter 5, these conclusions lend support to the ideas of Hopkins (1978) proposed in section 5.4.2. that organisational deviance is facilitated through organisational structure and deficiencies in organisational procedures. While these are rich conceptual discoveries relating to the EIB structure and internal processes they are not underpinned by substantial theoretical conclusions. As a result, the meso level of analysis could be viewed as a site where the effects of macro level theories (in this case resource dependency) interact with organisational factors (e.g. organisational processes) to facilitate organisational deviance. This conclusion suggests that the desire to be
develop more ‘organisational theory’ at the meso level of analysis may be reconsidered in order to prioritise developing links between external factors (e.g. shareholder needs) that influence internal organisational processes.

Micro level of analysis

At the micro level of analysis strain theory was used to explain the tendency of a) EIB officials to interfere in the appraisal process under the influence of lending pressures b) the Management Committee members to do the same under pressure to deliver EIB support for individual projects – these internal pressures lend support to Agnew et al’s (2009) use of general strain theory to explain how individuals react to blocked goals by turning to deviance. These conclusions also support Rothe and Friedrichs’ (2015, p. 66) claim as identified in section 5.4.3. that general strain theory can explain the effect on individuals within IFIs. Strain, a mainly micro level theory, is not sufficient to explain organisational deviance by itself and is reliant on being integrated with macro and meso level theory and therefore is also viewed as the internal manifestation within the EIB organisational setting of external resource dependency.

Theory integration

The three main theories used within this thesis (resource dependency, dysnomie and strain) lend support to the benefit of developing theory from diverse but related disciplines. By adapting resource dependency theory into criminology I have added a new instance of combining insights from the sociology of organisations and organisation studies into criminology – this has previously been suggested as an approach with “unrealized potential” by Vaughan (2002) who has applied theory and concepts from these disciplines in order to tackle substantive criminological problems. This strategy has several benefits: firstly, by choosing the organisational setting as the unit of analysis, theory can be used to make connections between individual, organisational and environmental connections. Secondly, it
provides new insights through the introduction of complimentary analytical frames and thirdly, it assists in the development of integrative general theory in criminology. This overlap contains the potential to integrate the analysis of the World Bank and other IFIs undertaken by Babb (2009) and Weaver (2008) with further criminological studies on IFIs.

9.4. Theoretical consolidation

The diagram on the following page (left) compiles the main theoretical conclusions from this thesis. The EIB can be viewed as a resource dependent organisation (7.1.4.) which can cause the EIB to become organisationally deviant and for its individual officials to encounter strain in the course of their activities (8.1.4.). This process takes places in, and is amplified by, a normative environment characterised by the presence of dysnomie. When compared to the framework proposed by Rothe and Friedrichs (2015, p. 74) below (right) its minimalist structure is immediately apparent:

This is not to discard completely the proposed theories by Rothe and Friedrichs (system criminality, rational choice, techniques of neutralisation etc) but it is my view that their proposed theoretical framework could not underpin any viable analysis of an IFI due to its complexity, the amount of
data required (both from interviews and documents), the additional challenges posed by integrating so many theories across macro, meso and micro levels of analysis and lastly, the practical difficulties of securing access to so many IFI officials.

This thesis does not engage in the political-economy debate over the relationship between IFIs managed by Global North countries operating in the Global South and the surrounding debate on globalisation and neocolonialism – debates which are central to the crimes of globalization literature. As a consequence, this thesis has not incorporated any of the additional modifications to the theoretical framework as identified in section 5.3., such as an international level of analysis and therefore the conceptual and theoretical frameworks in this section bare more resemblance to the state-corporate crime framework – demonstrating that it is flexible enough to support an analysis of an IFI. This finding explains the choice of title for this thesis which does not reference the term crimes of globalization.

This chapter has consolidated the main conceptual and theoretical findings that have emerged as a result of the inductive research strategy. In the following chapter I will assess the significance of the results and discuss their potential contribution to criminology.
Chapter 10: Conclusion and contribution to criminology

10.1. Conclusion

The EIB is the world’s largest public lending institution by volume but despite its sizeable economic influence over Europe’s development it is simultaneously one of the least understood institutions in the EU landscape, a claim supported by the paucity of academic attention it is paid as demonstrated in section 2.9. Established in order to finance the development of Europe’s infrastructure, EIB lending activity reaches into every corner of the continent and contributes toward leveraging private sector investment for thousands of infrastructure projects in Europe worth hundreds of billions of euros annually. Returning to a point stated in Chapter 1, this thesis recognises the positive contribution that the EIB has had on the development of Europe through the provision of a reliable source of finance for difficult (from both technical and financial perspectives) infrastructure projects. A political union such as the EU requires access to finance to sustain economic growth. It is beyond doubt that this is what the EIB has done and continues to do so.

However, and as established in detail in chapter 4, the EIB has a history of involvement in projects that, far from benefitting the communities that host them, are responsible for causing environmental harm, facilitating corruption and producing debt for EU citizens – behaviours which were viewed throughout this thesis as socially injurious actions that lead to the creation of environmental and financial harms for EU citizens. When EIB involvement in such projects has been in violation of parts of the normative frameworks to which it subscribes, this thesis has viewed such behaviour as a form of ‘organisational deviance’ (as defined in section 4.2.4.). Section 4.3. observed 4 examples which connected these points:

- EIB financing for the MOSE and Passante di Mestre projects facilitated corruption networks involving politicians and
organised crime groups resulting in overpriced and delayed infrastructure projects.

- EIB support for Project Castor in Spain was a catalyst in the production of serious environmental damage resulting in the paralysis of the platform and the creation of a €1.3 billion debt for Spanish gas users.
- EIB investment in the Budapest Metro line 4 project was poorly monitored facilitating corruption between Hungarian political parties and dozens of local and multi-national corporations.

In each of these events, the EIB’s involvement was a catalyst in the eventual outcome either through its support for projects already affected by fraud/corruption risks contravening EIB anti-fraud standards (MOSE and Passante di Mestre), projects which failed to recognise technical risks ultimately responsible for the project’s failure (Castor), or through the poor monitoring of projects (Budapest Metro). Chapters 7 and 8 offered a detailed analysis of the decision-making processes behind EIB involvement and also identified several internal EIB organisational factors that somehow facilitated or contributed toward EIB organisational deviance.

In order to understand why the EIB engages in behaviours that are organisationally deviant, chapter 1 proposed 4 research questions to which I will now return:

1) How does the EIB commit to lending activities that are in violation of the EU/member state legal frameworks, international agreements of which it is a signee and its own policy commitments?

2) What external factors or internal organisational processes contribute toward this form of organisational deviance?

3) What socially injurious actions can result from EIB lending activities and what harms do they create for the communities hosting them?
4) How can we interpret this conduct using criminological theory?

In Chapters 7 and 8 I have argued that in order to understand EIB organisational deviance, attention must be focused on the relationship between the EIB shareholders and the members of the EIB Management Committee and Board of Directors that ultimately take decisions on EIB support for projects – these decision-making bodies are the sites through which external pressures enter the EIB organisational setting and simultaneously, where the most critical decisions are taken. In section 7.4. I advanced the use of resource dependency theory which was especially adept at tracking the ways in which EIB organisational interdependencies can influence its internal decision-making processes – in addition, this theory is particularly useful at creating connections between the macro and meso levels of analysis of the theoretical framework. When used to explain EIB organisational deviance, sections 7.1.3. and 7.1.4. emphasised connections between external pressures on the EIB to support projects while sections 8.1.4. and 8.1.5. tracked these pressures into the EIB organisational setting and explored how EIB officials are subject to lending pressures which can affect the appraisal process. Section 8.1.4. observed the effects of these external pressures on individual EIB officials and argued that strain theory is an additional useful theoretical tool to interpret the way individual EIB officials react to pressures to secure EIB approval for certain projects.

While resource dependency provides an etiological theory that provides a convincing explanation for the ‘motivation’ catalyst for action from the theoretical framework, section 7.2. explored the extent to which the types of lending instruments used by the EIB and the regulatory frameworks required can function as opportunity structures that facilitate EIB organisational deviance. In addition, section 7.3. argued that dysnomie theory is helpful to interpret the asymmetries that exist between EU institutions and the EIB in terms of the limits to supervision, potential to intervene and inspection rights which combine together to create weak social controls that struggle to constrain or prevent EIB organisational deviance – one example of which is discussed in section 7.2.3. on the
limited role for the ECA which can only audit a fraction of EIB-financed projects but was instrumental in uncovering the systemic fraud and corruption which affected the Budapest Metro project. It is these asymmetries which create gaps in complicated multi-jurisdictional normative frameworks that leave spaces for organisational deviance to occur.

While dysnomie proved useful to interpret such spaces, it is in need of reconfiguration in order to account for emerging forces such as financialisation (as explored in section 7.2.3.) which offers a more concise analytical vantage point to better understand new regulatory structures and architectures which are created as a result of financialised lending which prioritises investors through guaranteeing profits while using EU funds to socialise any financial losses.

In response to question 2, these macro level forces described above influence EIB organisational deviance and are amplified by internal shortcomings as demonstrated throughout chapter 8. In particular, the EIB Management Committee in its role as a bridge between the EIB shareholders and the EIB directorates can interfere in individual projects, engage in horse-trading on individual projects and yet be simultaneously removed from any accountability insofar as the body merely ‘prepares’ decisions for the Board of Directors where the ultimate decision on loan disbursement is taken. Then, when such decisions on loan disbursement are to be taken, the Board of Directors is unfamiliar with the intricacies of projects and tend to approve the majority of projects under the assumption that all the EIB filters have been applied. This dynamic between the two governance boards undoubtedly increases the likelihood of bad projects being given approval by the EIB. However, while this thesis has questioned the rationale for EIB support in Castor and Passante di Mestre (section 4.3.), through the case of the Budapest metro (4.3.4. and 8.3.4.) it is also a conclusion of this thesis that in projects that have a sound purpose, the EIB’s failure to monitor the way in which its finance is used can contribute to the creation of criminogenic conditions in which other actors (e.g.
government officials, businessmen) engage in fraud, corruption and embezzlement.

This last point provides the direct answer for question 3 posed above. The vignettes of EIB financed projects explored in section 4.3., although being extreme cases, nevertheless show direct connections between EIB lending activities and environmental and financial costs for EU citizens. When large, capital intensive infrastructure projects enter into financial difficulties – as the result of poor project identification, project management or monitoring or by being affected by fraud and corruption – additional financial resources are required which are inevitably provided by more public funds which reduces the ability for governments to increase (or even maintain) spending on more pressing budgetary concerns such as healthcare and education. These effects pose consequences at both local, regional and national levels which this thesis has viewed through the concept of ‘communities’ that recognises that stakeholders across different levels can be affected.

The Castor project shows this in action – the initial localised environmental damage caused by the earthquakes then led to the costs of the failed project being passed onto Spanish citizens in order to protect investors’ commitments. In all of the projects described in section 4.3. I have focused on clear links between EIB lending activities and the generation of such harms.

In response to question 4 on the role of criminological theory, chapter 7 underlined the need to extend the thesis’ theoretical toolkit beyond criminology to incorporate additional theory from related disciplines – in chapter 7 I argued that resource dependency theory, elsewhere used in case studies on the World Bank, could be a useful addition. However, the theory is not without its limitations. Johnson (1995, p. 16) argues that the theory’s major limitation is that it views organisational behavior as being primarily influenced by materialistic forces and as a consequence it fails to regard the role of cultural, ideological forces within institutions. Rothe (2010) has previously suggested that such cultural forces could be vital in
understanding IFI organisational deviance. While this thesis has explored individual experiences of working in the EIB it has not constructed a framework to analyse the EIB internal environment using cultural perspectives. Therefore, the call to make connections between organisational culture and deviance remains unanswered and is left for future studies. However, the possibility of constructing such a framework capable of exploring cultural forces within an organisation would require an unprecedented level of access for criminologists. It is difficult to conceive of an IFI granting such a degree of access to a researcher and therefore the feasibility of undertaking such research remains in doubt.

A second disadvantage to using resource dependency theory as the main macro-level etiological theory to explain EIB organisational deviance, and one which is reminiscent of the critique pointed at state-corporate crime research by Lasslett, Tombs and Whyte (in section 5.4.1), is that it has less to say about the exact configuration of the political-economic situation in which it is applied. In order to overcome this weakness, this thesis has proposed the use of dysnomie as an additional macro level theory that compliments research dependency theory but which focuses on the political-economic environment in which organisational deviance occurs. I will now expand this debate and connect it to the principle debate within state-corporate crime.

10.2. Contribution to criminological theory

The principle debate within state-corporate crime and crimes of globalization (outlined in section 5.4.1.) is prompted by Lasslett (2010), Tombs (2012) and Whyte (2014) and coalesces around a critique of these literatures’ perceived failure to adequately connect crime and organisational deviance to the political and economic structures in which they occur. This has led to the claim that the foregrounding of such events has ultimately led to them being cut ‘out of the fabric in which they exist.’
This thesis has contributed to this debate in two ways. Firstly, in order to avoid focusing on case studies (or vignettes presented in section 4.3.) as mere ‘moments of rupture,’ this thesis did not select them as the main unit of analysis as is often the case within current research. Instead, chapter 7 sought to understand the projects as the outcome of relationships between the EIB and other institutions - paying particular attention to the relationship between the EIB and its shareholders (7.1.3/7.1.4.) and with other EU institutions (section 7.3.2./7.3.3./7.3.4.) while placing them in context of EU legal and regulatory environment and the contemporary political economy of Europe.

Secondly, instead of addressing this perceived problem through the use of Marxist theoretical and analytical tools (as suggested by Lasslett (2010)), this thesis has chosen to use dysnomie to interpret the current political and economic arrangements of Europe which forms the structural backdrop to EIB organisational deviance.

However, this thesis also recognises that the original conception of dysnomie rests heavily on an antiquated reading of the nebulous concept of neoliberalism – one which is in need of reconfiguration in order for it to be salvaged. Writing in 2000, Passas views neoliberalism as a system which increasingly sees “minimal or no state interference in the market” (p. 21) – an analysis contravened by both Whyte (2003) and Tombs (2012) who point to the increasingly “symbiotic” relationship between states and corporations. The findings of this thesis on the EIB challenge Passas’ conception of neoliberalism and lend support to such symbiosis - chapters 3,7 and 8 present a detailed analysis of the EIB’s organisational structure, its institutional relationships and the type of operations it engages in which are undoubtedly symbiotic in nature and perhaps even beyond Tombs’ conception: the EIB operates in similar ways to a commercial bank through its fundraising activities on capital markets and its lending activities, but simultaneously, its shareholders (and guarantors) are the EU member states, and furthermore, it exists within the EU governance structures and its statutory objective could be characterised as directly interfering in markets.
This institutional hybridity undermines the view of neoliberalism as entailing the retreat of the state as per Passas, and in addition, contributes to a blurring of lines between the dichotomies that the state-corporate crime literature produces i.e. state vs corporation, public vs private given that the EIB is simultaneously both. Far from representing “minimal or no state interference in the market,” the EIB operates as a state-backed actor on commercial markets. This is a significant finding insofar as it challenges the central idea of state-corporate crime that organisational deviance is the result of joint ventures between states and corporations – the EIB, as an example of such symbiosis, shares features with states and corporations but neither can it be restricted to being defined as one or the other.

Section 7.2.3. further develops this analysis through the exploration of the development of the Project Bonds Initiative (PBI) as a concerted attempt by EU institutions (directed by member states) to intervene in the infrastructure finance market through the development of new financial instruments and regulatory structures and the offer of financial guarantees in order to stimulate private investment. However, and as per section 7.2.3., this process was viewed, not as a consequence of the broad term neoliberalism, but through the lens of financialisation which offers a more precise analytical focus to describe the expansion of markets, market dynamics and market ideology into infrastructure finance.

Returning to the critique of Tombs et al at the beginning of this section, financialisation and the increasingly symbiotic and financialised relationships between states, supranational actors, corporations and private investors can be seen as representing the ‘fabric’ in which EIB organisational deviance occurs. This finding, in addition, offers a response to Kramer and Michalowski’s (1990) original call for state-corporate crime research to “direct attention toward the way in which deviant organisational outcomes are not discrete acts, but rather the outcome of relationships between different social institutions.” While using the concept of financialisation as a pillar of dysnomie offers a convincing analysis for the EIB’s involvement in the Castor and Passante di Mestre projects it is less so
to explain the Budapest Metro case. When dysnomie was used to explain this case it centred on the ways in which legal frameworks at EU and national level are developed with gaps or asymmetries that can act as spaces in which deviance can occur. In this context, dysnomie is concerned with the ways in which the neoliberal economy produces conflicting and contravening normative frameworks across different jurisdictions but is less related (but still connected) to the way in which the economy is becoming increasingly financialised. Therefore, much in the same way as neoliberalism has been broken down into the concept of ‘financialisation’ as an alternative pillar of dysnomie, new and more nuanced concepts are needed to better understand how the configuration of the economy influences the creation of supranational normative frameworks. Within this thesis this process remains incomplete and therefore the full reconfiguration of dysnomie is left for future studies.

With regard to the meso and micro levels of analysis – due to a lack of access to the institutions under study, there is no substantial debate within the literatures on concepts and theories at these levels. In section 9.3. I consolidated this thesis’ results at these levels of analysis and suggested that the meso level of analysis is best interpreted as a site where organisational factors (e.g. structure, internal processes) can amplify or constrain organisational deviance but are of secondary importance to the macro environment which serves as the main incubator of organisational deviance. This finding contravenes the tentative predictions made in section 5.4.2. on the expected importance of the meso level. Rather, the macro level remains the most important level of analysis (at least from a theoretical standpoint) - a finding which further lends support to the argument of Tombs et al to prioritise examining organisational deviance within the structures in which exists. However, as a consequence of identifying several important internal EIB organisational factors, this thesis has resisted framing its results in overly structural terms.
Reflecting on the value of the conceptual and theoretical frameworks

At the beginning of this thesis the conceptual and theoretical frameworks derived from state-corporate crime and crimes of globalization presented in chapter 5 provided a foundation from which to begin the inductive research process through the division of the analysis into macro/meso/micro levels. Consequently, the inductive process was driven by three questions: what is the macro level political and economic situation in which the IFI exists? What are the critical organisational factors that result in the IFI taking decisions to support infrastructure projects? What is the experience of individuals within the IFI’s organisational setting? Asking these three broad questions at the beginning of the research process was undoubtedly helpful to the project insofar as the data collection and sorting was given an initial broad structure which was subsequently narrowed and refined as the process continued, resulting in the conclusions presented in chapters 7, 8 and 9.

Despite the advantages of using the framework at the onset of the project, its continued relevance has become diluted as the thesis has advanced. While section 9.2. continued to use the framework to order the main conceptual conclusions, its primary theoretical conclusions challenge its continued utility insofar as dysnomie, resource dependency and strain do not fit so easily within the macro, meso and micro divisions. Therefore, the frameworks proposed in chapter 5 are beneficial in the sense that they cast a wide net, but during the empirical investigation many of the concepts and theory attached to the frameworks were abandoned. As a result, the theoretical conclusions of thesis consolidated in section 9.3. are detached from the initial framework entirely and have little resemblance with theoretical conclusions within most state-corporate crime research.

The title of this thesis suggests that state-corporate crime as a research endeavour should, in some way, be reconsidered. The findings of this thesis suggest that in addition to being reconsidered it could be repositioned or repurposed to be used as a frame for beginning inductive investigations but one that will give way to emerging theories and ultimately exert a diminished influence over a study’s conclusions. This process should form
part of the natural evolution of the subject and will contribute to the improvement of its conceptual and theoretical tools.

10.3. Research implications

Repeatedly during this thesis I have identified organisational factors that contribute toward EIB organisational deviance. In particular:

- Section 8.2.5. explored the tension between the appointment of Management Committee members by shareholders, the promotional role they undertake in their home countries and the obligation to be loyal to the Bank in the course of their duties.
- Section 8.2.4. demonstrated that despite being the driving force behind the Bank’s operations, members of the Management Committee are removed from any accountability for the decisions they make insofar as they are technically limited to preparing decisions for the Board of Directors.
- Section 8.3.4. EIB monitoring at project level is often weak that is underpinned by a lack of incentive for EIB loan officers to monitor projects after the loan has been disbursed.

In relation to the first point, previous EIB sanctioned research undertaken by the NGO Transparency International (as discussed previously in section 8.2.5.) has also focused on the link between the Management Committee and the Bank’s shareholders as a potential threat to the independence of the EIB. The findings of the Transparency International report were often discussed with EIB officials who, while accepting the research’s conclusions, were dismissive of the solution to break or modify the current relationship. EIB officials claimed that this would merely result in changing the dynamics or location of the political horse trading over projects but would not remove such negotiations altogether. The findings discussed in section 8.2.5. lend support to this position and pose doubts as to the efficacy of altering the current appointment mechanism in order to reinforce the independence of the Management Committee.
With regard to the second point, a secondary finding of this thesis is related to the concentration of power on the Management Committee and its inverse relationship with accountability. Within organisations (and particularly those of a financial character) it is beyond doubt that executives require a necessary degree of power in order to be able to effectively and decisively manage day-to-day operations. This amount of power, however, should be balanced against the need to be accountable for decisions made and the findings of this thesis suggest that such a balance has not been struck in the right place. One possible avenue to improving EIB governance would be to undertake a review on the justification for the continuation of the two-tier board system which places the EIB Board of Directors as an additional layer above the Management Committee. In addition, in section 8.2.4. I drew attention to the problems that arise from the EIB Directors taking the final decision on loan disbursement while simultaneously being the body with the least familiarity of the intricacies of each project. This raises questions over the continued necessity of the EIB Directors as a board and suggests that it could be either merged with the Management Committee to create a single unit comprising of executive and non-executive directors as per the Anglo system, or disbanded entirely. The relative merits of the two-tier or combined board format and impacts on EIB decision making would be needed to be assessed in more detail before any such reconfiguration should be made.

Redesigning the EIB governance structures may be one route to increasing accountability and efficiency but it may be a cosmetic alteration. Ultimately, and as this thesis has argued, the EIB in its role as policy-driven bank is both a commercial and political institution and shareholders will always use the EIB as a venue to secure finance for their own needs, which as the case of Passante di Mestre are sometimes not compatible with the Bank’s lending criteria. Therefore, strategies to try to dilute the power of shareholders over individual credit decisions may prove to be temporary fixes and merely displace bargaining into other areas.
In relation to the third point, EIB officials should be afforded more resources and incentives to monitor how projects are implemented. Alternatively, monitoring tasks could be undertaken by a dedicated unit that undertakes thematic or random audits of projects in their implementation stage to avoid the bureaucracy and difficulties of monitoring all EIB projects all the time. This unit would track projects as they develop on the ground as opposed to the Operations Evaluation unit that analyses project impacts usually some years after their completion.

In addition to internal governance changes, other EU institutions could be given enhanced opportunities to supervise, inspect or influence EIB lending activities. As demonstrated in the Budapest case, the ECA’s auditing work identified some of the fraud connected to the project which was the precursor to full OLAF involvement which uncovered the systemic fraud and corruption. At present the ECA only has inspection rights on a minority of EIB projects (limited to those co-financed with EU budgetary funds) but the relationship could be deepened to provide the ECA with some additional auditing functions/competences over EIB projects either through random auditing of large projects or on a thematic basis.

Potential changes to the EIB’s governance structure and its relationship with other EU institutions would not happen easily nor quickly, and would need the consent of influential member states and sufficient political energy to pass through the EU’s decision-making mechanisms – a prospect that currently has little support.

10.4. Avenues for future research

A welcome outcome of this thesis is the addition of a substantial case study that is focused on a European IFI to a body of research that has until now been the preserve of US academics working on US-led institutions. To continue this trend, a natural starting point for future research would be to examine the impacts of EIB lending activities in the Global South which would inevitably pose a different set of political-economic questions to the ones examined in
this thesis and would be more closely aligned to those asked within crimes of globalization research. In addition, the EIB is not the only European controlled lending institution operating in the Global South and there are several member state led development finance institutions (DFIs) that work in partnership with commercial banks and governments such as the Netherlands Development Finance Company (FMO) and the UK’s Commonwealth Development Corporation (CDC). These institutions have been exposed by journalists and NGOs to routinely engage in controversial lending activities which overlap with many of the concerns raised within the crimes of globalization literature on the operations and impacts of such financial institutions. In order to further widen the scope of such research, criminologists should engage with these institutions to develop a deeper understanding of the footprint of European financial institutions in the Global South in what would represent original and vital criminological research.

These endeavours would undoubtedly enrich the emerging field of crimes of globalization but it is my view that the original objective of this body of research has yet to be achieved. The World Bank and the IMF loom large over the majority of the published case studies but as I have consistently stated, there is next to no information on their internal worlds and organisational settings. What is missing from the crimes of globalization literature is an extended study built on access to officials at all levels of the organisational hierarchy of these institutions in order to understand how the internal processes that led to these IFIs undertaking the projects which have been critiqued by criminologists. The conceptual and theoretical frameworks proposed in chapter 9 could function as a useful starting point for such studies and I welcome criminologists to make use of them.

10.5. Ending

Rothe and Friedrichs (2015, p. 58) suggest that criminologists engaging with IFIs should begin with a sense of humility in the face of a complex phenomenon - a view which after undertaking this study on the EIB I also share. In the same way as the other IFIs referred to during the thesis, the
EIB invests in complex infrastructure projects in partnership with all types of publicly and privately-owned institutions across the EU and outside involving dozens of organisational actors and thousands of individuals – and therefore any conceptual and theoretical conclusions should remain modest in their claims. In order to strike the required balance, this thesis has offered a foundation based on empirical results and I would welcome other criminologists engaging with the IFIs to consider using it as a starting point for future inductive analyses of other IFIs. The main achievement of this thesis has been the production of a workable theoretical and conceptual framework that can inform future research on similar organisations and remain optimistic that it can be used by other criminologists.

A quick scan of the more recognised criminological journals reveals the marginal status to which research on organisational deviance, state-corporate crime and crimes of globalization is conferred. This situation is both undesirable and unacceptable – research on powerful actors and institutions such as the EIB that take decisions leading to profound repercussions for citizens should be at the forefront of a criminology that engages critically with its environment and is unafraid to aim upwards from time to time
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Appendix 1

Internal message posted on EIB intranet. May 22nd, 2017.

The above image was received on June 22nd, 2017 from an anonymous email account.
## Appendix 2: Interview list

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Appendix 3: documents cited in thesis


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Acknowledgements

I wish to place on record my profound gratitude to my supervisory team; Prof. dr. John Vervaele and Dr. Damián Zaitch of Utrecht University and Dr. Péter Hack of Eötvös Loránd University, whose guidance, expert advice, intellectual support and constant encouragement made this thesis possible. The commitment shown toward the project by my supervisory team was something from which I drew strength and provided the motivation needed to get it over the line. The project could not have proceeded without financial support and I have been a lucky and proud recipient of a grant from the EU Erasmus Mundus Joint Doctorate Fellowship scheme. Finally, the PhD journey is one which is not made alone and I thank my family for their love and support during some difficult moments. A special dedication is reserved for Nick, Jean, Kieran and Sarah.
Daniel Beizsley - Curriculum Vitae
d.j.beizsley@uu.nl

Education


Publications


2019 The Independent: “Company owned by Tory donor who met Boris Johnson has £1.6bn oil deal backed by UK taxpayer despite major fraud investigation


2015 The Guardian: “Footballers who once earned millions face penury over tax demands.”

2014 The Independent: “British taxpayers underwrote deals worth £140m by firm based in Cayman Islands.”

2014 Sydney Morning Herald: “Socceroos star Tim Cahill caught in tax crackdown.”

Research Interests

My research interests are in the area of criminology, with a focus on financial crime, organisational deviance and infrastructure finance. My research aims to better understand how large organisations follow courses of action that cause or provoke deviance. Theoretically, my research cuts across a number of disciplines (e.g. criminology, law, organisation studies) and considers organisational deviance from several perspectives. My PhD thesis represents an attempt to advance an integrated theoretical framework which understands organisational deviance from macro, meso and micro perspectives.
Summary of thesis in English

The European Investment Bank (herein EIB) is an EU body owned by the member states created as part of the Treaty of Rome in March 1957. As the EU’s finance arm, the EIB identifies and invests in infrastructure projects (roads, bridges, power plants etc) that work toward achieving EU policy goals. EIB backed projects can involve finance for projects with risk profiles out of reach of commercial banks and other sources of finance. This is the niche that the EIB fills, and it has quietly been doing so since its inception without much fanfare. It operates under the radar, lending large volumes but receiving very little attention from the media and even less so from academia.

The EIB is one of many international financial institutions (herein IFIs) whose mission and objectives vary according to geographic focus but are usually managed by clusters of nation states and undertake lending operations to fulfil certain policy objectives such as economic development, infrastructure investment and poverty alleviation. These organisations and their activities are not without their detractors and have long been subject to critical assessments that highlight the distance between their policy objectives and mission statements versus the effects on the ground of their lending operations.

In addition to purely economic assessments, IFI operations have been shown to facilitate, or be directly responsible for, wide ranging unethical behaviours in the finance, implementation and monitoring of large infrastructure projects such as pipelines, dams and those in in the extractive industries that have caused environmental damage and the involuntary or forced displacement of local communities. IFI projects have also resulted in dozens of corruption scandals across the globe that share similar features - projects costs are inflated, funds are siphoned off by corrupt individuals in collusion with state officials and taxpayers are left to shoulder the loan
repayments without benefiting from the project’s intended development objectives.

This thesis attempts to better understand how an IFI takes decisions on supporting controversial projects to which the EIB is no stranger. One recent problematic EIB investment in the EU is the Šoštanj coal power plant in Slovenia which benefitted from two EIB loans totalling €550 million in 2007 and 2010. The corruption scandals connected to the project reveal how individuals working for the project promoter, in collusion with government insiders, artificially inflate project costs in the procurement stage thereby leaving citizens with an overpriced infrastructure asset at the cost of investment in other sectors. The EIB, by offering significant financial resources to the project and by failing to monitor how its funds are disbursed, can facilitate and exacerbate these corruption networks in large infrastructure projects that result in the public being significantly short-changed. In this case, the initial project cost was estimated at €600 million but eventually rose to €1.4 billion. These criticisms are further underpinned by a more fundamental doubt as to the rationale for EIB involvement and the extent to which EIB financing for the Šoštanj plant is at all compatible with EU policy objectives on climate and emissions. Questions regarding the economic justifications for EIB support for individual projects and the EIB’s role in supervising how its funds are spent are central to this thesis and covered in detail in chapters 7 and 8.

Many of the charges levelled against the EIB centre on its violations of project standards (e.g. environmental, social, technical) to which it is supposedly meant to adhere through its legal obligations at EU/member state level, international agreements it has signed, its due diligence and compliance standards, and its own policy commitments. The EIB does not always comply with these standards and at times offers support for projects that are at best inconsistent with such standards, or at worst in violation of them. When the EIB violates these commitments, I will consider such behaviour as a form of organisational deviance – a concept used throughout
this thesis which draws attention to the ways in which organisations may act counter to the law, regulations and their founding statutes and mission statements.

When these standards are violated it can result in the EIB supporting infrastructure projects that lead to negative effects for the local communities hosting them in terms of environmental damage and the stimulation of corruption with the resulting impacts being felt at national level. This thesis views such EIB backed projects as being socially injurious – a criminological concept connected to the idea of harm that is used to denote courses of action or behaviours that while not being illegal according to legal frameworks nevertheless cause substantial negative impacts, or harms, on the public at both local and national levels (Kramer et al, 2002).

**Research questions**

In order to understand why the EIB engages in these conducts the thesis is guided by the following research questions:

1) How does the EIB commit to lending activities that are in violation of the EU/member state legal frameworks, international agreements of which it is a signee and its own policy commitments?

2) What external factors or internal organisational processes contribute toward this form of organisational deviance?

3) What socially injurious actions can result from EIB lending activities and what harms do they create for the communities hosting them?

4) How can we interpret this conduct using criminological theory?

**Key concepts and theory**

Large infrastructure projects such as the ones described in this thesis are complex initiatives involving dozens of state agencies, possibly hundreds of subcontracting companies and thousands of individual workers at all stages
of the project cycle from procurement, construction to *ex-post* monitoring. Through their interactions with the natural and built environment, large projects have the potential to negatively affect the communities that host them through adverse environmental, social and financial impacts. The severity of these impacts have been observed by criminologists using the concept of ‘harm’ that encompasses a broad range of behaviours and their impacts, often ignored by the criminal justice system, but which nevertheless cause substantial and demonstrable harms and suffering to individuals and groups (Hillyard *et al*’s 2004 work is specifically relevant here).

Observing the EIB through a criminological lens leads this paper to overlap with two related bodies of research that are connected to understanding the relationship between states, corporations and IFIs in the production of crime and organisational deviance and the resulting harms caused. Firstly, ‘state-corporate crime’ research focuses on “illegal or socially injurious actions that occur when one or more institutions of political governance pursue a goal in direct cooperation with one or more institutions of economic production and distribution” (Kramer, 1992). This body of research began in the early 1990s and has included case studies on the Space Shuttle Challenger disaster (Kramer, 1992), the criminogenic features of the US nuclear weapons production industry (Kauzlarich and Kramer, 1998) and the 2007 collapse of the I-35W bridge over the Mississippi River (Schotter and Rhineberger-Dunn, 2013). State-corporate crime research has expanded beyond the US to include case studies on the UK government’s relationship with private military companies (Whyte, 2003), the mining and extractive industries in Colombia (Zaitch and Gómez, 2015) and tax rulings made by EU member states that facilitate aggressive tax planning (Evertsson, 2017).

Secondly, the ‘crimes of globalization’ body of research that borrows much of its focus from state-corporate crime but engages specifically with international financial institutions (IFIs) such as the World Bank and the IMF. Beginning with Friedrichs and Friedrichs’ (2002) study of a World Bank financed dam in Thailand, the crimes of globalization literature aims
to better understand the lending activities of IFIs while interpreting their conduct and operations through a neo-colonialist perspective that critically dismantles many of the development claims made by the IFIs, instead drawing attention to the ways they can contribute to worsening economic conditions (Ezeonu, 2008) stimulating corruption (Rothe, 2010) and fueling military conflict leading to human rights abuses (Rothe et al, 2008; Stanley, 2008).

Common to both bodies of literature is the use of a three-tiered theoretical framework that proposes the analysis of crime and organisational deviance on macro, meso and micro levels of analysis (Kramer and Michalowski, 1990). The macro perspective emerges from political economy approaches that locate criminogenic forces within the structure of capitalism that create incentives for organisations to achieve profit using illegitimate means (Barnet 1981, Michalowski 1985). At the meso level, the analysis is underpinned by a view of organisational deviance as the product of organisations’ emphasis on goal attainment (Finney and Lesieur, 1982); as the result of defective standard operating procedures (Hopkins, 1978); or as consequence of organisational structure (Kramer, 1982) while the micro level is influenced by Sutherland’s (1949) theory of differential association and the individual learning of deviant activities. As per the logic of the framework, a goal-oriented individual operating in an organisation that prioritises economic performance in a society that is structured upon goal attainment will be more likely to pursue deviant means than if one of those conditions is not present.

Both bodies of literature have arrived at a crossroads with further progress being prevented in two ways. Firstly, very few case studies in either endeavour have been able to access individuals or organisations under study (with the exception of Lasslett, 2014) and as a consequence are reliant on secondary data sources (Michalowski and Kramer, 2006, p. 245). This problem is especially acute in the crimes of globalization literature which offers no empirical data on the organisational setting of the IFIs and the internal processes that lead to these institutions supporting individual
infrastructure projects. Given that the IFIs are essentially credit granting financial institutions operating under a specific policy remit, this lack of internal knowledge is a blind-spot in the current literature which is addressed in chapter 6 of the thesis.

Secondly, a long-lasting critique aimed at the state-corporate crime research is proposed by Lasslett (2010, p. 227), Tombs (2012, p. 175) and Whyte (2014, p. 237) who argue that the existing literature is overly focused on explaining spectacular events, or discrete acts, at the cost of unpacking the social relationships that produce them, or as per Tombs’ (2012, p. 175 invocation of Mathiesen (2004, p. 37) “to cut the event out of the fabric in which it exists.” In order to attend to this critique, in Chapter 8 I will argue that EIB activities must be understood as a product of post-financial crisis economic conditions and the increasing ways in which infrastructure projects are connected to financial markets through the process of financialisation - a concept that seeks to interpret the shift in the global economy from profit accumulation based on production to accruing profits through financial channels and financial engineering.

Research strategy

Research into the EIB was conducted utilising the case study research strategy, which according to Yin (1994), consists of empirical enquiries investigating contemporary phenomenon within its real-life context suitable for undertaking detailed investigations into events, industries and organisational processes. Vaughan (2007, p. 17) suggests that the strategy, when applied to organisational research, “can expose macro-level influences, micro-processes, and cultural influences external and internal to the organization” or, as per Hartley (2004, p. 209), “provide analysis of the context and processes involved in the organisation under study.” The case study strategy was identified as the most appropriate to explore EIB internal processes, inter-departmental relationships and decision making on its governing bodies in order to understand the internal processes that led to the EIB taking the decision to support Castor.
In order to provide the data needed for the inquiry, the study employs two methods. Firstly, interviews were conducted with EIB officials, EU Commission officials, Members of the European Parliament (MEPs) and EIB business partners. Interviews were conducted between September 2016 and June 2017 in Luxembourg, Brussels and Strasbourg and via Skype. Participating EIB officials were recruited informally as a result of the EIB Civil Society Division’s refusal to participate in the study and its members’ attempts to enforce a blanket ban on EIB officials taking part in interviews. Secondly, documentation was analysed relating to the EIB’s corporate governance, its internal processes and specific project relating to individual infrastructure projects. The documents used were downloaded from institutional databases and webpages of EU institutions and relevant member state authorities as well as through freedom of information requests (FOIs) made to the EIB. The analysis of the two data sources took place between September 2017 and January 2018 using NVivo coding software.

Results

In Chapters 7 and 8 I argue that in order to understand EIB organisational deviance attention must be focused on the relationship between the EIB shareholders and the members of the EIB Management Committee and Board of Directors that ultimately take decisions on EIB support for projects – these decision-making bodies are the sites through which external pressures enter the EIB organisational setting and simultaneously, where the most critical decisions are taken. In chapter 7 I advance the use of resource dependency theory which was especially adept at tracking the ways in which EIB organisational interdependencies can influence its internal decision-making processes – in addition, this theory is particularly useful at creating connections between the macro and meso levels of analysis of the theoretical framework. When used to explain EIB organisational deviance, chapter 7 emphasises connections between external pressures on the EIB to support projects while chapter 8 tracks these pressures into the EIB organisational setting and explores how EIB officials are subject to lending pressures which can affect the appraisal process. In addition, chapter 8
observes the effects of these external pressures on individual EIB officials and argues that strain theory is an additional useful theoretical tool to interpret the way individual EIB officials react to pressures to secure EIB approval for certain projects.

While resource dependency provides an etiological theory that provides a convincing explanation for the ‘motivation’ catalyst for action from the theoretical framework chapter 7 explored the extent to which the types of lending instruments used by the EIB and the regulatory frameworks required can function as opportunity structures that facilitate EIB organisational deviance. In addition, Chapter 7 argues that dysnomie theory is helpful to interpret the asymmetries that exist between EU institutions and the EIB in terms of the limits to supervision, potential to intervene and inspection rights which combine together to create weak social controls that struggle to constrain or prevent EIB organisational deviance – one example of which is discussed in chapter 7 on the limited role for the European Court of Auditors which can only audit a fraction of EIB-financed projects but was instrumental in uncovering the systemic fraud and corruption which affected the Budapest Metro project. It is these asymmetries which create gaps in complicated multi-jurisdictional normative frameworks that leave spaces for organisational deviance to occur. While dysnomie proved useful to interpret such spaces, it is in need of reconfiguration in order to account for emerging forces such as financialisation (as explored in chapter 7) which offers a more concise analytical vantage point to better understand new regulatory structures and architectures which are created as a result of financialised lending which prioritises investors’ through guaranteeing profits while using EU funds to socialise any financial losses.

In response to question 2, these macro level forces described above influence EIB organisational deviance and are amplified by internal shortcomings as demonstrated throughout chapter 8. In particular, the EIB Management Committee in its role as a bridge between the EIB shareholders and the EIB directorates can interfere in individual projects, engage in horse-trading on individual projects and yet be simultaneously
removed from any accountability insofar as the body merely ‘prepares’
decisions for the Board of Directors where the ultimate decision on loan
disbursement is taken. Then, when such decisions on loan disbursement are
to be taken, the Board of Directors is unfamiliar with the intricacies of
projects and tend to approve the majority of projects under the assumption
that all the EIB filters have been applied. This dynamic between the two
governance boards undoubtedly increases the likelihood of bad projects
being given approval by the EIB. However, while this thesis has questioned
the rationale for EIB support in Castor and Passante di Mestre (chapter 4),
through the case of the Budapest metro, it is also a conclusion of this thesis
that in projects that have a sound purpose, the EIB’s failure to monitor the
way in which its finance is used can contribute to the creation of
 criminogenic conditions in which other actors (e.g. government officials,
businessmen) engage in fraud, corruption and embezzlement.

This last point provides the direct answer for question 3. The vignettes of
EIB financed projects explored in Chapter 4, although being extreme cases,
nevertheless show direct connections between EIB lending activities and
environmental and financial costs for EU citizens. When large, capital
intensive infrastructure projects enter into financial difficulties – as the
result of poor project identification, project management or monitoring or
by being affected by fraud and corruption – additional financial resources
are required which are inevitably provided by more public funds which
reduces the ability for governments to increase (or even maintain) spending
on more pressing budgetary concerns such as healthcare and education.
These effects pose consequences at both local, regional and national levels
which this thesis has viewed through the concept of ‘communities’ that
recognises that stakeholders across different levels can be affected.

In response to question 4 on the role of criminological theory, chapter 7
underlines the need to extend the thesis’ theoretical toolkit beyond
criminology to incorporate additional theory from related disciplines – in
chapter 7 I argue that resource dependency theory, elsewhere used in case
studies on the World Bank, could be a useful addition. However, the theory
is not without its limitations. Johnson (1995, p. 16) argues that the theory’s major limitation is that it views organisational behavior as being primarily influenced by materialistic forces and as a consequence it fails to regard the role of cultural, ideological forces within institutions. Rothe (2010) has previously suggested that such cultural forces could be vital in understanding IFI organisational deviance. While this thesis has explored individual experiences of working in the EIB it has not constructed a framework to analyse the EIB internal environment using cultural perspectives. Therefore, the call to make connections between organisational culture and deviance remains unanswered and is left for future studies. However, the possibility of constructing such a framework capable of exploring cultural forces within an organisation would require an unprecedented level of access for criminologists. It is difficult to conceive of an IFI granting such a degree of access to a researcher and therefore the feasibility of undertaking such research remains in doubt.

A second disadvantage to using resource dependency theory as the main macro level etiological theory to explain EIB organisational deviance, and one which is reminiscent of the critique pointed at state-corporate crime research by Lasslett, Tombs and Whyte (in chapter 5), is that it has less to say about the exact configuration of the political-economic situation in which it is applied. In order to overcome this weakness, this thesis has proposed the use of dysnomie as an additional macro level theory that compliments research dependency theory but which focuses on the political-economic environment in which organisational deviance occurs.

**Theoretical contribution**

The principle debate within state-corporate crime and crimes of globalization (outlined in chapter 5) is prompted by Lasslett (2010), Tombs (2012) and Whyte (2014) and coalesces around a critique of these literatures’ perceived failure to adequately connect crime and organisational deviance to the political and economic structures in which they occur. This
has led to the claim that the foregrounding of such events has ultimately led to them being cut ‘out of the fabric in which they exist.’

This thesis has contributed to this debate in two ways. Firstly, in order to avoid focusing on case studies as mere ‘moments of rupture,’ this thesis did not select them as the main unit of analysis as is often the case within current research. Instead, chapter 7 sought to understand the projects as the outcome of relationships between the EIB and other institutions - paying particular attention to the relationship between the EIB and its shareholders and with other EU institutions while placing them in context of EU legal and regulatory environment and the contemporary political economy of Europe.

Secondly, instead of addressing this perceived problem through the use of Marxist theoretical and analytical tools (as suggested by Lasslett (2010)), this thesis has chosen to use dysnomie to interpret the current political and economic arrangements of Europe which forms the structural backdrop to EIB organisational deviance.

In chapter 7 I argue that financialisation and the increasingly symbiotic and financialised relationships between states, supranational actors, corporations and private investors can be seen as representing the ‘fabric’ in which EIB organisational deviance occurs. This finding, in addition, offers a response to Kramer and Michalowski’s (1990) original call for state-corporate crime research to “direct attention toward the way in which deviant organisational outcomes are not discrete acts, but rather the outcome of relationships between different social institutions.”

While using the concept of financialisation as a pillar of dysnomie offers a convincing analysis for the EIB’s involvement in the Castor and Passante di Mestre projects it is less so to explain the Budapest Metro case. When dysnomie was used to explain this case it centred on the ways in which legal frameworks at EU and national level are developed with gaps or asymmetries that can act as spaces in which deviance can occur. In this context, dysnomie is concerned with the ways in which the neoliberal
economy produces conflicting and contravening normative frameworks across different jurisdictions but is less related (but still connected) to the way in which the economy is becoming increasingly financialised.

Much in the same way as neoliberalism has been broken down into the concept of ‘financialisation’ as an alternative pillar of dysnomie, new and more nuanced concepts are needed to better understand how the configuration of the economy influences the creation of supranational normative frameworks. Within this thesis this process remains incomplete and therefore the full reconfiguration of dysnomie is left for future studies.
Állami-vállalati bűnözés új megközelítésben: az Európai Beruházási Bank Európai Unióén belüli hitelezéseinek kriminológiai elemzése

Az Európai Beruházási Bank (European Investment Bank - EIB) az Európai Unió szerve, amelyet a tagországok a Római Szerződés részeként alapítottak 1957. márciusában. Az unió pénzügyi szerveként az EIB olyan infrastrukturális projektekbe (utak, hidak, erőművek) fektet be, amelyek uniós irányelvek szerint meghatározott célok elérését szolgálják. Az EIB által támogatott beruházások olyan kockázatos profilill rendelkező projektek finanszírozását is érinthetik, amelyek számára elérhetetlenek a kereskedelmi banki és más finanszírozási források. Ezt a sajátos igényt elégíti ki az EIB a kezdetek óta, a háttérben maradva, minden nagyobb publicitás nélkül. Működése szinte észrevétlen, nagy összegeket hitelez miközben kevés figyelmet kap mind a médiában, mind a tudományos életben.

Az EIB egyike azon nemzetközi pénzügyi intézményeknek, amelyek küldetése és célkitűzései az adott földrajzi hely függvényében változnak, de általában nemzetállamok klasztere irányítják őket, és hitelezési műveleteket hajtanak végre bizonyos szakpolitikai célkitűzések, például a gazdasági fejlődés, infrastrukturális beruházások vagy a szegénység enyhítése érdekében. A nemzetközi pénzügyi intézmények és tevékenységeik nem maradnakkritikusok nélkül. Régóta olyan vizsgálódások tárgyai, amelyek rávilágítanak arra a szakadékra, amely a szakpolitikai célkitűzéseik és irányelveik, valamint hitelezési gyakorlatuk tényleges hatásai között húzódik.

A tisztán gazdasági szempontú értékelés mellett érdemes figyelembe venni azt is, hogy a nemzetközi pénzügyi intézmények gyakorlatai bizonyítottan elősegítik, vagy közvetlenül felelősek a nagy infrastrukturális projektek finanszírozási, kivitelezési és ellenőrzési fázisaiban megvalósuló széles körű etikátlan magatartásokért. Ezek megvalósulhatnak olajvezeték és gátépítési
projektek során, valamint hozzájárulhatnak a kitermelő ipar által okozott környezetkárosításhoz, és a helyi közösségek nem önkéntes, vagy kényszerített átelepítéséhez is. A nemzetközi pénzügyi intézmények projekti jei több tacat korrupciós botrányhoz vezettek világszerte, amelyek sok közös tulajdonsággal rendelkeznek – a projektköltségek inflálódnak, a pénzügyi forrásokat korr upt személyek állami hivatalokkal összejátszva elcsalják, a hitel visszafizetését az adófizetőknek kell fedezniük, anélkül, hogy a projekt által kijelölt fejlődési célok elöl nyit hat. A jelen értekezés arra törekszik, hogy jobban megértse azt az EIB számára sem ismeretlen folyamatot, amelynek során a nemzetközi pénzügyi intézmények az ellentmondásos projektek támogatásáról döntenek. Az egyik ilyen uniós eset a közelmúltból a szlovéniai Šoštanj szénerőmű, és az ahhoz kapcsolódó megkérdőjele zhető beruházás, melyet az EIB finanszírozott. Ez a projekt 2007 és 2010 során két EIB hitelből is profitált, melyek összege elérte az 550 millió eurót. E projekthez köthető korrupciós botrányok bepillantást engednek abba a folyamatba, ahogyan a beszerzési szakaszban a projektgazda munkatársai kormányzati bennfentesekkel együttműködve mesterségesen növelik a projektköltségeket, azt eredményezve, hogy az állampolgároknak egy olyan túlárazott infrastruktúra marad, amely más szektoroktól vonja el a forrásokat. Az EIB azáltal, hogy jelentős pénzügyi forrásokat ajánl fel a projektnak, valamint, hogy az általa biztosított források elosztásának felügyeletében kudarcot vall, elősegítheti és súlyosbíthatja a nagy infrastrukturális beruházásokban létrejövő korrupciós hálózatok kialakulását, amelyek az állampolgárok nagymértékű becaspását eredményezik. A Šoštanj szénerőmű esetében a projekt költségeit eredetileg 600 millió euróra becsülték, de végül 1,4 milliárd euróra növekedett. Ezt a kritikát egy még alapvetőbb problém felvetés erősíti, amely az EIB részvételének indokoltságára, valamint arra irányul, hogy a Šoštanj erőműnek nyújtott EIB támogatás mennyiben felelt meg az éghajlatra és a káros kibocsátásokra vonatkozó uniós szakpolitikai célokra. Értekezésemben központi szerepet kap az EIB által támogatott egyes projektek gazdasági indokoltságának, valamint az
EIB szerepének vizsgálata az általa nyújtott támogatások elkötésének felügyeletében. Ezek részletes kifejtését a 7. és a 8. fejezet tartalmazza.

Az EIB ellen felhozott vádak közül sok a projektekre vonatkozó előírások (pl.: környezeti, társadalmi, technikai) megszegése köré épül, amely előírásokat elméletileg be kellene tartania az uniós/tagállami jogi kötelezettségeiből eredően, az általa aláírt nemzetközi szerződésekben foglaltaknak megfelelően, az átvilágítási és megfelelősség előírásokból adódóan, valamint a saját szakpolitikai kötelezettségvállalásai révén. Az EIB nem mindig felel meg ezeknek az előírásoknak, és időnként támogatást nyújt olyan projektekhez, amelyek minimum összeegyeztethetetlenek a fent említett előírásokkal, de legrosszabb esetben meg is sértik őket. Azt a magatartásformát amikor az EIB megszegi ezeket a kötelezettségvállalásokat, a szervezeti deviancia egy formájának tekintem – ez az értekezés során használt fogalom arra hívja fel a figyelmet, hogy a szervezetek milyen módon cselekedhetnek ellentétesen a törvényvel, szabályozásokkal, valamint saját alapszabályaikkal és küldetési állásfoglalásukkal.

Az ilyen előírások megszegése olyan infrastrukturális projektek támogatásához vezethet, amelyeknek negatív következményei lehetnek azokra a helyi közösségekre nézve, ahol a projekt megvalósul, tekintve a környezeti kárt és a korrupció elősegítését, melyeknek következményei országos szinten is érzékelhetők. Az értekezés a társadalomra kártékonységet kezeli az ilyen típusú EIB által támogatott projektek – ez egy olyan kriminológiai koncepció, amely összefügg a kár azon fogalmával, amelyet olyan intézkedéseket vagy viselkedésformák leírására használnak, amelyek a jogrendszer szerint nem tekinthetők illegálisnak, mégis helyi és nemzeti szinten is negatív következményekkel járnak, valamint jelentős károkat okoznak az embereknek (Kramer et a. 2002).

**Kutatási kérdések**
Annak érdekében, hogy megértsük miért jellemzők az EIB-re ilyen magatartásformák, az értekezés vezérfonala a következő kutatási kérdések mentén halad:

1) Hogyan köteleződhet el az EIB olyan hitelezési gyakorlatok mellett, amelyekkel az uniós/tagállami jogi kereteket, az általa is aláírt nemzetközi egyezményeket, valamint saját szakpolitikai kötelezettségvállalásait is séríti?

2) Milyen külső tényezők vagy belső szervezeti folyamatok járulnak hozzá a szervezeti devancia e formájához?

3) Milyen társadalomra ártalmas események következhetnek az EIB hitelezési gyakorlataiból, és milyen károkat okoznak azoknak a közösségeknek, ahol a projektek megvalósulnak?

4) Hogyan értelmezhetjük ezt a magatartásformát a kriminológiai elméletek segítségével?

**Kulcsfogalmak és elméleti keret**

Az értekezésben is leírt nagyszabású infrastrukturális projektek olyan komplex kezdeményezések, amelyek több tuca állami ügynökséget, valószínűleg több száz alvállalkozó céget és több ezer munkavállalót érintenek a projektciklus minden fázisában, a beszerzéstől a kivitelezésen át, egészen az utólagos ellenőrzésig. A természettel és az épített környezettel való kölcsönhatásuk révén a nagy projektek hátrányosan befolyásolhatják azokat a közösségeket, ahol megvalósulnak, amely megjelenhet a megvalósulni körüli, társadalmi és pénzügyi hatásokban. Ezeknek a hatásoknak a szúlyosságát a kriminológusok a ’kár’ fogalmán keresztül vizsgálják, amely a büntető igazságszolgáltatás által gyakran figyelmen kívül hagyott, de az egyéneknek és csoportoknak jelentős és kimutatható károkat, valamint szenvedést okozó viselkedésformák széles körét foglalja magában (Hillyard és társai 2004 munkája itt különösen releváns).

Az EIB kriminológiai megközelítéséből adódóan, a tanulmány átfedésben van két kapcsolódó kutatási területtel, amelyek a bűnözés és a szervezeti devancia létrehozásában a nemzetállamok, a vállalatok és a nemzetközi

A 'globalizációs bűncselekmények’ szakirodalmában hangsúlyosan jelenik meg az állami-vállalati bűnözés is, de kifejezetten az olyan nemzetközi pénzügyi intézmények vizsgálatával foglalkozik, mint a Világbank vagy a Nemzetközi Valutaalap (IMF). Friedrichs és Friedrichs (2002) tanulmányától kezdve, amely a Világbank által finanszírozott thaiföldi gát esetét dolgozza fel, a globalizációs bűncselekményekkel foglalkozó irodalom arra irányul, hogy jobban megértse a nemzetközi pénzügyi intézmények hitelezési gyakorlatát. Ennek során egy neokolonista perspektívából értelmezi az ilyen intézmények magatartását és gyakorlatait, amely kritikai módon leplezi le a nemzetközi pénzügyi intézmények által létrehozott fejlesztési igényeket, és közben arra is felhívja a figyelmet, hogy miként járulhatnak hozzá a gazdasági tényezők romlásához (Ezeonu 2008), a korrupció ösztönzéséhez (Rothe 2010) valamint katonai konfliktusok gerjesztette emberi jogi sérelmekhez (Rothe et al 2008; Stanley 2008).
Mindkét kutatási területre jellemző, hogy egy háromszintű elméleti keretet alkalmaznak, amely a bűnözést és a szervezeti devianciát a makro-, mezo- és mikroszint elemzésével vizsgálja (Kramer and Michalowsky 1990). A makroszintű perspektíva abból a politikai gazdaságtani megközelítésből ered, amely a kriminogén ténylegőket a kapitalizmus struktúrájában helyezi el, amely ösztönzőket teremt a szervezetek számára, hogy illegális eszközökkkel tegyenek szert profitra (Barnet 1981; Michalowski 1985). Az elemzést mezo-szinten egy olyan szemlélet támasztja alá, amely a szervezeti devianciát a szervezet céljainak teljesítésén lévő hangsúly eredményeként (Finney és Lesieur 1982); a működési gyakorlatok hiányos sztenderdjeinek következményeiként (Hopkins 1978); vagy a szervezeti struktúrából adódóan magyarázza (Kramer 1982). A mikroszintű elemzésre Sutherland (1949) differenciális asszociáció elmélete és a deviáns viselkedésformákhoz kapcsolódó tanulási folyamatok voltak hatással. A felvázolt keretrendszer logikáját követve egy olyan társadalomban, amely bizonyos célok elérése mentén strukturálódik, a gazdasági teljesítményt előnyben részesítő szervezetben operáló célorientált egyén nagyobb eséllyel fog deviáns eszközökhöz nyúlni, mintha akár csak egy feltétel hiányozna ezek közül.

Mind az állami-vállalati bűnözést, mind a globalizációs bűncelekményeket vizsgáló szakirodalmi terület egy olyan ütelágazáshoz érkezett, ahol a további haladás két oldalról is akadályokba ütközik. Először is, nagyon kevés esettanulmány során tudtak elérni a vizsgálat tárgyát képző egyénekhez vagy szervezetekhez (ami alól kivételt képez Lasslett, 2014) és ennek következtében másodlagos adatforrásokra támaszkodnak (Michalowski és Kramer 2006:245). Ez a probléma kiváltképpen akut a globalizációs bűncelekményeket vizsgáló irodalmakban, amelyek nem tartalmaznak empirikus adatokat a nemzetközi pénzügyi intézmények szervezeti környezetéről és azokról a belső folyamatokról, amelyek az egyes infrastrukturális projektek támogatásához vezetnek. Tekintettel arra, hogy a nemzetközi pénzügyi intézmények lényegében olyan hitelintézetek, amelyek konkrét szakpolitikai hatáskörben működnek, a belső folyamatok ismeretének hiányossága egy vakfolt az aktuális irodalomban, amellyel az értekezés 6. fejezete foglalkozik.

**Kutatási stratégia**


A kutatás során két módszert alkalmaztam annak érdekében, hogy a vizsgálódáshoz szükséges adatokat biztosítsí tudjam. Egyrészt interjúkat
készítettem EIB tisztségviselőkkel, európai uniós bizottsági
tisztségviselőkkel, az Európai Parlament tagjaival, valamint az EIB üzleti
partneréivel. Az interjúk 2016 szeptember és 2017 június közötti időszakban
készültek Luxemburgban, Brüsszelben, Strasburgban, valamint Skype-on
keresztül. A kutatásban részt vevő EIB tisztviselőket informálisan vontam
be, mivel az EIB Civil Társadalmi Részlege visszautasította a kutatásban
való részvételt, valamint általánosan tiltani próbálta az interjúkban való
részvételt EIB tisztviselők számára. Ezen kívül, az EIB vállalatirányításával,
belső folyamataival és egyes konkrét infrastrukturális beruházásokat érintő
projektjeivel kapcsolatos dokumentációkat elemeztem. A felhasznált
dokumentumok intézményi adatbázisokból, az uniós intézmények és a
releváns tagországok hivatalainak honlapjáról, valamint az EIB-hez az
információszabadság alapján beadott közérdekű adatigénylésből
származtak. A két adatforrás elemzése NVivo kódoló szoftver használatával
2017 szeptember és 2018 január között válósult meg.

Kutatási eredmények

A 7. és a 8. fejezetben amellett érvelek, hogy az EIB szervezeti
devianciájának megértéséhez vizsgálni kell az EIB részvényesei, valamint
az EIB Igazgatási Bizottságának és az EIB projektek támogatásáról szóló
végleges döntést meghozó Igazgatótanács tagjai közötti kapcsolatot – ezek a
döntéshozatali szervek egyidejűleg olyan platformok, amelyeken keresztül
az EIB szervezeti környezetébe külső kényszerek kerülhetnek, valamint ahol
a legmeghatározóbb döntéseket hozzák. A 7. fejezetben az
erőforrásfüggőség-elmélet alkalmazását indítványozom, amely különösen
jól használható azon folyamatok felfedésére, amely során az EIB kölcsönös
szervezeti függőségei befolyásolhatják belső döntéshozatali
mechanizmusait. Továbbá, az erőforrásfüggőség-elmélet segíti az elméleti
keret makro-, és mezo-szintű elemzései közötti kapcsolatok létrehozását. Az
EIB szervezeti devianciájának magyarázata során, a 7. fejezet a projektek
támogatása körül kialakuló külső kényszerekkel való összefüggésekre
helyezi a hangsúlyt, míg a 8. fejezet ezeket a kényszereket követi végig az
EIB szervezeti környezetében, valamint azt vizsgálja, hogy az EIB
tisztsviselők milyen hitelnyújtási nyomásnak lehetnek kitéve, amely befolyásolhatja a projektek elbírálását. Ezenfelül a 8. fejezetben ezeknek a külső nyomásoknak az EIB tisztségviselőkre gyakorolt hatásait vizsgálat, és amellett érvelek, hogy a feszültségelmélet segíthet megérteni, hogy az EIB tisztségviselők hogyan reagálnak ezekre a nyomásokra, hogy bebiztosítsák bizonyos projektek EIB jóváhagyását.

Noha az erőforrásfüggőség-elmélet egy olyan oksági megközelítés, amely az elméleti keret részeként meggyőző magyarázattal szolgál a cselekvésre 'motívát' katalizátorokról, a 7. fejezetben azt vizsgálom, hogy az EIB által használt hitelezési eszközök és szabályozási keretek milyen mértékben működhetnek az EIB szervezeti deviációját elősegítő lehetőségstruktúráként. Továbbá, a 7. fejezetben kifejtett érvek alátámasztják a dysnomie1 elmélet használatát, amely segítheti az Unió intézményei és az EIB közötti aszimmetriák értelmezését, amelyek megjelenhetnek a felügyelet korlátozottságában, a beavatkozási képességben és az ellenőrzési jogkörökben. Ezen aszimmetriák együttesen gyenge társadalmi kontroll kialakulását eredményezik, amely küzd azzal, hogy megelőzze, vagy legalább korlátok közé szorítsa az EIB szervezeti deviációját. Ennek egy példája a 7. fejezetben tárgyalt Európai Számvevőszék korlátozott szerepe, amely szerint az EIB által finanszírozott projekteknek csak egy töredékét ellenőrizheti, de ennek ellenére fontos szerepet játszott a budapesti metróberuházást érintő rendszerszintű csalások és korrupció feltárásában. Ezek az aszimmetriák felelősek azon hiányosságok kialakulásáért a bonyolult, több joghatóságon átívelő normatív keretrendszerekben, amelyek teret engednek a szervezeti deviáciának. A dysnomie hasznosnak bizonyult az ilyen terek értelmezésében, de annak érdekében, hogy figyelembe tudja venni az újonnan kialakuló folyamatokat, mint például a financializációit (ahogyan

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1 Dysnomie („nehéz kormányozni”) Passas (2000:37) szerint az alábbi feltételek mentén alakul ki: „egy globális normaalaktó mechanizmus hiánya, a nemzetközi szabályok nem következetes alkalmazása és kikényszerítése, valamint egy olyan szabályozási keret létezése, amely eltérő és egymással ellentétes jogi hagyományokon és gyakorlatokon alapul.” (a ford.)
azt a 7. fejezetben vizsgálatom), az elmélet tovább gondolása és árnyalása szükséges. Ezáltal letisztultabb eszközöket adhat a financializáció nyomán létrejövő új szabályozási struktúrák és architektúrák megértéséhez, amely a profit garantálásán keresztül a befektetőket helyezi előtérbe, és az uniós forrásokat arra használja, hogy az esetleges pénzügyi veszteségeket a társadalomra hárítsa.

A 2. kutatási kérdésre válaszolva elmondhatjuk, hogy a fentebb leírt makroszintű tényezők hatással vannak az EIB szervezeti devianciájára, amelyeket a 8. fejezetben bemutatott belső szervezeti hiányosságok erősítenek. Kiemelkedő az EIB Igazgatási Bizottságának az EIB részvényeit és az EIB igazgatóságait összekötő szerepe, amelyen keresztül úgy avatkozhat be és alkudozhat a projektek során, hogy nincs elszámolási kötelezettsége, mivel e testület a döntést csak ’előkészíti’ a hitel folyósításáról végleges döntést meghozó Igazgatótanács számára. A hitel folyósításáról szóló döntéshozatal során az Igazgatótanács nem ismeri a tervezett projektek lebonyolításának minden apró részletét, és hajlamos a projektek nagy részét elfogadni, azt feltételezve, hogy azokra már minden EIB szűröt alkalmaztak. Ez a dinamika a két irányító testület között kétségkívül növeli a rossz projektek jóváhagyásának esélyét. Míg értekezésem a Castor és a Passante di Mestre esetek kapcsán az EIB által nyújtott támogatás racionális alapjait kérdőjelezi meg (4. fejezet), a budapesti metróberuházás vizsgálata ahhoz a következtetéshez is elvezetett, hogy az EIB egy kriminogén környezet kialakulásához járulhat hozzá azzal, hogy kudarcot vall a megbízható céllal rendelkező projektek kivitelezése során a pénzügyi alapok felhasználásának felügyeletében. Ennek során rajta kívülálló szereplők (például: kormányhivatalnokok, üzletemberek) válnak csalás, korrupció, valamint sikkasztás elkövetővé.

Az utóbbi megállapítás a 3. kutatási kérdésre adja meg a választ. A 4. fejezetben vizsgált, EIB által finanszírozott projektek, habár kirívó esetek, direkt kapcsolatot mutatnak az EIB hitelezési gyakorlata és az európai uniós állampolgárok számára felmerülő környezeti és pénzügyi költségek között. Amikor nagy, tőkeigényes infrastrukturális projektek pénzügyi

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Értekezésemben ezeket a következményeket a ’közösségek’ fogalmán keresztül vizsgálom, amely felismeri, hogy az érdekelt felek (stakeholders) minden szinten lehetnek érintettek.

A kriminológiai elméleti keret szerepét vizsgáló 4. kérdésre válaszolva, a 7. fejezet kiemeli annak szükségességét, hogy a kutatás elméleti eszközöszletét a kriminológia határain kívülre is ki kell terjeszteni annak érdekében, hogy a kapcsolódó tudományterületek elméleteit is bele lehessen építeni. Ezért a 7. fejezetben az erőforrásfüggőség-elmélet használata mellett érvelek, amely a Világbankot érintő esettanulpéldányoknál is megjelenik, noha ez az elmélet sem mentes a korlátoktól. Johnson (1995:16) szerint az elmélet legnagyobb korlátja az, hogy úgy tekint a szervezeti viselkedésre, mint amit elsősorban materialista tényezők befolyásolnak, és ebből kifolyólag nem veszi figyelembe a kulturális és az ideológiai hatások szerepét az intézményeken belül. Rothe (2010) azzal érvel, hogy az ilyen kulturális tényezők létfontosságukat lehetnek a nemzetközi pénzügyi intézmények szervezeti devianciájának megértéséhez. Az érthezés az EIB-ben folytatott munka során keletkezett egyéni tapasztalatokat vizsgálta, de az EIB belső környezetének elemzéséhez a kulturális perspektíva felhasználásával nem alkotott elméleti keretrendszer.

Ezért a szervezeti kultúra és a deviancia közötti kapcsolat feltárása jövőbeni kutatásokra vár. Egy olyan elméleti keret kialakítása, amely képes lenne a szervezeten belüli kulturális dinamikák vizsgálatára, a kriminológusok számára az adatforrásokhoz soha nem látott mértékű hozzáférést kívánna meg. Nehéz elképzelni egy olyan nemzetközi pénzügyi intézményt, amely ilyen szintű hozzáférést biztosítana egy kutatónak, ezért az ilyen jellegű kutatás megvalósíthatósága még kétséges.
Egy másik hátránya annak, hogy az erőforrásfüggőség-elméletet a legfőbb makroszintű oksági elméletként használjuk az EIB szervezeti devianciájának magyarázatához, és amely egyben emlékeztet az állami-vállalati bűnözés kutatását érintő kritikákra is, az nem más, mint Lasslett, Tombs és White érvelése (5. fejezet), miszerint az erőforrásfüggőség-elmélet nem mond sokat arról a politikai gazdaságtani környezetről, amelyben használják. Ennek megoldásaként az értekezés a dysnomie használatát indítványozza makroszinten, hiszen jó kiegészítést nyújthat az erőforrásfüggőség-elmélethez, miközben arra a politikai és gazdasági környezetre is koncentrál, amelybe a szervezeti deviancia ágyazódik.

Elméleti vonatkozások

A Lasslett (2010), Tombs (2012) és Whyte (2014) által elindított alapvető vita az állami-vállalati bűnözés és a globalizációs bűncselekmények témakörének vizsgálatában (5. fejezet) egy kritikáját adja a szakirodalom azon érzékelt mulasztásának, amely abból áll, hogy nem tudják a bűnözést és a szervezeti devianciát megfelelően azokhoz a politikai és gazdasági struktúrákhoz kapcsolni, amelyekben történnek. Mindez azon állításhoz vezetett, amely szerint az ilyen események előtérbe helyezése végül nem eredményez mást, mint azt, hogy „kivágıják őket abból a szövetből, amelyben léteznek”.

Az értekezés két módon járul hozzá ehhez a diskurzushoz. Először is, azt elkerülendő, hogy az esettanulmányokra csupán, mint ’pillanatnyi zavarokra’ koncentráljunk, a kutatás során azokat nem fő elemzési egységként kezeltem, annak ellenére, hogy ez egy bevett módszere a mai kutatásoknak. Ehet ett a 7. fejezet inkább az EIB és más intézmények közötti kapcsolat következményeként kívánta értelmezni a projekteket – különös tekintettel az EIB, részvényesei, valamint más európai uniós intézmények között kialakult kapcsolatokra, melyeket az Európai Unió jogi és szabályozási környezetébe, és napjaink európai politikai gazdaságtanának kontextusába helyezett.
Továbbá ahelyett, hogy ezt a problémát a marxista elméleti és elemzési keretekben keresztül vizsgáltam volna (ahogyan azt Lasslett (2010) javasolja), értekezésemben a dysnomie elméletét alkalmaztam annak érdekében, értelmezni lehessen Európa mai politikai és gazdasági berendezkedését, amely a strukturális hátterét formálja az EIB szervezeti devianciájának.

A 7. fejezet során érvelésemben azt javasolom, hogy a financializációra, valamint az egyre nagyobb mértékben szimbiotikus és financializált kapcsolatra országok, szupranacionális szereplők, vállalatok és magánberuházók között tekintsünk úgy, mint olyan jelenségekre, amelyek reprezentálhatják azt a ’szerkezetet’, amelyben az EIB szervezeti devianciája megvalósul. Ez az érvelés reflektál Kramer és Michalowski (1990) korábbi gondolatára, amely szerint az állami-vállalati bűnözés kutatásának „azt kell figyelembe venniük, hogy a deviáns szervezeti következmények nem különálló cselekmények, hanem különböző, társadalmi intézmények közötti kapcsolatok eredményei.”

Miközben a financializáció fogalmának a dysnomie elmélet egyik pilléreként való használata meggyőző elemzést nyújt az EIB szerepéről a Castor és a Passante di Mestre projektekben, aközben ez a fogalomhasználat kevésbé meggyőző a budapesti metróberuházás esetének magyarázatánál. Amikor a dysnomie elméletét ennek az ügynek az indoklására használtam azokra a folyamatokra összpontosítottam, melyek során az uniós és nemzeti jogszabályi keretek hiányosan vagy aszimmetrikusan jönnek létre, amelyek így teret engednek a devianciáknak. Ebben a kontextusban a dysnomie azokkal a szempontokkal foglalkozik, amelyek hatására a neoliberális gazdaság egymásnak ellentmondó és egymásba ütköző normatív keretekeket produkál különböző jogrendszereken át, és kevésbé kötödik (de még mindig kapcsolódik) a gazdaság egyre erősödő financializációjának folyamataihoz.

Ahhoz hasonlóan, mint ahogy a neoliberalizmus a ’financializáció’ koncepciójára, mint a dysnomie elméletének egy alternatív pillérére tagolódkik, új és még kifinomultabb fogalmak kellenek ahhoz, hogy jobban megértsük azt a folyamatot, ahogyan a gazdaság alakulása befolyásolja a
szupranacionális normatív keretrendszereket. Az értekezésemben ez a törekvés befjezetlen marad, ezért a dysnomie teljes újragondolása leendő tanulmányokra vár.