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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	COMMISSION OPINION on the request for amendments to Protocol No 5 on the Statute of the European Investment Bank, presented by the European Investment Bank on 11 March 2019

Delegations will find attached document C(2019) 3589 final.

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COMMISSION OPINION

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Having regard to the Treaty on the Functioning of the European Union, and in particular Article 308 thereof,

2. On 11 March 2019, the European Investment Bank submitted a request to the Council under Article 308 of the Treaty on the Functioning of the European Union ('TFEU') to amend its Statute.
3. The document submitted by the European Investment Bank to the Council consists of three parts: (1) a preamble describing the context and the reasons underlying the request; (2) a presentation / a statement of the Board of Governors' agreement that the share of Poland increases by EUR 5 386 000 000 and the share of Romania increases by EUR 125 452 381 and a description of the payment modalities of the paid-in part of this capital increase; and (3) a request that the Council amends Protocol No 5.
4. The request contains an amendment of Article 4, paragraph 1, of Protocol No 5 in order to adapt the total capital of the European Investment Bank and the capital distribution among Member States. In addition, the European Investment Bank proposes to modify the arrangements in Article 9, paragraph 2, of Protocol No 5 relating to the nomination of alternate members of the Board of Directors by groups of Member States ('constituencies') by common accord. A new constituency consisting of Poland, Hungary and Croatia is proposed to be created.
5. The requested amendments to the Statute are conditional upon the withdrawal of the United Kingdom from the European Union and upon the decision of the Board of Governors on the replacement of the capital held by the United Kingdom by the other Member States taking effect.
6. The request by the European Investment Bank follows the request it made on 11 October 2018 to the Council to amend certain provisions of its Statute in relation to the withdrawal of the United Kingdom from the European Union and to changes to its governance. On 31 January 2019, the Commission issued a favourable opinion on those amendments, subject to considerations expressed in the opinion. On 15 April 2019, the Council adopted Decision (EU) 2019/654 amending Protocol No 5 on the Statute of the European Investment Bank¹.

I. On the request relating to the capital increase

7. The European Investment Bank proposes that the Council increases its capital to EUR 248 795 606 881.
8. In addition, it proposes to increase the respective shares of Poland and Romania in the capital. Without this asymmetric increase, the distribution of the capital among the Member States would be as resulting from the capital replacement of the share of the United Kingdom by increasing proportionally the share of other Member States as

¹ OJ L 110, 25.4.2019, p. 36.

decided by the Board of Governors on 16 April 2019². As a result of the amendment of Article 4, paragraph 1, of Protocol No 5 requested by the European Investment Bank, the share of Poland would be increased by EUR 5 386 000 000 and the share of Romania by EUR 125 452 381. Poland would end up holding EUR 11 366 679 827 and Romania EUR 1 639 379 073 of the capital of the European Investment Bank.

9. The Commission agrees that such an asymmetric increase of the capital requires a Council Decision under Article 308 TFEU.
10. The Commission can support the proposal, while referring to its opinion of 31 January 2019 and in particular to point 9 thereof as regards the interaction between the increase of the capital adopted by the Board of Governors to replace the share of the United Kingdom in the capital, on the one hand, and the additional increase which is the subject of the request to amend to Statute, contemplated in this opinion, on the other hand.

II. On the request relating to the constituencies

11. The European Investment Bank proposes to establish in Article 9, paragraph 2, of Protocol No 5 a new constituency consisting of Poland, Hungary and Croatia by moving these three Member States out from their current constituency while keeping the rest of the constituent Member States therein. Both reconstituted constituencies shall have the right to nominate as many alternates to the Board of Directors as there are constituting Member States in each of them.
12. The Commission can support the proposal.

III. On the recitals

13. The request does not contain explicit recitals for the Council Decision but includes those that relate to the adoption by the Board of Governors of the request to amend the Statute. The Council Decision should have its own recitals, as appropriate, that relate to the enacting terms of the Decision.
14. The first recital of the decision of the Board of Governors, in so far it is intended to be inserted in the Council Decision, should not be part of the Council Decision because the latter should only refer to Article 308 of the Treaty. The last recital of the decision of the Board of Governors relates to an event that should have already happened. The Commission considers that it should be slightly reworded to correspond to the situation of the time of the adoption of the Council Decision if included in its recitals.

IV. On entry into force

15. The Council Decision should contain an entry into force provision. It should enter into force after the entry into force of and taking effect of the decision of the Board of Governors adopted on 16 April 2019 on the capital increase replacing the capital held by the United Kingdom until the withdrawal date.

² Decision of the Board of Governors of the European Investment Bank of 16 April 2019 on the replacement of the capital of the United Kingdom in the European Investment Bank by capital subscribed by the remaining Member States [2019/655] (OJ L 110, 25.4.2019, p. 39).

Conclusion

In the light of the above, the Commission hereby issues a favourable opinion on the requested amendments to the Statute of the European Investment Bank, subject to the considerations expressed in this opinion.