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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 October 2018

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

1. On 11 October 2018, 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. First, the European Investment Bank proposes to amend its Statute to reflect the withdrawal of the United Kingdom from the European Union which will bring an end to its membership in the European Investment Bank. Second, the European Investment Bank proposes to strengthen the functioning of its Board of Directors by allowing the appointment of a larger number of alternate directors. Third, the European Investment Bank proposes to extend the use of qualified majority voting to the decision on the Corporate Operational Plan, the appointment of members of the Management Committee and the approval of the Rules of Procedure.
2. All amendments proposed by the European Investment Bank to its Statute are envisaged to take effect immediately on the withdrawal of the United Kingdom from the European Union. The request also refers in a recital to an envisaged increase of the capital subscribed by the remaining Member States which should go in parallel with a further strengthening of the governance of the European Investment Bank.

I. On the relation between the request and the withdrawal of the United Kingdom from the European Union

3. The Commission raises the question whether it is appropriate to link the entry into force of the whole decision to the withdrawal of the United Kingdom from the EU. There is in any event no legal necessity that the envisaged amendments to Protocol No 5 enter into force on the date on which the United Kingdom would not anymore be a Member State.
4. Indeed, the request by the European Investment Bank contains two different categories of amendments. The first category simply draws the consequence of the withdrawal of the United Kingdom from the Union by deleting the reference to the shareholding of the United Kingdom in Article 4(1), by decreasing the number of members of the Board of Directors in Article 9(2), first sentence, and by deleting the reference to the nomination of alternate directors by the United Kingdom in Article 9(2), third subparagraph. The Commission can support these changes but wishes to stress that their effect will simply be of a declarative nature. Indeed, the withdrawal of the United Kingdom from the EU does not require a prior amendment of the Treaties and Protocols to remove all references to the United Kingdom. These references will become automatically obsolete on the date of withdrawal. By contrast, the other amendments requested by the European Investment Bank, which contain governance changes, are of a constitutive nature. The Council might consider that these changes are appropriate independently of the withdrawal.
5. Therefore, the Commission raises the question whether the decision of the Council should not enter into force at a specified date not linked to the withdrawal of the

United Kingdom, for instance on the publication in the Official Journal of the EU. In such a case, it is only the entry into effect of the declaratory amendments of the first category that would be linked to the withdrawal of the United Kingdom. This alternative approach would require some technical redrafting of the decision.

II. On the request to delete references to capital held by the United Kingdom

6. The European Investment Bank proposes to delete the mention of the shareholding by the United Kingdom of EUR 39 195 022 000 in Article 4(1) of the Statute.
7. As indicated above, in legal terms, on the withdrawal date all references to the United Kingdom in the Treaties and Protocols would become automatically obsolete and thus an explicit amendment of the Statute is not necessary in this sense. In any event, the text of the Treaties and Protocols will be brought in line with the new situation, by a formal amendment in accordance with Article 48 TEU, in order to delete obsolete provisions and proceed to consequential adaptations. Nevertheless, it seems acceptable to proceed to the proposed amendments at the occasion of the amendments to the governance of the European Investment Bank (hereafter Sections III and IV). This amendment can, therefore, be supported for the sake of clarity.
8. The European Investment Bank also proposes that the amount of total subscribed capital mentioned in the same Article should be decreased accordingly unless an increase of the subscribed capital “by the remaining Member States” is decided before the withdrawal date. The Commission understands that this latter decision would be adopted by the Board of Governors of the European Investment Bank on the basis of Article 4(3) of its Statute.
9. The Commission can support the objective behind this proposal but wishes to draw attention to the following legal aspects. The capital of the European Investment Bank mentioned in Article 4(1) of Protocol No 5 is the total amount of Member States' shares listed in that provision. If the Council only removes the reference to the United Kingdom, it must diminish the total capital in accordance. The Council cannot take into account in its decision a possible decision by the European Investment Bank to increase the capital, and the ensuing new repartition among Member States. Therefore, the Council Decision should mention the (diminished) total capital as a consequence of the withdrawal of the United Kingdom. A parallel decision of the Board of Governors of the European Investment Bank may increase the capital (and define its repartition between the Member States pro rata) but it is a separate decision.

III. On the appointment of additional alternates to the Board of Directors

10. The European Investment Bank proposes to increase the number of alternates to the Board of Directors from 18 to 31. Germany, France and Italy, which already had two alternates each, will maintain that number. The constituencies of Member States that previously had fewer alternates than shareholders in that constituency will after the amendment have as many alternates as shareholders in that constituency. The Commission maintains the one alternate.
11. As a larger number of alternate directors will allow the European Investment Bank from benefiting from a broader experience at the level of the Board of Directors, in particular in view of the intention to make better use of the alternates in the decision-making process of the Board of Directors, in particular regarding the analysis of financing proposals, the Commission can support this proposal.

IV. On the extensions of qualified majority voting instead of simple majority voting

12. The European Investment Bank further proposes to enlarge the scope of qualified majority voting in three important areas where simple majority is currently required. These are:
- i) Decisions on the corporate operational plan (Article 9(1) of the Statute)
 - ii) Decisions on the nominations of the Management Committee members by the Board of Governors and corresponding proposals by the Board of Directors (Article 11(1), first subparagraph, of the Statute)
 - iii) Decisions on the Rules of Procedure of the European Investment Bank (Article 7(3)(h) of the Statute).
13. The Commission endorses the objectives which this proposal to amend the Statute seeks to achieve.

V. On the recitals

14. The eight, ninth and tenth recitals, in so far they are intended to be inserted in the Decision of the Council, do not explain or justify the enacting terms of the Decision but relate to issues that do not require changes to the Statute of the European Investment Bank. The Commission considers that these recitals should be slightly reworded to make clear that they do not relate to any particular enacting terms.

VI. Conclusion

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