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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	Proposal for a DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL authorising the Commission to vote in favour of the capital increase of the European Investment Fund

Delegations will find attached document COM(2020) 774 final.

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Brussels, 25.11.2020
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2020/0343 (COD)

Proposal for a

DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**authorising the Commission to vote in favour of the capital increase of the European
Investment Fund**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

The Union, represented by the Commission, is a shareholder in the European Investment Fund (EIF) since the establishment of the EIF. It currently holds 29,7 % of the shares. The majority of the shares (58,9 %) are owned by the European Investment Bank. The rest (11,4 %) are owned by other financial institutions.

Considering the expected impact of the COVID-19 crisis and with a view to contributing to the Union and EIF response to the crisis through the implementation of the expected InvestEU Programme as part of the Multiannual Financial Framework for 2021-2027, the Board of Directors of the EIF [has decided] to propose a capital increase to the General Meeting, where the Commission, representing the Union as a shareholder of the EIF, has to be in a position to vote on the increase.

The EIF has calculated an immediate need for an increase in the authorised capital by EUR 2 870 000 000, which corresponds to a cash injection of EUR 1 250 000 000. In order to effectively respond to the COVID-19 crisis, the capital increase should be put in place as soon as possible.

This proposal aims to allow the Commission, representing the Union in the General Meeting, to vote in favour of the capital increase of the EIF.

The Commission proposal for a Regulation of the European Parliament and of the Council establishing the InvestEU Programme [2020/0108 (COD), InvestEU Regulation] provides in its Article 32 for the participation of the Union in the capital increase and was originally intended to serve implicitly as a legal basis for the Commission to vote in favour of the capital increase in the General Meeting of the EIF. However, given that there is a degree of uncertainty regarding the time of the entry into force of the InvestEU Regulation, a separate decision authorising the Commission to vote in favour of the capital increase at the General Meeting has to be adopted beforehand in order to allow for the subscription period for the capital increase to be launched in due time.

Thus, shareholders of the EIF other than the Union will be able to provide capital support needed immediately after the start of the subscription period, even if it runs for a longer period of time to allow all shareholders to decide on their participation in accordance with their rules and procedures. The Union may then participate in the capital increase and subscribe shares after the entry into force of and in accordance with the legal basis for its participation (the InvestEU Regulation) as and if adopted by the co-legislators. In accordance with Article 5 (3) of the Statutes of the EIF, each member will be entitled to subscribe to a fraction of the increase corresponding to the ratio which existed between the shares subscribed by that member and the overall number of EIF shares subscribed, before the capital increase.

- **Consistency with existing policy provisions in the policy area**

Additional capital will enable the EIF to implement the expected InvestEU Programme as a key implementing partner foreseen in the InvestEU Regulation and therefore contribute to improving the competitiveness and socio-economic convergence and cohesion of the Union and at the same time supports the recovery from the COVID-induced economic crisis, in particular as regards supporting innovative SMEs. This will include contributions in the fields

of innovation and digitisation, to the efficient use of resources in accordance with the circular economy objectives, to the sustainability and inclusiveness of the Union's economic growth and to the resilience and integration of the Union capital markets, including through solutions that address the fragmentation of Union capital markets and that diversify sources of financing for Union enterprises. In addition, the capital increase will allow for further development of EIF's role in the management of national and regional programmes, thereby contributing to the EU policy objectives of improving access to finance for SMEs, fostering regional development and supporting the objectives of the Capital Markets Union.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

Council Decision 94/375/EC contains a specific provision on capital increases in Article 3 in terms of which the position of the Union on a possible increase in the capital of the EIF and on its participation in that increase is to be decided unanimously by the Council, acting on a proposal from the Commission and after consulting the European Parliament. However, this provision is deemed excluded as legal basis for a new decision on the vote on an EIF capital increase and on the participation in an EIF capital increase by the Union in view of the development of the case-law of the European Court of Justice regarding so-called "secondary legal bases"¹. Instead, a legal base in primary law should be proposed.

In light of the objectives and activities of the EIF, as set out in its Statutes and decisions taken by its governing bodies in accordance with the Statutes, and in light of the primary aim pursued with the capital increase, which is to support SMEs, innovation and jobs in parallel to addressing other pressing needs such as climate change, COVID-relief and the digitalisation of the EU economy in particular through the implementation of the expected InvestEU Programme, thus promoting action in support of the Union's industry, Article 173(3) TFEU is considered as the appropriate legal basis for the proposed authorisation to the Commission to vote in favour of the capital increase.

Decision No 562/2014 of the European Parliament and of the Council of 15 May 2014 on the participation of the European Union in the capital increase of the European Investment Fund (OJ L 156, 24.5.2014, p. 1) was also based on Article 173(3) TFEU.

• Subsidiarity (for non-exclusive competence)

The Union, represented by the Commission, as a shareholder of the EIF is exclusively competent to vote on decisions on capital increases of the EIF.

• Proportionality

The additional authorised capital, to the extent subscribed by the shareholders of the EIF, will provide the EIF with the capital it needs to contribute to EU objectives.

3. BUDGETARY IMPLICATIONS

The proposal has no budgetary implications, as the vote at the General Meeting on the capital increase of the EIF does not oblige the Union to subscribe shares. Budgetary implications will

¹ Judgment of the Court of 6 May 2008, Case C-133/06, *European Parliament v Council of the European Union*, ECLI:EU:C:2008:257.

only result from the InvestEU Regulation providing the legal basis for the participation of the Union in the capital increase.

Proposal for a

DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

authorising the Commission to vote in favour of the capital increase of the European Investment Fund

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 173(3) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee², —

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) According to Article 5(2) of the Statutes of the European Investment Fund (the Fund) the authorised capital of the Fund may be increased by decision of the General Meeting acting with a majority of 85 % of the votes cast.
- (2) Considering the expected impact of the COVID-19 crisis and with a view to contributing to the response of the Union and the Fund to the crisis through the implementation of the expected InvestEU Programme³ as part of the Multiannual Financial Framework for 2021-2027 and through further development of EIF's role in the management of national and regional programmes, the Fund has calculated an immediate need to increase its authorised capital by EUR 2 870 000 000.
- (3) The Board of Directors of the Fund [has decided] to submit a request to the General Meeting for approval of an increase of the Fund's authorised capital by EUR 2 870 000 000 through the issuance of 2 870 new shares and of the arrangements for payment and other modalities for such capital increase. If the capital increase is approved, each new share will have a nominal value of EUR 1 000 000 and each subscribed share will be paid-in as to 20% of its nominal value. The General Meeting may require payment of the remaining 80% under the conditions laid down in Article 7(3) of the Statutes of the Fund. All shares, whether existing or newly issued, will be of equal value and carry equal rights in all respects.
- (4) The Board of Directors has proposed that the newly authorised shares be available for subscription during a single subscription period starting immediately upon approval of the capital increase by the General Meeting and ending on 30 September 2021. The Union will be able to participate in the subscription under the conditions laid down in the General Meeting's decision once the legal basis approving the participation of the Union in the capital increase has entered into force.

² OJ C , , p. .

³ Proposal for a Regulation of the European Parliament and of the Council establishing the InvestEU Programme, 2020/0108 (COD).

- (5) In order to allow the Union representative in the General Meeting to vote on the capital increase as soon as possible, this Decision should be adopted as a matter of urgency. It is therefore considered to be appropriate to provide for an exception to the eight-week period and the ten-day period referred to in Article 4 of Protocol No 1 on the role of national Parliaments in the European Union, annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community.
- (6) For the same reason, this Decision should therefore also enter into force on the day following that of its publication,

HAVE ADOPTED THIS DECISION:

Article 1

The Commission, representing the Union, is authorised to vote at the General Meeting of the European Investment Fund in favour of the proposed capital increase of EUR 2 870 000 000.

Article 2

This Decision shall enter into force on the day following that of its publication in *the Official Journal of the European Union*.

Done at Brussels,

For the European Parliament
The President

For the Council
The President