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SECRETARIAT-GENERAL

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Brussels, 27 June 2001

MINUTES
of the 1528th meeting of the Commission
held in Brussels
(Breydel)
on Wednesday 20 June 2001
(morning)

These minutes were approved by the Commission at its 1529th meeting, held in Brussels on 27th June 2001.

They contain 21 pages.

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Single sitting: Wednesday 20 June (morning)

The sitting opened at 0920 hours with Mr Prodi, President, in the chair.

Present:

Mr PRODI	President
Mr KINNOCK	Vice-President
Ms de PALACIO	Vice-President
Mr MONTI	
Mr FISCHLER	
Mr LIIKANEN	
Mr BOLKESTEIN	
Mr BUSQUIN	
Mr SOLBES	
Mr NIELSON	
Mr VERHEUGEN	
Mr PATTEN	
Mr LAMY	
Mr BYRNE	
Mr BARNIER	
Ms REDING	
Ms SCHREYER	
Ms WALLSTRÖM	
Mr VITORINO	
Ms DIAMANTOPOULOU	

The following also sat in

Mr PETITE	Director-General, Legal Service	
Mr MANSERVISI	Chef de cabinet to the President	
Ms HOUTMAN	Deputy Chef de cabinet to the President	Items 6, 14 and 15
Mr GUSSETTI	A member of the President's staff	Items 9, 12, 13 and 14
Mr SMULDERS	A member of the President's staff	Items 14 and 15
Mr FAULL	Commission Spokesman	
Ms CORUGEDO STENEBOERG	Unit Head in DG PRESS	
Mr TODD	Spokesman	Items 14 and 15
Mr GOOCH	Spokesman	Items 14 and 15
Mr CALLEJA	Chef de cabinet to Ms de Palacio	Items 12 to 15
Mr CANGA FANO	A member of Ms de Palacio's staff	Items 14 and 15
Ms MASCARDI	A member of Ms de Palacio's staff	Item 12
Mr VAN HOOFF	Chef de cabinet to Mr Monti	Items 6, 14 and 15
Mr BERARDIS	A member of Mr Bolkestein's staff	Items 14 and 15

Secretary: Mr O'SULLIVAN, Secretary-General, assisted by Mr BISARRE, Director in the Secretariat-General.

1. AGENDAS

(OJ(2001)1528/3; SEC(2001)951/2)

The Commission took note of the agenda for that day's meeting and of the tentative agendas for forthcoming meetings.

2. WEEKLY MEETING OF CHEFS DE CABINET

(SEC(2001)1528)

The Commission considered the Secretary-General's report on the weekly meeting of Chefs de cabinet held on Monday 18 June.

3. APPROVAL OF MINUTES AND SPECIAL MINUTES OF 1527th MEETING

(12 June)

(PV(2001)1527; PV(2001)1527, Part II)

The Commission approved the minutes of its 1527th meeting as set out in PV(2001)1527 and PV(2001)1527, Part II.

4. PARLIAMENT

4.1. JUNE PART-SESSION

(SP(2001)1960)

The Commission took note of the record of Parliament's part-session held in Strasbourg from 11 to 14 June.

**4.2. ACTION TO BE TAKEN ON PARLIAMENT'S OPINIONS
(SP(2001)1954)**

The Commission approved the proposed empowerment decisions relating to action to be taken on the amendments presented by Parliament under the codecision and consultation procedures in SP(2001)1954.

**5. PERMANENT REPRESENTATIVES COMMITTEE
(SI(2001)640 and /2; SI(2001)688; SI(2001)693)**

The Commission took note of the Secretariat-General's reports on recent meetings of the Permanent Representatives Committee.

It paid particular attention to the following:

**5.1. PREPARATIONS FOR COUNCIL MEETING
(TRANSPORTS/TELECOMMUNICATIONS) (27 AND 28 JUNE)
(SEC(2001)640/2)**

Proposal for a directive on the compulsory use of safety belts and child restraint systems in vehicles

Following the difficulties encountered in the Council meeting of 5 April, the Presidency now hoped that a common position could be adopted at the meeting on 28 June, on the basis of a new compromise still containing a series of exemptions, which, however, would require prior authorisation by the Commission.

The Commission decided to maintain the reservations on these exemptions entered by its representatives at the Coreper meeting on 13 June.

**5.2. COMMUNITY ACCESSION TO THE CODEX ALIMENTARIUS
(SI(2001)688)**

With a view to Community accession to the Codex Alimentarius, Coreper had reached agreement in April (see PV(2001)1519) on the arrangements for the preparation and expression of the Community position within the Codex. Coreper had also agreed to ask the Codex for amendments to its rules of procedure. These would have to be on the agenda for the Codex Commission on 2 July, and had been discussed with the Secretariat of the Codex. Given the reluctance shown by several Member States, Community accession to the Codex could be blocked *de facto*, even though the Community had exclusive powers for a very large proportion of the subjects covered by the organisation.

The Commission instructed its representatives to maintain appropriate contacts in order to seek the agreement of the Member States on a satisfactory form of words. However, in the absence of such agreement, the Commission decided that it would have a statement entered in the Council minutes, reserving the right to make use of all the legal means at its disposal.

**5.3. PROPOSAL FOR A PARLIAMENT AND COUNCIL REGULATION
LAYING DOWN THE GENERAL PRINCIPLES AND REQUIREMENTS
OF FOOD LAW, ESTABLISHING THE EUROPEAN FOOD
AUTHORITY, AND LAYING DOWN PROCEDURES IN MATTERS OF
FOOD SAFETY
(SI(2001)693)**

The Presidency wished to see this matter brought to a conclusion, and had submitted a compromise text on the composition of the Food Authority's Management Board (the only substantive question outstanding, apart from the location of the headquarters). This text differed significantly from the initial proposal, particularly in reducing the Commission's role in the Management Board and in the appointment of members.

The Commission noted that the present compromise was likely to secure unanimity; however, if there were only majority agreement, the Commission decided to authorise its representative to accept the compromise only if this were closer to the Commission's initial proposal.

**6. MONITORING THE APPLICATION OF COMMUNITY LAW: STATE AID
AND INFRINGEMENTS
(SEC(2001)979 to /2)**

STATE AID
(SEC(2001)979/2)

The Commission adopted the decisions in SEC(2001)979/2, subject to the following amendment:

N 278/2001 **DENMARK**
Electricity reform - new RE-based power plants
 (SEC(2001)929 to /5)

Decision: to raise no objection, holding the aid to be compatible with the EC Treaty, as set out in the letter in SEC(2001)929/5.

On page 7 of SEC(2001)929/3, the third sentence of the third paragraph was amended to read as follows:

"In the present case, and against the background of the Preussen Elektra jurisprudence, there could be a distinction to be made."

7. WRITTEN PROCEDURES, EMPOWERMENT AND DELEGATION OF POWERS

7.1. WRITTEN PROCEDURES APPROVED

(SEC(2001)952 to /5)

The Commission took note of the Secretariat-General's memoranda recording decisions adopted by written procedure between 11 and 15 June.

7.2. SENSITIVE WRITTEN PROCEDURES

(SEC(2001)954)

The Commission took note of the following written procedures initiated between 11 and 15 June for the adoption of decisions with political implications:

Time limit: 20.06.2001

E/1101/2001 - COM(2001)333

DG SANCO

Commission communication on a Community strategy against antimicrobial resistance.

Time limit: 21.06.2001

E/904/2001 - COM(2001)274

DG MARKT

Commission interpretative communication on the Community law applicable to public procurement and the possibilities for integrating environmental considerations into public procurement.

Time limit: 22.06.2001

E/1144/2001 - C(2001)1656

DG RTD

Commission decision on the creation of the European Research Advisory Board.

7.3. EMPOWERMENT

(SEC(2001)955 to /5; SEC(2001)956 to /4)

The Commission took note of the Secretariat-General's memoranda recording decisions adopted under the empowerment procedure between 11 and 15 June.

8. ADMINISTRATIVE AND BUDGETARY MATTERS

(SEC(2001)957/2)

ADMINISTRATIVE MATTERS

(PERS(2001)188)

8.1. DG RELEX - INTERIM A2 APPOINTMENT

On a proposal from Mr KINNOCK and in agreement with the PRESIDENT and Mr PATTEN, the Commission decided, under Article 7(2) of the Staff Regulations, to appoint as interim Director Mr Jonathan SCHEELE, currently A3 Unit Head, who had been deputising for the Director of Directorate H in the External relations DG from 1 November 2000 to 30 April 2001.

This decision would take effect immediately.

8.2. INITIAL COMMUNICATION UNDER ARTICLE 50 OF THE STAFF REGULATIONS

The Commission, on a proposal from Mr KINNOCK, in agreement with the PRESIDENT and Ms WALLSTRÖM, decided to initiate the first stage of the procedure laid down in Article 50 of the Staff Regulations in respect of Mr James CURRIE, A1 official and currently Director-General for Environment.

The President would send Mr CURRIE a letter notifying him of the Commission's intentions and asking for a reply by 29 June.

**9. COMMUNICATION ON EMPLOYMENT AND SOCIAL POLICIES: A
FRAMEWORK FOR INVESTING IN QUALITY
(COM(2001)313 to /5; SEC(2001)917 and /2)**

The Commission approved the communication in COM(2001)313/5 for transmission to Parliament, the Council, the Economic and Social Committee and the Committee of the Regions.

**10. APPLICATION OF COUNCIL REGULATION (EC) No 4064/89 ON THE
CONTROL OF CONCENTRATIONS BETWEEN UNDERTAKINGS
(C(2001)1643 to /4)**

The Commission:

- took note of the final report of the Hearing Officer in C(2001)1643/4;
- took note of the opinion of the Advisory Committee on Concentrations of 8 June in C(2001)1643/2;
- adopted, in the authentic language (German), the decision in C(2001)1643/3.

The decision would be published in the Official Journal (with all business secrets deleted) in the eleven official Community languages.

**11. COMMISSION DECISION ON APPLICATION OF ARTICLE 82 OF THE
EC TREATY**

(C(2001)1582 to /5; SEC(2001)997)

The Commission:

- took note of the final report of the Hearing Officer in C(2001)1582/4;
- took note of the opinion of the Advisory Committee on Restrictive Practices and Dominant Positions of 21 May in C(2001)1582/2;
- adopted, in the authentic language (French), the decision relating to competition case E-2136.43 as set out in C(2001)1582/2 and /5, indicating that the company concerned had infringed Article 82 EC and imposing on it a fine of €19.76 million.

The decision would be published in the Official Journal (with all business secrets deleted) in the eleven official Community languages.

**12. PROPOSAL FOR THE AMENDMENT OF THE REGULATION ON
COMMON RULES FOR THE ALLOCATION OF SLOTS AT COMMUNITY
AIRPORTS**

(COM(2001)335 to /5)

Ms de PALACIO presented a proposal for a Parliament and Council Regulation amending the Regulation laying down common rules for the allocation of take-off and landing slots at Community airports.

This proposal followed consultation with the Member States on the various possible options for transforming the present slot allocation system.

The proposal did not aim to make fundamental changes to the slot allocation system, which at this stage continued to be based on the rule of the protection of acquired rights ("grandfather rights"); rather, it was limited to clarifying the text of the Regulation in force so as to eliminate differences of interpretation, and to defining more clearly the legal nature of airlines' rights over the slots they were currently using.

Before giving a view on the feasibility of reforming the present system, particularly by the possible introduction of specific market mechanisms for the allocation of slots, an in-depth study would be launched by her departments to consider all the legal, economic and international aspects of the various possible options.

The Commission held a brief exchange of views on the advisability of including straight away in the proposal for a Regulation under discussion (Article 8(a), paragraph 2) a measure to ban the transfer of slots, apart from certain specific cases set out at paragraph 1 of the Article.

Following this discussion, the Commission approved unchanged the proposal in COM(2001)335/5 for transmission to Parliament, the Council, the Economic and Social Committee and the Committee of the Regions.

**13. PROPOSAL FOR A COUNCIL REGULATION ON THE ESTABLISHMENT
OF THE GALILEO JOINT UNDERTAKING AND ADOPTING ITS
STATUTES, TOGETHER WITH A COMMUNICATION
(COM(2001)336 to /5; SEC(2001)978)**

Ms de PALACIO presented a proposal for a Council Regulation on the establishment of a joint undertaking - within the meaning of Article 171 of the Treaty on European Union - to take charge of the development stage of the Galileo project for 2001-05.

She reminded the meeting of the composition proposed for the bodies of the joint undertaking (Administrative Board, Executive Committee, Director-General) and its main tasks: implementation of the development stage, preparation of management structures for the subsequent (deployment and operational) stages, and establishment of the conditions for financial participation by the private sector.

The Commission held an exchange of views on:

- the procedure under which Member States could be involved in the activities of the joint undertaking;
- the arrangements for European Investment Bank participation in the formation of the capital of the joint undertaking;
- the arrangements for monitoring of the joint undertaking by the Commission and the Court of Auditors.

As regards the involvement of Member States, the Commission noted that it would be kept informed of the negotiations in the various stages of the legislative procedure, since it would be desirable to avoid any solution that might make the undertaking's operation more cumbersome (for instance, committee procedure).

The Commission noted that Section 9 of the financial statement annexed to the proposal for a Regulation would be revised and renamed "audit measures" instead of "anti-fraud measures".

Subject to finalisation of the text of the financial statement, the Commission approved the proposal in COM(2001)336/5 for transmission to the Council, Parliament and the Economic and Social Committee.

14. RESTRICTIONS ON INTRA-COMMUNITY INVESTMENT

(SEC(2001)964 to /5)

15. UNEVEN MARKET OPENING OF COMMUNITY ENERGY MARKETS

(SEC(2001)967 to /3; SEC(2001)964/3)

The Commission held an in-depth discussion on restrictions on intra-Community investments, and on the political situation created by the reactions of certain Member States to distortions of competition on the energy markets.

The Commission noted firstly that the free movement of capital and freedom of establishment were fundamental and directly applicable freedoms of the Treaty.

Following this discussion, it drew the following conclusions:

- The communication from Mr BOLKESTEIN was approved.
- Progress in the opening-up of energy markets had, in most Member States, been more rapid than provided for in the directives in force, but there were still some obstacles to genuine opening-up. As a result there were possible distortions of competition between companies.
- The Commission felt that this situation called for:
 - . strict application of the competition rules and the Treaty rules on state aid, including as regards nuclear energy;
 - . speeding-up of the adoption by the Council and Parliament of the second liberalisation package;
 - . the possible application of Article 86, and particularly paragraph 3, in the event of delay in adopting this package, directives or decisions being addressed to Member States with a view to eliminating possible distortions of competition, while preserving service obligations of general economic interest;

- . a speedy solution to problems of tariffication in intra-Community trade, and problems in the development of infrastructure, which formed obstacles to the effective opening-up of the markets.
- Liberalisation did not necessitate privatisation. While liberalisation was going ahead on the initiative of the Commission, particularly by means of harmonisation, Member States remained free to privatise their companies or not. Once this choice was made, however, the Treaty rules remained in force.
- The principle of neutrality laid down in the Treaty meant in particular that private and public companies were subject to the same rules, particularly the competition rules, and enjoyed the same rights, particularly the free movement of capital and freedom of establishment.
- The application of a reciprocity principle or retaliatory measures between Member States were alien to the Treaty and in particular to the principles of the internal market.
- The Treaty also ruled out any discriminatory measures on principle, except in cases which it expressly laid down and on condition that the measures complied with the principle of proportionality. The case law of the Court also allowed exemptions for "imperative requirements in the general interest", provided the measures taken were non-discriminatory and proportional.
- These principles had been reiterated in the 1997 communication on restrictions on direct investment. The Commission would continue to base itself on its 1997 communication when considering obstacles put in place by the Member States, particularly in the form of special powers, to the free movement of capital and freedom of establishment, subject to forthcoming Court of Justice decisions in cases currently pending in this area.
- The Commission confirmed the position it had taken in the very first stage of the privatisation of "Aeroporti di Roma", when the State still retained control of the

company, whereby a temporary limitation on shareholdings by public enterprises, under conditions that were precise, objective, non-discriminatory and determined in advance, was in conformity with the Treaty.

- The Commission would begin a dialogue with Parliament, in response to its resolution of April 2001 asking it to propose a Directive on restrictions on intra-Community investments, since directly applicable Treaty provisions required no implementing measures.
- The Commission would also explain its position in detail to the Council.

16. COUNCIL MEETINGS

(SI(2001)726)

16.1. GOTHENBURG EUROPEAN COUNCIL

(15-16 JUNE)

(SI(2001)500)

The President gave a brief report on the main subjects dealt with by the European Council in Gothenburg on 15 and 16 June, viz.: enlargement, the referendum in Ireland, sustainable development, and the future of Europe.

He would be making an official visit to Ireland from 21 June and, in the light of such information as he might glean, a new debate on the lessons to be drawn from the referendum would be held at the Commission meeting on 27 June.

The Commission held a brief exchange of views on the possibilities of holding a dialogue with certain representatives of civil society, so as to avoid confrontations in future between demonstrators and the forces of law and order at any meeting for international negotiations.

16.2. AGRICULTURE

(LUXEMBOURG, 28-29 JUNE)

Mr FISCHLER reported on the main results of the Council meeting (Agriculture).

The Council had unanimously adopted:

- the introduction of a simplified aid scheme for the payment of certain direct aid to small farmers who receive small amounts (maximum €1 250 per year); this scheme would be implemented for a trial period ending in 2005;
- the Regulation on the improvement of quality standards for olive oil;
- the extension for three years of the common organisation of the market in hops.

The Council had also adopted the plan to combat the effects of the BSE crisis on the cattle sector, aimed at reducing beef production by modifying the system of aid granted to producers.

Mr BYRNE reported on the principal decisions adopted by the Council (Agriculture) in his area of responsibility:

- as regards the ban on meat and bone meal, on which the Council had not succeeded in securing a qualified majority, it was now up to the Commission to renew the ban for a temporary period;
- the Council had reached political agreement on the proposal for a Regulation on the health rules applicable to animal by-products not intended for human consumption (ban on the recycling into the food chain of animal carcasses and condemned animal material);

- the Council had also reached political agreement on the proposal for a Directive concerning measures to combat classical swine fever.

Mr BYRNE noted in this connection that one case of swine fever had been discovered in Spain.

He also reminded the meeting that Parliament had delivered its opinion on the proposal to set up a Food Authority, and that this matter was on the agenda for Coreper.

17. OTHER BUSINESS

APPLICATION OF COUNCIL REGULATION (EC) No 4064/89 ON MERGER CONTROL (GENERAL ELECTRIC / HONEYWELL)

Mr MONTI reported on progress in the negotiations between the Commission and the representatives of General Electric, widely covered in the press in recent weeks, on what would be the largest operation ever planned (USD 41 billion).

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The meeting closed at 1350 hours.