



EUROPEAN COMMISSION

SECRETARIAT-GENERAL

PV(2002)1571 final

Brussels, 19 June 2002

MINUTES
of the 1571st meeting of the Commission
held in Strasbourg
(Winston Churchill Building)
on Tuesday 11 June 2002
(afternoon)

These minutes were approved by the Commission at its 1572nd meeting, held in Luxembourg on 19th June 2002.

They contain 22 pages.

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Single sitting: Tuesday 11 June (afternoon)

The sitting opened at 1330 hours with Mr Prodi, President, in the chair.

Present:

Mr PRODI	President
Ms de PALACIO	Vice-President
Mr MONTI	
Mr LIIKANEN	
Mr BOLKESTEIN	
Mr BUSQUIN	
Mr SOLBES	
Mr NIELSON	
Mr LAMY	
Mr BYRNE	
Mr BARNIER	
Ms REDING	
Ms WALLSTRÖM	
Ms DIAMANTOPOULOU	

Absent:

Mr KINNOCK	Vice-President
Mr FISCHLER	
Mr VERHEUGEN	
Mr PATTEN	
Ms SCHREYER	
Mr VITORINO	

The following sat in to represent absent Members of the Commission

Ms DORAN SCHIRATTI	Deputy Chef de cabinet to Mr Fischler
Ms PROUT	A member of Mr Verheugen's staff
Mr POWER	A member of Mr Patten's staff
Mr SPENCE	Deputy Chef de cabinet to Ms Schreyer
Ms CABRAL	A member of Mr Vitorino's staff

The following also sat in

Mr PETITE	Director-General, Legal Service
Mr MANSERVISI	Chef de cabinet to the President
Ms TORRES	Spokeswoman
Mr KEMPPINEN	Spokesman
Mr MAMER	Spokesman
Mr SCHINAS	Deputy Chef de cabinet to Ms de Palacio
Mr CARDANI	Deputy Chef de cabinet to Mr Monti
Ms BARDENHEWER	A member of Mr Byrne's staff

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

1. AGENDAS

(OJ(2002)1571/3; SEC(2002)646/2)

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(2002)1571)

The Commission considered the Secretary-General's report on the weekly meeting of Chefs de cabinet held on Monday 10 June.

3. APPROVAL OF MINUTES AND SPECIAL MINUTES OF 1570th MEETING

(5 June)

(PV(2002)1570 and /2; PV(2002)1570, Part II and /2)

The Commission approved the minutes of its 1570th meeting.

4. PARLIAMENT

PARLIAMENTARY AFFAIRS GROUP

(SP(2002)1857)

The Commission took note of the record of the meeting of the Parliamentary Affairs Group held on 7 June.

It paid particular attention to the following:

a) Preparations for June part-session

(point 2 of the record)

The Commission, in accordance with the rules in force, authorised the Commission Members responsible, in agreement with the PRESIDENT, Ms de PALACIO and any other Members associated, to take a position on Parliament's amendments to its proposals.

It paid particular attention to the following:

2nd reading

- MASTORAKIS report, European Maritime Safety Agency,
COM(2000)802 - 00/0327 (COD)

The Commission adopted the line set out in SP(2002)1881.

- BERENGUER FUSTER report, Insurance mediation,
COM(2000)511 - 00/0213 (COD)

The Commission adopted the line set out in SP(2002)1908 involving the rejection of some amendments.

Empowerment

Under Article 13 of its Rules of Procedure the Commission empowered Ms de PALACIO and Mr BOLKESTEIN, in agreement with the PRESIDENT, the Member responsible for relations with Parliament and any other Members associated, to adopt its opinion on the amendments, together with any amended proposals, on the basis of the line set out in SP(2002)1881 and SP(2002)1908, once Parliament had given its opinion, and transmit them to the Council in accordance with Article 251(2)(c) of the Treaty for the following:

- MASTORAKIS report, European Maritime Safety Agency,
COM(2000)802 - 00/0327 (COD)
- BERENGUER FUSTER report, Insurance mediation,
COM(2000)511 - 00/0213 (COD)

b) Action taken on Parliament's opinions and resolutions

(point 5 of the record)

The Commission adopted the replies to own-initiative resolutions adopted by Parliament to which the Commission had undertaken to reply (SP(2002)1842), for transmission to Parliament.

5. PERMANENT REPRESENTATIVES COMMITTEE

COUNCIL AFFAIRS GROUP (CAG)

(SI(2002)677)

The Commission took note of the record of the meeting of the Council Affairs Group held on Friday 7 June.

It paid particular attention to the following:

a) Marco Polo Programme

The Commission authorised Ms de PALACIO to support the Presidency compromise on the overall allocation for the programme, on condition that it was not reduced later, and to confirm the Commission's initial position on the level of eligibility thresholds.

b) Trans-European transport networks

The Commission authorised Ms de PALACIO:

- to accept the final compromise concerning Article 8 on environmental impact assessment;
- to present a Commission statement indicating that the proposal for the revision of the TEN-T guidelines in 2004 would be subject to an impact assessment, including environmental analyses if necessary;
- to confirm the Commission's initial position as regards Annex III (list of priority projects) and Article 5(c) (priority for goods traffic in the construction of railway networks).

c) Bunker Oil and HNS Conventions

The Commission asked the Legal Service to study in greater detail both the options mentioned in the CAG meeting and, under the authority of the PRESIDENT and in agreement with the Members concerned, to prepare a draft statement for the Council meeting (Justice and Home Affairs) on Thursday and Friday 13 and 14 June.

It also noted that contacts would be made by the Director-General of the Legal Service with the competent Austrian authorities to try and reach an acceptable solution.

d) Association of Switzerland in the implementation of the Schengen *acquis*

Depending on developments in the debate in Coreper on Wednesday 12 June, the Commission, under the authority the PRESIDENT, in agreement with the Members concerned, decided that a unilateral statement would be prepared in case the Council decided unanimously to adopt a mixed negotiating mandate

(1st and 3rd pillars), and that it would not adopt the solution of a joint statement.

e) Draft protocol on disputes on European patents

The Commission decided that the PRESIDENT, in agreement with the Members concerned, would approach the Member States to draw their attention to the need to comply with their obligations under the Treaty.

f) Compulsory wearing of seatbelts in vehicles of less than 3.5 tonnes

The Commission authorised Ms de PALACIO, while defending the Commission's initial proposal, not to stand in the way of an agreement by qualified majority in the Council provided it moved in the direction of an exemption of a maximum of six years. It took note of the thrust of the letter Ms de PALACIO had recently sent to Coreper in this connection.

g) European Data Protection Supervisor

The Commission empowered the PRESIDENT to adopt the decision on behalf of the Commission.

h) European Agency for the Evaluation of Medicinal Products: membership of the Management Board

The Commission decided to handle this matter with a certain degree of flexibility, given the mode of operation of the agency in question.

6. WRITTEN PROCEDURES AND EMPOWERMENT

6.1. WRITTEN PROCEDURES APPROVED

(SEC(2002)647 to /5)

The Commission took note of the Secretariat-General's memoranda recording decisions adopted by written procedure between 3 and 7 June.

6.2. SENSITIVE WRITTEN PROCEDURES

(SEC(2002)648)

E/2002/1033 - COM(2002)301 and /2 DG INFSO

Commission communication *Towards the full roll-out of third-generation mobile communications*

The Commission referred to the draft communication presented by Mr LIIKANEN *Towards the full roll-out of third-generation mobile communications* (COM(2002)301), originally tabled for approval by written procedure.

It agreed to amend the text of the communication.

On page 3 "Executive Summary", the first sentence of the second paragraph was amended to read as follows:

*"Advanced wireless platforms such as 3G are an essential building-block to achieve the goals of **the information society** in terms of consumer demand, productivity, competitiveness and job creation."*

On page 13, under item 3.1. "Stability of the regulatory environment", the first sentence of the second paragraph was amended to read as follows:

*"Changes to licence conditions should be envisaged only when circumstances have changed unpredictably and in these cases any modification should be proportional, transparent **and non-discriminatory**."*

On page 18, under the item "R&D activities and e-Europe: A focus on new wireless services", the third sentence of the second paragraph was amended to read as follows:

*"It is therefore important to ensure the availability of this information as input for added-value and cross-border information services, as set out in the recent communication on public sector information **and the proposed Directive on the re-use and commercial exploitation of public sector documents**."*

On page 18, the footnote on page 25 should be supplemented by:

"COM(2002)207".

Subject to these amendments, the Commission adopted the communication in COM(2002)301 for transmission to Parliament, the Council, the Economic and Social Committee and the Committee of the Regions.

6.3. EMPOWERMENT **(SEC(2002)649 to /5)**

The Commission took note of the Secretariat-General's memoranda recording decisions adopted under the empowerment procedure between 3 and 7 June.

**6.4. *UPDATING OF EMPOWERMENT CONCERNING THE COMMISSION
OPINION ON THE OPERATIONS OF THE FORMER FINANCIAL
MECHANISM, NOW CALLED THE FINANCIAL INSTRUMENT OF
THE EUROPEAN ECONOMIC AREA (EEA)
(SEC(2002)302 to /3)***

The Commission granted the empowerment set out in SEC(2002)302/3.

6.5. *DELEGATION AND SUBDELEGATION OF POWERS*

The Commission took note of the Secretariat-General's memoranda recording decisions adopted under the delegation procedure between 3 and 7 June, as archived on the "Grefte 2000" (Registry) website.

**7. *ADMINISTRATIVE AND BUDGETARY MATTERS
(SEC(2002)650/3)***

***ADMINISTRATIVE MATTERS
(PERS(2002)96/2)***

**7.1. *INITIAL COMMUNICATION UNDER ARTICLE 50 OF THE STAFF
REGULATIONS***

The Commission's discussions on this item are recorded in the special minutes.

**7.2. *MIDDLE-MANAGEMENT POSTS AND ORGANISATION CHARTS
(PERS(2002)95)***

The Commission took note of the decisions adopted by Mr KINNOCK in May.

**8. FOLLOW-UP COMMUNICATION ON THE GREEN PAPER ON EU
CONSUMER PROTECTION
(COM(2002)289 to /3; SEC(2002)659)**

The Commission approved the communication in COM(2002)289/3 for transmission to Parliament, the Council, the Economic and Social Committee and the Committee of the Regions.

**9. PROPOSAL FOR A COUNCIL REGULATION ON A FINANCIAL
REGULATION APPLICABLE TO THE EUROPEAN DEVELOPMENT
FUND
(COM(2002)290 to /5)**

The Commission approved the proposal for a Regulation in COM(2002)290/5 for transmission to the Council, and also to the Court of Auditors and the European Investment Bank for an opinion, and to Parliament for information.

10. PARLIAMENT (continued from item 4)

***PARLIAMENTARY AFFAIRS GROUP
(SP(2002)1857)***

HEDKVIST PETERSEN report, Pedestrian protection: Commitment by the European automobile industry,
COM(2001) 389 final

Mr LIIKANEN reminded the meeting that in June 2001, following negotiations with the Commission, the European motor industry, represented by the ACEA (European Automobile Manufacturers Association), had undertaken to introduce from 2002 a series of measures to improve pedestrian safety, and that the Commission had decided on this basis to consult the Council and Parliament on the content and form of this commitment.

The Council had taken a decision in November 2001 largely approving, subject to certain conditions on some specific points, both the content of the proposed measures and the principle of a voluntary commitment by the motor industry. On the other hand, the relevant committee of Parliament (Committee on Regional Policy, Transport and Tourism), which had adopted the report by Ms HEDKVIST PETERSEN, while supporting the objectives and timetable for implementation of the planned measures, had asked the Commission to propose framework legislation in this area.

He proposed that the Commission accept this approach, if it were adopted by Parliament in plenary, and to undertake to bring forward such a legislative proposal including the content of the measures provided for in the commitment by the European motor industry.

The Commission approved this approach as set out in SP(2002)1901/2.

11. WORK OF THE CONVENTION

PLENARY SESSION OF 6 AND 7 JUNE

(SEC(2002)675)

Mr BARNIER referred to the record of the fifth plenary session of the European Convention in SEC(2002)675, which had focused on two subjects:

- the role of the Union in the area of freedom, security and justice;
- the role of national parliaments in the European constitutional set-up.

On the first point, a large majority of members were in favour of the full communitisation of the third pillar or a merger of the pillars with generalised application of the qualified majority and of codecision, and on the second point, the creation of a "second chamber" had received no support.

The Commission's contribution on the European project had become a point of reference in the debate.

The Commission held an exchange of views on the timetable for the preparations for the next Commission contribution, which should deal with the institutional aspects, as well as on the preparations for the possible debate that could be triggered by the oral report that Mr Valéry GISCARD D'ESTAING, President of the Convention, would be making to the Seville European Council (20-21 June).

12. COMMISSION DECISION ON APPLICATION OF ARTICLE 81 OF THE EC TREATY

(AUSTRIAN BANKS - LOMBARD CLUB CASE)

(C(2002)2091 and /2; SEC(2002)684)

Mr MONTI presented a draft decision concerning an infringement of Article 81(1) of the EC Treaty, addressed to eight Austrian banks.

The case concerned an unjustifiable price cartel of an all-encompassing nature, involving nearly all Austrian banks, covering all the main aspects of competition (in particular interest rates, fees and advertising) and extending to the whole of Austria.

This type of cartel, by its very nature (price cartel), its scale and its duration, constituted a particularly serious infringement and justified the imposition of especially large fines, despite the reduction applied to take account of the fact that the banks had not contested the facts established in the statement of objections. The total amount of fines came to €124.26 million, the highest fine being €37.69 million and the smallest €1.52 million.

Mr MONTI pointed out that over the past ten years the Court of Justice had in general upheld the Commission's decisions in this area, and the only two decisions annulled in their entirety had been annulled on procedural grounds.

The Commission:

- took note of the final report of the Hearing Officer of 27 May in C(2002)2091;
- took note of the opinions of the Advisory Committee on Restrictive Practices and Dominant Positions of 27 May (C(2002)2091) and 10 June (C(2002)2091/2);
- adopted, in the authentic language (German), the decision in Case COMP/36.571/D-1 (*Austrian banks - Lombard Club*) in C(2002)2091/2, concluding that the companies in question had infringed Article 81(1) of the EC Treaty and imposing fines on them.

This decision would be published in the Official Journal with all business secrets removed.

13. COUNCIL MEETINGS

(SI(2002)673)

INDUSTRY AND ENERGY

(6-7 JUNE, LUXEMBOURG)

(SI(2002)644)

**Proposal for a Council Regulation concerning a temporary defensive
mechanism for shipbuilding**

Mr MONTI, in agreement with Mr LIIKANEN and Mr LAMY, reported on the Council's discussions on the temporary defence mechanism for the shipbuilding industry.

He summarised the various elements of the compromise likely to secure a qualified majority, viz. (see Annex 3 of SI(2002)644):

- inclusion of methane tankers in the scope of the mechanism, subject to confirmation by the Commission, on the basis of a report on the barriers to trade (TBR report) referring to the data concerning 2002, of the damage suffered by this segment of the market;
- reduction of the maximum rate of authorised aid from 14% to 6%;
- entry into force of the Regulation and launch of proceedings in the WTO subject to the Commission deciding that negotiations with Korea had broken down (the Commission would have to report to the Council on the negotiations with Korea by 30 September at the latest);
- postponement of the date of expiry of the Regulation to 31 March 2004 (instead of 31 December 2002).

On condition that this compromise was likely to secure a qualified majority in the Council, the Commission decided to take it over and empowered Mr MONTI, Mr LIIKANEN and Mr LAMY, in agreement with the PRESIDENT, to amend the proposal for a Regulation accordingly.

14. OTHER BUSINESS

14.1. PREPARATIONS FOR WORLD SUMMIT ON SUSTAINABLE

DEVELOPMENT: PREPARATORY MINISTERIAL MEETING IN BALI

(4-7 JUNE)

(SEC(2002)681)

Ms WALLSTRÖM reported on the ministerial meeting held in Bali from 4 to 7 June to prepare for the world summit on sustainable development.

Despite progress in certain subject areas, the debates had been largely dominated by demands by the Group of 77 for market access for developing countries (and not only the least developed) and for increased resources for public development aid, in line with the guidelines agreed in Monterrey.

Initiatives had been taken by the EU delegation to clarify for the G77 its position on globalisation and the trade and financial aspects of the negotiations, but these had not succeeded in clearing the blockage created by the confrontation between the United States and the G77.

The Commission held a brief exchange of views on what strategy to adopt to overcome these difficulties, re-establish more favourable conditions in the negotiations and achieve concrete results at the Johannesburg Conference.

14.2. FOOD SAFETY: CONTAMINATION BY NITROFEN
(SEC(2002)685)

Mr BYRNE referred to the information note distributed to Members on the case in Germany of contamination of feedingstuffs by nitrofen, a carcinogenic herbicide prohibited by Community law since 1 January 1988.

He reminded the meeting of the chronology of the events and the fact that the Commission itself had not been informed of this case until 24 May, while the first contamination had been detected by a German private laboratory in January, but the competent national authorities had not been alerted.

The origin of the contamination had been identified and 94% of the contaminated products had been traced.

A meeting of the Standing Committee on the Food Chain was being held on 11 June, at which the German delegation was expected to present an exhaustive report on the situation.

The Commission held an exchange of views on the action to take in the absence of notification to the Commission in good time of accidents detected in Germany, and the unilateral adoption of restrictive measures on imports by Belgium.

It agreed to resume discussion of this item in the light of the further information to be disclosed at the meeting of the Standing Committee on the Food Chain.

**14.3. ANNULMENT BY THE COURT OF FIRST INSTANCE OF THE
COMMISSION DECISION TO REFUSE AUTHORISATION OF THE
MERGER OF AIRTOURS AND FIRST CHOICE**

Mr MONTI reported on the content and scope of the Court of First Instance judgment annulling the Commission's 1999 decision declaring the proposed merger between Airtours and First Choice incompatible with the common market.

While confirming certain elements of the analysis carried out by the Commission, and particularly the definition of the relevant market, and without calling into question the notion of "collective dominance", the Court had considered that the Commission had not demonstrated sufficiently clearly the negative effects this merger would have on competition.

The content of the judgment would be analysed in detail by his departments, in liaison with the Legal Service, and all appropriate conclusions would be drawn, particularly at the time of revision of the Merger Regulation, an operation launched in June 2000 which was the subject of a Green Paper published in December 2001.

The Court's decision showed that the Commission, far from being "judge and party" as it had been accused of being following recent negative decisions on certain proposed mergers, was, like any other body in a democratic system, subject to judicial review.

The Court had decided to apply from now on a "fast-track procedure" to deal with appeals against Commission merger decisions, and this new procedure would be applied to the appeals lodged following the negative decisions on the proposed Schneider/Legrand and Tetra-Laval/Sidel mergers.

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The meeting closed at 1530 hours.