



EUROPEAN COMMISSION

SECRETARIAT- GENERAL

PV(2002)1587 final

Brussels, 6 November 2002

MINUTES

of the 1587th meeting of the Commission

held in Brussels

(Breydel)

on Wednesday 30 October 2002

(morning)

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These minutes were approved by the Commission at its 1588th meeting, held in Brussels on 6th November 2002.

They contain 19 pages.

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Single sitting: Wednesday 30 October (morning and afternoon)

The sitting opened at 0850 hours with Mr Prodi, President, in the chair.

It was adjourned at 1245 hours for the Commission's lunch with Mr Atef EBEID, Prime Minister of Egypt.

The Commission resumed the sitting at 1500 hours.

Present:

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

Absent:

Mr BOLKESTEIN

Mr NIELSON

Ms DIAMANTOPOULOU

The following sat in to represent absent Members of the Commission

Mr VAN BALLEKOM Deputy Chef de cabinet to Mr Bolkestein

Mr MØRCH	A member of Mr Nielson's staff
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Mr GLYNOS Chef de cabinet to Ms Diamantopoulou

The following also sat in

Mr PETITE Director-General, Legal Service

Mr MANSERVISI Chef de cabinet to the President

Mr FAULL Commission Spokesman

Mr KEMPPINEN Spokesman

Ms TORRES Spokeswoman Item 16

Mr FILORI Deputy Spokesman Item 16

[illegible]

Mr DE RYNCK Press and Communication DG Item 16

Mr GOZI	A member of the President's staff	Item 16
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Mr SMULDERS	A member of the President's staff	Item 16
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Ms OLIVI	A member of Mr Monti's staff	Item 16
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Mr SOUKUP	A member of Mr Monti's staff	Items 5 and 16
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Mr SALMI Chef de cabinet to Mr Liikanen

Ms HOFFMAN Deputy Chef de cabinet to Ms Reding

Ms GAGO-FILORI A member of Mr Vitorino's staff Item 16

Mr LEVI GOPA Item 16

Mr PONZANO Director in the Secretariat-General Item 16

Mr BRAKELAND	Secretariat-General	Item 16
Mr SAGREDO	Secretariat-General	Items 4, 8 and 16
Mr CANGA FANO	A member of Ms de Palacio's staff	

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

1. AGENDAS

(OJ(2002)1587/3; SEC(2002)1129/2)

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

2. WEEKLY MEETING OF CHEFS DE CABINET

(SEC(2002)1587)

The Commission considered the Secretary-General's report on the weekly meeting of Chefs de cabinet held on Monday 28 October.

3. APPROVAL OF MINUTES OF 1586th MEETING (22 October)

(PV(2002)1586)

The Commission approved the minutes of its 1586th meeting.

4. PARLIAMENT

ACTION TO BE TAKEN ON PARLIAMENT'S OPINIONS

(SP(2002)3389 and /2)

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 (see list produced by the Secretariat-General in SP(2002)3389/2).

**5. MONITORING THE APPLICATION OF COMMUNITY LAW: STATE AID
AND INFRINGEMENTS**

**(SEC(2002)1128; C(2002)3174 and /2; C(2002)3728 to /11; SEC(2002)1143;
SEC(2002)1153)**

5.1. STATE AID

(SEC(2002)1128)

The Commission adopted the decisions in SEC(2002)1128.

5.2. STATE AID - CASE DEFERRED

(C(2002)3714 and /2)

The Commission adopted the decision in C(2002)3714/2 (Case NN 94/2002 - *Directive for the promotion of German maritime shipping of 14 June 2002 - Financial contributions for 2002*).

**5.3. STATE AID - COMMISSION REGULATION ON THE APPLICATION
OF ARTICLES 87 AND 88 OF THE EC TREATY TO EMPLOYMENT
AID**

(C(2002)3728 to /11)

The Commission held this item over for its next meeting.

5.4. INFRINGEMENTS - URGENT OR DEFERRED CASES

(SEC(2002)1143)

The Commission adopted the decisions in SEC(2002)1143.

**5.5. *INFRINGEMENTS - CASES HELD OVER BECAUSE OF
UNAVAILABILITY OF DOCUMENTS - REGULARISATION
(SEC(2002)1153)***

The Commission adopted the decisions in SEC(2002)1153.

6. WRITTEN PROCEDURES AND EMPOWERMENT

**6.1. *WRITTEN PROCEDURES APPROVED
(SEC(2002)1130 to /5)***

The Commission took note of the Secretariat-General's memoranda recording decisions adopted by written procedure between 21 and 25 October.

**6.2. *SENSITIVE WRITTEN PROCEDURES
(SEC(2002)1131)***

The Commission took note of the following written procedures initiated between 21 and 25 October for the adoption of decisions with political implications:

Time limit: 30.10.2002

E/2002/2088 - COM(2002)596 DG REGIO

Annual Commission report of the instrument for structural policy for pre-accession (ISPA) 2001.

E/2002/2089 - COM(2002)591 DG REGIO

Thirteenth annual report on the Structural Funds (2001).

6.3. EMPOWERMENT

(SEC(2002)1132 to /5)

The Commission took note of the Secretariat-General's memoranda recording decisions adopted under the empowerment procedure between 21 and 25 October.

6.4. DELEGATION AND SUBDELEGATION OF POWERS

The Commission took note of the Secretariat-General's memoranda recording decisions adopted under the delegation procedure between 21 and 25 October, as archived on the "Grefte 2000" (Registry) website.

7. ADMINISTRATIVE AND BUDGETARY MATTERS

(SEC(2002)1133/2)

ADMINISTRATIVE MATTERS

(PERS(2002)150)

DG ENV.C - TEMPORARY APPOINTMENT OF AN A3 OFFICIAL

The Commission, on a proposal from Mr KINNOCK, in agreement with the PRESIDENT and Mr NIELSON, decided under Article 7(2) of the Staff Regulations to appoint Mr Roger MOORE, an A3 official and currently Head of Unit DEV.C.2 (Horn of Africa, East Africa and Indian Ocean) temporarily to the post of Director of Directorate DEV.C (Horn of Africa, Eastern and Southern Africa, Indian Ocean and Pacific) from 1 April 2002 until the new Director was appointed, subject to a maximum of twelve months.

This decision would take effect immediately.

**8. THE COMMISSION'S LEGISLATIVE AND WORK PROGRAMME FOR
2003**

(COM(2002)590 to /6; SEC(2002)1155)

The Commission approved the communication in COM(2002)590/6 for transmission to Parliament, the Council, the Economic and Social Committee and the Committee of the Regions.

**9. LETTER OF AMENDMENT No 3 TO PRELIMINARY DRAFT BUDGET
2003**

(SEC(2002)1144 to /4)

The Commission adopted Letter of amendment No 3 to the preliminary draft budget as set out in SEC(2002)1144/4, for transmission to Parliament and the Council.

**10. PROPOSAL FOR A COUNCIL REGULATION TO AVOID TRADE
DIVERSION INTO THE EUROPEAN UNION OF CERTAIN KEY
MEDICINES**

(COM(2002)592 to /4; SEC(2002)1152)

The Commission adopted the proposal for a Council Regulation in COM(2002)592/4 for transmission to the Council and Parliament.

**11. COMMISSION DECISION CONCERNING A PROCEEDING UNDER
ARTICLE 81(1) OF THE EC TREATY AND ARTICLE 53 OF THE EEA
AGREEMENT (CASES COMP/C-3/35.587 PO VIDEO GAMES,
COMP/C-3/35.706 PO NINTENDO DISTRIBUTION AND COMP/C-3/36.321
OMEGA - NINTENDO)
(C(2002)4072 to /5; SEC(2002)1163)**

Mr MONTI presented the case of an infringement of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement by a number of companies in the form of agreements and concerted practices on the markets for specialised games consoles and games cartridges compatible with the specialised games consoles made by Nintendo.

He proposed the amount of fines to be imposed on each of the companies.

In the light of this information, the Commission:

- took note of the final report of the Hearing Officer in C(2002)4072/3;
- took note of the opinion of the Advisory Committee on Restrictive Practices and Dominant Positions of 11 and 28 October as set out in C(2002)4072 and /4;
- adopted, in the authentic languages (English, German, Greek, Italian, Portuguese and Swedish), the decision in C(2002)4072/4 and /5, concluding that the companies in question had infringed Article 81(1) of the EC Treaty and Article 53 of the EEA Agreement, and imposing fines on them totalling €167.843 million.

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

**12. COMMISSION DECISION CONCERNING A PROCEEDING UNDER
ARTICLE 81(1) OF THE EC TREATY AND ARTICLE 53 OF THE EEA
AGREEMENT (CASE COMP/E-2/37.784, AUCTION HOUSES)
(C(2002)4283 to /4; SEC(2002)1163)**

Mr MONTI presented the case of an infringement of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement by two auction houses in the form of agreements and concerted practices in auctions of fine art.

He proposed the amount of fines to be imposed on the operators concerned, after application of the Leniency Notice.

In the light of this information, the Commission:

- took note of the final report of the Hearing Officer in C(2002)4283/3;
- took note of the opinion of the Advisory Committee on Restrictive Practices and Dominant Positions of 18 and 28 October as set out in C(2002)4283 and /3;
- adopted, in the authentic language (English), the decision set out in C(2002)4283/4, concluding that the companies in question had infringed Article 81(1) of the EC Treaty and Article 53 of the EEA Agreement, and imposing a fine of €20.4 million on one of the two companies.

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

13. PARLIAMENT (continued from item 4)

OCTOBER II PART-SESSION

(SP(2002)3433)

Ms de PALACIO and Ms SCHREYER reported on the decisions taken by Parliament in its various bodies (Conference of Presidents and the vote on the amendments to the draft budget for 2003) concerning the Committee on Budgetary Control's refusal to hold a hearing of a Commission official currently subject to disciplinary proceedings.

The Commission took note of this information.

14. ADMINISTRATIVE AND BUDGETARY MATTERS (continued from item 7)

(SEC(2002)1133/2)

OTHER MATTERS

14.1. BERLAYMONT

Mr KINNOCK reported on the signing of the contract between the Commission and the Belgian authorities for the purchase of the Berlaymont building.

He outlined the total purchase cost, the amount of the resultant annual payments, the deadlines for handing over the building, and the penalties laid down for failure to comply with these deadlines.

The date for handing over the basic building was set at 31 December 2003; since additional work requested by the Commission would still have to be

carried out up to 30 June 2004, the building should be definitively available to the Commission on 1 July 2004.

This information had already been communicated to Parliament's Committee on Budgets and Committee on Budgetary Control.

The Commission took note of this information.

***14.2. FRAMEWORK AGREEMENT BETWEEN THE COMMISSION AND
THE TRADE UNIONS AND STAFF ASSOCIATIONS ON SOCIAL
DIALOGUE***

Mr KINNOCK reminded the meeting that the negotiations between the Commission and the trade unions and staff associations on the rules applicable to the social dialogue, which had been under way since 1999, covered three aspects:

- the number of representatives authorised to take part in meetings of the social dialogue;
- the resources to be placed at the disposal of the trade unions and staff associations to enable them to fulfil their obligations in the social dialogue;
- the representativeness criteria to be met in order to take part in the social dialogue.

The first two aspects had already been closed in 2001, and the new provisions were already in force in 2002. The negotiations on the third aspect (representativeness criteria) had been concluded on 25 October. The result was that the new criteria applicable from 1 January 2004 would require a minimum of 1 000 members (instead of 500 currently) and 10% of the votes

(instead of 5% currently) in elections to the staff representative bodies within the institution.

The Commission took note of this information.

14.3. PROTECTING THE COMMUNITY'S FINANCIAL INTERESTS

The Commission approved the decision to initiate a civil action in the US courts concerning money-laundering - a joint action by the Community and ten Member States - and empowered the PRESIDENT and Ms SCHREYER to instruct the Legal Service to take the necessary measures.

15. OTHER BUSINESS

15.1. EXTENSION OF THE AGREEMENT WITH THE INTERNATIONAL OLIVE OIL COUNCIL (IOOC) - REQUEST FOR EMPOWERMENT TO AMEND THE PERIOD OF EXTENSION

Mr FISCHLER reminded the meeting that on 14 October the Commission had proposed that the Council extend by two years the agreement with the International Olive Oil Council (IOOC), while reserving the right to amend this proposal in the light of the results of the audit in progress on the financial management of the IOOC.

That audit was not yet completed and, on a precautionary basis, he proposed limiting the period of extension of the agreement to six months, and asked to be empowered to amend the Commission's initial proposal to the Council to this effect.

The Commission decided to grant the requested empowerment to Mr FISCHLER, to be exercised in agreement with the PRESIDENT.

***15.2. RECENT JUDGMENTS OF THE COURT OF FIRST INSTANCE IN
COMPETITION CASES AND STATE OF PLAY OF THE MERGER
REVIEW***

Mr MONTI referred to recent Court of First Instance judgments annulling Commission decisions in two merger cases (Schneider/Legrand and Tetra-Laval/Sidel).

He reminded the meeting that a year earlier he had launched a fundamental review of the merger control system and had published a Green Paper on this subject in December 2001, and was on the point of tabling a legislative package (proposal for a Council Regulation and guidelines) at the Commission meeting on 11 December.

The Commission took note of this information.

**16. GENERAL DISCUSSION IN PREPARATION FOR THE COMMISSION'S
NEXT CONTRIBUTION TO THE WORK OF THE CONVENTION
(SEC(2002)1159 and /2)**

With a view to the finalisation of its communication to the Convention on the future institutional architecture of the Union, and in preparation for the meeting with Mr GISCARD D'ESTAING, President of the Convention, on 6 November, the Commission held an in-depth discussion and agreed precise guidelines on the following subjects:

- the appointment of the President of the Commission;
- the Presidency of the Council of the European Union
- the High Representative for external relations;

- the financing of the Union;
- the structure of the future constitutional Treaty.

The PRESIDENT drew operational conclusions for each of these subjects, to be included in the draft communication for the special Commission meeting on 18 November.

As regards the structure and scope of the future constitutional Treaty, the Commission asked the Legal Service, under the authority of the PRESIDENT, in agreement with Mr BARNIER and Mr VITORINO, to prepare an analytical note on the legal consequences of the recasting option (new constitutional Treaty repealing the existing Treaties).

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The Commission's other discussions on certain agenda items are recorded in the special minutes.

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The meeting closed at 1545 hours.