



EUROPEAN COMMISSION

SECRETARIAT-GENERAL

PV(2012)1986 final

Brussels, 25 January 2012

MINUTES

**of the 1986th meeting of the Commission
held in Strasbourg
(Winston Churchill building)
on Tuesday 17 January 2012
(afternoon)**

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Single sitting: Tuesday 17 January 2012 (afternoon)

The sitting opened at 13.10 with Mr BARROSO, President, in the chair.

Present:

Mr BARROSO	President
Ms REDING	Vice-President
Mr KALLAS	Vice-President
Mr ŠEFČOVIČ	Vice-President
Mr REHN	Vice-President
Mr POTOČNIK	Member
Mr ŠEMETA	Member
Mr DE GUCHT	Member
Mr DALLI	Member
Mr LEWANDOWSKI	Member
Ms DAMANAKI	Member
Mr OETTINGER	Member
Mr HAHN	Member
Ms HEDEGAARD	Member
Mr FÜLE	Member
Mr ANDOR	Member
Ms MALMSTRÖM	Member
Mr CIOLOŞ	Member

Absent:

Baroness ASHTON	High Representative/ Vice-President
Mr ALMUNIA	Vice-President
Ms KROES	Vice-President
Mr TAJANI	Vice-President
Mr PIEBALGS	Member
Mr BARNIER	Member
Ms VASSILIOU	Member
Ms GEOGHEGAN-QUINN	Member
Ms GEORGIEVA	Member

The following sat in to represent absent Members of the Commission:

Ms CASTAGNOLI	Adviser in Baroness ASHTON's office
Mr PÉREZ CALDENTÉY	A member of Mr ALMUNIA's staff
Mr JOSTEN	A member of Ms KROES's staff
Mr PRETO	Chef de cabinet to Mr TAJANI
Ms SOEWARTA	A member of Mr PIEBALGS's staff
Mr RIEKELES	A member of Mr BARNIER's staff
Mr HILL	A member of Ms VASSILIOU's staff
Mr KÜTT	Deputy Chef de cabinet to Ms GEOGHEGAN-QUINN
Ms CHOUMELOVA	A member of Ms GEORGIEVA's staff

The following also sat in:

Mr LAITENBERGER	Chef de cabinet to the PRESIDENT
Mr ROMERO REQUENA	Director-General, Legal Service
Mr PAULGER	Director-General, DG Communication
Ms AHRENKILDE HANSEN	Commission Spokeswoman
Mr THEBAULT	Head of the Bureau of European Policy Advisers
Ms MARTÍNEZ ALBEROLA	Adviser in the PRESIDENT's Office
Mr KONIECKI	A member of the PRESIDENT's staff
Ms CORREIA	A member of Mr ŠEFČOVIČ's staff

Secretary: Ms DAY, Secretary-General, assisted by Ms COLLOMP and Ms PASSI, administrators in the Secretariat-General.

1. AGENDAS

(OJ(2012)1986/3; SEC(2012)42/2)

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

2. WEEKLY MEETING OF CHEFS DE CABINET

(RCC(2012)1986)

The Commission considered the Secretary-General's report on the weekly meeting of Chefs de cabinet held on Monday 16 January.

3. APPROVAL OF THE MINUTES AND SPECIAL MINUTES OF THE 1984TH MEETING OF THE COMMISSION (20 DECEMBER 2011) AND THE MINUTES OF THE 1985TH MEETING (11 JANUARY 2012)

(PV(2011)1984; PV(2011)1984, PART II)

The Commission approved the minutes of its 1984th meeting, and decided to hold over for one week approval of the minutes of its 1985th meeting.

4. INTERINSTITUTIONAL RELATIONS

(RCC(2012)1)

The Commission took note of the record of the meeting of the Interinstitutional Relations Group held on Friday 13 January (RCC(2012)1).

It paid particular attention to the following points.

4.1. LEGISLATIVE MATTERS

i) Ordinary legislative procedure

(point 1.2 of the IRG record)

Dossiers at Parliament first reading

- Deposit guarantee schemes (Directive – recast) – SIMON report – 2010/0207 (COD)

The Commission approved the line set out in SI(2012)9/2.

- Financial rules applicable to the annual budget of the Union (Regulation) – GRÄSSLE / RIVELLINI report – 2010/0395 (COD)

The Commission took note of the information in SI(2012)10.

ii) Preparation for Parliament's January part-session

(point 1.3 of the IRG record)

Ordinary legislative procedure – Second reading

- Placing on the market and use of biocidal products (Regulation) – KLASS report – 2009/0076 (COD)

The Commission took note of SP(2012)19, further to note SI(2011)441, which it had already approved on 30 November.

- Waste electrical and electronic equipment (WEEE) (Directive – recast) – FLORENZ report – 2008/0241 (COD)

The Commission approved the line set out in SP(2012)18 and /2.

Empowerment

- Waste electrical and electronic equipment (WEEE) (Directive – recast) – FLORENZ report – 2008/0241 (COD)

Under Article 13 of its Rules of Procedure, the Commission empowered Mr POTOČNIK, in agreement with the PRESIDENT and Mr ŠEFČOVIČ 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(2012)18 and /2, once Parliament had given its opinion, and transmit them to the Council in accordance with Article 294(7)(c) of the Treaty on the Functioning of the European Union.

Ordinary legislative procedure – First reading

- Amendment of Regulation (EC) 810/2009 establishing a Community Code on Visas (Visa Code) (Regulation) – MICHEL report – 2011/0223 (COD)

The Commission approved the line set out in SP(2012)20.

4.2. RELATIONS WITH THE EUROPEAN COUNCIL AND THE COUNCIL

iii) Programming of Council business

(SI(2012)13)

The Commission took note of the information in SI(2012)13 on the Council meetings between 19 January and 1 February.

4.3. RELATIONS WITH PARLIAMENT

iv) Action taken on non-legislative resolutions adopted by Parliament at its October II part-session

(point 3.5.2 of the IRG record)

The Commission approved for transmission to Parliament document SP(2012)28 on the action taken on the non-legislative resolutions adopted by Parliament at its October II part-session.

v) Action taken on legislative opinions and non-legislative resolutions adopted by Parliament at its November I and II part-sessions

(point 3.5.3 of the IRG record)

The Commission approved for transmission to Parliament document SP(2012)29 on the action taken on the legislative opinions and non-legislative resolutions adopted by Parliament at its November I and II part-sessions.

5. WRITTEN PROCEDURES, EMPOWERMENT AND DELEGATION OF POWERS

5.1. WRITTEN PROCEDURES APPROVED

(SEC(2012)43 ET SEQ.)

The Commission took note of the Secretariat-General's memoranda recording decisions adopted between 9 and 13 January.

5.2. EMPOWERMENT

(SEC(2012)44 ET SEQ.)

The Commission took note of the Secretariat-General's memoranda recording decisions adopted between 9 and 13 January.

5.3. DELEGATION AND SUBDELEGATION OF POWERS

(SEC(2012)45 ET SEQ.)

The Commission took note of the Secretariat-General's memoranda recording decisions adopted under the delegation and subdelegation procedure between 9 and 13 January, as archived in e-Greffe.

5.4. SENSITIVE WRITTEN PROCEDURES

(SEC(2012)46)

The Commission took note of the sensitive written procedures for which the time limit expired between 16 and 20 January.

5.5. DELEGATION OF POWERS RELATING TO CERTAIN ACTS OF THE COMMISSION REGARDING THE AGENCY FOR THE COOPERATION OF ENERGY REGULATORS (ACER)

(C(2012)74)

The Commission decided to delegate powers to the Director-General for Energy for the adoption, on behalf of the Commission and under its responsibility, of certain acts regarding the Agency for Cooperation of Energy Regulators (ACER), in accordance with the terms set out in C(2012)74.

6. GREEN PAPER – RESTRUCTURING AND ANTICIPATION OF CHANGE – WHAT LESSONS FROM RECENT EXPERIENCE?

(COM(2012)7 AND /2; SEC(2012)59 AND /2; RCC(2012)3)

The Commission approved the Green Paper in COM(2012)7/2, for transmission to Parliament, the Council, the Economic and Social Committee and the Committee of the Regions and, for information, to the national parliaments, accompanied by the staff working document distributed as SEC(2012)59 and /2, the contents of which were noted.

7. ADMINISTRATIVE AND BUDGETARY MATTERS
(SEC(2012)47/2)

ADMINISTRATIVE MATTERS
(PERS(2012)2/2)

Mr ŠEFČOVIČ briefly presented to the Commission the proposals for the appointment of three Directors-General and one Deputy Director-General as part of the mobility exercise for senior management staff (see items 7.1 to 7.4 of these minutes). In agreement with the PRESIDENT and the Commission Members concerned, he asked the Commission to appoint Mr Walter DEFFAA, Mr Heinz ZOUREK and Mr Daniel CALLEJA CRESPO to the posts of Director-General of DG Regional Policy, DG Taxation and Customs Union and DG Enterprise and Industry respectively, with effect from 1 February 2012. The purpose of the fourth proposal was to amend the organisation chart of DG Enterprise and Industry so that its Director-General would now perform the function of Special Envoy for Small and Medium-sized Enterprises and to appoint Mr Antti PELTOMAKI to the vacant post of Deputy Director-General in that DG, with effect from 1 February 2012.

**7.1. DG REGIONAL POLICY – APPOINTMENT OF AD16
DIRECTOR-GENERAL**

On a proposal from Mr ŠEFČOVIČ, in agreement with the PRESIDENT and Mr HAHN, the Commission decided to fill the post of Director-General of DG Regional Policy by transferring in the interest of the service under Article 7 of the Staff Regulations Mr Walter DEFFAA, AD16 official and currently Director-General of DG Taxation and Customs Union.

This decision would take effect on 1 February 2012.

**7.2. DG TAXATION AND CUSTOMS UNION – APPOINTMENT OF AD16
DIRECTOR-GENERAL**

On a proposal from Mr ŠEFČOVIČ, in agreement with the PRESIDENT and Mr ŠEMETA, the Commission decided to fill the post of Director-General of

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DG Taxation and Customs Union by transferring in the interest of the service under Article 7 of the Staff Regulations Mr Heinz ZOUREK, AD16 official and currently Director-General of DG Enterprise and Industry.

This decision would take effect on 1 February 2012.

7.3. *DG ENTERPRISE AND INDUSTRY – APPOINTMENT OF AD15 DIRECTOR-GENERAL*

On a proposal from Mr ŠEFČOVIČ, in agreement with the PRESIDENT and Mr TAJANI, the Commission decided to fill the post of Director-General of DG Enterprise and Industry by transferring in the interest of the service under Article 7 of the Staff Regulations Mr Daniel CALLEJA CRESPO, AD15 official and currently Deputy Director-General in DG Enterprise and Industry with responsibility for Directorates C, D, E and F and International Relations, and Special Envoy for Small and Medium-Sized Enterprises.

This decision would take effect on 1 February 2012.

7.4. *DG ENTERPRISE AND INDUSTRY – AMENDMENT OF ORGANISATION CHART AND APPOINTMENT OF AD15 DEPUTY DIRECTOR-GENERAL*

On a proposal from Mr ŠEFČOVIČ, in agreement with the PRESIDENT and Mr TAJANI, the Commission decided:

- to amend the organisation chart of DG Enterprise and Industry so that the Director-General would now perform the function of Special Envoy for Small and Medium-Sized Enterprises;
- to fill the vacant post of Deputy Director-General in DG Enterprise and Industry by transferring in the interest of the service under Article 7 of the Staff Regulations Mr Antti PELTOMAKI, AD15 official and currently Deputy Director-General in DG Information Society and Media.

This decision would take effect on 1 February 2012.

**7.5. DG CLIMATE ACTION – APPOINTMENT OF AD14 PRINCIPAL ADVISER
(PERS(2011)43 TO /8)**

The Commission had before it applications under Article 29(1)(a)(i) and (iii), 29(1)(b) and 29(2) of the Staff Regulations for the post of Principal Adviser in DG Climate Action (PERS(2011)43 to /6).

It took note of the opinions of the Consultative Committee on Appointments of 9 and 24 November (PERS(2011)43/7 and /8).

The Commission proceeded to compare the applicants' qualifications for the post. On a proposal from Mr ŠEFČOVIČ, in agreement with the PRESIDENT and Ms HEDEGAARD, it then decided to appoint Mr Jacob WERKSMAN to the post.

This decision would take effect on a date to be determined.

**7.6. EUROPEAN ANTI-FRAUD OFFICE – INTERNAL AND INTERINSTITUTIONAL PUBLICATION (GRADE AD14/15) AND EXTERNAL PUBLICATION (GRADE AD14 – EU-27) OF VACANCY NOTICE FOR A DIRECTOR POST
(PERS(2012)7)**

On a proposal from Mr ŠEFČOVIČ, in agreement with the PRESIDENT and Mr ŠEMETA, the Commission decided to authorise the publication, under Article 29(1)(a)(i) and (iii), 29(1)(b) and 29(2) of the Staff Regulations, of the vacancy notice in PERS(2012)7 for the post of Director, 'Investigations I', in the European Anti-Fraud Office.

This decision would take effect immediately.

7.7. EUROPEAN ANTI-FRAUD OFFICE – INTERNAL AND INTERINSTITUTIONAL PUBLICATION (GRADE AD14/15) AND EXTERNAL PUBLICATION (GRADE AD14 – EU-27) OF VACANCY NOTICE FOR A DIRECTOR POST (PERS(2012)8)

On a proposal from Mr ŠEFČOVIČ, in agreement with the PRESIDENT and Mr ŠEMETA, the Commission decided to authorise the publication, under Article 29(1)(a)(i) and (iii), 29(1)(b) and 29(2) of the Staff Regulations, of the vacancy notice in PERS(2012)8 for the post of Director, ‘Support for Investigations’, in the European Anti-Fraud Office.

This decision would take effect immediately.

7.8. DG HEALTH AND CONSUMERS – RENEWAL OF THE TERM OF OFFICE OF THE VICE-PRESIDENT OF THE COMMUNITY PLANT VARIETY OFFICE (CPVO)

The Commission took note of the information in point 8 of PERS(2012)2/2 and, on a proposal from Mr ŠEFČOVIČ, in agreement with the PRESIDENT and Mr DALLI, decided:

- to propose to the Council that Mr Carlos GODINHO’s term of office as Vice-President of the Community Plant Variety Office be renewed for a period of five years from 1 April 2012;
- to ask Mr DALLI to communicate this proposal to the Council.

These decisions would take effect immediately.

8. MONITORING THE APPLICATION OF EUROPEAN UNION LAW

INFRINGEMENTS – URGENT INDIVIDUAL CASES

(SEC(2012)69/2)

- 2011/2088 – HU – C(2012)301 – Infringement of Article 130 of the Treaty on the Functioning of the European Union (TFEU) concerning the independence of central banks

Decision: letter of formal notice under Article 258 TFEU

- 2012/2011 – HU – C(2012)302 – Infringement of the principle of an independent data protection supervisory authority

Decision: letter of formal notice under Article 258 TFEU

- 2012/2012 – HU – C(2012)303 – Fixed retirement age for judges, prosecutors and notaries

Decision: letter of formal notice under Article 258 TFEU

The PRESIDENT opened the discussion on the three cases in which legislation recently adopted by Hungary infringed European law. The Commission was to decide that day on whether to translate into legal action the principles and approach it had agreed on at its meeting of 11 January. Specifically, this involved opening three infringement proceedings under Article 258 of the Treaty on the Functioning of the European Union. He added that it was necessary to demonstrate the utmost objectivity in examining the issues concerned by these measures, given the quasi-judicial role played by the Commission in such cases.

The close contacts he had had on these issues with the European Parliament and with the Danish Presidency of the Council of the European Union, in particular with the Danish Prime Minister in Copenhagen a few days earlier, had strengthened his belief that the course of action being taken by the Commission enjoyed widespread support at European level.

The PRESIDENT also informed the Commissioners of the request he had received personally from the Hungarian Prime Minister, Mr Viktor Orbán, for a meeting in Brussels on Tuesday 24 January. The PRESIDENT would publicly announce this meeting after the Commission meeting. He regarded this request for direct talks as a positive move and a sign of full recognition of the Commission's authority.

Although certain political forces in the European Parliament were calling for application of Article 7 of the Treaty on the European Union, as they were entitled to do, the PRESIDENT pointed out that the European institutions were independent in this respect, as such an initiative could be proposed to the Council by the European Parliament, the Commission or a third of the Member States. However, each institution had a different role to play in this particular case: Parliament's role was political, whereas the Commission, in bringing infringement proceedings, performed a quasi-judicial function. He stressed therefore that the Commission's strength lay in its legal credibility and that if the proceedings for infringements of European law had to be followed up by further measures, these could be adopted only on the basis of a perfectly watertight legal analysis carried out at this stage.

The PRESIDENT also announced that the Hungarian Prime Minister wished to address the European Parliament at the part-session on 18 January, and was waiting for unequivocal confirmation that Hungary intended to remain a democracy and that, irrespective of the arguments, which were the common lot of democracies, if serious problems were identified, the European Union had the means to remedy them through the Treaties.

He finished his introductory remarks by highlighting a procedural aspect whose political importance should be stressed, namely the need for the Commission, in the specific case of Hungary, to act without delay and to shorten the deadline for responding to the letter of formal notice to one month, instead of the two months usually allowed a Member State by infringement proceedings, while urging the Hungarian authorities to comply as soon as possible.

Ms REDING then explained in detail the content of the two letters of formal notice drawn up by her department, in cooperation with Mr REHN's department and the Legal Service.

The first letter of formal notice concerned the independence of the new Hungarian data protection supervisory authority, which came into being on 1 January, replacing the Data Protection Commissioner's Office, and thereby curtailing the term of office of the Commissioner, who was appointed in 2008 for six years.

Ms REDING pointed out that this measure constituted a breach of the Hungarian Data Protection Commissioner's independence; the new rules also created the possibility for a decision by the Prime Minister and the President to remove the new supervisory authority on arbitrary grounds, which was a second breach. The independence of the data protection supervisory authority was guaranteed under both Article 16 of the Treaty on the Functioning of the European Union and Article 8 of the Charter of Fundamental Rights. The principle was set out in Directive 95/46/EC on data protection and had recently been confirmed by case-law of the Court of Justice of the European Union.

The second letter of formal notice concerned measures affecting the Hungarian judicial system, namely the change in the new Constitution to the retirement age for judges, the immediate effect of which was the forced early retirement of 274 judges, without objective justification, while the other professions in Hungary were not subject to a compulsory retirement age. This constituted a breach of Directive 2000/78/EC on equal treatment in employment and was also inconsistent with the case-law of the Court of Justice.

The urgency of the situation justified accelerated infringement proceedings with a one-month deadline for responding. Her personal preference would be for a two-week deadline, which had already been used in the past.

Lastly, Mrs REDING addressed the question of communication, and in particular the publication, following that day's meeting, of a single press release on the decisions concerning the opening of the three infringement proceedings. She

concluded by saying that she and Mr REHN had notified the Hungarian authorities of the measures under way in order to prevent any surprises.

Mr REHN then presented the letter of formal notice prepared by his department and pointed out that, according to the analysis carried out by the Commission, the independence of the Hungarian Central Bank, one of the fundamental principles of the Treaty, was indeed at stake. He explained that his department had identified a number of breaches of European primary legislation, in particular Article 130 of the Treaty on the Functioning of the European Union concerning the independence of central banks and Article 127(4) of the same Treaty, which requires that the European Central Bank be consulted by national authorities regarding any draft legislative provision in its field of competence. The infringements referred to in the letter of formal notice concerned the Hungarian law governing its central bank and the text of Hungary's new constitution. He also made particular reference to the provisions concerning the structure of the Hungarian Central Bank and the dismissal of the Governor and the members of the Monetary Council, which did not provide sufficient guarantees against the risks of abuse. He highlighted the systematic criticism by the Hungarian Government, set out in official press releases, of every decision on monetary policy, which illustrated the fact that the Government was seeking to influence the Central Bank in breach of Article 130 of the Treaty on the Functioning of the European Union.

Mr REHN also raised the precautionary financial assistance requested by Hungary. He reported on his contacts since the last Commission meeting with Ms Christine Lagarde, the Managing Director of the International Monetary Fund, which suggested that the decision by the Fund would be conditional on Hungary complying with the preconditions even before the start of formal negotiations. First, Hungary had to guarantee the independence of its central bank, which implied amending the relevant legislation, including the Constitution. Second, Hungary had to guarantee the independence of its judicial system, a fundamental principle of the European Union which, moreover, he felt had an impact on the functioning of the economy. He stressed the fact that the financial assistance requested by Hungary would be forthcoming only if these policy preconditions were met. He concluded by

announcing his next meeting, on 20 January, with Mr Tamás Fellegi, the Hungarian Minister with responsibility for relations with international financial organisations.

In the course of the discussion of these proposals the Commission also mentioned the following main aspects:

- There was general agreement concerning the procedure chosen, which was based on respect for European Union law and values and also served to emphasise the Commission's aim of ensuring that both the spirit and the letter of the Treaties were respected;
- It was important to place the infringement proceedings in perspective, taking into account Hungary's political context and current circumstances, bearing in mind the political implications of these three highly sensitive cases and weighing fairly but firmly the conditions attached to the precautionary financial assistance to Hungary, which was currently being studied;
- It must be emphasised that it would be in the interests of the Hungarian authorities to ensure greater legal certainty in order to restore the confidence they needed on both the political and economic fronts;
- Certain Commission Members expressed a wish of examining the possibilities of reducing still further the one-month time limit to be granted to Hungary for replying to the Commission's letters of formal notice, while others emphasised the need to find a balance between the urgency of the situation and the time needed to prepare the legitimate right of reply and defence which was a fundamental principle of the rule of law;
- It was necessary to ensure that the infringement proceedings were communicated in a balanced way in order to avoid the risks of political exploitation. Care should also be taken to make sure that the Commission's role, i.e. to ensure, fairly and impartially, that EU law and values were upheld, was positively perceived.

Responding to a question by the PRESIDENT about the time limit granted to the Member State for replying to the letter of formal notice, the Director-General of the Legal Service recommended taking a very measured approach as regards the possibility of reducing this time limit, particularly in view of the case-law of the Court of Justice of the European Union. This pointed to a time limit of one month. He considered that in the case at hand a clear distinction should be drawn between matters relating to political dialogue and those relating to the infringements proceedings the Commission was preparing to launch under Article 258 of the Treaty on the Functioning of the European Union.

In conclusion, the PRESIDENT stressed the Commission's coherent, clear and solid position. It had been the first to take official initiatives, as early as 2010, in order to verify whether certain decisions of the Hungarian authorities were in line with EU law. The Commission must act firmly to rectify the current situation, which gave serious cause for concern, and must be seen to be fully objective in its legal analysis of the facts. But it must also display a spirit of openness and fairness towards Hungary, avoid pre-judging its reactions and allow it time to prepare its reply.

He wound up by stressing the Commission's special role as guardian of the Treaties and informed the meeting that he would be addressing Parliament next day on the principles which it was the Commission's task to ensure were upheld. He also read out a public statement he was going to issue that day on behalf of the Commission announcing its decision on the infringement proceedings.

The Commission adopted the decisions in SEC(2012)69/2.

9. OTHER BUSINESS

GROUNDING OF THE CRUISE SHIP COSTA CONCORDIA

Mr KALLAS briefly referred to the grounding of the cruise ship Costa Concordia on 13 January off the coast of Southern Tuscany and the investigation under way to determine the causes of and responsibility for this accident. He had made public a

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letter of condolence on behalf of the Commission and had written to the Italian authorities. He told the meeting that the security rules for large passenger vessels would be re-examined, referring in this context to cooperation with the International Maritime Organization.

Mr POTOČNIK pointed out that there were serious risks of pollution as a result of leaks of fuel from the wreck.

The Commission took note of this information.

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The meeting closed at 14.25.