



EUROPEAN COMMISSION

SECRETARIAT-GENERAL

PV(2014) 2074 final

- English language version of the French text which is authentic -

Brussels, 12 February 2014

TEXTE EN

MINUTES

of the 2074th meeting of the Commission

held in Strasbourg

(Winston Churchill building)

on Tuesday 4 February 2014

(afternoon)

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Single sitting: Tuesday 4 February 2014 (afternoon)

The sitting opened at 13.17 with Mr BARROSO, President, in the chair. The discussion of item 8 was chaired by Mr KALLAS.

Present:

Mr BARROSO	President	Items 1 to 7
Ms REDING	Vice-President	Items 1 to 7
Mr ALMUNIA	Vice-President	Items 1 to 7
Mr KALLAS	Vice-President	
Ms KROES	Vice-President	
Mr TAJANI	Vice-President	Items 1 to 6 (in part)
Mr ŠEFČOVIČ	Vice-President	Items 1 to 6
Mr POTOČNIK	Member	
Mr BARNIER	Member	Items 1 to 6
Ms VASSILIOU	Member	
Mr ŠEMETA	Member	
Mr DE GUCHT	Member	Items 1 to 7 (in part)
Ms GEOGHEGAN-QUINN	Member	Items 1 to 7
Mr LEWANDOWSKI	Member	
Ms DAMANAKI	Member	Items 1 to 7 (in part) and 8
Ms GEORGIEVA	Member	Items 1 to 6 (in part)
Mr OETTINGER	Member	Items 1 to 7
Mr HAHN	Member	
Ms HEDEGAARD	Member	Items 1 to 7 (in part)
Mr FÜLE	Member	Items 1 to 6 (in part), 7 and 8
Mr ANDOR	Member	
Ms MALMSTRÖM	Member	Items 1 to 7 (in part)
Mr CIOLOŞ	Member	
Mr BORG	Member	Items 1 to 7 (in part)
Mr MIMICA	Member	

Absent:

Baroness ASHTON

High Representative/
Vice-President

Mr REHN

Vice-President

Mr PIEBALGS

Member

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

Ms CASTAGNOLI	Adviser in Baroness ASHTON's Office
Mr ROSA	A member of Mr PIEBALGS's staff

The following also sat in:

Mr SOBRAL	Deputy Chef de cabinet to the PRESIDENT	
Mr ROMERO REQUENA	Director-General, Legal Service	
Ms MARTÍNEZ ALBEROLA	Adviser in the PRESIDENT's Office	
Mr KLAUS	A member of the PRESIDENT's staff	Items 1 to 7
Ms ROUCH	A member of Ms REDING's staff	Items 1 to 7
Mr PÉREZ CALDENTEY	A member of Mr ALMUNIA's staff	Items 6 (in part) and 7
Mr INOTAI	A member of Ms DAMANAKI's staff	Item 7 (in part)

Secretary: Ms DAY, Secretary-General, assisted by Mr AYET PUIGARNAU, Director in the Secretariat-General.

1. AGENDAS

(OJ(2014) 2074/FINAL; SEC(2014) 82/2)

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(2014) 2074)

The Commission considered the Secretary-General's report on the weekly meeting of Chefs de cabinet held on Monday 3 February.

3. MINUTES OF 2073RD MEETING (29 JANUARY)

(PV(2014) 2073)

The Commission approved the minutes of its 2073rd meeting.

4. MONITORING THE APPLICATION OF EUROPEAN UNION LAW

STATE AID – INDIVIDUAL CASES

(SEC(2014) 92; RCC(2014) 13)

The Commission adopted the decisions in SEC(2014) 92.

5. WRITTEN PROCEDURES, EMPOWERMENT AND DELEGATION OF POWERS

5.1. WRITTEN PROCEDURES APPROVED (SEC(2014) 83 ET SEQ.)

The Commission took note of the Secretariat-General's memoranda recording decisions adopted between 27 and 31 January.

5.2. EMPOWERMENT (SEC(2014) 84 ET SEQ.)

The Commission took note of the Secretariat-General's memoranda recording decisions adopted between 27 and 31 January.

5.3. DELEGATION AND SUBDELEGATION OF POWERS (SEC(2014) 85 ET SEQ.)

The Commission took note of the Secretariat-General's memoranda recording decisions adopted under the delegation and subdelegation procedure between 27 and 31 January, as archived in e-Greffe.

5.4. SENSITIVE WRITTEN PROCEDURES (SEC(2014) 86 AND /2)

The Commission took note of the sensitive written procedures for which the time limit expired between 3 and 7 February and of the 'finalisation' written procedures initiated following the weekly meetings of Chefs de cabinet on 27 January and 3 February.

6. INTERINSTITUTIONAL RELATIONS (RCC(2014) 11)

The Commission took note of the record of the meeting of the Interinstitutional Relations Group (IRG) held on Friday 31 January (RCC(2014) 11).

It paid particular attention to the following points.

6.1. LEGISLATIVE MATTERS

i) Ordinary legislative procedure

(point 1.2 of the IRG record)

Dossiers at Parliament first reading

- Exercise of the Union's rights for the application and enforcement of international trade rules (Regulation) – RINALDI report – 2012/0359 (COD)

The Commission approved the line set out in SI(2014) 47.

- Amendment of Regulation (EC) 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders of Member States and those whose nationals are exempt from that requirement (Regulation) – GABRIEL report – 2012/0309 (COD)

The Commission approved the line set out in SI(2014) 43.

- Rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Regulation) – COELHO report – 2013/0106 (COD)

The Commission approved the line set out in SI(2014) 38/2.

- Creation of a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters (Regulation) – BALDASSARRE Report – 2011/0204 (COD)

The PRESIDENT opened the discussion by explaining that, in the context of the interinstitutional legislative procedure relating to the proposal for a Regulation presented by the Commission in July 2011 creating a European Account Preservation Order (EAPO), the Council would like to limit access to the harmonised preservation order to creditors residing in the Member States bound by the Regulation (Article 4(7)).

This provision appeared to run counter to the Treaty on the Functioning of the European Union (TFEU) in that it risked undermining the principle of non-discrimination on grounds of nationality set out in Article 18 TFEU. The actual consequence of this would be to exclude from the mechanism creditors residing in the United Kingdom and Denmark, whereas the only effect of the opt-out set out in Protocol No 21 to the Treaty for the UK and in Protocol No 22 for Denmark would be that these two countries would not be subject to the requirement to introduce in their territory the harmonised procedures provided for in the Regulation.

Ms REDING pointed out that the proposal for a Regulation initially presented by the Commission in 2011 was intended to create a new legal instrument to facilitate cross-border recovery of debts in civil and commercial matters. In the current situation, with the application of national laws, approximately 60% of cross-border debts owed to European citizens and companies established in the Union were not recovered.

Given that, following two years of negotiations, the Council and Parliament were apparently on the brink of agreement on this proposal, Ms REDING

proposed that the Commission should give its views on the compromise reached within the Council, which changed the definition of 'creditor' in Article 4(7) of the proposal.

Placing this matter in its context, Ms REDING pointed out that, by virtue of the relevant Protocols annexed to the TFEU, the Treaty allowed the United Kingdom, Ireland and Denmark not to take part in European instruments forming part of the area of freedom, security and justice. Since the United Kingdom and Denmark had opted out of the future European Order (EAO), she felt that their exclusion from this mechanism following the change made by the Council would be a direct, logical consequence of their opt-out. Ireland, however, had decided to take part in the EAO so that its companies and citizens could benefit fully from greater security in terms of recovering cross-border debts.

Ms REDING considered that, rather than constituting a form of discrimination, the situation that would result from the compromise proposed by the Council would, given the existence of the opt-outs, be a fair differentiation that could be justified in the specific context of the policies relating to the area of freedom, security and justice.

Moreover, since the practical application of the mechanism was so complex, mainly because of the specific legal arrangements set out in the Treaty in the area of justice, she urged the Commission to adopt a pragmatic approach to the compromise which the Council and Parliament seemed to be on the point of agreeing.

At the request of the PRESIDENT, the Director-General of the Legal Service presented a legal analysis of the compromise text, in particular Article 4(7). He said that the question was whether Europeans living in Denmark and the United Kingdom could be regarded as citizens of a third country because of

the special status of Denmark with respect to the provisions adopted on the basis of Title V of Part Three of the TFEU on the area of freedom, security and justice, and because the UK had not exercised its right to 'opt-in' to the proposed EAPO arrangements. He explained that the question was whether these European citizens could be treated differently from other European citizens in terms of the application of the new instrument established under European law.

While pointing out that this question had not yet been settled by the Court of Justice, he reminded the meeting that the Commission had always called for a 'non-discriminatory' interpretation of the UK and Danish Protocols.

He referred in particular to Article 18 TFEU, which prohibited any discrimination on grounds of nationality, and noted that, according to the settled case-law of the Court, discrimination on the basis of the residence criterion was merely an indirect form of discrimination on grounds of nationality. He stressed that, in this case, the only objective justification for discrimination was that the provisions of Title V of Part Three, TFEU, did not apply to Denmark under Protocol No 22 to the Treaty and that the United Kingdom did not exercise its right to 'opt in' granted under Protocol No 21 to the Treaty.

Besides discrimination against British and Danish nationals, European citizens from other Member States would be deprived of the possibility of using the EAPO in their dealings with operators established in other Member States if they had exercised their right to freedom of movement in the United Kingdom or Denmark. Taking the argument further, he pointed out that if a British or Danish law setting up a national mechanism similar to the EAPO restricted access to only those persons residing in the Member State in question, the Commission would probably have to start infringement proceedings.

Lastly, he emphasised that the compromise envisaged by the Council with regard to Article 4(7) would introduce a major innovation. Judicial cooperation in civil matters did not, in general, impose conditions relating to the residence or nationality of the parties concerned.

The Commission then held a detailed discussion during which the following aspects were raised:

- a reminder of the political expediency of the Commission's proposal to create a new legal instrument enabling European citizens to recover debts across borders in cases governed by civil or commercial law; the desire that the Commission should continue to argue for the retention of the fundamental objective in its initial proposal;
- the fact that the vast majority of the Member States were in favour of setting up this instrument, including Ireland, which had chosen to participate, and the United Kingdom and Denmark, which, without wishing or being able to participate because of their opt-outs, were not raising any objections; in the same vein, Parliament's broadly favourable position on the proposal;
- with regard to the compromise countenanced by the Council, which sought to restrict access to the harmonised preservation order to creditors resident in the participating Member States, the need for some to consider more carefully the legal consequences of this clause in terms of respect for the fundamental principles of the Union, including that of non-discrimination on grounds of nationality enshrined in Article 18 TFEU; insistence on the Commission's role as guardian of the treaties and on the established case-law of the Court of Justice of the European Union, whereby a residency condition was likely to be an indirect violation of that principle; caution against creating a precedent and against any attempt

to call into question the Commission's interpretation of the principle of non-discrimination in the Union;

- for others, the advisability of a pragmatic approach, given the unanimity among the Member States that seemed to be emerging in favour of the compromise reached in the Council, in particular with a view to respecting the will of the citizens that they represented; the argument that the Protocols specific to the United Kingdom and Denmark by definition provided for a certain differentiation, which should not necessarily be likened to discrimination;
- the case for considering that the question on which the Commission had to adopt a line was not a matter of European law that might possibly be discriminatory, but of the consequences of the 'opt-outs' of certain Member States in a number of areas of Union law, which were common in particular in the fields of justice and home affairs;
- the importance, nevertheless, for the Commission to reserve the right to adopt a position subsequently on the final compromise resulting from the negotiations between the Council and Parliament by an official statement, or to refer the matter to the Court of Justice of the European Union in the event of an infringement of the Treaty provisions;
- with regard to the substance, the difficulty of justifying exemption regimes politically and the need to limit them; the observation that a decision by a Member State to exercise its right not to participate in a particular European instrument is a political choice that has a twofold consequence: fewer obligations, on the one hand, but fewer benefits on the other; the desirability of returning to these points of substance in due course and analysing in detail all the consequences of the opt-outs provided for in the protocols.

At the end of this in-depth discussion, the Commission did not approve the line proposed in SI(2014) 46/2.

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

- enhanced cooperation between Public Employment Services (PES) (Decision) – DAERDEN report – 2013/0202 (COD)

The Commission approved the line set out in SI(2014) 20.

- Marine equipment and repeal of Directive 96/98/EC (Directive) – RIQUET report – 2012/0358 (COD)

The Commission approved the line set out in SI(2014) 49/2.

- Amendment of Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions (Directive) – GIEGOLD report – 2012/0168 (COD)

The Commission approved the line set out in SI(2014) 33/2.

- Amendment of Council Directives 78/660/EEC and 83/349/EEC as regards disclosure of non-financial and diversity information by certain large companies and groups (Directive) – BALDASSARRE report – 2013/0110 (COD)

The Commission approved the line set out in SI(2014) 41/4.

- Space surveillance and tracking support programme (Decision) – ANDERSDOTTER report – 2013/0064 (COD)

The Commission approved the line set out in SI(2014) 34.

- Protection of the euro and other currencies against counterfeiting and replacement of Council Framework Decision 2000/383/JHA (Directive) – McINTYRE report – 2013/0023 (COD)

The Commission approved the line set out in SI(2014) 24 and /2.

- European Year for Development (2015) (Decision) – GOERENS report – 2013/0238 (COD)

The Commission approved the line set out in SI(2014) 42.

- Macro-financial assistance to the Republic of Tunisia (Decision) – MOREIRA report – 2013/0416 (COD)

The Commission approved the line set out in SI(2014) 35.

- Imports of rice originating in Bangladesh (Regulation) – MURPHY report – 2012/0085 (COD)

The Commission approved the line set out in SI(2014) 36.

ii) Preparation for the February I part-session of Parliament

(point 1.3 of the IRG record)

Ordinary legislative procedure – First reading

- Amendment of Council Regulation (EC) 1225/2009 on protection against dumped imports from countries not members of the European Community and Council Regulation (EC) 597/2009 on protection against subsidised imports from countries not members of the European Community (Regulation) – FJELLNER report – 2013/0103 (COD)

The Commission approved the line set out in SP(2014) 50/4, further to notes SI(2014) 50/2 and /3, which it had already approved on 29 January.

6.2. RELATIONS WITH THE EUROPEAN COUNCIL AND THE COUNCIL

iii) Programming of Council business

(SI(2014) 48)

The Commission took note of the information in SI(2014) 48 on the Council meetings between 6 and 19 February.

6.3. RELATIONS WITH PARLIAMENT

iv) Action taken on the legislative opinions and non-legislative resolutions adopted by Parliament at its November 2013 part-session (point 3.4.1 of the IRG record)

The Commission approved, for transmission to Parliament, document SP(2014) 87 on the action taken on the legislative opinions and non-legislative resolutions adopted by Parliament at its November 2013 part-session.

v) Action taken on the non-legislative resolutions adopted by Parliament at its November 2013 part-session (point 3.4.2 of the IRG record)

The Commission approved, for transmission to Parliament, document SP(2014) 88 on the action taken on the non-legislative resolutions adopted by Parliament at its November 2013 part-session.

6.4. OTHER BUSINESS

vi) Parliament – Commission delegated regulations (point 6.2 of the IRG record)

- Commission Delegated Regulation (EU) .../... amending Annex I to Regulation (EU) 1316/2013 of the European Parliament and of the Council establishing the Connecting Europe Facility

The Commission approved the line set out in SP(2014) 112.

7. OTHER BUSINESS

COMPETITION CASES UNDER INVESTIGATION

Mr ALMUNIA briefed the Commission Members on progress in the inquiry into alleged abuse of a dominant market position by Google launched by his department in November 2010. He briefly recalled the facts of the case. The inquiry, which was already extremely complex and had been made even more sensitive by the media furore surrounding it, was currently focusing on an important point in the negotiations between the Commission and Google to eliminate competition-distorting factors which reduced the range of products and services offered to European users by the group.

The Commission was looking into the third series of proposals tabled by the US group, and would decide what course of action to take on the basis of its findings. He explained the options that the Commission would look at, described their legal repercussions and indicated a timetable for implementation. He planned to present these points at a press conference on Wednesday, 5 February.

Following a brief discussion, the PRESIDENT thanked Mr ALMUNIA for briefing the Commission on the state of play and on the way in which he planned to tackle the forthcoming stages. He noted that Mr ALMUNIA was willing to provide those members of the Commission who so wished with further details at a future meeting. In view of the importance of the case under investigation, the PRESIDENT

suggested that the Commission discuss it again at next week's meeting following a more detailed presentation of the ongoing work by the Member responsible.

The Commission took note of this information.

8. RELATIONS WITH NON-EU COUNTRIES

LATEST DEVELOPMENTS CONCERNING THE SITUATION IN UKRAINE (INFO(2014) 6)

Mr FÜLE reported on his two recent visits to Ukraine, on 24-25 January and 27-29 January. He presented an analysis of the situation which highlighted two priorities, namely restoring calm and order and launching a political process to find a way out of the current impasse. The Ukrainian authorities appeared to be now moving in the right direction in terms of restoring order, although much still remained to be done. However, national dialogue between the authorities and the opposition would probably be a long process, against a background of human rights violations, burgeoning extremist movements and a highly confused and tense financial situation. The European Union was attempting to facilitate dialogue between the political forces with the aim of bringing the violence to an end and contributing to the launch of a political process involving Ukrainian civil society. He would be willing if required to return to Kiev in the next few days.

The Commission took note of this information and of Mr FÜLE's note in INFO(2014) 6.

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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 16.03.