



EUROPEAN COMMISSION

SECRETARIAT-GENERAL

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Brussels, 3 December 2002

MINUTES
of the 1590th meeting of the Commission
held in Strasbourg
(Winston Churchill Building)
on Tuesday 19 November 2002
(afternoon)

These minutes were approved by the Commission at its 1592nd meeting, held in Brussels on 3rd December 2002.

They contain 23 pages.

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Single sitting: Tuesday 19 November (afternoon)

The sitting opened at 1400 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 VERHEUGEN	
Mr LAMY	
Mr BYRNE	
Mr BARNIER	
Ms REDING	
Ms SCHREYER	
Ms WALLSTRÖM	
Mr VITORINO	
Ms DIAMANTOPOULOU	

Absent:

Mr NIELSON
Mr PATTEN

The following sat in to represent absent Members of the Commission

Mr POWER A member of Mr Patten's staff

The following also sat in

Mr PETITE	Director-General, Legal Service
Mr MANSERVISI	Chef de cabinet to the President
Mr FAULL	Commission Spokesman
Mr MAMER	Spokesman
Mr THOMAS	Spokesman
Mr TODD	Spokesman
Mr KEMPPINEN	Spokesman
Ms HOUTMAN	Deputy Chef de cabinet to the President
Mr ABOU	Chief Adviser in the President's Office
Mr CALLEJA	Chef de cabinet de Ms de Palacio
Mr CARDANI	Deputy Chef de cabinet to Mr Monti
Mr NØRLUND	Chef de cabinet to Mr Bolkestein
Mr VAN BALLEKOM	Deputy Chef de cabinet to Mr Bolkestein
Mr BEKX	Deputy Chef de Cabinet to Mr Solbes
Mr MARTINEZ	A member of Mr Solbes's staff
Ms PROUT	A member of Mr Verheugen's staff

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

1. AGENDAS

(OJ(2002)1590/3; SEC(2002)1226/2)

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

The PRESIDENT proposed postponing the seminar planned for 27 November on immigration policy, and suggested holding instead on that date, after the weekly meeting (either at the end of the morning or the beginning of the afternoon), an initial exchange of views on the financial perspective for after 2006.

The Commission approved this proposal.

2. WEEKLY MEETING OF CHEFS DE CABINET

(SEC(2002)1590)

The Commission considered the Secretary-General's report on the weekly meeting of Chefs de cabinet held on Friday 15 November.

3. APPROVAL OF MINUTES OF 1589th MEETING (13 November)

(PV(2002)1589 and /2)

The Commission approved the minutes of its 1589th meeting.

4. PARLIAMENT

PARLIAMENTARY AFFAIRS GROUP

(SP(2002)3695)

The Commission took note of the record of the meeting of the Parliamentary Affairs Group held on Thursday 14 November.

It paid particular attention to the following:

a) Interinstitutional relations (point 1 of the record)

Codecision procedure - Article 251 EC

Public participation in the drawing-up of certain plans and programmes relating to the environment, 00/0331 (COD)

The Commission adopted the line set out in SP(2002)3691, taking into account the Legal Service's recommendations for avoiding as far as possible any reference within a recital to the Commission's work programme for 2003, with a view to facilitating a speedy conclusion in this matter.

b) Preparations for November II and December I part-sessions
(point 2 of the record)

Specific points to consider: November II

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.

Empowerment

Under Article 13 of its Rules of Procedure the Commission empowered Mr SOLBES, 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 proposal, on the basis of the line set out in SP(2002)3641, 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:

- LULLING report, Community statistical programme 2003-07

Information sheets

- Council/Commission statement - Extension of the Lamfalussy process to the whole of the financial services sector (with a view to the Copenhagen European Council)

The Commission approved the line set out in SP(2002)3667/2.

c) Action taken on Parliament's opinions and resolutions

(point 5 of the record)

The Commission adopted SP(2002)3617/2 on the action taken on Parliament's opinions and resolutions adopted at its October I and II part-sessions.

5. PERMANENT REPRESENTATIVES COMMITTEE (SI(2002)1308)

The Commission took note of the information communicated to it relating to the work of Coreper.

It paid particular attention to the following:

***PREPARATIONS FOR COUNCIL MEETING (COMPETITIVENESS) ON
26 NOVEMBER: REFORM OF THE SYSTEM FOR APPLYING THE
COMPETITION RULES***

(SI(2002)1308)

In the light of the discussions in Coreper and further clarifications provided by Mr MONTI, the Commission decided to empower Mr MONTI, in agreement with the PRESIDENT, to accept the comprehensive compromise being drawn up provided that it was satisfactory and that it would ensure the maintenance of a uniform competition framework for companies. This would therefore involve the renunciation of the provision covered by Article 28.

**6. MONITORING THE APPLICATION OF COMMUNITY LAW: STATE AID
(C(2002)4364/3)**

***STATE AID - CORRIGENDUM TO A PREVIOUS DECISION (C 2/2002 ex
N540/2001)***

The Commission adopted the corrigendum to its decision of 13 November (PV(2002)1589, item 4.1 and SEC(2002)1173/2, *Capro Schwedt GmbH*) in C(2002)4364/3.

7. WRITTEN PROCEDURES AND EMPOWERMENT

7.1. WRITTEN PROCEDURES APPROVED

(SEC(2002)1227 to /5)

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

7.2. SENSITIVE WRITTEN PROCEDURES

(SEC(2002)1228)

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

Time limit: 18.11.2002

E/2002/2210 - COM(2002)639 DG DEV

Commission communication *Untying: Enhancing the effectiveness of aid*

7.3. EMPOWERMENT

(SEC(2002)1229 to /5)

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

7.4. DELEGATION AND SUBDELEGATION OF POWERS

The Commission took note of the Secretariat-General's memoranda recording decisions adopted under the delegation procedure between 11 and 15 November, as archived on the "Greffé 2000" (Registry) website.

**7.5. DELEGATION OF POWERS IN THE FIELD OF BIOCIDAL
PRODUCTS**

(SEC(2002)1247)

The Commission agreed to delegate the powers set out at section IV of
SEC(2002)1247.

8. ADMINISTRATIVE AND BUDGETARY MATTERS
(SEC(2002)1230/2)

ADMINISTRATIVE MATTERS
(PERS(2002)156)

8.1. APPOINTMENTS

DG AGRI - A1 post of Deputy Director-General

The Commission had before it applications under Article 29(1)(a) of the Staff
Regulations for the A1 post of Deputy Director-General in the Agriculture
DG (PERS(2002)79/3).

The Commission took note of the opinions of the Consultative Committee on
Appointments of 2 and 12 September (PERS(2002)79/4 and /5).

The Commission proceeded to compare the applicants' qualifications for the
post. It also examined the reports on their ability, efficiency and conduct in
the service. On a proposal from Mr KINNOCK, in agreement with the
PRESIDENT and Mr FISCHLER, the Commission decided to appoint
Mr Dirk AHNER to the post.

This decision would take effect on a date to be fixed later.

DG AGRI - A1 post of Deputy Director-General

The Commission had before it applications under Article 29(1)(a) of the Staff Regulations for the A1 post of Deputy Director-General in the Agriculture DG (PERS(2002)110/3, /4 and /6).

The Commission took note of the opinions of the Consultative Committee on Appointments of 7 and 11 October (PERS(2002)110/5 and /7).

The Commission proceeded to compare the applicants' qualifications for the post. It also examined the reports on their ability, efficiency and conduct in the service. On a proposal from Mr KINNOCK, in agreement with the PRESIDENT and Mr FISCHLER, it then decided to appoint Mr Fabrizio BARBASO to the post.

This decision would take effect on a date to be fixed later.

8.2. VACANCY NOTICES

DG ESTAT - A1 post of Director-General

On a proposal from Mr KINNOCK, in agreement with the PRESIDENT and Mr SOLBES, the Commission approved the vacancy notice in PERS(2002)159 and asked DG ADMIN to publish it.

This decision would take effect immediately.

**9. COMMISSION REGULATION ON THE FRAMEWORK FINANCIAL
REGULATION FOR THE BODIES REFERRED TO IN ARTICLE 185 OF
COUNCIL REGULATION (EC, EURATOM) No 1605/2002 ON THE
FINANCIAL REGULATION APPLICABLE TO THE GENERAL BUDGET
OF THE EUROPEAN COMMUNITIES
(C(2002)4520 to /3)**

The Commission adopted the Regulation in C(2002)4520/3 and asked the Secretariat-General to transmit it to the Community bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002.

The Commission confirmed that the Community bodies referred to in Article 185 of the general Financial Regulation were required, as far as possible, to adapt their own financial regulations by 1 January 2003 and, in any case, to have implemented by that date the provisions of the general Financial Regulation applying to them, particularly those relating to discharge, the competence of the Commission's internal auditor and the application of the accounting rules, as provided for in Article 185(2) to (4) of the general Financial Regulation.

It also specified that the reference to "the relevant provisions of the general Financial Regulation and the detailed rules for implementing that Regulation" (in the context of their application to the Community bodies) referred to the whole of the general Financial Regulation and its detailed implementing rules, including the specific provisions applicable to external operations.

**10. EXCESSIVE DEFICIT - COMMISSION REPORT UNDER ARTICLE 104(3)
OF THE EC TREATY
(SEC(2002)1245 and /2; SEC(2002)1255)**

Mr SOLBES presented a report produced pursuant to Article 104(3) of the Treaty on Germany's failure to meet the criteria for budgetary discipline.

He outlined the key points of the report, which assessed recent and current budgetary trends in Germany and included an analysis of the short-term prospects in the light of world economic conditions and the policy measures taken by the government.

Although budgetary trends had suffered from the persistent weakness in economic activity and, to a lesser extent, the consequences of the floods, the forecast scale of the deficit compared with the reference value of 3% could not be regarded, within the meaning of the Treaty, as resulting from an exceptional event beyond the control of the German authorities, or from a major economic recession. The origins of the budgetary slippage lay in the developments of previous years.

The Commission adopted the report on the excessive deficit in Germany, drawn up on the basis of Article 104(3) of the EC Treaty, as set out in SEC(2002)1245/2, for transmission to the Council for consideration by the Economic and Financial Committee.

**11. RECOMMENDATION UNDER ARTICLE 99(4) OF THE EC TREATY
(SEC(2002)1246 to /3; SEC(2002)1255)**

Mr SOLBES presented a recommendation for a Council recommendation to give an early warning to France to head off an excessive deficit, and a proposal for a Council decision making this recommendation public.

The 2001 update of the stability programme for France, presented to the Commission on 11 December 2001, had forecast a public deficit of 1.4% and 1.3% of GDP in 2002 and 2003 respectively, on the assumption of real GDP growth of 2.5% in both years. The latest estimates of the deficit for 2002 put it at 2.6% of GDP in 2002 (estimate by the French authorities in a draft amending budget presented in July 2002) or 2.7% of GDP (Commission's estimate in its autumn forecasts 2002).

About half the slippage could be put down to cyclical factors, and the other half represented a genuine deterioration in the budgetary balance as corrected for cyclical variations.

Given that the scale of the slippage in 2002 was much too large to contain the public deficit within the reference value of 3% of GDP, and that the draft budget for 2003 did not correct the significant slippage for 2002, Mr SOLBES concluded that the early warning system must be triggered in respect of France, in the same way as had been done earlier for Portugal and Germany.

The Commission adopted the recommendation drawn up under Article 99(4) of the EC Treaty in SEC(2002)1246/3 and the proposal for a Council decision (*Proposal for a Council Decision making public this Recommendation*) for transmission to the Council.

12. PARLIAMENT AND COUNCIL DIRECTIVE ON INVESTMENT SERVICES AND REGULATED MARKETS (COM(2002)625 to /6; SEC(2002)1223)

The PRESIDENT introduced the debate by stressing the importance of the proposal tabled by Mr BOLKESTEIN for a Directive on investment services and regulated

markets, intended to replace a 1993 Directive which had laid down the conditions for a "passport" enabling firms authorised in their Member State of origin to provide investment services in other Member States and to take part in trading on those States' regulated markets (stock exchanges).

Mr BOLKESTEIN explained the reasons for updating the 1993 Directive and the objectives sought:

- enlargement of its scope as regards the financial services covered;
- setting rules for organisation and behaviour (conflicts of interest, concept of "best execution", transparency in transactions) applicable to investment firms;
- inclusion of all methods for executing orders (not only regulated markets, but also multilateral trading facilities (MTF) and systems for the internalisation of orders by investment firms).

He focused his analysis on the only controversial point, which concerned pre-transaction transparency imposed on investment firms executing orders outside the rules of the regulated markets and MTF (internalisation).

Following an in-depth exchange of views, the Commission adopted an amendment to Article 20 on the rules for handling orders from clients: in the last sentence of paragraph 3, the frequency of renewal of the client's prior consent for investment firms to execute orders outside the rules and systems of a regulated market or an MTF was increased from 6 months to one year. The last sentence should therefore read as follows:

"If the prior consent of clients was given in the form of a general agreement, it should be contained in a separate document and should be renewed *annually*."

The thrust of this amendment would be set out in the appropriate part of the explanatory memorandum (section III.5).

Subject to this amendment, the Commission adopted the proposal for a Directive on investment services and regulated markets, as set out in COM(2002)625/6, for transmission to Parliament and the Council and, for opinions, to the Economic and Social Committee and the European Central Bank.

**13. COMMISSION DECLARATION, LETTER TO MEMBER STATES AND
COMMUNICATION ON THE CONSEQUENCES OF THE COURT
JUDGMENT OF 5 NOVEMBER 2002 FOR EUROPEAN AIR TRANSPORT
POLICY
(COM(2002)649 to /4)**

Ms de PALACIO outlined the content of, and the conclusions to be drawn from, the judgments handed down on 5 November by the Court of Justice against eight Member States (Austria, Belgium, Denmark, Finland, Germany, Luxembourg, Sweden, United Kingdom) in the "open skies" cases concerning various bilateral agreements concluded by those Member States with the United States.

She drew particular attention to three key points arising from the judgments:

- the nationality clauses in the agreements constituted a violation of the right of establishment enshrined in Article 43;
- in line with the "AETR" case law, the Court's judgments confirmed that the Community acquired an external competence as a result of the exercise of its internal competence where international commitments arose in the field of the application of common rules;
- the Member States not only may not conclude new bilateral agreements of this kind but must invoke the denunciation clauses in the existing agreements.

She therefore proposed that the Commission publicly take a clear position on this matter in a statement, send all Member States a detailed letter on the conclusions to be drawn from the Court's judgments, and invite the Council to give it the necessary mandate to launch negotiations for an agreement between the European Union and the United States.

Following a brief exchange of views, the Commission:

- approved the text of the letter in COM(2002)649/3 to be sent by Ms de PALACIO to all Member States;
- approved the declaration in COM(2002)649/3;
- approved the communication in COM(2002)649/3 and the financial statement in COM(2002)649/4, and decided to transmit the communication (COM(2002)649/3) to the Council and Parliament.

14. COUNCIL MEETINGS

(SI(2002)1359)

14.1. GENERAL AFFAIRS AND EXTERNAL RELATIONS

(BRUSSELS, 18 AND 19 NOVEMBER)

Mr VERHEUGEN reported on the Council's conclusions on enlargement, viz., as regards the institutional provisions:

- setting 1 May 2004 as the official date for the accession of the ten new Member States designated at the Brussels European Council;

- laying down in the Accession Treaty that the Commission's current term of office would end on an earlier date than normal (probably 31 October 2004);
- designation as from 1 May 2004 of ten additional Commission members, one from each new Member State;
- the new Commission would probably take up duties on 1 November 2004 and its composition would be as provided for in the Nice Treaty (25 members).

In this connection the Commission noted that the amendments to the institutional provisions referred to above, including the dates, would be adopted under procedures that would take full account of Parliament's prerogatives.

As for the other subjects raised, and in particular the financial and agricultural aspects, the Council Presidency intended very soon to present a final compromise proposal so that negotiations could be closed before the Copenhagen European Council on 12-13 December.

The Commission proposal for an updated roadmap and for additional pre-accession aid for Bulgaria and Romania had been largely approved by the Council.

The Commission took note of this information.

14.2. ECONOMIC AND FINANCIAL AFFAIRS **(BRUSSELS, 3 DECEMBER)**

With an eye to the Council meeting on 3 December, Mr BOLKESTEIN gave an update on his negotiations with certain non-member countries, particularly Switzerland and the United States, on the taxation of savings income.

He would be tabling proposals on this matter at the Commission meeting on 27 November.

The Commission took note of this information.

14.3. *TRANSPORT, TELECOMMUNICATIONS, ENERGY*
(BRUSSELS, 25 NOVEMBER)
(SEC(2002)1270)

Ms de PALACIO reported on progress in the Council on the internal market in energy and trans-European energy networks.

Following an in-depth exchange of views, the Commission authorised Ms de PALACIO, in agreement with the PRESIDENT, to facilitate the search for a comprehensive agreement within the limits and according to the terms set out in SEC(2002)1270.

14.4. *AGRICULTURE AND FISHERIES*
(BRUSSELS, 27-29 NOVEMBER)

Mr FISCHLER reported that the Council (Agriculture and Fisheries) would be devoting its next meeting to the bilateral talks between the Presidency and the Member States on the reform of the fisheries policy and the mid-term review of the common agricultural policy.

The Commission took note of this information.

15. *RELATIONS WITH NON-MEMBER COUNTRIES*

WTO - RESTRICTED MINISTERIAL MEETING
(SYDNEY, 14 NOVEMBER)

Mr LAMY reported on the two key topics dealt with at the WTO's restricted ministerial meeting in Sydney on 14 November:

- access to medicines for developing countries: this covered both the possibility for developing countries hit by pandemics to invoke emergency health provisions to manufacture generic medicines, and the possibility for producer countries to export generic medicines to the poorest countries lacking local manufacturing capacity. Political agreement on this item had been reached in outline and should be finalised before 31 December;
- the arrangements for negotiations on the tariff aspect and the agricultural aspect for the follow-up to the multilateral negotiations.

On this last point, in agreement with Mr FISCHLER, he would be tabling a draft negotiating mandate before the end of 2002, for transmission to the Council.

The Commission took note of this information.

16. OTHER BUSINESS

SINKING OF THE OIL TANKER "PRESTIGE" OFF THE COAST OF GALICIA (SPAIN)

Ms WALLSTRÖM and Ms de PALACIO reported on the circumstances of the sinking of the oil tanker "Prestige" off Spain, and on the scale of the damage caused not only to the environment but also to the economy of the affected region, which specialised in fisheries and aquaculture (oysters, shellfish, etc.).

Ms WALLSTRÖM gave an update on initiatives taken by the Commission and by certain Member States to assess the situation (task force of experts) and to assist the Spanish authorities in limiting the damage caused by the oil slick.

The coastal zone affected by the oil slick was part of a protected area under the Natura 2000 Directive.

Ms de PALACIO pointed out that the controls provided for in the Erika 1 package - which would not enter into force until June 2003 - would have enabled this kind of catastrophe to be avoided if it had already been in force.

She had asked the Member States to bring forward entry into force of the "Erika 1" legislation by several months.

This disaster would reopen debate on the international pollution compensation fund and in particular on the possibility of raising the ceiling for its intervention (originally set at €200 million; in the process of being increased to €300 million). A diplomatic conference on this subject was planned for March 2003.

The Commission noted that Ms de PALACIO would be tabling a briefing paper on the Community's options for action in response to such disasters and on the expected impact of the entry into force of the Erika 1 package.

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The meeting closed at 1700 hours.