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MINUTES

of the 1985th meeting of the Commission

held in Brussels

(Berlaymont)

on Wednesday 11 January 2012

(morning)

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Single sitting: Wednesday 11 January 2012 (morning)

The sitting opened at 9.09 with Mr Barroso, President, in the chair.

Present:

Mr BARROSO	President	
Ms REDING	Vice-President	
Mr ALMUNIA	Vice-President	
Mr KALLAS	Vice-President	
Ms KROES	Vice-President	
Mr TAJANI	Vice-President	Item 9 (in part)
Mr ŠEFČOVIČ	Vice-President	
Mr REHN	Vice-President	
Mr POTOČNIK	Member	
Mr PIEBALGS	Member	Item 9 (in part)
Mr BARNIER	Member	
Ms VASSILIOU	Member	Items 1 to 9 (in part)
Mr ŠEMETA	Member	
Mr DE GUCHT	Member	Item 9 (in part)
Mr DALLI	Member	
Mr LEWANDOWSKI	Member	
Ms DAMANAKI	Member	Items 1 to 9 (in part)
Ms GEORGIEVA	Member	Items 1 to 9 (in part)
Mr OETTINGER	Member	Items 1 to 9 (in part)
Mr HAHN	Member	
Ms HEDEGAARD	Member	
Mr FÜLE	Member	Items 1 to 9 (in part)
Mr ANDOR	Member	
Ms MALMSTRÖM	Member	
Mr CIOLOŞ	Member	

<u>Absent</u>:

Baroness ASHTON	High Representative/ Vice-President
Ms GEOGHEGAN-QUINN	Member

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

Mr BANNERMAN	Adviser in Baroness ASHTON's office	Items 1 to 9 (in part)
Mr BELL	Chef de cabinet to Ms GEOGHEGAN-QUINN	Items 1 to 9 (in part)

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	
Mr DOENS	Head of the Commission Spokesperson Service	
Ms AHRENKILDE HANSEN	Commission Spokeswoman	Items 1 to 9 (in part)
Mr THEBAULT	Head of the Bureau of European Policy Advisers	Items 1 to 9 (in part)
Mr CABRAL	Adviser *hors classe* in the PRESIDENT 's Office	Items 1 to 9 (in part)
Ms MARTÍNEZ ALBEROLA	Adviser in the PRESIDENT's Office	
Mr KONIECKI	A member of the PRESIDENT's staff	
Mr JOSTEN	A member of Ms KROES's staff	
Mr PESONEN	Chef de cabinet to Mr REHN	
Mr VANHEUKELEN	Chef de cabinet to Mr DE GUCHT	Items 1 to 9 (in part)

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

1. AGENDAS
(OJ(2012)1985/2; SEC(2012)29/2)

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)1985)

The Commission considered the Secretary-General's report on the weekly meeting of Chefs de cabinet held on Monday 9 January.

3. APPROVAL OF MINUTES AND SPECIAL MINUTES OF 1984TH MEETING (20 DECEMBER)
(PV(2011)1984; PV(2011)1984, PART II)

The Commission held over approval of the minutes of its 1984th meeting for the following week.

4. MONITORING THE APPLICATION OF EUROPEAN UNION LAW

STATE AID – INDIVIDUAL CASES
(SEC(2012)38/2)

The Commission adopted the decisions in SEC(2012)38/2.

5. WRITTEN PROCEDURES, EMPOWERMENT AND DELEGATION OF POWERS

5.1. WRITTEN PROCEDURES APPROVED (SEC(2012)30 ET SEQ.)

The Commission took note of the Secretariat-General's memoranda recording decisions adopted between 19 December and 6 January.

5.2. EMPOWERMENT (SEC(2012)31 ET SEQ.)

The Commission took note of the Secretariat-General's memoranda recording decisions adopted between 19 December and 6 January.

5.3. DELEGATION AND SUBDELEGATION OF POWERS (SEC(2012)32 ET SEQ.)

The Commission took note of the Secretariat-General's memoranda recording decisions adopted under the delegation and subdelegation procedure between 19 December and 6 January, as archived in e-Greffe.

5.4. SENSITIVE WRITTEN PROCEDURES (SEC(2012)33 AND /2)

The Commission took note of the sensitive written procedures for which the time limit expired between 9 and 13 January.

6. ADMINISTRATIVE AND BUDGETARY MATTERS (SEC(2012)34)

ADMINISTRATIVE MATTER (PERS(2012)1)

LEGAL SERVICE / DG HUMAN RESOURCES AND SECURITY – COMMISSION DECISION TO BRING PROCEEDINGS BEFORE THE COURT OF JUSTICE OF THE EUROPEAN UNION SEEKING ANNULMENT OF THE COUNCIL DECISION OF 19 DECEMBER 2011 NOT TO ADOPT THE PROPOSAL FOR A COUNCIL REGULATION ADJUSTING WITH EFFECT FROM 1 JULY 2011 THE REMUNERATION AND PENSIONS OF OFFICIALS AND OTHER SERVANTS OF THE EUROPEAN UNION AND THE CORRECTION COEFFICIENTS APPLIED THERETO (AND IF NECESSARY TO BRING PROCEEDINGS AGAINST THE COUNCIL FOR FAILURE TO ACT)

The Commission took note of the information in PERS(2012)1 and, on a proposal from Mr ŠEFČOVIČ, in agreement with the PRESIDENT, decided:

- to bring proceedings before the Court of Justice of the European Union seeking the annulment of the Council decision of 19 December 2011 not to adopt the proposal for a Council Regulation [1] adjusting with effect from 1 July 2011 the remuneration and pensions of officials and other servants of the European Union and the correction coefficients applied thereto;

- to invite the Council (by means of a letter from the PRESIDENT) to adopt within a period of two months the Commission proposal adjusting with effect from 1 July 2011 the remuneration and pensions of officials and other servants of the European Union and the correction coefficients applied thereto, and, in the event of the proposal not being adopted by the deadline set, to bring

[1] Commission proposal COM(2011)820.

proceedings before the Court of Justice of the European Union against the Council for failure to act by not adopting the above Commission proposal;

– to authorise the Legal Service to take all the necessary steps to bring these proceedings before the Court of Justice of the European Union.

These decisions would take effect immediately.

7. COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS – A COHERENT FRAMEWORK FOR BUILDING TRUST IN THE DIGITAL SINGLE MARKET FOR E-COMMERCE AND ONLINE SERVICES (COM(2011)942 TO /3; SEC(2011)1640 AND /2; SEC(2011)1641 AND /2; RCC(2011)1047)

The Commission approved the Communication in COM(2011)942/3 for transmission to Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, and, for information, to the national parliaments, together with the staff working documents distributed as SEC(2011)1640/2 and SEC(2011)1641/2, the contents of which were noted.

8. GREEN PAPER – TOWARDS AN INTEGRATED EUROPEAN MARKET FOR CARD, INTERNET AND MOBILE PAYMENTS (COM(2011)941 AND /2; RCC(2011)1047)

The Commission approved the Green Paper in COM(2011)941/2 for publication in the Official Journal of the European Union and transmission to Parliament, the Council, the European Central Bank, the Economic and Social Committee, the Committee of the Regions and the European Data Protection Supervisor, and, for information, to the national parliaments.

9. OTHER BUSINESS

9.1. LATEST ECONOMIC DEVELOPMENTS

The PRESIDENT briefly introduced the presentation of the latest economic developments, highlighting the new era of European economic governance launched by the entry into force of the six-pack measures in mid-December 2011. He explained that today's Commission decision assessing the impact of measures taken by the Member States to correct their excessive government deficit was a first and followed on from the working methods agreed upon in 2011. It would be adopted by written procedure and had been discussed the day before at an information meeting for the cabinets of the Commission Members.

The PRESIDENT asked Mr REHN to explain the latest macroeconomic forecasts for 2012 before telling the Commissioners about the new stage embarked on by the Commission in the excessive deficit procedure.

Mr REHN regretted that there had been few developments in the situation since the previous month and that the economic outlook at the start of this year was still very uncertain. On the basis of the latest available figures, he described the European economy as being at a standstill. Since the fourth quarter of 2011 there had been at best stagnation, with a significantly higher risk of a downturn in business activity. At the same time, he noted that the situation differed greatly from one Member State to another, since some had relatively solid growth forecasts in the short term while the outlook of others had worsened since the Commission's autumn economic forecasts. The unemployment rate of 10.3% in the euro area remained unchanged, as did the rate in the EU as a whole (9.8%). Here again there were wide divergences between Member States, with rates ranging from 4% to 23%.

Mr REHN then turned to the excessive deficit procedure itself. He was pleased that several vulnerable Member States, as well as those benefiting from a European assistance programme, had taken structural budgetary consolidation measures in recent weeks. This correction procedure was currently being applied to 23 Member States in accordance with the new economic governance rules which came into force on 13 December 2011. Only the four remaining countries (Sweden, Finland, Estonia and Luxembourg) came under the preventive arm of the Stability and Growth Pact. Although in most of the Member States concerned this situation could be attributed to the economic crisis which had started after 2009, in others the excessive budget deficit went back earlier than this. The new economic governance, starting with the six-pack measures, therefore helped to address the crisis, correct the mistakes of the past and prevent such a crisis from recurring in the future.

He outlined the improvements introduced by the new economic governance provisions (six-pack) to the Stability and Growth Pact, referring to the system of early and graded sanctions planned for the euro area Member States. He explained how the system of financial sanctions worked in the preventive arm of the Pact, applied once a decision had been taken that an excessive deficit existed, in accordance with Article 126(6) of the Treaty on the Functioning of the European Union. However, the 15 euro area Member States subject to the excessive government deficit procedure had gone beyond that stage and could be sanctioned with a fine of up to 0.2% of their gross domestic product if the Council, under Article 126(8) of the Treaty, considered that they had not taken effective steps to comply with its recommendations under Article 126(7).

In view of all this, it was the Commission's prerogative to be able to propose at any time that the procedure be speeded up. On the basis of an in-depth analysis, he considered that five Member States must urgently step up their efforts if they were to correct their excessive deficits by the required deadline. These were Malta and Hungary for the 2011 budget year and Belgium, Cyprus and Poland for 2012.

On 11 November 2011 Mr REHN had written to these five Member States asking them, where appropriate, to adopt a budget for 2012 or take additional structural measures to bring their government deficits to below 3% of gross domestic product by the required deadline and on a sustainable basis. Reviewing the situation in each of these five Member States, he said that they had responded positively to these requests and taken concrete measures by the end of December 2011 to meet these conditions with the exception of Hungary, whose measures were judged to be lacking in credibility and insufficient to correct its excessive budget deficit on a sustainable basis.

Mr REHN referred to the particular case of Hungary, which was currently in the news following the intense interaction and close contacts he and his services had had with the Hungarian authorities. At the Council's request, Hungary must take effective measures to correct its government deficit in 2011. Although it could claim to have a budget surplus of 3.5% of its gross domestic product, this significant figure was owing to a one-off measure, namely the transfer of private pension funds to the national budget. Without this measure there would be a budget deficit of 6%. The same principle would be applied to the 2012 budget revenue with the one-off revenue from sectoral taxes, without which the deficit would be over the threshold of 3% of gross domestic product set by the Treaty. This would undoubtedly occur in 2013 unless public finances were placed on a sound footing.

Given the transitory nature of the correction of the excessive government deficit, the Commission would propose a new recommendation to the Hungarian authorities under Article 126(7) of the Treaty on the Functioning of the European Union. Given the sanctions that could be taken against Member States in the euro area under the new economic governance rules, and given that Hungary had had an excessive deficit since joining the European Union in 2004 and that the time limit for correcting this deficit had been extended by a total of three years, he felt that it would be both fair and wise to consider what means the Commission could deploy in this case. He referred to the possibility of suspending the Cohesion Fund commitments from January 2013. He was currently studying this possibility in close collaboration with Mr HAHN.

Mr REHN concluded his presentation by noting that the six-pack measures were working well in general.

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

General aspects

– the usefulness of systematically providing oral information to the Commission on decisions relating to excessive deficit procedures, even though such decisions would from now on be adopted by means of a written procedure;

– the concern to ensure that national parliaments also received the right information on these new rules, in particular the committees responsible for budgets;

Regarding the excessive deficit procedure for Hungary

– the predictable nature, for those in the know, of the recommendation for a Council decision stating that no effective action had been taken by Hungary;

– at the same time, the challenge facing Mr REHN and all the Members as regards communicating this recommendation to the general public in Hungary, given the random nature of the forecasts and the "satisfactory" level of the current deficit following the transfer from private pension funds; on the other hand, the artificial nature of the public deficit reduction obtained by transferring funds from the private pension system, and the fact that the Commission must look at the facts and produce a realistic estimate for future budgets;

– the apparent paradox between the level of the deficit and the measures to be taken against Hungary which could potentially affect allocations under the Cohesion Fund from 2013, despite the fact that Hungary was very dependent on these payments;

– the comparison that might be made by public opinion between the treatment meted out to Hungary and that enjoyed by other Member States which were in a critical economic situation but were still receiving Cohesion Fund aid;

– the case for taking pains to apply measures on Cohesion Fund commitments equitably and proportionately in order to ensure equal treatment of euro-area and non-euro-area Member States;

– the importance of stressing the one-year deadline Hungary still had to take the appropriate action and hence avoid actual suspension of Cohesion Fund appropriations in 2013;

– the political leverage effect of the suspension instrument, which had already proven useful in other situations; the clarifications that would have to be made to highlight the preventive rather than punitive nature of this warning;

– the importance of avoiding linking this recommendation to the political problems currently encountered with Hungary;

– at the same time, the need for the Commission to apply the new instruments strictly and credibly to ensure the sustainability of Member States' public finances and the stability of the European economy, despite this unfortunate coincidence.

Mr REHN thanked the other Commission Members for their support for his work and said that he would keep them informed of progress in the excessive deficit procedures. He also confirmed that, as certain speakers had rightly pointed out, the potential measures concerning Cohesion Fund commitments would not have immediate consequences or even any practical consequence if the necessary decisions were taken and implemented by the Hungarian authorities. He said that the announcement of a possible suspension of commitments in 2013 should be seen more as a positive incentive than as a sanction. In the case of one euro-area Member State, the financial sanction would, however, be immediate.

In reply to requests concerning the need to ensure equal treatment between euro-area and non-euro-area Member States, he said that since the mechanisms were indeed different, the implementation arrangements were being looked at in order to ensure equal treatment.

He wound up by acknowledging the challenge he and the rest of the Commission faced in terms of communication, and not only in relation to Hungary. He asked his colleagues to be pragmatic and to continue with their explanations despite the initial reaction, which would certainly be hostile.

In response to the comments concerning the new procedure to adopt proposals on the excessive deficit procedures, the PRESIDENT said that this was a result of the enhanced powers given to the Commission Vice-President responsible for economic and monetary affairs and the euro, but he agreed that a discussion such as this one was useful.

As for the recommendation for a decision concerning Hungary, the PRESIDENT pointed out that it was a difficult but necessary decision; otherwise the Commission's role would be weakened. Referring to the unfortunate coincidence whereby Hungary was currently at the centre of several different controversies, he underlined the fact that the analyses behind the recommendation had been carried out objectively; five countries were affected by the excessive deficit procedure, while four had managed to get back on track within the deadlines laid down. Any other Member State in a comparable situation would be subjected to the same treatment. The Commission must comply with the principle of equal treatment, despite the fact that communicating this decision would prove particularly difficult.

He reiterated the need to state clearly that it was not possible to impose financial sanctions on Member States that did not belong to the euro area and that it was a question, in this case, of applying positive conditionality. He was convinced that Hungary would be able to take the necessary steps to remedy its excessive deficit, for instance under the future International Monetary Fund aid programme.

He restated the importance of distinguishing properly between the various problems currently involving Hungary and, for the Members, of ensuring targeted communication in their area of responsibility and avoiding any mixed messages. He stressed that it was also essential for everyone to support Mr REHN, and welcomed this very useful exchange of views.

Lastly, the PRESIDENT said that it was worth pointing out that the principle of sanctions had been introduced in the new provisions adopted on 13 December 2011 on economic governance ("the six-pack"), the objective of which was financial stability, the sustainability of public finances and the promotion of growth prospects.

The Commission took note of this information.

9.2. STATE OF PLAY IN NEGOTIATIONS ON THE INTERNATIONAL AGREEMENT FOR STRONGER ECONOMIC GOVERNANCE

The PRESIDENT presented the state of play in the negotiations on the international agreement for stronger economic governance in the European Union, and began by welcoming the rapid and constructive progress and the broad consensus reached on most aspects of the draft agreement at the second meeting of the group of experts held on 6 January. It was therefore realistic for a new version to be presented at political level at the end of next week, then at the Council (Economic and Financial Affairs) on 23 and 24 January, ahead of the informal meeting of the European Council on 30 January.

On reading the new version dated the evening before, 10 January, he was astonished to find that it did not go in the right direction, but was even a worrying step back on a number of points, which risked undermining the bases of an emerging consensus.

Against this background, he reiterated the five major principles that had been accepted in the previous versions, which had been set out by Commission departments in a document dated 29 December 2011, and to which he remained firmly attached, namely: (i) the need to avoid setting up a parallel structure of intergovernmental coordination of economic policy outside the framework of the European Union; (ii) the use of secondary European legislation in order to make certain aspects operational, for example the 'budget and economic partnership programme' to be submitted to the Member States subject to an excessive deficit procedure; (iii) the necessary balance to be sought between fiscal discipline on the one hand and growth and jobs on the other, which went hand in hand, bearing in mind that growth and jobs had to be stimulated by European instruments; (iv) a clause providing for the obligation to incorporate the international agreement into European law within a maximum of five years; and lastly (v) the unqualified approval of compliance with the Community method.

The PRESIDENT then highlighted a number of stumbling blocks, such as the title of the draft, in which 'agreement' (preferred by the Commission) had become 'treaty', which led to confusion in relation to the treaties of the European Union. He stressed in particular the serious problem caused by the fact that, for reasons that were still not clear, the new version of the draft agreement went back on points that had been more or less agreed or that formed the basis of a consensus. One such example was the deletion of provisions concerning the mandate of the euro-area summits and the possibility to invite the Heads of State or Government of countries that were not members of the euro area, and the right granted to the President of the European Parliament to take the floor at these meetings, which was the custom at European Councils.

The PRESIDENT underlined the Commission's clear position and supported the call by the European Parliament to obtain fair treatment for the institutions, and two further proposals by Parliament concerning the role of national parliaments and Eurobonds, which he suggested should be referred to in the international agreement's review clause, in accordance with the

Commission's Green Paper, without playing down the resistance raised by this option.

With regard to the mandate that a number of Member States wished to confer on the Commission in the international agreement to bring quasi-infringement procedures before the Court of Justice against Member States who did not transpose the debt-brake rule, lawyers were examining the possibility of participation by the Commission that would be compatible with the treaties and with its status as an independent institution.

He finished by raising two substantive problems that remained particularly controversial. First, the criticism that the 'golden rule' to be transposed into national law provided for stricter conditions than the existing six-pack concerning the authorised percentage of annual structural deficit, which was 1% compared to the rate of 0.5% of gross domestic product that had been accepted at the European Council on 9 December 2011. Second, the question of the reverse qualified majority that certain parties wished to see applied only to those Member States running an excessive public deficit and whose public debt was also above the 60% threshold, a position supported by the Commission, whereas at the European Council on 9 December, only the excessive debt criterion had been agreed.

He disagreed with the linkage that certain Member States still wanted to establish between the international agreement and the treaty on the European Stability Mechanism (ESM), contrary to the position defended by the Commission, which wanted a clear distinction between the two and the ESM Treaty to be finalised as quickly as possible.

The PRESIDENT concluded by regretting the sudden appearance of new difficulties in the negotiating process and by reaffirming the clear principles that the Commission would stand by, in particular the defence of the Community method. On this last point, he stressed the need for coordination with the European Parliament and hoped that the Member States would return to more consensual positions.

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

- it was pointed out that the Commission's preferred option, rather than an international intergovernmental agreement, had been to adopt a Community approach and seek an amendment to Protocol No 12 to the Treaty on the Functioning of the European Union, but the political circumstances at the time had made this impossible;

- there was general recognition of the shortcomings of the current draft agreement, but it was worthwhile shaping it into as effective an instrument as possible, in particular by allowing Member States to assume proper ownership of the rules it laid down; the Commission also needed to maintain a realistic and constructive attitude and ensure that the international agreement was incorporated into the European treaties as soon as possible;

- in view of the current economic situation it was important to contribute to a successful conclusion of the negotiations under way and to find the necessary compromises, particularly as regards the date for implementing the European Stability Mechanism;

- most speakers stressed the economic problems to be resolved in the short term, especially the key question of growth, and questions were asked about the Commission's progress in preparing proposals in this field;

- some speakers wanted the draft international agreement (i) to come up with a more effective response to the problems of the government debt crisis, (ii) in the short term to help bring forward the signing of the treaty on the European Stability Mechanism or make progress on the question of private sector involvement, and (iii) to avoid the creation of parallel structures or areas of potential controversy, in particular between the European institutions;

– it was suggested that the provision on inviting non-euro-area Member States to euro-area summits be reworded and that some means be devised of involving national parliaments more closely in the overall process by developing the Commission's dialogue with them and exchanging information;

– the agreement could, however, present an opportunity for the Commission to speed up work on secondary legislation on economic governance and assert the political role it should play in the economic government of Europe;

– regarding the financial transaction tax – also mentioned elsewhere – there was a need to help promote as broad a consensus as possible among the EU Member States.

Replying to these various comments, Mr REHN gave the clarifications that had been requested, while stressing the need to adopt the international agreement as soon as possible so that efforts could then be directed fully to the urgent matter of restoring growth. He suggested examining the possibility of introducing Article 3 of the agreement on the fiscal compact into European law. He felt the Commission should take a lead on the question of Eurobonds. It was a mistake to make a link between this agreement and the treaty on the European Stability Mechanism, which was crucial in order to obtain assistance from the International Monetary Fund and convince both the EU's international partners and the financial markets. He also felt that the firewall mechanisms should be clarified, including the amounts involved.

The PRESIDENT wound up the discussion by reiterating the Commission's five main economic priorities – resolving the crisis in Greece, recapitalising the banks, setting up firewalls, adopting measures to revive growth, which would shortly be the subject of a Commission debate ahead of the European Council, and implementing the new economic governance. He insisted that the Commission should therefore endorse the aims of the international agreement, which consisted of improving fiscal discipline, convergence and coordination.

However, he warned against any attempts to impose an intergovernmental model and evoked the risks of a divided Europe at a time when the need to restore confidence and revive growth was greater than ever. He called for vigilance throughout the process of negotiating the international agreement and praised the work done by the Commission's team of negotiators.

The Commission took note of this information.

9.3. EVALUATION OF THE SITUATION IN HUNGARY

The PRESIDENT returned to the concerns raised by the political and legal developments in Hungary in recent weeks and, more generally, the situation since Hungary's adoption of its new constitution in 2011.

He regretted the populist overtones of the political debate on how to respond to what some commentators were dubbing an attack by Hungary on fundamental rights and democratic checks and balances.

The PRESIDENT said it was important to spell out exactly what the Commission had done in the last few months: he himself had sent two letters expressing concerns about the compatibility of the Hungarian bank law and economic stability law with Union law and about the independence of the central bank. Meanwhile Ms REDING had written to express concern about the independence of the data protection authority, the retirement age for judges and, more generally, the reorganisation of the judiciary. Following the replies and comments from the Hungarian authorities the Commission departments were currently examining the compatibility of these provisions with Union law.

In his view, the Commission's position must be that the problem concerned the application of Union law: Member States were free to amend their constitution and their legislative arsenal, but the Commission for its part had a duty to examine their compatibility with the laws and principles of the Union.

In the light of the current political debate, he stressed the need to complete this analysis as soon as possible, given that Parliament had scheduled a plenary debate for the following week, and to take any decision on infringements at the Commission meeting in Strasbourg on Tuesday 17 January. The lack of confidence in Hungary among investors and markets was another reason why rapid action was needed.

Ms REDING shared the PRESIDENT's concern about the compatibility of the new legislation with Union law and had been expressing these concerns to the Hungarian authorities since the beginning of December.

Three points were currently the subject of legal scrutiny by her officials: (i) the early retirement of a large number of judges which might be incompatible with Directive 2000/78/EC which prohibited any form of age discrimination; (ii) the independence of the judiciary in applying and implementing Union law, given the concentration of powers in the hands of the president of the new judicial authority; and (iii) the independence of the data protection authority following the replacement of the office of the data protection commissioner by a new authority that could be dismissed by decision of the prime minister and the president.

Ms REDING stressed the Commission's role as guardian of the Treaties, as acknowledged by the Hungarian authorities, which had recently indicated their willingness to review their legislation if necessary. However, only real changes to the points in question could properly allay the Commission's concerns, and draft letters of formal notice were currently being examined by the Legal Service at the initiative of her department and Mr REHN's (as regards the independence of the Hungarian central bank). She was prepared to act quickly as soon as the legal analysis was ready.

Mr REHN referred to concerns about the situation in Hungary on two levels: the framework of European values at systemic level, and a series of specific problems at sectoral level. He highlighted two points in his particular area of responsibility: (i) the infringement proceedings currently being prepared on the independence of the Hungarian central bank; and (ii) the precautionary credit programme Hungary had requested from the International Monetary Fund and the European Union.

As regards the first case, he noted that the independence of the central banks was a cornerstone of the Treaty and explained that the new Hungarian law governing its central bank infringed this principle. The infringement had been denounced by the Commission back in 2010 and confirmed by a European Central Bank study. His officials were drafting the letter of formal notice, and a proposal to initiate infringement proceedings should be put to the Commission at its next meeting.

As regards the precautionary financial assistance requested last November, he mentioned the ongoing contacts following the interruption of the joint mission before Christmas and insisted that these were informal discussions which by no means signalled the start of official negotiations. In any case, political conditions would have to be attached to any new assistance.

He concluded by saying that Hungary must be given an opportunity to take the measures necessary to return to an acceptable situation in terms of respect for Union law, but at the same time action should not be ruled out in the long term.

Ms KROES mentioned the issues of protection of media freedom and pluralism, which had been jeopardised by the new media law of 2010. She referred to the creation in October 2011 of a high-level group to examine the measures needed to ensure media freedom and pluralism in Europe, and the judgment of the Hungarian constitutional court on 19 December 2011 which confirmed the Commission's concerns regarding the extent of the restrictions imposed by the new law on the freedom of the print media.

She had called on the Hungarian authorities to comply with this judgment and implement it immediately, but felt that the Commission should go further and demand that media pluralism be guaranteed more systematically in the attribution of frequencies, that the powers of the media authority be limited outside the field of audiovisual services and that more proportionate penalties be introduced for any infringements of the law on the media, among other things in order to avoid the effects of self-censorship.

During this discussion the Commission also raised the following points:

– the possibility of applying financial pressure by setting political conditions for the payment of the assistance requested, an option being considered by the International Monetary Fund;

– the case for commencing infringement proceedings in some of the instances mentioned, where Union law was found to have been infringed;

– the importance of not ruling out any possible course of action at this stage, including the use of Article 7(1) of the Treaty on European Union, although such a drastic step would require careful consideration given the lasting damage it would cause to relations between the Member State concerned and the European institutions;

– the dossiers concerning Hungary that were pending in the state aid and internal market fields;

– the view that if Hungary were still a candidate country it would not pass the test of respect for the Copenhagen criteria;

– the Commission's responsibility to ensure compliance with the treaties and the importance of a response that was commensurate with the seriousness of the infringements committed in order to safeguard the institution's credibility.

The PRESIDENT noted that this matter would be discussed again at the next Commission meeting, when formal decisions could be taken. He insisted that the Commission must fully assume its role as guardian of the treaties and complete its legal analysis in a fair and objective manner before the next meeting.

He said that the statement to be released to the press that day would highlight the Commission's concerns regarding the new Hungarian constitution and signal its intention of using its full powers to analyse compatibility with Union law and to bring infringement proceedings where necessary.

He ended by pointing out that an initiative under Article 7 of the Treaty on European Union was under way in the European Parliament. It was essential that the Commission react and its reaction was awaited by the Member States.

The Commission took note of this information.

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The meeting closed at 12.34.