EUROPEAN COMMISSION

SECRETARIAT-GENERAL

PV(2012)1999 final

Brussels, 8 May 2012

<u>MINUTES</u>

of the 1999th meeting of the Commission

held in Brussels

(Berlaymont)

on Wednesday 25 April 2012

(morning)

TABLE OF CONTENTS

<u>Single sitting</u>: Wednesday 25 April 2012 (morning)

The sitting opened at 09.09 with Mr Barroso, President, in the chair.

<u>Present</u>:

Mr BARROSO	President	
Ms REDING	Vice-President	Items 7 and 8
Mr ALMUNIA	Vice-President	
Mr KALLAS	Vice-President	
Ms KROES	Vice-President	
Mr ŠEFČOVIČ	Vice-President	
Mr REHN	Vice-President	
Mr PIEBALGS	Member	
Mr BARNIER	Member	
Ms VASSILIOU	Member	Items 1 to 8 (in part)
Mr ŠEMETA	Member	
Mr DE GUCHT	Member	Items 7 and 8
Mr DALLI	Member	
Mr LEWANDOWSKI	Member	
Ms DAMANAKI	Member	
Ms GEORGIEVA	Member	Items 7 and 8
Mr OETTINGER	Member	Items 7 (in part) and 8
Mr HAHN	Member	
Ms HEDEGAARD	Member	
Mr FÜLE	Member	
Mr ANDOR	Member	Items 7 (in part) and 8
Ms MALMSTRÖM	Member	
Mr CIOLOŞ	Member	

Absent:

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

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

Mr CEBALLOS BARÓN	A member of Baroness ASHTON's staff
Ms SUPERTI	Deputy Chef de cabinet to Mr TAJANI
Mr VANDENBERGHE	Chef de cabinet to Mr POTOČNIK
Mr BELL	Chef de cabinet to Ms GEOGHEGAN-QUINN

The following also sat in:

Mr LAITENBERGER	Chef de cabinet to the PRESIDENT	Items 7 (in part) and 8
Mr FRUTUOSO DE MELO	Deputy Chef de cabinet to the PRESIDENT	Items 1 to 7
Mr ROMERO REQUENA	Director-General, Legal Service	
Mr PAULGER	Director-General, DG Communication	Items 7 (in part) and 8
Mr DOENS	Head of the Commission Spokesperson Service	Items 1 to 7
Ms AHRENKILDE HANSEN	Commission Spokeswoman	
Mr THEBAULT	Head of the Bureau of European Policy Advisers	Item 7 (in part)
Ms MARTÍNEZ ALBEROLA	Adviser in the PRESIDENT's Office	Item 8
Mr DANDOY	A member of the PRESIDENT's staff	Items 1 to 7
Ms SKURATOWICZ	A member of the PRESIDENT's staff	Item 8
Mr SELMAYR	Chef de cabinet to Ms REDING	Item 8
Mr PESONEN	Chef de cabinet to Mr REHN	Item 8
Mr LEMAÎTRE	Chef de cabinet to Mr LEWANDOWSKI	Items 1 to 7
Ms CHOMICKA	A member of Mr LEWANDOWSKI's staff	Items 1 to 7
Mr JOUANJEAN	Director-General, DG Budget	Items 1 to 7
Mr LEARDINI	Secretariat-General	Items 1 to 7

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

1. AGENDA
(OJ(2012)1999/3)

The Commission took note of that day's agenda.

2. WEEKLY MEETING OF CHEFS DE CABINET
(RCC(2012)1999)

The Commission considered the Secretary-General's report on the weekly meeting of Chefs de cabinet held on Monday 23 April.

3. APPROVAL OF THE MINUTES AND SPECIAL MINUTES OF THE 1997TH MEETING OF THE COMMISSION (4 APRIL) AND THE MINUTES OF THE 1998TH MEETING (18 APRIL)
(PV(2012)1997; PV(2012)1997, PART II; PV(2012)1998)

The Commission approved the minutes of its 1997th meeting, and decided to hold over for one week approval of the minutes of its 1998th meeting.

4. INTERINSTITUTIONAL RELATIONS

4.1. LEGISLATIVE MATTERS

i) Administrative cooperation through the Internal Market Information System ('the IMI Regulation') (Regulation) – BIELAN report – 2011/0226 (COD)

The Commission approved the line set out in SI(2012)162/2.

ii) Permitted uses of orphan works (Directive) – GERINGER DE OEDENBERG report – 2011/0136 (COD)

The Commission approved the line set out in SI(2012)161.

4.2. RELATIONS WITH THE EUROPEAN COUNCIL AND THE COUNCIL

iii) Programming of Council business
(SI(2012)163)

The Commission took note of the information in SI(2012)163 on the Council meetings between 26 April and 9 May.

4.3. RELATIONS WITH PARLIAMENT

iv) Results of the April part-session of Parliament
(SP(2012)273; SP(2012)274)

The Commission took note of the information in SP(2012)273 and SP(2012)274 on the proceedings of the part-session of Parliament held in Strasbourg from 17 to 20 April.

v) Action to be taken on Parliament's legislative opinions and resolutions of a legal nature
(SP(2012)290)

The Commission decided to empower the Commission Members responsible for the sectors in question, in agreement with the PRESIDENT and Mr ŠEFČOVIČ and, if necessary, with the other Members concerned, to adopt the amended proposals for transmission to Parliament and the Council, as set out in SP(2012)290, drawn up following the April part-session of Parliament, the contents of which were noted.

5. WRITTEN PROCEDURES, EMPOWERMENT AND DELEGATION OF POWERS

5.1. WRITTEN PROCEDURES APPROVED (SEC(2012)251 ET SEQ.)

The Commission took note of the Secretariat-General’s memoranda recording decisions adopted between 16 and 20 April.

5.2. EMPOWERMENT (SEC(2012)252 ET SEQ.)

The Commission took note of the Secretariat-General’s memoranda recording decisions adopted between 16 and 20 April.

5.3. DELEGATION AND SUBDELEGATION OF POWERS (SEC(2012)253 ET SEQ.)

The Commission took note of the Secretariat-General's memoranda recording decisions adopted under the delegation and subdelegation procedure between 16 and 20 April, as archived in e-Greffe.

5.4. SENSITIVE WRITTEN PROCEDURES (SEC(2012)254 AND /2)

The Commission took note of the sensitive written procedures for which the time limit expired between 23 and 27 April and of the finalisation written procedures initiated following the weekly meeting of Chefs de cabinet on 23 April.

6. ADMINISTRATIVE AND BUDGETARY MATTERS (SEC(2012)255)

ADMINISTRATIVE MATTERS
(PERS(2012)61)

6.1. SECRETARIAT-GENERAL – APPOINTMENT OF AD14/15 DIRECTOR (PERS(2012)3 TO /3)

The Commission had before it applications under Article 29(1)(a)(i) and (iii) of the Staff Regulations for the post of Director, 'Smart Regulation: Evaluation, Impact Assessment and Application of EU Law', in the Secretariat-General (PERS(2012)3).

It took note of the opinions of the Consultative Committee on Appointments of 12 and 29 March (PERS(2012)3/2 and /3).

The Commission proceeded to consider the applicants' qualifications for the post. It also considered their ability, efficiency and conduct in the service. On a proposal from Mr ŠEFČOVIČ, in agreement with the PRESIDENT, it then decided to appoint Ms Elizabeth GOLBERG to the post.

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

6.2. SECRETARIAT-GENERAL – APPOINTMENT OF AD14/15 DIRECTOR (PERS(2012)9 TO /3)

The Commission had before it an application under Article 29(1)(a)(i) and (iii) of the Staff Regulations for the post of Director, 'Relations with the European Council/Council, International Relations and G8/G20 Co-ordination', in the Secretariat-General (PERS(2012)9).

It took note of the opinions of the Consultative Committee on Appointments of 27 January and 23 February (PERS(2012)9/2 and /3).

The Commission proceeded to consider the applicant's qualifications for the post. It also considered her ability, efficiency and conduct in the service. On a proposal from Mr ŠEFČOVIČ, in agreement with the PRESIDENT, it then decided to appoint Ms Sabine WEYAND to the post.

This decision would take effect on 1 May 2012.

6.3. *AMENDMENT OF ORGANISATION CHARTS – 2012 SPRING PACKAGE (SEC(2012)266)*

Having noted the information in point 3 of PERS(2012)61, the Commission took note of the changes to the organisation charts of DG Communication and DG Maritime Affairs and Fisheries, as set out in SEC(2012)266, which would be adopted at a later date by simplified procedure.

6.4. *DG AGRICULTURE AND RURAL DEVELOPMENT – CHANGES TO ORGANISATION CHART (SEC(2012)266; SEC(2012)267)*

The Commission took note of the information in point 1 of SEC(2012)266 and, on a proposal from Mr ŠEFČOVIČ, in agreement with the PRESIDENT and Mr CIOLOŞ, decided:

– to abolish an *hors classe* adviser function and the task force in charge of developing new measures to improve future stability in the agricultural sector;

– to create a temporary task force for research and innovation, for a duration of one year, to be headed by Mr Nikiforos SIVENAS, Principal Adviser in DG Agriculture and Rural Development;

– to review the organisation chart of DG Agriculture and Rural Development in the course of 2013 with a view to reducing the number of Directorates by one;

– to adopt the new organisation chart set out in SEC(2012)267.

These decisions would take effect on 1 May 2012.

6.5. *DG ECONOMIC AND FINANCIAL AFFAIRS – CHANGES TO ORGANISATION CHART (SEC(2012)266; SEC(2012)268)*

The Commission took note of the information in point 1 of SEC(2012)266 and, on a proposal from Mr ŠEFČOVIČ, in agreement with the PRESIDENT and Mr REHN, decided:

– to increase by one the number of structural adviser functions in DG Economic and Financial Affairs;

– to adopt the new organisation chart set out in SEC(2012)268.

These decisions would take effect on 16 May 2012.

After the reorganisation, the total number of adviser functions in DG Economic and Financial Affairs would increase from 16 to 17, the number of units would remain unchanged and the average number of staff covered by the Staff Regulations per unit would remain at 14.

6.6. *DG HUMAN RESOURCES AND SECURITY – CHANGES TO ORGANISATION CHART (SEC(2012)266)*

The Commission took note of the information in point 1 of SEC(2012)266 and, on a proposal from Mr ŠEFČOVIČ, in agreement with the PRESIDENT, decided to create a principal adviser function in DG Human Resources and Security.

This decision would take effect retroactively from 1 January 2011.

6.7. DG INFORMATION SOCIETY AND MEDIA – CHANGES TO ORGANISATION CHART (SEC(2012)266; SEC(2012)269; PERS(2011)116; PERS(2011)157)

The Commission took note of the information in point 1 of SEC(2012)266 and, on a proposal from Mr ŠEFČOVIČ, in agreement with the PRESIDENT and Ms KROES, decided:

– to close, with immediate effect and without making an appointment, the internal, interinstitutional and external selection procedures COM/2011/1455, COM/2012/81 and COM/2012/10322 for the post of Director, 'Electronic Communications Policy', in the Directorate-General for Information Society and Media (PERS(2011)116 and PERS(2011)157);

– to change the name of the Directorate-General for Information Society and Media to the Directorate-General for Communications Networks, Content and Technology and to give it the acronym 'CNECT';

– to abolish Directorate INFSO.S, 'General Affairs', and close down a total of six units;

– to create two temporary task forces at unit level: 'Internet Policy Development', with an envisaged end date of 31 December 2013, and 'Sectoral Strategy Needs', with an envisaged end date of 31 December 2014;

– to increase the number of temporary adviser functions by four until the end of 2015 at the latest;

– to adopt the new organisation chart set out in SEC(2012)269.

The decisions concerning the organisation chart would take effect on 1 July 2012.

After the reorganisation, the total number of adviser functions in

DG Communications Networks, Content and Technology would increase from 7 to 11, the number of units would fall from 52 to 48 and the average number of staff covered by the Staff Regulations per unit would be 18.

7. STATEMENT OF ESTIMATES OF THE COMMISSION FOR 2013 – PREPARATION OF THE 2013 DRAFT GENERAL BUDGET OF THE EUROPEAN UNION (SEC(2012)270 AND /2, DOCUMENTS I, II, III, IV, IV BIS; RCC(2012)38; RCC(2012)41)

The PRESIDENT introduced the discussion on the 2013 draft budget. He referred to Article 323 of the Treaty on the Functioning of the European Union which states that ‘the European Parliament, the Council and the Commission shall ensure that the financial means are made available to allow the Union to fulfil its legal obligations in respect of third parties’. He explained that the Commission should take a strong political position on the sensitive issue of the budget for several reasons. Firstly, it should show that it was fully aware of the consequences of the economic and financial crisis and that it understood the messages being sent by the Member States. It was also desirable to demonstrate to the other institutions that there was a sound political, economic and budgetary logic behind the draft budget. He added that the Commission must indicate that it was submitting a realistic proposal based on fair estimates and that the European budget was all the more important as a tool for investing in economic recovery given that practically all the Member States were being obliged to cut expenditure and investment.

Once all these factors had been taken into account, the PRESIDENT considered that the Commission’s aim as regards commitment appropriations must be to limit the increase in these appropriations to the estimated inflation rate of 2%. The effect of this was to freeze the volume of these appropriations in real terms and avoid the risk of a massive outflux of payments to be made under future budgets when the Member States would still be consolidating their public finances. He felt that the main increases should be in the areas where the European Union needed them most.

As regards payment appropriations for 2013, the PRESIDENT submitted the following strategic considerations to the Commission Members: (i) the priority to be given to the quality of expenditure to ensure that it contributed directly to the general and sustainable recovery of the European economy; (ii) the need to focus efforts on budgetary headings that most stimulated growth and employment; (iii) the need for a realistic increase in payment appropriations. This increase was at present 6.8% with respect to 2012, which allowed prior legal commitments to be honoured. To those who doubtlessly wished to go further, he pointed out the difficulty of obtaining such an increase from the Council. He regretted that these proposals by the Commission had been leaked in the media, which could have led to the risk of pressure being brought to bear; (iv) the use, where necessary, of instruments to make up the shortfall between the legal obligations and the amounts allocated by the budgetary authority, for example amending budgets; and lastly, (v) the freeze on the Commission's administrative budget in nominal terms, with an increase under the rate of inflation and a 1% reduction in staff.

The PRESIDENT then gave the floor to Mr LEWANDOWSKI, who explained in more detail the figures to be submitted to the budgetary authority and invited the Commission Members to hold a debate in a spirit of collective responsibility.

Mr LEWANDOWSKI explained the 2013 draft budget with the help of a PowerPoint presentation. He started by emphasising that the proposal being submitted that day was both realistic, given the current climate of budgetary austerity, and responsible, since it suggested acceptable amounts while stressing priority investments to boost growth and job creation. He also drew attention to the moderate increase in total commitment appropriations, which was still in line with the estimated inflation rate of 2%, to the proposed 3.5% increase in commitment appropriations under heading 1 of the financial framework in the two key areas of competitiveness and cohesion in order to encourage a return to sustainable growth, to the efficiency gains in less effective programmes, and to the cuts in administrative expenditure. He said that the increase of 6.8% in payment appropriations was largely justified by the stage that had now been reached in the financing of European Union projects, as the end of the multiannual budget cycle approached. He noted the similar trend in payment appropriation requirements in the periods 2000-2006 and 2007-2013.

With the aid of diagrams, Mr LEWANDOWSKI presented an overview of the main budgetary developments over the current multiannual financial framework, in particular in 2012. He explained the role of the stock of outstanding commitments and the gap between commitment appropriations and payment appropriations, i.e. the commitments outstanding of €207 billion which had been carried over and would determine the rate of payments in the draft budget for 2013, the last year of the current financial cycle. He noted that the low level of payments made at the end of 2011 had increased the commitments outstanding from €194 billion to €207 billion and that an additional €5 billion could have been paid in 2011 if the appropriations had been sufficient for the cohesion actions. The 2012 budget was lower than the implementation potential of 2011 and because of these situations in the 2011 and 2012 budget years there was a lot of catching up to do in 2013.

The 2013 draft budget provided for the financing of two new initiatives that would have a leverage effect on growth. These were the pilot phase of the European bonds to finance infrastructure ("Project Bonds") and the new risk-spreading instrument. He also pointed out that underperforming programmes and actions had been adjusted and that the gap between commitment appropriations and payment appropriations would be reduced from €18 billion to €13 billion between 2012 and 2013.

He went on to explain the proposed allocation of financing in the 2013 draft budget and the importance of sub-headings 1A and 1B on competitiveness and cohesion to boost growth and employment, with an increase of 17.7% in payment appropriations for the first and of 11.7% for the second, as well as the importance of solidarity and migration. He also detailed the breakdown of commitments in favour of the flagship initiatives of the Europe 2020 Strategy, in particular those relating to innovation, energy efficiency and industrial policy, which benefited from the biggest increases.

Turning to the allocation for the human resources of the Commission and the agencies, which was reduced by 1% in accordance with the target set in the future multiannual financial framework, Mr LEWANDOWSKI emphasised in particular the Commission's staff reduction drive in 2013 (357 posts). With the aid of a table, he noted that few other European institutions were making such significant efforts to reduce staff as the Commission. He also detailed the breakdown of the administrative expenditure in Heading 5 of the financial framework.

In conclusion, he pointed out that the data on the Commission's human resources in the 2013 draft budget already included the needs linked to Croatia, which would not be joining until 1 July 2013. Croatia's accession would require 125 new posts to meet the Union's obligations. An adjustment to the multiannual financial framework would be proposed, together with an amending budget, once the ratification process had been completed.

During the ensuing discussion the following main points were raised:

- support in principle for the approach adopted in preparing this draft budget, although serious difficulties had already arisen – and would continue to arise – in providing the finance planned under the Structural Funds, which was in particular demand because of the economic crisis, as the amount earmarked would not be enough to meet all the Member States' requests; the danger that the budget might therefore be seen as failing to meet real needs;

- similarly, given the planned allocation for agriculture, the impossibility of honouring all the commitments made with regard to direct payments and rural development aid, and the need to envisage budgetary adjustments in the course of 2013;

- a reminder that one of the chief characteristics of the Union budget was its focus on investment, and the importance of ensuring that EU funds continued to serve as a guaranteed contribution to the national resources spent on investment;

- at the same time, the observation that it was vitally important to prevent a repeat of the under-implementation of the budget in 2011 and that the Commission must not be placed in the position of having to ask for more funds for 2013;

– concern about the growing gap between commitment and payment appropriations;

– on the communication front, the need to explain clearly that, rather than benefiting the institutions, the EU budget served to help those working on the ground in the Member States, and to underline in this respect the difference between the EU budget and national budgets;

– the importance therefore of highlighting the efforts being made to curb administrative expenditure and reduce staff in order to favour spending on social and agricultural policy, employment and solidarity; very specific examples would have to be cited;

– as regards the funding of the ITER project, a reminder that the transfer from the budget line for information and communication technologies was not prompted by underperformance in that sector; support for a substantial European budget for major projects like these which would shape the Union's future;

– concerns about how this draft budget would be received in the Member States which were net contributors, given the general economic context;

– conversely, the support it should receive from net beneficiary countries where the budgetary efforts made would stimulate growth and employment;

– given the need to reconcile the various constraints mentioned, the fact that the proposal presented had struck the right balance, as it took into account the workings of the EU budget in the final year of the current programming period and the reluctance of net contributors to see an increase in their payments at a time of budgetary austerity;

– the observation that the coexistence in 2011 of a shortfall in payments and a budgetary surplus pointed to a procedural weakness which would have to be rectified by paying more attention in future to the scope for internal transfers;

– the importance of making it clear straight away to the Member States and the

European Parliament that this was a tight budget and that an amending budget might be needed in the course of 2013 in order to ensure that the Member States' repayment requests could be met.

Mr LEWANDOWSKI began by acknowledging that communication on this issue would be difficult, given the complexity and technical nature of the budget; two points that would be particularly tricky to explain were the fact that a shortfall in funds for certain payments had coincided with a surplus and that it was impossible to make transfers immediately. He pointed to certain fields in which mandatory payments had to be made. As regards the reception to be expected in net contributor countries, he noted that today's payments were the result of commitments agreed and approved in the past. The amending budget should not be seen as the solution to the problem, as it would be just as difficult to draw up as the initial budget. He ended by thanking his colleagues for their suggestions on how to communicate on this dossier.

The PRESIDENT thanked the Commission Members for their contributions and their spirit of cooperation and was pleased that the discussion had shown overall support for the proposal. He noted the different reception to be expected from Member States, depending on whether they were net contributors to the budget or beneficiaries; it was in fact the coexistence of these two situations that made the exercise so difficult. He also stressed the importance of presenting examples that fitted the different national contexts. He pointed out, however, that the net contributors also received payments from the Union budget and in some cases were exerting strong pressure for these payments to continue while openly criticising European public expenditure.

What was needed in this context was a frank approach, and he stressed in particular that the Commission was presenting the tightest possible budget, as it knew full well that any further tightening would produce a budget that was insufficient to meet the objectives set and honour the commitments made and, what is more, would then be criticised for a lack of realism and an inability to provide investment.

Noting the growing opinion in the Member States that austerity measures were not enough to put the economy back on track, the PRESIDENT stressed that this budget represented an investment in growth, jobs and solidarity. Also worth emphasising was the reduction in administrative spending, and it was important to explain that the proposed budget was the only way for the Union to honour the commitments that had been made. He acknowledged that this was a difficult task, but the one facing national governments was no less arduous. On the question of internal flexibility, he confirmed that the terms of the global transfer would be discussed at a Commission meeting in October.

He also asked the Commission Members to show the utmost restraint in discussing the draft budget and to avoid any comments in connection with current or forthcoming elections in the Member States.

Winding up, the PRESIDENT noted the Commission's support for the proposed statement of estimates for the 2013 financial year, and its agreement that the following amendment be made to the English language version of SEC(2012)270/2, Document I:

– **on page 27, in subsection 3.2.4 ('*Payment appropriations for heading 1b*'), the second paragraph under '*2007-2013 programmes*' was amended to read as follows:**

"*Payment appropriations for the 2007-2013 programmes, relating to the ERDF, ESF and the Cohesion Fund, have been calculated on the basis of the historical payment rates against the corresponding commitment tranches of the 2000-2006 programming period (details are provided in Annex X). This estimate strictly relates to 2013 and assumes that payment needs from previous years will have been covered. If this were not the case, the proposed level of payment appropriations for 2013 would in all likelihood not suffice. The level of payment appropriations for 2013 is affected by the fact that the 2010 tranche is the last to be submitted to an 'n+3' rule: Member States that have benefitted from the additional year for the automatic decommitment rule will therefore have to meet the end-2013 deadline for two annual commitment tranches (2010 and 2011 tranches).*"

Having taken note of the outcome and conclusions of the discussion, and subject to inclusion of the above amendment, the Commission:

- adopted the statement of estimates as set out in documents I, II, III and IV, distributed as SEC(2012)270/2, and document IV bis, distributed as SEC(2012)270, as a basis for drawing up the draft general budget of the European Union for the 2013 financial year;

- authorised Mr LEWANDOWSKI, Member of the Commission responsible for the budget and financial programming, to send documents I, II and III to the European Parliament and the Council, for information, in the three procedural languages;

- empowered Mr LEWANDOWSKI, Member of the Commission with responsibility for the budget and financial programming, in agreement with the PRESIDENT, to finalise documents I, II, III, IV and IV bis, distributed as SEC(2012)270 and /2, to convert documents I, II and III into the corresponding volumes of the draft general budget for the 2013 financial year, taking into account the outcome of the meeting of the Advisory Committee on Own Resources to be held on 21 May, and to send them to the European Parliament and the Council and, for information, to the national parliaments;

- empowered Mr LEWANDOWSKI, Member of the Commission with responsibility for the budget and financial programming, in agreement with the PRESIDENT and in accordance with Article 314(1) of the Treaty on the Functioning of the European Union, to consolidate the draft general budget for the 2013 financial year on the basis of the latest information supplied by the other institutions concerning their own statements of estimates, which might contain different estimates.

8. MONITORING THE APPLICATION OF EUROPEAN UNION LAW

8.1. STATE AID – INDIVIDUAL CASES (SEC(2012)258; RCC(2012)40)

The Commission adopted the decisions in SEC(2012)258.

8.2. STATE AID – HORIZONTAL DOSSIER

Commission Regulation on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid granted to undertakings providing services of general economic interest (C(2011)9381 to /6; RCC(2012)40)

The Commission:

- adopted the Regulation in C(2011)9381/6;
- decided to send it, for information, to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions;
- decided to publish it in the Official Journal of the European Union in order to inform the Member States and interested parties.

8.3. INFRINGEMENTS – URGENT INDIVIDUAL CASES (SEC(2012)276)

- **2012/2011 – HU – Infringement of the principle of an independent data protection supervisory authority**
  Decision: referral to the Court under Article 258 TFEU
- **2012/2012 – HU – Fixed retirement age for judges, prosecutors and notaries**
  Decision: referral to the Court under Article 258 TFEU

The PRESIDENT opened the discussion on the infringement procedures initiated against Hungary, stating that the Commission had now completed its analysis of the Hungarian authorities' replies to the various infringement proceedings and asking Ms REDING and Mr REHN to present their conclusions.

Before giving them the floor, he reported to the Commission on his meeting the day before with the Hungarian Prime Minister, Viktor Orbán, which he felt had been a constructive and frank exchange of views. Following their meeting, Mr Orbán's spokesman had issued a statement confirming the Hungarian Prime Minister's commitment to introduce prompt and comprehensive measures on the independence of the Hungarian central bank and, where necessary, to comply with the judgments of the Court of Justice of the European Union regarding the independence of the data protection supervisory authority and the retirement age for judges as well as to adopt measures aimed at meeting the concerns raised by the Council of Europe's Venice Commission in its opinion on the independence of the judiciary in Hungary.

He also mentioned his talks with the Secretary-General of the Council of Europe, Thorbjørn Jagland, who had told him about the progress made, in cooperation with the Hungarian authorities, on resolving the fundamental questions raised by the Venice Commission. He felt that all the elements were now in place to accede to Hungary's request to open negotiations on preventive aid aimed at stabilising its balance of payments.

Ms REDING reported on the intense discussions between the Commission and the Hungarian authorities on the infringements in question, observing that at the end of the talks it had already been possible to make a number of changes to the Hungarian legislation to bring it into line with Community law. She then went on to mention the issues on which no progress had been possible and which she proposed to refer to the Court of Justice of the European Union, in particular the question of the independence of the data protection supervisory authority and the reduction in the retirement age for Hungarian judges, prosecutors and notaries from 70 to 62.

She pointed out first of all that, under the terms of Directive 95/46/EC on data protection, Member States must establish a data protection supervisory authority capable of acting with complete independence. She also said that the independence of this authority was guaranteed by both Article 16 of the Treaty on the Functioning of the European Union and Article 8 of the Charter of Fundamental Rights.

She felt that Hungary had provided a partial response to the concerns expressed by the Commission by amending its legislation, on 3 April 2012, so as to guarantee the independence of the new Hungarian data protection authority; she pointed out however that, when setting up this new authority, Hungary had put an end prematurely to the term of office of the Data Protection Commissioner, who had been appointed for six years. She stressed that protection against removal during the term of office was part of the personal independence of the data protection supervisor, which was a key principle of European law in this area, and she therefore proposed to refer Hungary to the Court of Justice for violating this principle.

As regards the reduction in the retirement age for Hungarian judges, prosecutors and notaries, Ms REDING noted that this measure would lead to the early retirement of 236 judges in 2012, 10% of their total number. She added that the Commission had examined the conformity of this measure with European legislation on equal treatment in employment, which also covered changes to the mandatory retirement age for a specific profession without an objective justification. She said that Hungary had not provided an objective or coherent justification for its measures and she therefore proposed that the Commission should bring the case before the Court of Justice, and that it should ask the Court to deal with the matter in an expedited procedure.

Lastly, on the independence of the Hungarian judiciary, she stated that three administrative letters had been sent to Hungary and she expressed her concern on two particular aspects: the power of the President of the National Judicial Office to designate a court in a given case and the possibility of transferring judges to another court without their consent; these concerns had been entirely vindicated by the opinion of the Council of Europe's Venice Commission on the organisation and administration of Hungarian courts. She noted that the Hungarian authorities had recently tabled amendments to the laws in question with a view to meeting these concerns, and added that, while these measures were a step in the right direction, the situation remained unsatisfactory and did not guarantee the right of citizens and companies to an effective remedy before a tribunal as provided for by Article 47 of the Charter of Fundamental Rights; she also mentioned the fact that this legislation had an adverse effect on the application of Union law in Hungary.

In view of the fact that the amendments to the legislation concerned were currently under discussion in the Hungarian Parliament and the Council of Europe, Ms REDING felt it would be wiser at this stage not to initiate infringement proceedings in relation to the independence of the Hungarian judiciary. Nevertheless, this matter would, she said, be closely monitored by her departments to make sure that the Hungarian measures were compatible with Union law. She therefore reserved the right to propose that the Commission also open infringement proceedings regarding the independence of the judiciary if it emerged that independent Hungarian courts were not applying EU law effectively.

She also announced that before the summer she would be organising a meeting with the network of supreme court presidents in the European Union at which the Hungarian Minister of Justice, the President of the National Judicial Office, the President of the National Judicial Council and judges from the Hungarian Constitutional Court and Supreme Court would be invited to explain the current position of the judiciary in Hungary.

Ms REDING concluded her remarks by thanking the PRESIDENT and Mr REHN for their close cooperation, and the Legal Service for the quality of its analysis of these complicated dossiers.

Mr REHN, for his part, reported to the Commission on the infringement proceedings relating to the independence of the Hungarian central bank and the preventive assistance to Hungary to stabilise its balance of payments.

On the subject of the infringement proceedings relating to the independence of the Hungarian central bank, Mr REHN began by stating that Hungary had provided written and oral explanations and political undertakings which answered the questions raised by the Commission, promising specifically to amend the law on the central bank as regards the matter of the oath, the participation of the Minister of Finance in the Monetary Council and the cardinal law on the merger of the Hungarian National Bank with the supervisory authority. The Hungarian authorities had also undertaken to make consultation of the European Central Bank compulsory in matters falling under the latter's jurisdiction and to halt the practice of systematically criticising the Hungarian central bank's decisions in press releases. On the question of the salary cut for the Governor of the Hungarian central bank, which was an essential aspect of the infringement proceedings, Mr REHN said that this was apparently not an *ad personam* measure but part of a more general policy of salary cuts. In the light of these commitments and findings, he proposed terminating the infringement proceedings, provided Hungary adopted the legislation on the measures it had notified.

Mr REHN also referred to the preparations for starting negotiations on the programme of preventive balance of payments assistance. The independence of the Hungarian central bank was an essential pre-condition for starting the formal negotiations. The independence of the judiciary was another condition imposed on Hungary before negotiations on balance of payments assistance could begin, because of its impact on the economy. In the light of the commitments made by Hungary in these areas, Mr REHN proposed that these negotiations be formally opened and emphasised that the assistance programme was subject to full political conditionality. The outstanding issues relating to the independence of the Hungarian central bank would be dealt with in the working group made up of the European Central Bank, the International Monetary Fund, the Commission and Hungary. Discussions were under way between the Hungarian authorities and the Venice Commission on the amendments to be made to the legislation on the administration of justice. Mr REHN noted that a satisfactory conclusion to these discussions would be a positive sign for the negotiations. He concluded by expressing satisfaction at the progress made by Hungary on the measures relating to the independence of its central bank. In his view, initiating infringement proceedings in this area had started to produce results.

Ms KROES then took the floor and expressed her concern about the media law in Hungary, where very little progress had been made. In this connection she referred to the work of the Council of Europe and the preliminary conclusions of its report, which showed that Hungary's law did not protect the media, in particular because it exposed the authority responsible for supervising the media to political interference, imposed provisions on information content that were vague yet binding and weakened the protection of sources.

In her view, the Hungarian authorities should explicitly seek the Council of Europe's opinion on whether Hungary's media law respected fundamental values. She also wanted a public commitment from Hungary to implement the Council of Europe's recommendations in its forthcoming report, and stressed that the adoption of the amendments to the media law should be a condition for the successful completion of the negotiations on preventive financial assistance.

She concluded by saying that the restrictions on press freedom and freedom of expression violated citizens' rights and affected the economy and investment in Hungary. In her view, the Commission should make full use of its political authority and insist that Hungary respect fundamental values, in particular the freedom of the press, as a condition for concluding the negotiations on preventive financial assistance.

The Commission then held a discussion during which the following points were highlighted:

- the importance for the Commission's credibility of being consistent as regards insisting on respect for press freedom and other fundamental values in the EU Member States, particularly given the requirements imposed on candidate countries;

- the need to stand by the conditions for starting negotiations on preventive financial assistance that were announced when the infringement proceedings against Hungary were initiated and therefore not to include press freedom as a condition for the negotiations;

- the need to be as clear as possible in discussing the timetable for completing the negotiations;

- the need to make the Commission's involvement in Hungary more visible, by increasing the presence of Commission Members on the ground and raising its profile in the Hungarian media.

The PRESIDENT thanked the Members of the Commission for their contributions and expressed satisfaction with the coherent, rigorous and objective approach which the Commission had maintained during these infringement proceedings against Hungary, which he felt had been the best way of helping to remedy the problems identified in the Hungarian legislation. Hungary now needed to engage in the same sort of constructive dialogue with the Council of Europe on its media law as had taken place on the question of the independence of the judiciary. He welcomed the commitments which the Commission had obtained from

Hungary and the progress made on the questions raised by these infringement proceedings, but stressed the need for continued vigilance in all the aspects that remained unresolved.

He concluded that the Commission agreed with the decisions proposed by Ms REDING regarding the removal from office of the former Data Protection Commissioner and the retirement age for judges, prosecutors and notaries, and with Mr REHN's proposal in principle to close the infringement proceeding relating to the independence of the national central bank.

The Commission thus adopted the decisions in SEC(2012)276.

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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 11.30.