EUROPEAN COMMISSION

SECRETARIAT-GENERAL

PV(2012)2009 final

Brussels, 18 July 2012

MINUTES

of the 2009th meeting of the Commission

held in Strasbourg

(Winston Churchill building)

on Tuesday 3 July 2012

(afternoon)

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<u>Single sitting</u>: Tuesday 3 July 2012 (afternoon)

The sitting opened at 13.33 with Mr BARROSO, President, in the chair.

<u>Present</u>:

Mr BARROSO	President	
Ms REDING	Vice-President	
Mr ALMUNIA	Vice-President	
Mr KALLAS	Vice-President	
Ms KROES	Vice-President	
Mr TAJANI	Vice-President	
Mr ŠEFČOVIČ	Vice-President	Items 9 to 11
Mr REHN	Vice-President	
Mr POTOČNIK	Member	
Mr PIEBALGS	Member	
Mr BARNIER	Member	Items 9 to 11 (in part)
Mr ŠEMETA	Member	
Mr DE GUCHT	Member	Items 9 to 10 (in part)
Mr DALLI	Member	Items 9 to 11
Ms GEOGHEGAN-QUINN	Member	
Mr LEWANDOWSKI	Member	Items 1 to 10 (in part)
Mr OETTINGER	Member	
Mr HAHN	Member	
Ms HEDEGAARD	Member	
Mr FÜLE	Member	
Mr ANDOR	Member	
Ms MALMSTRÖM	Member	
Mr CIOLOŞ	Member	

<u>Absent</u>:

Baroness ASHTON	High Representative/ Vice-President
Ms VASSILIOU	Member
Ms DAMANAKI	Member
Ms GEORGIEVA	Member

<u>The following sat in to represent absent Members of the Commission</u>:

Mr CEBALLOS BARÓN	A member of Baroness ASHTON's staff	
Mr HILL	A member of Ms VASSILIOU's staff	
Mr INOTAI	A member of Ms DAMANAKI's staff	

<u>The following also sat in</u>:

Mr LAITENBERGER	Chef de cabinet to the PRESIDENT	
Mr ROMERO REQUENA	Director-General, Legal Service	
Mr PAULGER	Director-General, DG Communication	
Ms AHRENKILDE HANSEN	Commission Spokeswoman	
Mr SCHINAS	Bureau of European Policy Advisers	
Ms MARTÍNEZ ALBEROLA	Adviser in the PRESIDENT's Office	
Ms SUTTON	A member of the PRESIDENT's staff	Items 9 (in part) to 11
Mr BAUDRU	Deputy Chef de cabinet to Mr ŠEMETA	Items 1 to 9

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

1. AGENDAS
(OJ(2012)2009/FINAL; SEC(2012)406/2)

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)2009)

The Commission considered the Secretary-General's report on the weekly meeting of Chefs de cabinet held on Monday 2 July.

3. MINUTES OF 2008TH MEETING (27 JUNE)
(PV(2012)2008)

The Commission held over approval of the minutes of its 2008th meeting for the following week.

4. WRITTEN PROCEDURES, EMPOWERMENT AND DELEGATION OF POWERS

4.1. WRITTEN PROCEDURES APPROVED
(SEC(2012)407 ET SEQ.)

The Commission took note of the Secretariat-General's memoranda recording decisions adopted between 25 and 29 June.

4.2. EMPOWERMENT (SEC(2012)408 ET SEQ.)

The Commission took note of the Secretariat-General's memoranda recording decisions adopted between 25 and 29 June.

4.3. DELEGATION AND SUBDELEGATION OF POWERS (SEC(2012)409 ET SEQ.)

The Commission took note of the Secretariat-General's memoranda recording decisions adopted under the delegation and subdelegation procedure between 25 and 29 June, as archived in e-Greffe.

4.4. SENSITIVE WRITTEN PROCEDURES (SEC(2012)410)

The Commission took note of the sensitive written procedures for which the time limit expired between 2 and 6 July.

5. ADMINISTRATIVE AND BUDGETARY MATTERS (SEC(2012)411)

ADMINISTRATIVE MATTERS (PERS(2012)82)

DG TRADE – APPOINTMENT OF AD14/15 DIRECTOR (PERS(2012)28 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, ‘Resources, Information and Policy Coordination’, in DG Trade (PERS(2012)28).

It took note of the opinions of the Consultative Committee on Appointments of 24 May and 7 June (PERS(2012)28/2 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 and Mr DE GUCHT, it then decided to appoint Mr Peter SANDLER to the post.

This decision would take effect on 16 July 2012.

6. PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON KEY INFORMATION DOCUMENTS FOR INVESTMENT PRODUCTS (COM(2012)352 TO /3; SWD(2012)187; SWD(2012)188; SEC(2012)403; RCC(2012)72)

The Commission adopted the proposal for a Regulation in COM(2012)352/3 for transmission to Parliament, the Council, the European Central Bank, the Economic and Social Committee, the European Data Protection Supervisor and the national parliaments, together with the impact assessment and the summary thereof in staff working documents SWD(2012)187 and SWD(2012)188, the contents of which were noted.

It also took note of the opinion of the Impact Assessment Board on the above proposal for a Regulation, as set out in SEC(2012)403.

7. PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DIRECTIVE 2009/65/EC ON THE COORDINATION OF LAWS, REGULATIONS AND ADMINISTRATIVE PROVISIONS RELATING TO UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN TRANSFERABLE SECURITIES (UCITS) AS REGARDS DEPOSITARY FUNCTIONS, REMUNERATION POLICIES AND SANCTIONS

(COM(2012)350 AND /2; SWD(2012)185; SWD(2012)186; SEC(2012)402; RCC(2012)72)

The Commission adopted the proposal for a Directive in COM(2012)350/2 for transmission to Parliament, the Council, the European Central Bank, the European Data Protection Supervisor and the national parliaments, and, for information, to the Economic and Social Committee, together with the impact assessment and the summary thereof in staff working documents SWD(2012)185 and SWD(2012)186, the contents of which were noted.

It also took note of the opinion of the Impact Assessment Board on the above proposal for a Directive, as set out in SEC(2012)402.

8. PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON INSURANCE MEDIATION (RECAST) (COM(2012)360 TO /3; SWD(2012)191; SWD(2012)192; SEC(2012)412; RCC(2012)72)

The Commission adopted the proposal for a Directive in COM(2012)360/3 for transmission to Parliament, the Council, the Economic and Social Committee, the European Data Protection Supervisor and the national parliaments, together with the impact assessment and the summary thereof in staff working documents SWD(2012)191 and SWD(2012)192, the contents of which were noted.

It also took note of the opinion of the Impact Assessment Board on the above proposal for a Directive, as set out in SEC(2012)412.

9. MONITORING THE APPLICATION OF EUROPEAN UNION LAW

INFRINGEMENTS – URGENT INDIVIDUAL CASES
(SEC(2012)420; RCC(2012)66)

- **2012/2098 – Luxembourg – VAT – Reduced VAT rate on digital books**
  Decision: letter of formal notice under Article 258 TFEU and press release

- **2012/4080 – France – VAT – Reduced VAT rate on digital books**
  Decision: letter of formal notice under Article 258 TFEU and press release

The PRESIDENT introduced the discussion on the infringement cases concerning the reduced VAT rates applied in France and Luxembourg to digital books, beginning by pointing out that, from a legal point of view, the two cases were clear, since the VAT Directive allowed the application of such rates only to physical books and expressly excluded books in digital format. Since this provision had been accepted by all the Member States, the application by two of them, for several months now, of reduced rates to digital books was a clear violation of Union law.

He recalled that, under the terms of the Treaties, the Commission had an obligation and a duty to ensure compliance with Union law and that this principle lay at the very heart of the institution’s daily work.

He also pointed out that in these two cases the principles of the single market were at stake, which made the adoption of the two decisions even more urgent since, given the difficult economic climate in Europe, the Commission could not be seen to be slow to respond when the fundamental rules of the single market were ignored in this way. Indeed, he observed that economic operators in the sector in question were now electing to establish themselves in one or other of the two Member States concerned because of their reduced rate of VAT, to the clear detriment of the normal operation of the freedom to provide services and freedom of establishment within the Union.

He concluded by recalling that this was in any case only the first stage in the procedure and that the letters of formal notice would allow the Member States concerned to take action.

Mr ŠEMETA thanked the PRESIDENT for his very comprehensive presentation of the implications of the decisions in question.

He stressed that it was vital that the Commission take action as a matter of urgency, given the major distortions of the internal market and competition observed following the reduction in rates of VAT on digital books by the Member States concerned since the end of 2011. He reported some alarming figures on falling sales of these products by sites based in other Member States, and said that he had received letters from a number of Finance Ministers demanding an explanation.

He acknowledged that the proposed decisions might seem hard against the background of Europe's policy on encouraging digital technology, and recalled in this connection that the Commission's 2011 Communication on the future of VAT recognised *de facto* the benefits of moving towards the equal treatment of similar goods and services in future. He stressed, however, that neither the Commission's favourable position on digital technology nor the proposed changes in taxation gave Member States the right to adopt unilateral decisions that were clearly in breach of the rules currently in force.

The Commission then held a discussion, during which the following points were brought to the fore:

– questions on the political advisability of the proposed decisions seen against the Commission's digital agenda, and the possibility for the Commission of using the power of discretion available to it in its role of guardian of the Treaties;

– in particular, a reminder of the current discussions on differential rates for digital media and the desire of some of those present to wait before deciding to proceed on the matter of the infringements until the Commission had issued its future formal proposal on the taxation of digital goods and services;

- with this in mind, the need to ensure the consistency of European legislation in the face of the changes arising as a result of technological progress, and to act quickly to take account of such changes and encourage economic growth;
- the importance of the market in digital books and the way it was expanding, especially on the other side of the Atlantic; the fact that Europe was falling behind in this market and the need for it to encourage its growth;
- the fact nevertheless that the present situation was leading to serious distortions of competition and the imperative need for the Commission to rectify the situation and re-establish the uniform application of the rules of the internal market; the resulting support for swift action by the Commission to put an end to the infringements in question, which would not in any way prevent work continuing in parallel on a proposal in 2013 for new legislation on equal treatment for similar goods and services and thus promoting new technologies.

Replying to specific comments, Mr ŠEMETA pointed out that any delay in combating the distortions of competition would seriously harm the economy in general and companies in that sector in particular in a rapidly evolving market; he insisted that this justified the use of an accelerated procedure. He reminded the meeting that the decision to exclude electronic goods from the reduced rate of VAT had after all been adopted in 2009 by unanimous vote of all the Member States, including those that were currently in breach of the rules.

The PRESIDENT repeated that the decision by the Member States in this matter had been unanimous and stressed the importance of ensuring that it was now respected, since the European Union was a union based on the rule of law. He also mentioned the ongoing discussions on harmonising the tax treatment of similar products, noting that any change to existing legislation would once again require a unanimous decision by the Member States. Finally, he remarked that, in its recent Conclusions, the European Council had called on the Commission to be ambitious in defending, promoting and deepening the single market and felt that, in this case, that would require a swift response to the infringements observed.

The PRESIDENT concluded by noting the Commission's agreement on the adoption of the proposed decisions, taking note of Ms KROES' intention of making a statement in the special minutes of the meeting, and stressing the importance of good communication on these questions and clear explanations of why the Commission was forced to take action.

The Commission adopted the two decisions in SEC(2012)420.

10. INTERINSTITUTIONAL RELATIONS (RCC(2012)74)

The Commission took note of the record of the meeting of the Interinstitutional Relations Group held on Friday 29 June (RCC(2012)74).

It paid particular attention to the following points.

10.1. LEGISLATIVE MATTERS

i) Ordinary legislative procedure
(point 1.2 of the IRG record)

<u>Dossiers at Parliament first reading</u>

– European venture capital funds (Regulation) – LAMBERTS report – 2011/0417 (COD) / European social entrepreneurship funds (Regulation) – AUCONIE report – 2011/0418 (COD)

The Commission approved the line set out in SI(2012)344/2.

– Amendment of Council Regulation (EC) 1234/2007 as regards the regime of the single payment scheme and support to vine-growers (Regulation) – DORFMANN report – 2011/0285 (COD)

The Commission approved the line set out in SI(2012)340.

– Approval of agricultural or forestry vehicles (Regulation) – PANZERI report – 2010/0212 (COD)

The Commission approved the line set out in SI(2012)331.

– Credit agreements relating to residential property (Directive) – SÁNCHEZ PRESEDO report – 2011/0062 (COD)

The Commission approved the line set out in SI(2012)341/3.

Dossier at Council first reading

– Criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (Regulation – recast) – WIKSTRÖM report – 2008/0243 (COD)

The Commission approved the line set out in SI(2012)329.

ii) Preparation of Parliament's July part-session
(point 1.3 of the IRG record)

Ordinary legislative procedure – First reading

– Amendment of Council Regulation (EC) 73/2009 as regards the application of direct payments to farmers in respect of the year 2013 (Regulation) – CAPOULAS SANTOS report – 2011/0286 (COD)

The Commission approved the line set out in SP(2012)453 and /2.

– Alignment with the Lisbon Treaty (committee procedure) – Amendment of Council Regulation (EC) 1290/2005 on the financing of the common agricultural policy and repeal of Council Regulations (EC) 165/94 and (EC) 78/2008 (Regulation) – LA VIA report – 2010/0365 (COD)

The Commission approved the line set out in SP(2012)456 and /2.

– Alignment with the Lisbon Treaty (committee procedure) – Amendment of Council Regulation (EC) 834/2007 on organic production and labelling of organic products (Regulation) – HÄUSLING report – 2010/0364 (COD)

The Commission approved the line set out in SP(2012)457 and /2.

– Alignment with the Lisbon Treaty (committee procedure) – Amendment of Council Regulation (EC) 485/2008 on scrutiny by Member States of transactions forming part of the system of financing by the European Agricultural Guarantee Fund (Regulation) – CAPOULAS SANTOS report – 2010/0366 (COD)

The Commission approved the line set out in SP(2012)459 and /2.

10.2. RELATIONS WITH THE EUROPEAN COUNCIL AND THE COUNCIL

iii) Programming of Council business
(SI(2012)345)

The Commission took note of the information in SI(2012)345 on the Council meetings between 5 and 18 July.

iv) Outcome of the European Council and the summit of Heads of State or Government of the euro area (Brussels, 28 and 29 June)
(SI(2012)343; SI(2012)347)

The PRESIDENT began by alluding to the difficult background to the European Council meeting, at what was a decisive moment for European integration.

He referred to the conclusions of the meeting and the letter which he had sent to all Members of the Commission, setting out his thoughts on the outcome, which he considered satisfactory in terms of both the substance and the Union's practical capacity for action.

The atmosphere at the start of the European Council had been strained, as all Member States were feeling the impact of the crisis and all leaders faced difficult issues. Although it was true that market pressure and the economic and social impact of fiscal consolidation were affecting some countries particularly badly, all of the leaders without exception were under strong political pressure from their electorate and parliaments. The Member States that were most exposed were under an obligation to achieve results; the negotiations had been difficult and would not have succeeded without the contribution of the European institutions.

Turning to the short-term stabilisation measures, which he felt were the most important direct result of the meeting, he explained that after difficult discussions the members of the euro area had agreed to allow direct recapitalisation of the banks by the European Stability Mechanism as soon as a single European banking supervisory mechanism with European Central Bank involvement was in place. In the meantime, measures were taken to provide financial support for the recapitalisation of the Spanish banking sector and a commitment was made to re-examine the situation in Ireland to ensure that similar cases were treated equally.

The PRESIDENT also highlighted the importance of the agreement to allow more flexible and effective use of the European Financial Stability Facility (EFSF) and the European Stability Mechanism (ESM), while complying with the existing agreements, in order to contribute to the stabilisation of any Member State that fully satisfied the economic governance conditions.

The presentation of a long-term vision for integration had been influential in securing agreement on short-term measures; all participants had recognised the need for a clear idea of what closer integration would mean. There had been broad agreement on the need to complete economic and monetary union (EMU), including among the Member States that were not part of the euro area.

He and the Presidents of the European Council, the European Central Bank and the Eurogroup had been asked to draft a road map and timetable for achieving genuine EMU. He stressed the importance of consulting the European Parliament and the Member States on the next stages of the process and confirmed that these questions would also continue to be discussed in Commission meetings to help him prepare his own contribution to the road map.

He pointed out that this debate raised fundamental questions about sovereignty and democracy and it would not be easy to make the transition from outlining a vision to adopting specific measures. The differences of opinion between the Member States could be overcome only if the Commission set in motion a creative and ambitious process that allowed for balanced progress.

He reiterated his belief that the decisions that would be taken over the coming months would crucially shape the coming decades and that the Commission had a historic role to play, not least in pre-empting the risk of fragmentation which, judging by some statements by Heads of State or Government outside the meeting, was a very real danger. All the Heads of State or Government had expressed their support for using the normal Community methods and working through the European institutions in this process.

The PRESIDENT also briefly mentioned the discussions on the European patent, the Compact for Growth and Jobs, the country-specific recommendations under the European Semester and the multiannual financial framework.

In conclusion he felt that the European Council had produced an important series of decisions which would entail a considerable workload and responsibility for the Commission in terms of follow-up, particularly as regards defining the supervisory tasks of the European Central Bank, implementing the growth and jobs agenda and negotiating a new interinstitutional agreement.

In relation to the negotiations on budget issues, Mr LEWANDOWSKI referred to the many problems he had to face, starting at this stage with a lack of financing for the measures envisaged, for instance in the field of research. He felt that it was now the responsibility of the new EU Presidency to hold discussions with the Member States in order to set their priorities, adding that it was important to obtain updated macroeconomic data rapidly, in particular in relation to regional development and to Croatia.

He hoped that the negotiations would be concluded soon, if possible in the autumn, with agreement in December, making it possible to launch a new generation of programmes. He welcomed the will to speed up the discussions which he had observed in the case of certain Heads of State or Government.

Mr BARNIER referred to the results obtained on the European patent, recalling the considerable work carried out in the past year, in particular with the introduction of enhanced cooperation between 25 Member States. He regretted the fact that the discussions on the location of the seat of the office had ended with the judicial panels being distributed among several countries, and that the British Prime Minister had in addition obtained the deletion of certain articles. This was tantamount to removing the "Community" dimension of the patent and had proved unacceptable to the European Parliament. Every possible effort was being made to find a solution by September.

He thanked the PRESIDENT for his work on behalf of the Commission during this difficult European Council meeting, noting that the preparatory roadmap had provided a very useful perspective.

He confirmed that, in close cooperation with the PRESIDENT, Mr REHN and Mr ALMUNIA, he would now start working on the implementation of the decision to move towards a banking union. Progress elsewhere, notably in the functioning of the European Stability Mechanism, would be dependent on the advances made in this area. He drew attention to the fact that the unanimity of all 27 Member States would be required to achieve a banking union involving

17, and that a large number of questions remained unanswered, such as the supervision to be exercised by the European Central Bank and by the national supervisory authorities, the way in which it would complement the European Banking Authority, the scope of this new supervision (all banks or only the main financial institutions in the system), and whether the banking union would apply to the entire euro area or on the basis of an opt-in, and to individual financial institutions rather than at national level. Parliament had already asked the Commission to be ready to submit proposals as soon as possible.

Fiscal union was technically easier to achieve but would require a bigger federal budget, an aspect that warranted examination in the report to be drawn up by the four presidents.

He stressed that a lot remained to be done in relation to economic union and that the current competitiveness gaps required the introduction of a genuine common competitiveness policy and a modern European industrial policy.

Mr REHN in turn welcomed the important decisions taken by the European Council in relation to the conclusion of the European Semester and measures on growth and employment. The financial markets had also reacted positively following this meeting and that of the Heads of State or Government of the euro area, whose decisions would pave the way for other measures that the European Central Bank might adopt quickly in order to stabilise the financial markets.

He briefly commented on the favourable economic context which appeared to be emerging in Ireland and which might signal its return to the capital markets. Referring to certain political and technical factors relating to the possible intervention on the secondary market by the European Financial Stability Facility and its successor, the European Stability Mechanism, he said that these possibilities were still at the theoretical stage because of the opposition of two Member States, Finland and the Netherlands.

Mr REHN concluded his comments by emphasising the need for direct recapitalisation of the banks and for a single supervision mechanism involving the European Central Bank, in which connection he hoped that the Commission would table proposals very shortly based on Article 127(6) of the Treaty on the Functioning of the European Union. He also referred to the waiving of the priority clause in relation to the financial assistance for Spain, which could set a precedent and required further consideration. Lastly, following the requests for financial assistance from Spain and Cyprus, Commission missions had been sent to these countries to carry out the necessary assessments and, while each of these two countries was in a different situation, both Memorandums of Understanding would contain strict conditions.

Mr ŠEFČOVIČ reported very briefly on the discussions concerning the conclusion of an interinstitutional agreement, stating that it was important for Parliament to make progress in this but that there were also problems on the Council's side. He added that he would keep the Commissioners informed of any developments on this front.

In reply to a question about the Commission’s work schedule with respect to the European supervisor in the banking sector, the PRESIDENT confirmed that an in-depth assessment would have to be carried out quickly so that the Council could adopt proposals by the end of 2012. The proposals would have to be prepared in such a way that all the Commissioners could assume full ownership of them, given the extremely sensitive nature of the issues at stake.

The Commission took note of this information.

10.3. RELATIONS WITH PARLIAMENT

v) Action taken on legislative opinions and non-legislative resolutions adopted by Parliament at its May I and II part-sessions
(point 3.4.2 of the IRG record)

The Commission approved document SP(2012)488 on the action taken on the legislative opinions and non-legislative resolutions adopted by Parliament at its May I and II part-sessions, for transmission to Parliament.

vi) Patent package – Enhanced cooperation in the area of the creation of unitary patent protection (Regulation) – RAPKAY report – 2011/0093 (COD) / Enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements (Council Regulation) – BALDASSARE report – 2011/0094 (CNS) / Draft agreement on the European and Community Patents Court (Council document 7928/09) – LEHNE report
(point 1.3 of the IRG record)

The Commission took note of Parliament's decision to remove the patent package from the agenda of its July part-session.

10.4. EXTERNAL RELATIONS

vii) Council Decision 2012/308/CFSP of 26 April 2012 on the accession of the European Union to the Treaty of Amity and Cooperation in Southeast Asia
(point 5.1 of the IRG record)

The Commission approved the line set out in SI(2012)346.

11. OTHER BUSINESS

PREPARATION OF MEETING WITH THE CYPRIOT PRESIDENCY (NICOSIA, 5 AND 6 JULY)
(SEC(2012)425; SEC(2012)364 AND /2)

The PRESIDENT referred the Members of the Commission to the guidance note which had been circulated ahead of the meeting with the Cypriot Council

Presidency. Given Cyprus's particular geopolitical situation and the highly sensitive nature of the issues surrounding it, he stressed the importance of not making any statements that might lead to misunderstandings.

Mr FÜLE reported on his recent visit to Cyprus on 19 and 20 June in order to discuss the priorities of the Cypriot Presidency and explain the Commission’s view that the efforts to resolve the Cypriot question, including the bilateral talks, should in one way or another be continued during the country’s Council Presidency.

He was confident that Cyprus was well prepared for the Presidency and that it was determined to take the European agenda forward between now and the end of the year. Looking ahead to the many high-level visits to the island in the coming months, he felt it was important that the Turkish Cypriot community should not feel left out. As for how to address this issue, he referred to the contents of the guidance note distributed under the authority of the PRESIDENT.

The Commission took note of this information and of the notes distributed as SEC(2012)425 and SEC(2012)364 and /2.

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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 15.08.