EUROPEAN COMMISSION

SECRETARIAT-GENERAL

PV(2013) 2037 final

Brussels, 20 March 2013

MINUTES

of the 2037th meeting of the Commission

held in Brussels

(Berlaymont)

on Wednesday 6 March 2013

(morning)

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Single sitting: Wednesday 6 March 2013 (morning)

The sitting opened at 9.10 with Mr BARROSO, President, in the chair.

Present:

Mr BARROSO	President	
Baroness ASHTON	High Representative/ Vice-President	
Ms REDING	Vice-President	
Mr ALMUNIA	Vice-President	
Mr KALLAS	Vice-President	
Ms KROES	Vice-President	
Mr ŠEFČOVIČ	Vice-President	
Mr REHN	Vice-President	Item 9 (in part)
Mr POTOČNIK	Member	
Mr BARNIER	Member	
Ms VASSILIOU	Member	
Mr ŠEMETA	Member	
Ms GEOGHEGAN-QUINN	Member	
Mr LEWANDOWSKI	Member	Items 1 to 9 (in part)
Ms GEORGIEVA	Member	Items 1 to 9 (in part)
Mr OETTINGER	Member	
Mr HAHN	Member	
Ms HEDEGAARD	Member	
Mr FÜLE	Member	
Mr ANDOR	Member	
Ms MALMSTRÖM	Member	
Mr CIOLOŞ	Member	
Mr BORG	Member	

Absent:

Mr TAJANI	Vice-president
Mr PIEBALGS	Member
Mr DE GUCHT	Member
Ms DAMANAKI	Member

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

Ms SUPERTI	Deputy Chef de cabinet to Mr TAJANI
Mr JONES	Chef de cabinet to Mr PIEBALGS
Mr VANHEUKELEN	Chef de cabinet to Mr DE GUCHT
Ms CHRISTOPHIDOU	Chef de cabinet to Ms DAMANAKI

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

Mr LAITENBERGER	Chef de cabinet to the PRESIDENT	
Mr ROMERO REQUENA	Director-General, Legal Service	
Mr VANDERSTEEN	Deputy Director-General (acting), DG Communication	
Mr DOENS	Head of the Commission Spokesperson Service	
Ms AHRENKILDE HANSEN	Commission Spokeswoman	
Mr THEBAULT	Head of the Bureau of European Policy Advisers	
Mr SOBRAL	Deputy Chef de cabinet to the PRESIDENT	Item 9 (in part)
Mr CABRAL	Adviser hors classe in the PRESIDENT 's Office	Items 1 to 9 (in part)
Ms SUTTON	A member of the PRESIDENT's staff	
Mr ALTAFAJ TARDIO	Deputy Chef de cabinet to Mr REHN	Items 1 to 9 (in part)
Mr RITTER	A member of Mr REHN's staff	Item 9 (in part)
Mr DUMONT	A member of Mr BARNIER's staff	Item 9
Ms HRISTCHEVA	Deputy Chef de cabinet to Ms GEORGIEVA	Item 9 (in part)
Mr FAULL	Director-General, DG Internal Market and Services	Item 9

Secretary: Ms DAY, Secretary-General, assisted by Mr GENISSON, Head of Unit in the Secretariat-General.

1. AGENDAS
(OJ(2013) 2037/FINAL; SEC (2013) 132/2)

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(2013) 2037)

The Commission considered the Secretary-General's report on the weekly meeting of Chefs de cabinet held on Monday 4 March.

3. MINUTES OF THE 2036TH MEETING (27 FEBRUARY)

The Commission held over approval of the minutes of its 2036th meeting for the following week.

4. INTERINSTITUTIONAL RELATIONS
(RCC(2013) 26)

The Commission took note of the record of the meeting of the Interinstitutional Relations Group held on Friday 1 March (RCC(2013) 26).

It paid particular attention to the following points.

4.1. LEGISLATIVE MATTERS

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

Dossiers at Parliament first reading

– Multiannual Financial Framework 2014-2020 – Implementation and exploitation of European satellite navigation systems (Regulation) – MARINESCU report – 2011/0392 (COD)

The Commission approved the line set out in SI(2013) 105/3.

– Access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms and amendment of Directive 2002/87/EC on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (Directive) / Prudential requirements for credit institutions and investment firms – Part I – (Regulation) – KARAS reports – 2011/0203 (COD) / 2011/0202 (COD)

The Commission approved the line set out in SI(2013) 112/2.

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

The Commission approved the line set out in SI(2013) 101/4.

– Award of concession contracts (Directive) – JUVIN report – 2011/0437 (COD)

The Commission approved the line set out in SI(2013) 100/3.

– New Legislative Framework Alignment Package (Implementation of the Goods Package) – Harmonisation of the laws of the Member States (directives – recast) – ROITHOVÁ reports – 2011/0350 to 2011/0358 (COD)

The Commission approved the line set out in SI(2013) 103/2.

Dossier at Council first reading

– Amendment of certain regulations relating to the common commercial policy as regards the granting of delegated powers for the adoption of certain measures (Regulation) – LEICHTFRIED report – 2011/0153 (COD)

The Commission approved the line set out in SI(2013) 110.

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

Ordinary legislative procedure – First reading

– Accounting rules and action plans on greenhouse gas emissions and removals resulting from activities related to land use, land use change and forestry (Decision) – ARSENIS report – 2012/0042 (COD)

The Commission took note of the information in SP(2012) 142, further to note SI(2012) 530/2, which it had already approved on 28 November 2012.

– Mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change (Regulation) – EICKHOUT report – 2011/0372 (COD)

The Commission approved the line set out in SP(2013) 143, further to note SI(2012) 604, which it had approved on 19 December 2012.

– Online dispute resolution for consumer disputes (Regulation on consumer ODR) / Alternative dispute resolution for consumer disputes and amendment of Regulation (EC) 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) − THUN UND HOHENSTEIN / GRECH reports – 2011/0374 (COD) / 2011/0373 (COD)

The Commission approved the line set out in SP(2013) 144.

– Common Agricultural Policy − Establishment of rules for direct payments to farmers under support schemes within the framework of the common agricultural policy − CAPOULAS SANTOS Report – 2011/0280 (COD)

– Common Agricultural Policy − Common organisation of the markets of agricultural products (Single CMO Regulation) – DANTIN Report – 2011/0281 (COD)

– Common Agricultural Policy – Support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (Regulation) – CAPOULAS SANTOS report – 2011/0282 (COD)

– Common Agricultural Policy – Financing, management and monitoring of the Common Agricultural Policy (Regulation) – LA VIA report – 2011/0288 (COD)

The Commission took note of the information in SP(2013) 145/2.

– European system of national and regional accounts in the European Union (Regulation) – BOWLES report – 2010/0374 (COD)

The Commission approved the line set out in SP(2013) 146.

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

The Commission took note of the information in SP(2013) 147, further to SP(2012) 590, and SI(2012) 578 approved by the Commission on 11 September 2012 and 12 December 2012 respectively.

Special legislative procedure

– Association of the overseas countries and territories with the European Union (Council Decision) – TIROLIEN report – 2012/0195 (CNS)

The Commission approved the line set out in SP(2013) 148 and /2.

Special non-legislative procedure

– Application of the Charter of Fundamental Rights of the European Union to the Czech Republic / Protocol – DUFF reports – 2011/0818 (NLE) / 2011/0817 (NLE)

The Commission took note of the information in SP(2012) 662/3, further to SP(2012) 662 and /2, which it had already approved on 17 October 2012.

– Requirements for the protection of public health with regard to radioactive substances in water intended for human consumption (Council Directive) – RIVASI report − 2012/0074 (NLE)

The Commission approved the line set out in SP(2013) 149 and /2.

iii) Special legislative procedure
(point 1.4 of the IRG record)

– Amendment of Regulation (EEC, Euratom) 354/83 concerning the opening to the public of the historical archives of the institutions at the European University Institute in Florence (Council Regulation) – PACK report – 2012/0221 (APP)

The Commission approved the line set out in SI(2013) 92.

4.2. RELATIONS WITH THE EUROPEAN COUNCIL AND THE COUNCIL

iv) Programming of Council business
(SI(2013) 104)

The Commission took note of the information in SI(2013) 104 on the Council meetings between 7 and 20 March.

v) Preparations for the Economic and Financial Affairs Council (Brussels, 5 March)
(point 2.3.1 of the IRG record)

– Framework for the recovery and resolution of credit institutions and investment firms and amendment of Council Directives 77/91/EEC and

82/891/EC, Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC and 2011/35/EC and Regulation (EU) 1093/2010 (Directive) – HÖKMARK report – 2012/0150 (COD)

The Commission approved the line set out in SI(2013) 76/4.

vi) Preparations for the Justice and Home Affairs Council (Brussels, 7 and 8 March)
(point 2.3.2 of the IRG record)

– Data protection package – Protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data (Directive) / Protection of individuals with regard to the processing of personal data and the free movement of such data (Regulation) – DROUTSAS / ALBRECHT reports – 2012/0010 (COD) / 2012/0011 (COD)

The Commission took note of the information in SI(2013) 77/2.

4.3. RELATIONS WITH PARLIAMENT

vii) Participation by Members of Parliament in international conferences
(point 3.5 of the IRG record)

– Twenty-fifth meeting of the parties to the Montreal Protocol on substances that deplete the ozone layer (Kiev, 21 to 25 October)

The Commission agreed to the request to the PRESIDENT from Mr Martin Schulz, President of Parliament, concerning the attendance of three Members of the European Parliament at the above-mentioned meeting as observers in the EU delegation, for the period 23 to 25 October, with a reminder about the procedure to be followed.

4.4. EXTERNAL RELATIONS

viii) EU-Canada Strategic Partnership Agreement
(point 5.1 of the IRG record)

The Commission approved the line set out in SI(2013) 106/4.

ix) Authorisation for the Member States that are signatories to the Vienna Convention on civil liability for nuclear damage of 21 May 1963 (Vienna Convention) to ratify the protocol amending the Convention, or accede to it, in the interests of the European Union (Council Decision) − MÉSZÁROS report – 2012/0262 (NLE)
(point 5.2 of the IRG record)

The Commission approved the line set out in SI(2013) 102/3.

4.5. OTHER BUSINESS

x) Withdrawal of pending proposals: 2013 exercise – Publication of the list of proposals withdrawn in the Official Journal of the European Union
(point 7.1 of the IRG record)

The Commission decided to conclude the 2013 exercise for the withdrawal of pending proposals by confirming its decision to withdraw the 15 proposals referred to in the Annex to its work programme for 2013 and to publish the list of the proposals withdrawn in the Official Journal of the European Union, following the line set out in SI(2013) 91/4.

5. MONITORING THE APPLICATION OF EUROPEAN UNION LAW

STATE AID – INDIVIDUAL CASES
(SEC(2013) 141/2)

The Commission adopted the decisions in SEC(2013) 141/2.

6. WRITTEN PROCEDURES, EMPOWERMENT AND DELEGATION OF POWERS

6.1. WRITTEN PROCEDURES APPROVED (SEC(2013) 133 ET SEQ.)

The Commission took note of the Secretariat-General's memoranda recording decisions adopted between 25 February and 1 March.

6.2. EMPOWERMENT (SEC(2013) 134 ET SEQ.)

The Commission took note of the Secretariat-General's memoranda recording decisions adopted between 25 February and 1 March.

6.3. DELEGATION AND SUBDELEGATION OF POWERS (SEC(2013) 135 ET SEQ.)

The Commission took note of the Secretariat-General's memoranda recording decisions adopted under the delegation and subdelegation procedure between 25 February and 1 March, as archived in *e*-Greffe.

6.4. SENSITIVE WRITTEN PROCEDURES (SEC(2013) 136)

The Commission took note of the sensitive written procedures for which the time limit had expired between 4 and 8 March.

6.5. DELEGATION OF POWERS IN THE FIELD OF AIR TRANSPORT (AVIATION SECURITY) (C(2013) 1270)

The Commission decided:

- to empower the Member of the Commission responsible for transport to adopt, on its behalf and under its responsibility, the report provided for in Article 16 of Regulation (EC) 300/2008, providing that it was solely factual or technical in nature, in accordance with the terms laid down in C(2013) 1270;

- to delegate to the Director-General of the directorate-general responsible for mobility and transport the power to adopt, on the Commission's behalf and under its responsibility, decisions related to (i) civil aviation security inspections; (ii) notification and transmission of information to the Member States; (iii) notification of the application of more stringent measures by the Member States; (iv) authorisation of the use of methods of screening for testing purposes using new technologies, in accordance with the terms set out in C(2013) 1270.

7. ADMINISTRATIVE AND BUDGETARY MATTERS (SEC(2013) 137)

ADMINISTRATIVE MATTERS (PERS(2013) 44)

DG INTERNAL MARKET AND SERVICES – APPOINTMENT OF AN AD14/15 DIRECTOR (PERS(2012) 83 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, « Public Procurement », in DG Internal Market and Services (PERS(2012) 83).

It took note of the opinions of the Consultative Committee on Appointments of 19 September and 6 December 2012 (PERS(2012) 83/2 and /3).

The Commission proceeded to compare 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 BARNIER, it then decided to appoint Mr Joaquim NUNES DE ALMEIDA to the post.

This decision would take effect on 1 April 2013.

8. COMMISSION DECISION ON A PROCEDURE TO IMPOSE A FINE, UNDER ARTICLE 23(2)(C) OF COUNCIL REGULATION (EC) 1/2003, FOR NON-COMPLIANCE WITH COMMITMENTS MADE BINDING BY A COMMISSION DECISION PURSUANT TO ARTICLE 9 THEREOF (*CASE COMP/AT.39530 – MICROSOFT / TYING)*

(C(2013) 1210 A /7; RCC(2013) 30)

The Commission:

- took note of the opinion of the Advisory Committee on Restrictive Practices and Dominant Positions of 4 March in C(2013) 1210/3;
- took note of the final report of the Hearing Officer of 5 March in C(2013) 1210/6;
- adopted, in the authentic language (English), the decision in C(2013) 1210/7, under Article 23(2)(c) of Council Regulation (EC) 1/2003, finding that the company to which the decision was addressed had infringed Article 9 of that Regulation, calling upon the company concerned to put an end to the infringement referred to in so far as it had not yet done so, and imposing a fine of €561 000 000;
- decided that the decision in C(2013) 1210/7 would be notified to the company concerned, together with the final report of the Hearing Officer;

- decided that the key parts of the decision, together with the Advisory Committee's opinion and the Hearing Officer's final report, would be published in the official languages of the Union in the Official Journal of the European Union (with business secrets and other confidential information removed);
- decided also to publish the decision on the internet (with business secrets and other confidential information removed).

9. POLICY DEBATE ON BANKING UNION (SEC(2013) 149 TO /3; RCC(2013) 29)

The PRESIDENT opened that day’s policy debate, whose objectives were two-fold: to review the initiatives taken as part of financial reform and to agree on the next stages to undertake in order to complete the Banking Union.

There were two priority initiatives for the months ahead, namely the single resolution mechanism for bank failures and the follow-up to the ‘LIIKANEN Report’, which had been presented to the Commission in October 2012. The report set out the conclusions of the High-Level Expert Group on reforming the structure of the banking sector, under the chairmanship of Mr Erkii LIIKANEN, the current Governor of the central bank of Finland and a former Member of the Commission. He pointed out that the purpose of this report was to examine the case for introducing additional structural reforms in order to isolate risks within banking groups.

These two initiatives had the same policy objectives, i.e. to break the link between sovereign debt and banks, to conceive of solutions to be implemented where banking groups seemed too big to fail, and to ensure that banks could not enjoy an implicit public guarantee because of their direct access to savers’ deposits that would enable them to engage in more speculative activity in their own interest.

The Commission, in its Blueprint for Deep and Genuine Economic and Monetary

Union, had already defined the general outline and objectives of a single resolution mechanism for bank failures, which was the essential complement to the single supervisory mechanism.

On the question of the structural separation of bank activities, he stressed how important it was for the Commission to give its initial position on the 'LIIKANEN Report', and the need to examine the advisability of an initiative launched at European level in order to maintain the integrity of the single market. In the context of such structural reform, he noted the diversity of the possible options and the need to spell out the basic features of a possible Commission initiative.

Mr BARNIER set out the next steps in financial services reform from the specific perspective of the banking sector. Having enumerated the recent initiatives proposed by the Commission, he explained that the key issue that now needed to be addressed was that of the banks that were 'too big to fail', in the sense that any failure would have serious repercussions for the whole system, and the moral hazard linked to the implicit guarantees which these banks enjoyed. Given that the structural separation of certain activities was manifestly the most effective way of containing the risks inherent in these banks, where they took deposits from the public, he argued in favour of such a measure being implemented as part of coordinated action at European level, specifically for reasons related to the integrity of the internal market. The main reasons for such a reform were (i) the attraction of certain speculative, high-risk activities, (ii) the large size and complexity of the banks, which made the orderly resolution of any failures very difficult, (iii) the advantageous financing conditions enjoyed by certain big banks because of the public guarantee they had implicitly been given, and (iv) the possible conflicts between the banks' interests and those of their clients, for example in market operations.

Citing several types of structural reforms currently being examined, he looked particularly closely at the 'LIIKANEN Report', which concluded that structural reform was needed, but advocated a gradual, differentiated approach, combined with thresholds, to ensure that banks were able to default in an orderly manner.

On the economic and political level, he stressed that any such reform would have to take into consideration a number of fundamental aspects, including the need to preserve the competitiveness of European banks, the impact on the financing of the economy, the risk of regulatory arbitrage and the development of a shadow banking sector, the reduction in the likelihood of future financial crises, the degree of protection for depositors and taxpayers, and the risk inherent in failing to coordinate reform at European level.

Finally, Mr BARNIER listed the three questions which Commission Members were being asked to comment on in the policy debate that day: 1) were further structural measures needed to separate risks within banking groups?; 2) how did they assess the balance between the costs of such a reform and its benefits in terms of financial stability?; and 3) should the European Commission prepare a proposal to ensure a harmonised European framework for these structural reform measures in 2013, or should such reform be left to the national level? He emphasised that the Commission must provide a response that was commensurate with the current challenges and risks. Action on these issues was needed without delay, in the form of a coordinated reform, in order to avoid any fragmentation of the European market and to ensure that this market functioned properly.

In the course of an in-depth debate, the Commission confirmed its support for a harmonised approach and a European framework for action to preserve the integrity of the single market, while maintaining a certain degree of flexibility between the national models, the diversity of which was underlined. With regard to the bank resolution mechanism, the Commission approved the idea of presenting a proposal rapidly. On the subject of the structural separation of bank activities, it highlighted the need for a sound impact analysis, mindful in particular of the implications of the various structural separation options. In conclusion, it pointed out that the Commission proposals were political as well as technical, with the emphasis on prioritising the protection of citizens, consumers, depositors and taxpayers, while ensuring the financing of the real economy.

Mr BARNIER noted that the debate confirmed the idea of distinguishing between banking activities that were useful to the economy and those that were the source of excessive risks. More generally, he stressed that the regulation programme as a whole was based on crisis prevention, good governance of the banking sector and the introduction of a 'toolbox' to enable ordered resolution in the event of a future crisis, without systematically requiring the taxpayer to contribute. He emphasised that it was also an essential element for growth. Lastly, he agreed that the political and social dimension of all these measures should be given more prominence.

The PRESIDENT thanked the Commission Members for their constructive contribution to the debate while pointing out that, although the reforms undertaken to date reduced the likelihood of bank failure, the possibility of future crises could not be completely ruled out. Additional measures were therefore needed in order to address this situation should it arise. He emphasised that it was absolutely necessary to break the link between the banking sector and sovereign debt and to ensure that all banks could be subject to resolution; in future, to protect taxpayers − a political objective that ought to be highlighted − no bank should ever again be regarded as 'too big to fail'. The single bank resolution mechanism would be an additional pillar in a common resolution structure. He noted the Commissioners' general support for the guidelines on this mechanism and said that the in-depth impact analysis would prepare the ground for the specific proposal to be submitted, if possible, by the end of June.

With regard to the follow-up to the 'LIIKANEN Report', he noted that there was a broad consensus in favour of an approach at European level, while stressing that the impact analysis would provide essential clarification. He acknowledged that any structural reform would entail costs for the all-purpose banks, but that these costs must be weighed against the benefits of financial stability and the increased resilience of the sector.

Lastly, he invited Mr BARNIER to make a start without delay on the impact analysis which was to examine the various possible options and their implications. He hoped that the Commission would be able to present a proposal on structural separation by September.

The Commission took note of the results and conclusions of the policy debate and of the background note distributed under the authority of the PRESIDENT and Mr BARNIER as SEC(2013) 149/3.

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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 11.50.