



EUROPEAN COMMISSION

SECRETARIAT-GENERAL

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- English language version of the French text which is authentic –

Brussels, 6 September 2017

TEXTE EN

MINUTES

of the 2221st meeting of the Commission

held in Brussels

(Berlaymont)

on Wednesday 19 July 2017

(morning)

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SPEECH (GENVAL, 31 AUGUST AND 1 SEPTEMBER)..... 33

Single sitting: Wednesday 19 July 2017 (morning)

The sitting opened at 10.27 with Mr JUNCKER, President, in the chair.

Present:

Mr JUNCKER	President	
Mr TIMMERMANS	First Vice-President	
Ms MOGHERINI	High Representative / Vice-President	
Mr ANSIP	Vice-President	
Mr ŠEFČOVIČ	Vice-President	
Mr DOMBROVSKIS	Vice-President	
Mr KATAINEN	Vice-President	
Mr OETTINGER	Member	Items 1 to 9 (in part)
Mr HAHN	Member	
Ms MALMSTRÖM	Member	
Mr ARIAS CAÑETE	Member	
Mr VELLA	Member	
Mr ANDRIUKAITIS	Member	
Mr MOSCOVICI	Member	
Mr STYLIANIDES	Member	
Mr HOGAN	Member	
Ms BULC	Member	
Ms BIENKOWSKA	Member	
Ms JOUROVÁ	Member	
Mr NAVRACSICS	Member	
Ms CREȚU	Member	
Ms VESTAGER	Member	
Mr MOEDAS	Member	
Sir Julian KING	Member	
Ms GABRIEL	Member	

Absent:

Mr MIMICA	Member
Mr AVRAMOPOULOS	Member
Ms THYSSEN	Member

(19 July 2017)

*- English language version of the French text which is authentic -*The following sat in to represent absent Members of the Commission:

Mr BEHRNDT	Chef de cabinet to Mr MIMICA	
Ms SCHMITT	Chef de cabinet to Mr AVRAMOPOULOS	Items 1 to 9 (in part)
Ms ASTERIADI	Deputy Chef de cabinet to Mr AVRAMOPOULOS	Item 9 (in part)
Ms PASERMAN	Deputy Chef de cabinet to Ms THYSSEN	

The following also sat in:

Mr SELMAYR	Chef de cabinet to the PRESIDENT	
Mr ROMERO REQUENA	Director-General, Legal Service	
Mr PESONEN	Director-General, DG Communication	
Mr SCHINAS	Head of the Spokesperson's Service and Chief Spokesperson of the Commission	
Mr SWIEBODA	European Political Strategy Centre	
Ms MICHOU	Deputy Secretary-General	
Ms MARTÍNEZ ALBEROLA	Deputy Chef de cabinet to the PRESIDENT	
Ms KRAMER	Director of Coordination and Administration in the PRESIDENT's Office	Item 8
Ms SILLAVEE	PRESIDENT's Office	
Mr SMULDERS	Chef de cabinet to Mr TIMMERMANS	
Ms PANZETTI	Chef de cabinet to Ms MOGHERINI	Items 1 to 7
Ms HOLZNER	A member of Mr OETTINGER's staff	Item 8
Mr HUSAK	Chef de cabinet to Ms BIENKOWSKA	Items 1 to 7
Ms ANDREEVA	Commission Spokesperson's Service	

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

1. AGENDAS

(OJ(2017) 2221/FINAL; SEC(2017) 342/FINAL)

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(2017) 2221)

The Commission considered the Secretary-General's report on the weekly meeting of Chefs de cabinet held on Monday 17 July.

3. APPROVAL OF THE MINUTES OF THE 2212TH MEETING (16 MAY), THE 2219TH MEETING (4 JULY) AND THE 2220TH MEETING (12 JULY) OF THE COMMISSION

(PV(2017) 2212; PV(2017) 2219 AND /2)

The Commission approved the minutes of its 2212th and 2219th meetings and decided to hold over for one week approval of the minutes of its 2220th meeting.

4. INTERINSTITUTIONAL RELATIONS

(RCC(2017) 96)

The Commission took note of the record of the meeting of the Interinstitutional Relations Group (IRG) held on Friday 14 July (RCC(2017) 96).

It paid particular attention to the following points.

4.1. LEGISLATIVE MATTERS

i) Council dossier

(point 3.3 of the IRG record)

- The position to be taken by the Union at the sixth session of the Meeting of the Parties to the Aarhus Convention regarding compliance case ACCC/C/2008/32 (Council Decision) – 2017/0151 (NLE)

The Commission approved the line set out in SI(2017) 357/2 and /5 and authorised the transmission to the Council as soon as possible of the Commission declaration, as amended on the basis of the text distributed at the meeting and contained in SI(2017) 357/5.

4.2. RELATIONS WITH THE EUROPEAN COUNCIL AND THE COUNCIL

ii) Non-legislative matter

(point 4.1 of the IRG record)

- Information to be provided to the Council on third countries' cooperation on readmission, visa policy and overall cooperation in the field of migration including border management and the fight against migrant smuggling

The Commission approved the line set out in SI(2017) 365 and /2 and authorised the transmission to the Council Presidency on Monday 17 July of the annex in SI(2017) 365/2.

4.3. RELATIONS WITH PARLIAMENT

iii) Action taken on the non-legislative resolutions adopted by Parliament at its April I part-session

(point 5.6.2 of the IRG record)

The Commission approved documents SP(2017) 487 and /2 on the action taken on the non-legislative resolutions adopted by Parliament at its April I part-session, for transmission to Parliament.

iv) Action taken on legislative opinions and non-legislative resolutions adopted by Parliament at its May I and II part-sessions

(point 5.6.3 of the IRG record)

The Commission approved document SP(2017) 494 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.

v) Participation by Members of Parliament in international conferences

(point 5.7 of the IRG record)

- High-level Political Forum on Sustainable Development (HLPF)
(New York, 10-20 July)

The Commission agreed to the request to the PRESIDENT from Mr Antonio TAJANI, the President of the European Parliament, concerning the attendance of five Members of Parliament at the above-mentioned meeting, from 17 to 20 July, as observers in the EU delegation, with a reminder about the procedure to be followed as set out in SP(2017) 491.

4.4. RELATIONS WITH NATIONAL PARLIAMENTS, THE OTHER INSTITUTIONS AND BODIES, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

vi) Follow-up to opinions of the European Economic and Social Committee – Plenary session of January 2017

(point 6.3.1 of the IRG record)

The Commission approved document SC(2017) 30 on the follow-up by the Commission to the opinions adopted by the European Economic and Social Committee during the January 2017 session, for transmission to that Committee.

vii) Follow-up to opinions of the European Economic and Social Committee – Plenary session of February 2017

(point 6.3.2 of the IRG record)

The Commission approved document SC(2017) 31/3 on the follow-up by the Commission to the opinions adopted by the European Economic and Social Committee during the February 2017 session, for transmission to that Committee.

5. MONITORING THE APPLICATION OF EUROPEAN UNION LAW

INFRINGEMENTS – URGENT INDIVIDUAL CASES

(SEC(2017) 352)

The Commission adopted the decisions in SEC(2017) 352.

6. WRITTEN PROCEDURES, EMPOWERMENT AND DELEGATION OF POWERS

6.1. *WRITTEN PROCEDURES APPROVED* ***(SEC(2017) 343 ET SEQ.)***

The Commission took note of the Secretariat-General's memoranda recording decisions adopted between 10 and 14 July.

6.2. *EMPOWERMENT* ***(SEC(2017) 344 ET SEQ.)***

The Commission took note of the Secretariat-General's memoranda recording decisions adopted between 10 and 14 July.

6.3. *DELEGATION / SUBDELEGATION OF POWERS* ***(SEC(2017) 345 ET SEQ.)***

The Commission took note of the Secretariat-General's memoranda recording decisions adopted under the delegation and subdelegation procedure between 10 and 14 July, as archived in Decide.

6.4. *SENSITIVE WRITTEN PROCEDURES* ***(SEC(2017) 346 AND /2)***

The Commission took note of the sensitive written procedures for which the time limit expired between 17 and 20 July and of the 'finalisation' written procedure initiated following the weekly meeting of Chefs de cabinet on 10 July.

**7. JOINT REPORT TO THE COUNCIL AND THE EUROPEAN PARLIAMENT
ON THE IMPLEMENTATION OF THE ‘JOINT FRAMEWORK ON
COUNTERING HYBRID THREATS – A EUROPEAN UNION RESPONSE’
(JOIN(2017) 30 TO /3; RCC(2017) 97)**

The PRESIDENT asked Mr KATAINEN, Ms MOGHERINI and Ms BIENKOWSKA to present to the College the joint report addressed to the European Parliament and the Council on the implementation of the Joint Framework on countering hybrid threats.

In his introduction, Mr KATAINEN praised the excellent cooperation during the drafting of this report. He reiterated the nature of hybrid threats, which mainly targeted the vulnerabilities and ambiguities of an objective to destabilise a decision-making process. He highlighted the fact that these threats concerned physical as well as IT structures and that the Commission could assist the Member States by enhancing their awareness of hybrid threats and helping to facilitate exchanges of information and good practices on this issue.

More than twenty concrete actions to counter hybrid threats were established in 2016, all of which had made significant progress. In particular, he stressed the very significant results achieved in information exchanges between the Member States, the UN and NATO, while pointing to the need for further efforts in the direction of a European Union that protects, echoing the wishes of the PRESIDENT in his 2016 speech on the State of the Union.

Ms MOGHERINI highlighted four concrete actions she regarded as fundamental: (i) strengthened EU-NATO cooperation; (ii) the creation of the EU Hybrid Fusion Cell within the EU Intelligence and Situation Centre; (iii) the establishment of the Centre of Excellence for countering hybrid threats; and (iv) strengthening of the StratCom Task Forces responsible for anticipating instances and campaigns of disinformation in order to mount a rapid response.

Ms BIENKOWSKA also welcomed the fact that the establishment of the Joint Framework on countering hybrid threats, which built on the initiatives taken in the area of defence, such as the creation of a European Defence Fund, was beginning to produce the expected effects.

She outlined some of the results obtained, in particular: the elevation of information and cooperation exchanges to a new level of intensity between the EU and its Member States and also between the EU and NATO; improved resilience to hybrid threats in areas such as transport, energy, customs and the financial system; and enhanced capacity in response to cyber-attacks. Nevertheless, she emphasised that the Commission could not stop there because the nature of hybrid threats was constantly evolving. She therefore announced that a new cyber security strategy, which was being drawn up, would include cyber defence components.

The PRESIDENT thanked Mr KATAINEN, Ms MOGHERINI and Ms BIENKOWSKA for their excellent work on this highly sensitive dossier.

The Commission approved the joint report in JOIN(2017) 30/3, for transmission to Parliament and the Council and, for information, to the national parliaments.

8. ADMINISTRATIVE AND BUDGETARY MATTERS

(SEC(2017) 347/2)

ADMINISTRATIVE MATTERS

(PERS(2017) 95/2)

8.1. LEGAL SERVICE – APPOINTMENT OF AN AD14/15 PRINCIPAL LEGAL ADVISER

(PERS(2016) 121 TO /3)

The Commission had before it applications under Article 29(1)(a)(i) and (iii) of the Staff Regulations for the post of Principal Legal Adviser responsible

for the ‘AGRI (Agriculture and Fisheries)’ team in the Legal Service (PERS(2016) 121).

The Commission took note of the opinions of the Consultative Committee on Appointments of 7 and 24 November 2016 (PERS(2016) 121/2 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 OETTINGER, in agreement with the PRESIDENT, it then decided to appoint Mr Fernando CASTILLO DE LA TORRE to the post.

This decision would take effect on 1 August 2017.

8.2. DG HUMAN RESOURCES AND SECURITY – APPROVAL OF THE LIST OF CANDIDATES FOR THE AD14 POST OF EXECUTIVE DIRECTOR OF THE EUROPEAN CHEMICALS AGENCY (ECHA) (PERS(2017) 84 TO /3)

On a proposal from Mr OETTINGER, in agreement with the PRESIDENT, and having consulted Ms BIENKOWSKA and Mr ANSIP, Mr ŠEFČOVIČ, Mr DOMBROVSKIS, Mr KATAINEN, Mr VELLA and Mr ANDRIUKAITIS, the Commission decided:

- to approve the list of three candidates, presented in alphabetical order, set out in point 2 of PERS(2017) 95/2, for the post of Executive Director of the European Chemicals Agency (ECHA), and to consider this list as the Commission proposal;
- to ask Ms BIENKOWSKA, Member of the Commission responsible for the Internal Market, Industry, Entrepreneurship and SMEs, to communicate this decision and the list of candidates to the Management Board of the European Chemicals Agency.

These decisions would take effect immediately.

**8.3. DG BUDGET – TERMINATION OF THE SELECTION PROCEDURE
FOR A TEMPORARY PRINCIPAL ADVISER POST
(PERS(2016) 33 TO /4)**

On a proposal from Mr OETTINGER, in agreement with the PRESIDENT, the Commission decided to terminate internal and interinstitutional selection procedure COM/2016/601 (grade AD 14/15) and external selection procedure COM/2016/10366 (grade AD14) for a temporary principal adviser post ('Budget focused on results') in DG Budget, without making an appointment.

This decision would take effect immediately.

**8.4. DG HUMAN RESOURCES AND SECURITY – PROMOTION OF
SENIOR MANAGEMENT OFFICIALS – 2016 EXERCISE
(PERS(2017) 96)**

The Commission took note of the procedure followed, as set out at point 3 of PERS(2017) 95/2, and, on a proposal from Mr OETTINGER, in agreement with the PRESIDENT, decided:

- to promote to grade AD16 Mr Ladislav MIKO, Mr Jens NYMAND CHRISTENSEN, Mr Xavier PRATS MONNE, Mr Stephen QUEST, Mr Gerassimos THOMAS and Mr Roberto VIOLA, presented in alphabetical order, exercising the basic function of Director-General, with effect from 1 January 2017;
- to promote to grade AD15 Mr Luc BAGUR, Mr Ugo BASSI, Mr Gwenole COZIGOU, Mr Gerrit Gerard DE GRAAF, Ms Margarete HOFMANN, Ms Ditte-Juul JØRGENSEN, Mr Stephan LECHNER, Ms Linsey MCCALLUM, Mr Mario MILOUCHEV, Mr Laurent MUSCHEL, Ms Nathalie SAUZE-VANDEVYVER, Mr Michael SCANNELL,

Mr Martin SELMAYR and Mr Erich UNTERWURZACHER, presented in alphabetical order, exercising the basic function of Director, with effect from 1 January 2017.

These decisions would take effect immediately.

8.5. DG HUMAN RESOURCES AND SECURITY – TARGETS FOR FEMALE REPRESENTATION IN MANAGEMENT FUNCTIONS IN THE EUROPEAN COMMISSION FOR THE YEARS 2015-2019 – FOLLOW-UP AND ADDITIONAL MEASURES (SEC(2017) 359)

The Commission took note of the information in point 5 of PERS(2017) 95/2 and, on a proposal from Mr OETTINGER, in agreement with the PRESIDENT, decided:

- to repeal the indicative sub-targets per directorate-general for female representation in middle management as set out in document SEC(2015) 336;
- to adopt quantitative targets of first female appointments to be made per directorate-general and service at middle management level by 1 November 2019, as set out in document SEC(2017) 359;
- to authorise the Commissioner responsible for Budget and Human Resources, in agreement with the PRESIDENT, to update and adjust these individual targets when necessary;
- to authorise the Commissioner responsible for Budget and Human Resources, in agreement with the PRESIDENT, to prevent a directorate-general or service from filling a middle management function if it did not make sufficient progress in achieving its assigned target;

- to instruct the Directorate-General for Human Resources and Security to:
 - ensure that vacancy notices for middle management positions were formulated in such a way that they did not discourage applications from women by unduly specifying job-related requirements which were not essential for the effective fulfilment of the managerial functions;
 - closely monitor the progress made in line with the agreed common targets and principles above, to discuss and review with each directorate-general and service their middle management appointment prospects and plans and to regularly report on the progress made by each DG;
 - refer intended appointments of middle managers to the Consultative Committee on Appointments if the progress made by the directorate-general or service concerned was not enough to achieve its assigned target;
- to ask recruiting directorates-general and services to indicate the impact a proposed middle management appointment would have on reaching the department's target for first female appointments when consulting the Member of the Commission responsible for that department, as set out in Article 8(2)(a) of the Commission Decision on Middle Management Staff.

These decisions would take effect immediately.

The Commissioner for Budget and Human Resources would inform the College on a quarterly basis about the progress made, highlighting in particular the DGs and services that needed to make an additional effort in contributing to the overall target of at least 40% women at management level.

8.6. COMMUNICATION OF THE COMMISSION ‘A BETTER WORKPLACE FOR ALL: FROM EQUAL OPPORTUNITIES TOWARDS DIVERSITY AND INCLUSION’

(C(2017) 5300 TO /3; RCC(2017) 99)

The PRESIDENT asked Mr OETTINGER to present the Communication entitled ‘A better workplace for all: from equal opportunities towards diversity and inclusion’ which was being tabled for approval by the Commission.

Mr OETTINGER referred first of all to the aim of this Communication, which was to foster a better working environment within the Commission for all – including women, staff with disabilities, lesbian, gay, bisexual, transsexual and intersex (LGBTI) staff and older staff. Concrete measures would also be implemented to make the best use of the talent of all employees and to ensure that there was no discrimination on the grounds of sex, religion, ethnic group, age or disability. This Communication had been subject to extensive consultations with stakeholders before it was presented to the College.

It was also a question of making the Commission an example for Member States to follow and raising their awareness of diversity and inclusion issues.

Mr OETTINGER reviewed the progress made since the start of the present Commission’s mandate with regard to women in management (see item 8.5 of these Minutes). He noted that the proportion of women in management had increased from 30 to 34% overall, with 33% of women at senior management level and 35% at middle management level. However, this progress was not enough to achieve the target of at least 40% by 1 November 2019, hence the need for the new firm measures set out in this Communication. He also referred to the individual targets assigned to all Commission services for the first female appointments to Head of Unit posts. He explained that the Commission could ask the services that failed to reach these targets to find out, before deciding on

the appointment, whether women with the appropriate qualifications could be invited to apply.

He then focused on the process of reporting, monitoring and further fine-tuning the proposed measures, stating that he would report to the Commission on a quarterly basis on the progress made. He invited the Members of the Commission to monitor this progress in the services they were responsible for. Mr OETTINGER concluded by recalling the importance of introducing tools to develop motivation and increase the number of applications for management posts submitted by members of staff from groups that were under-represented at this level.

In the course of the discussion that followed, the Commission raised the following main points:

- the importance of effective communication, stressing the benefits of diversity and inclusion;
- the balance that must be maintained between quantitative targets and the principle of non-discrimination;
- the need for a strong commitment by all Members of the Commission to ensure the effective implementation of the strategy and to foster a change in culture;
- the case for extending the same principles and quantitative targets to the agencies and other EU institutions given that the differences in representation, particularly between men and women, were often greater in these agencies and institutions than in Commission services;
- the possibility of using certain budgetary instruments to encourage services to achieve the targets;

- the importance of improving incentives and support mechanisms for potential candidates, for example management training programmes specifically designed for women as well as women's networks and associations.

The PRESIDENT thanked Mr OETTINGER and his team for this new set of measures which would enable the Commission to reach its targets in terms of diversity and inclusion, in particular the target of having at least 40% women in management by 2019. He highlighted the importance of the quantitative targets and the monitoring programme, a method he considered appropriate for eliminating certain habits and conditioned responses.

The Commission adopted the Communication in C(2017) 5300/3.

**8.7. AMENDMENT OF THE ORGANISATION CHART OF THE TASK FORCE FOR THE PREPARATION AND CONDUCT OF NEGOTIATIONS WITH THE UNITED KINGDOM UNDER ARTICLE 50 OF THE TREATY ON EUROPEAN UNION
(SEC(2017) 360)**

The Commission took note of the decision of the PRESIDENT to amend, in accordance with Article 22 of its Rules of Procedure, the organisation chart of the Task Force for the preparation and conduct of negotiations with the United Kingdom under Article 50 of the Treaty on European Union, set out in SEC(2017) 360.

9. OTHER BUSINESS

9.1. RULE OF LAW IN POLAND – LATEST DEVELOPMENTS AND NEXT STEPS

At the invitation of the PRESIDENT, Mr TIMMERMANS reported on the latest developments concerning respect for the rule of law in Poland, following the two Recommendations approved by the Commission on 27 July and 21 December 2016, in which it had noted the existence of a systemic threat to the rule of law in the country. He began by pointing out that recent draft laws on the judiciary submitted to Poland's national parliament by the government considerably exacerbated this threat, which was why the Commission was examining the issue again that day.

Mr TIMMERMANS recapped the sequence of events, explaining that, under the European Union Framework to strengthen the Rule of Law, the Commission had issued an Opinion on 1 June 2016, followed by the two Recommendations mentioned, in response to a series of measures taken by the Polish authorities with regard to the country's Constitutional Tribunal. The Commission was concerned that the composition of Poland's Constitutional Tribunal did not comply with its Constitution, given that three judges lawfully appointed in October 2015 had not yet taken office, its new president had not been appointed in accordance with existing laws, a number of rulings handed down by the Tribunal in late 2015 and 2016 had still not been published or implemented, and a series of other measures had been taken that were detrimental to the proper functioning of the Constitutional Tribunal. These factors seriously tarnished the legitimacy of the Polish Constitutional Tribunal, which was one of the fundamental guarantors of the rule of law in Poland. However, the Polish authorities' response to the Commission's Recommendation of December 2016, dated 20 February 2017, had failed to

dispel the Commission's concerns, as had the letter from the Polish Minister for European Affairs of 14 July.

Mr TIMMERMANS stressed that the Commission's concerns were shared widely elsewhere, including among representatives of the judiciary across Europe, the Council of Europe including the Venice Commission, the UN Human Rights Commission and many international civil society organisations.

At the meeting of the General Affairs Council on 16 May, ministers strongly agreed that the rule of law was a common interest and responsibility of the Union's institutions and Member States, and overwhelmingly supported the efforts made by the Commission to resolve the issue in Poland. Furthermore, Member States had called upon the Polish government to resume discussions with the Commission and wished to be kept informed of the outcome of these various efforts.

In addition to the matter of the Constitutional Tribunal, the Polish authorities had recently submitted to parliament four draft laws reforming the judiciary as a whole. These related to (i) the law on the National School for the Judiciary, (ii) the law on the National Council for the Judiciary, (iii) the law on the organisation of ordinary courts and (iv) the law on the Supreme Court.

The first of these laws had already entered into force, while the second and third had been adopted on 15 July and were awaiting the signature of the President of the Republic of Poland and publication in the country's official gazette before coming into force. Meanwhile, the fourth was to be adopted by the Polish parliament in the very near future, either that week or at an extraordinary session the following week.

Mr TIMMERMANS again stressed that these draft laws considerably exacerbated the systemic threat to the rule of law in Poland, which the

Commission had already highlighted twice in its Recommendations. Each individual law, if adopted, would seriously erode the independence of the Polish judiciary. Collectively, they would abolish any remaining judicial independence and put the judiciary under full political control of the government.

He explained the main reasons for concern with regard to the four laws. First, assistant judges would be appointed by the Minister for Justice and would serve for four years, but their status would not grant them the same guarantees as judges, and the National Council for the Judiciary would play a reduced role in their appointment. Moreover, assistant judges could act as the single judge in district courts.

Second, the 15 judge members of the National Council for the Judiciary would be appointed not by the judges themselves, which was currently the case, but by the Polish parliament.

Third, the entry into force of the new law on the National Council for the Judiciary would prematurely terminate the mandate of all current judge members of the National Council for the Judiciary.

Fourth, the new structure of this body would politicise the selection process of candidate judges by the National Council for the Judiciary. Under the new rules, the National Council for the Judiciary would in effect comprise two assemblies: one mostly made up of members of parliament and the other of judges appointed by parliament, meaning that the new ‘political’ assembly could obstruct the internal decision-making process of the National Council for the Judiciary.

Fifth, the Minister for Justice would be granted the power, for a period of six months, to appoint and dismiss court presidents without being bound by specific criteria, with no obligation to state reasons, and with no possibility

for the judiciary to block these decisions. The appointed court presidents could in turn exert increased influence on ordinary judges. At the end of the six-month period, the Minister for Justice could also appoint court presidents at his or her discretion. The Minister's decision could be suspended in the event of dismissal of a court president only if the National Council for the Judiciary voted in favour by a two-thirds majority.

Sixth, the retirement age that would apply to ordinary judges would be lowered from 67 to 60 for women and from 67 to 65 for men. Moreover, the Minister for Justice could decide to extend the tenure of judges up to the age of 70 on the basis of criteria that were so vague as to leave the door open to abuses of power and jeopardise the principle of the irremovability of judges.

Finally, in seventh place, if the draft law on the Supreme Court was adopted as it stood, it would put an end to the mandate of the current Supreme Court judges from the day following the law's entry into force, and only the judges appointed under the discretionary powers of the Minister for Justice could stay. In other words, the Minister for Justice would personally be able to appoint a candidate to each vacant seat and the National Council for the Judiciary would have 14 days in which to examine the candidature concerned. Once that time-limit had expired, the candidate would be proposed to the President of the Republic. If the Minister for Justice decided not to authorise the First President of the Supreme Court to remain in office, he would provisionally appoint a First President from among the judges. A new disciplinary chamber of the Supreme Court would be created with organisational and financing rules different from those of the other chambers, and the Minister for Justice would oversee disciplinary procedures brought against Supreme Court judges. Finally, the Supreme Court would also be subordinate to the Minister for Justice in terms of its organisation and staffing.

Mr TIMMERMANS summed up the expected global impact of the reforms, which was to politicise the entire judicial branch in Poland immediately by giving members of parliament or ministers control over the appointments, careers and mandates of all Polish judges and at the same time diminishing the influence of the National Council for the Judiciary.

The reforms were not limited, and although they did not improve the current government's chance of remaining in power, they would in any event force any successor to the government to annul them. The constitutional and judicial branch could therefore become a permanent political football as political parties succeeded one another in power.

It was up to the Member States to choose how to organise the judiciary, including whether or not to create a council for the judiciary with the task of safeguarding the independence of judges. Nevertheless, once such a council had been created, its independence should be guaranteed, as the rules in force in the Union required. If the planned reforms entered into force, the Polish judicial system would evidently no longer comply with European standards, and the laws might also not be compatible with the Polish Constitution, although a review of their constitutionality had become impossible in view of the current situation of the Constitutional Tribunal.

Mr TIMMERMANS turned finally to the concerns arising from the incompatibility of the laws in question with EU law. If EU law was infringed, the European citizens adversely affected could bring an action before the courts of a Member State in order to obtain relief. In that case, the courts – Polish or otherwise – acted as EU courts and had to meet the conditions as to the independence of the judiciary laid down by EU law, in the case in point Article 19(1) of the Treaty on European Union and Article 47 of the Charter of Fundamental Rights of the European Union. The legislative changes planned in Poland also raised the question of whether they complied with the

European acquis on non-discrimination, for example in the case of the different retirement ages for men and women judges.

He had sent a letter the previous week, on 13 July to be precise, to the Polish Minister for Foreign Affairs and Minister for Justice informing them of the concerns to which their draft laws on the functioning of the judiciary had given rise and inviting them to Brussels to resume the dialogue on the rule of law, while clearly stressing the importance of not adopting the laws or letting them enter into force in order to allow a meaningful exchange of views. However, the two draft laws on the National Council for the Judiciary and the organisation of the ordinary courts had been definitively adopted by the Polish parliament during the night of 15 July and forwarded to the President of the Republic of Poland for signing.

Mr TIMMERMANS regretted that the Polish authorities were using the exchanges as a means of gaining time in order to brazenly advance their reforms and thus seize all the levers of power. The recent developments had provoked strong reactions in Europe and in Poland itself, with declarations by the five former presidents of the Constitutional Tribunal, the First President of the Supreme Court and the National Council for the Judiciary, as well as major demonstrations in Warsaw. A large number of stakeholders shared the serious concerns of the EU: organisations representing judges and magistrates throughout Europe, the Council of Europe, the Organisation for Security and Cooperation in Europe, civil society, representatives of Polish economic circles, but also the principal political groups of the European Parliament.

The rule of law was one of the founding values of the European Union, as stipulated in Article 2 of the Treaty on European Union, and it defined the Union. Therefore the very functioning of the EU was jeopardised if its fundamental values, and specifically the rule of law, were under systemic

threat in one of its members. What was happening in Poland today concerned not only the Polish people but the EU as a whole.

That was why he was calling for unity to overcome this crisis – a real and profound unity to defend and ensure genuine respect for the very foundations of the community of values that constituted the European Union and to which all its member countries had subscribed when they won back peace and liberty. It was not a matter of politicking but of learning from experience, which showed that democracy needed law as a guiding principle and could not survive solely on the pretext that the majority had all the rights. The rule of law guaranteed precisely that no one was above the law – no president, no parliament, no government, no judge, no institution – and that the law was superior to them.

Mr TIMMERMANS concluded from the objective facts presented that, if the new laws placed before the Polish parliament were adopted and entered into force, coming on top of the placing of the Constitutional Tribunal under supervision, a red line would have been crossed in Poland and the Commission would have to act and take the measures it considered necessary.

Accordingly, he proposed using all the tools available to the Commission, namely (i) publicly declaring that the systemic threat hanging over the rule of law in Poland had been increased by the four recent draft laws on the judiciary, (ii) announcing that it was preparing a third recommendation under the European Union Framework to strengthen the Rule of Law, which would be submitted to the College for adoption at its meeting the following week, (iii) making known that it would have grounds to open procedures for infringement of EU law and that, subject to an in-depth analysis of the laws and the entry into force of the laws in question, it would not hesitate to launch such procedures at its next meeting, (iv) relaunching the dialogue with the Polish authorities if there was a chance of reaching a satisfactory settlement of

all the questions raised, and (v) asking the Estonian Presidency of the Council of the European Union to include the rule of law on the agenda of the General Affairs Council as soon as possible so that it could itself report on the situation, as desired by the Member States. Invoking Article 7 of the Treaty on European Union was also part of the discussion proposed to the College and no one would be surprised to find that, as a result of recent developments, the prospect of Article 7 being triggered was now very close. With regard to the infringement procedures, he considered that they should concern the violation of the principle of gender non discrimination and, if applicable, the possible infringement of Article 19(1) of the Treaty on European Union and Article 47 of the Charter of Fundamental Rights of the European Union as regards judicial redress and the independence of the judiciary.

In the course of the wide-ranging discussion that followed, the Commission raised the following main points:

- the full support of all Members of the Commission for the action taken by Mr TIMMERMANS as part of the regular dialogue with the Polish authorities on strengthening the rule of law;
- the importance for the Commission, as guardian of the Treaties, to stand firm on the question of observance of the rule of law by the Member States, which was a fundamental principle of its *raison d'être* and its operation;
- the observation that the challenge to the rule of law in Poland by the present government, which was endangering the very foundations of democracy and infringed some of the most basic provisions of the Treaty on European Union, was planned and organised;

- as a consequence of this, the need for a swift response from the Union, using all the tools at its disposal, to prevent the disputed laws from being adopted and implemented;
- the fact that the Polish people expected an explicit and forceful response from the Union to the laws that undermined the independence of the judiciary in Poland;
- the immediate problems created by the new laws for the Union’s legal order, given that Polish judges also acted as Union judges and the application of Union law was based on the principle of mutual recognition of Member States’ judicial decisions, a situation that would no longer apply if the independence of the judiciary in Poland were called into question;
- the fact that if the principle of mutual recognition and mutual trust between legal systems had to be questioned – if only in a single Member State – it would be impossible to implement programmes and instruments for reinforcing public safety and combatting crime, such as the European Public Prosecutor's Office and the European arrest warrant;
- the fact that respect for democratic principles was a precondition for accession by a new Member State under the Union’s Treaties and the Copenhagen criteria;
- for some, the painful memories awakened by the undermining of the rule of law, which could pave the way for arbitrary rule and dictatorship;
- the importance of bearing in mind the timetable for the proposed reforms in Poland over the next few weeks and the need for a rapid response from the EU;

- in that connection, support for the use of all the instruments available to the Union, whether legal instruments, political instruments or communication tools, so as to take visible and practical steps to prevent the undermining of the independence of the judiciary in Poland;
- the argument, advanced by some Members, that consideration should already be given at this stage to the use of Article 7(1) of the Treaty on European Union, determining that there was a clear risk of a serious breach by a Member State of the fundamental values of the Union;
- for others, the case for looking into the possibility of freezing EU funds for Member States which did not respect the rule of law;
- the value of an information campaign to remind people that the Union was founded on respect for the rule of law and fundamental values which guaranteed the rights of all EU citizens and without which the Union could not exist;
- the need for the Union to draw up a roadmap of the proposed measures for restoring the independence of the judiciary in Poland, to incorporate in it its overall strategy and to adapt it as events unfolded;
- the need for a reflection in the longer term on the development of new political and legal instruments to prevent any violation of the rule of law in a Member State and to respond to any such violation;
- the support already expressed by the European Parliament and by a number of Member States for a strong EU response to the serious violation of fundamental European values in Poland.

Mr TIMMERMANS pointed out that, quite apart from the question of the rule of law, Poland's challenge to the independence of its judiciary was an illustration of an ideological confrontation under way in other countries and

regions of the world. He mentioned the extensive mobilisation of Polish citizens and the weakening of popular support for a government that was increasingly isolated within the Union.

While recognising the effectiveness of financial arguments, he expressed regret that there was currently no legal instrument that allowed Member States' access to EU funding to be made conditional on respect for the rule of law. He therefore recommended that the Union make use of the instruments at its disposal as part of an overall strategy which he would submit to the College at its next meeting on 26 July.

Mr TIMMERMANS concluded his remarks by reaffirming his determination to pursue the measures he was taking on behalf of the Commission to protect democracy and the rule of law in Poland, a country to which he was very much attached, both personally and through family ties. He thanked the Members of the Commission for their unanimous support, their unity and their solidarity.

The PRESIDENT wound up this first detailed discussion by stressing how important it was for Mr TIMMERMANS to enjoy the full support of the College and to continue to be authorised to speak on behalf of the Commission in his discussions with the Polish authorities. It was just as vital for the Union to draw up targeted and legally sound measures that reflected the state of the discussions with the Polish government, while at the same time ensuring that it had the support of enough Member States to enable decisions to be adopted in the Council. He asked the Members to play their part through their political contacts in the Member States.

The Commission took note of this guidance and information.

9.2. COMMISSION SEMINAR TO PREPARE FOR THE 2017 STATE OF THE UNION SPEECH (GENVAL, 31 AUGUST AND 1 SEPTEMBER)

The PRESIDENT raised the matter of the forthcoming Commission seminar to be held in Genval from the afternoon of Thursday 31 August until Friday 1 September after lunch. The main objective would be to prepare his State of the Union address to the European Parliament on 13 September. He noted that the geopolitical climate and the many challenges facing the Union called for increased efforts and innovative solutions to carry through the Commission's political priorities.

The PRESIDENT stressed that it was important for all Members of the Commission to attend, and said that, if necessary, a formal Commission meeting could also be organised to coincide with the seminar.

The Commission took note of this information.

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The meeting closed at 12.29.