EUROPEAN COMMISSION

SECRETARIAT-GENERAL

PV(2018) 2248 final

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

Strasbourg, 17 April 2018

TEXTE EN

<u>MINUTES</u>

of the 2248th meeting of the Commission

held in Brussels

(Berlaymont)

on Wednesday 21 March 2018

(morning)

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EN

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<u>Single sitting</u>: Wednesday 21 March 2018 (morning)

The sitting opened at 9.43 with Mr JUNCKER, President, in the chair. Items 15 to 18 were chaired by Mr TIMMERMANS.

<u>Present</u>:

Mr JUNCKER	President	Items 1 to 14
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 15/18 (in part)
Mr MIMICA	Member	
Mr ARIAS CAÑETE	Member	
Mr VELLA	Member	
Mr ANDRIUKAITIS	Member	
Mr AVRAMOPOULOS	Member	
Ms THYSSEN	Member	
Mr MOSCOVICI	Member	Items 14 (in part) to 18
Mr STYLIANIDES	Member	
Mr HOGAN	Member	
Ms BULC	Member	
Mr NAVRACSICS	Member	
Ms CREȚU	Member	Items 1 to 15/18 (in part)
Ms VESTAGER	Member	Items 1 to 14 (in part)
Mr MOEDAS	Member	
Sir Julian KING	Member	
Ms GABRIEL	Member	

Absent:

Mr HAHN	Member
Ms MALMSTRÖM	Member
Ms BIEŃKOWSKA	Member
Ms JOUROVÁ	Member

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

Mr KARNITSCHNIG	Chef de cabinet to Mr HAHN
Mr CEBALLOS BARÓN	Deputy Chef de cabinet to Ms MALMSTRÖM
Mr HUSAK	Chef de cabinet to Ms BIEŃKOWSKA
Mr BRAUN	Deputy Chef de cabinet to Ms JOUROVÁ

The following also sat in:

Ms MARTÍNEZ ALBEROLA	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	
Ms METTLER	Head of the European Political Strategy Centre	
Mr SZOSTAK	Deputy Chef de cabinet to the PRESIDENT	
Ms DEJMEK-HACK	Adviser in the PRESIDENT's Office	Items 9 (in part) and 10
Mr GRASSI	Adviser in the PRESIDENT's Office	Items 10 (in part) to 14
Mr KASEL	Adviser in the PRESIDENT's Office	Items 14 (in part) to 18
Mr DELVAUX	Adviser in the PRESIDENT's Office	Item 14
Ms SILLAVEE	PRESIDENT's Office	
Mr SMULDERS	Chef de cabinet to Mr TIMMERMANS	Items 12 to 14
Mr WYNANDS	Chef de cabinet to Mr DOMBROVSKIS	Item 14 (in part)
Mr FREIMANIS	A member of Mr DOMBROVSKIS' staff	Items 14 (in part) to 18
Mr HAGER	Chef de cabinet to Mr OETTINGER	Items 1 to 8
Ms SCHMITT	Chef de cabinet to Mr AVRAMOPOULOS	Items 12 and 13
Mr BAILLY	Chef de cabinet to Mr MOSCOVICI	
Ms JUUL-JØRGENSEN	Chef de cabinet to Ms VESTAGER	Items 14 (in part) to 18

Mr BARNIER	Chief negotiator and Head of the Article 50 Task Force	Items 9 (in part) and 10
Ms VILA NUÑEZ	Secretariat-General	
Ms ANDREEVA	Commission Spokesperson's Service	

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

1. AGENDAS
(OJ(2018) 2248/FINAL; SEC(2018) 2248/FINAL)

The Commission took note of that day's agenda and of the tentative agendas for forthcoming meetings. It also noted the addition to the agenda for that day's meeting of item 8.3 on an administrative decision.

2. WEEKLY MEETING OF CHEFS DE CABINET
(RCC(2018) 2248)

The Commission considered the Secretary-General's report on the weekly meeting of Chefs de cabinet held on Monday 19 March 2018.

3. APPROVAL OF THE MINUTES OF THE 2246TH AND 2247TH MEETINGS OF THE COMMISSION (7 AND 13 MARCH 2018)

The Commission decided to hold over approval of the minutes of its 2246th and 2247th meetings for a later meeting.

4. MONITORING THE APPLICATION OF EUROPEAN UNION LAW

STATE AID AND OTHER COMPETITION RULES

The Commission's decision on this item is recorded in the special minutes.

5. WRITTEN PROCEDURES, EMPOWERMENT AND DELEGATION OF POWERS

5.1. WRITTEN PROCEDURES APPROVED (SEC(2018) 152 ET SEQ.)

The Commission took note of the Secretariat-General's memoranda recording decisions adopted between 12 and 16 March 2018.

5.2. EMPOWERMENT (SEC(2018) 153 ET SEQ.)

The Commission took note of the Secretariat-General's memoranda recording decisions adopted between 12 and 16 March 2018.

5.3. DELEGATION / SUBDELEGATION OF POWERS (SEC(2018) 154 ET SEQ.)

The Commission took note of the Secretariat-General's memoranda recording decisions adopted under the delegation and subdelegation procedure between 12 and 16 March 2018, as archived in D*e*cide.

5.4. SENSITIVE WRITTEN PROCEDURES (SEC(2018) 155 AND /2)

The Commission took note of the sensitive written procedures for which the time limit expired between 19 and 23 March 2018.

6. COMMISSION INTERPRETATIVE COMMUNICATION ON NEW REQUIREMENTS AGAINST TAX AVOIDANCE IN EU LEGISLATION GOVERNING IN PARTICULAR FINANCING AND INVESTMENT OPERATIONS (C(2018) 1756 AND /2)

The Commission approved the Interpretative Communication in C(2018) 1756/2.

7. RECOMMENDATION FOR A COUNCIL DECISION TO AUTHORISE THE COMMISSION TO OPEN NEGOTIATIONS ON BEHALF OF THE EUROPEAN UNION FOR THE AMENDMENT OF THE FISHERIES PARTNERSHIP AGREEMENT AND CONCLUSION OF A PROTOCOL WITH THE KINGDOM OF MOROCCO (COM(2018) 151; RCC(2018) 42)

The Commission adopted the recommendation for a Council Decision set out in COM(2018) 151, for transmission to the Council and, for information, to the European Parliament and the national parliaments.

8. ADMINISTRATIVE AND BUDGETARY MATTERS (SEC(2018) 156 AND /2)

ADMINISTRATIVE MATTERS
(PERS(2018) 20 AND /2)

8.1. DG HUMAN RESOURCES AND SECURITY – INTERNAL AND INTERINSTITUTIONAL (GRADE AD14/15) AND EXTERNAL (GRADE AD14) PUBLICATION OF VACANCY NOTICES FOR A DIRECTOR POST (PERS(2018) 21)

On a proposal from Mr OETTINGER, in agreement with the PRESIDENT, the Commission decided to authorise the internal, interinstitutional and external publication, under Article 29(1)(a)(i) and (iii), Article 29(1)(b) and Article 29(2) of the Staff Regulations, of the vacancy notices in PERS(2018) 21 for the post of Director of the ‘Security’ Directorate in DG Human Resources and Security.

This decision would take effect immediately.

8.2. PUBLICATIONS OFFICE – AMENDMENT OF ORGANISATION CHART (SEC(2018) 169)

On a proposal from Mr OETTINGER, in agreement with the PRESIDENT and after consulting Mr NAVRACSICS and also Mr ANSIP, Mr DOMBROVSKIS and Mr KATAINEN, the Commission decided:

– to create a temporary post of principal adviser that would be abolished on 31 December 2021;

– to abolish a unit, at the latest on 31 December 2018, unless a concrete plan to move the Brussels-based activities to the Publications Office while keeping the resources was presented and approved by Autumn 2018;

– to adopt the new organisation chart set out in SEC(2018) 169.

These decisions would take effect on 16 April 2018.

8.3. EUROPEAN ANTI-FRAUD OFFICE – APPROVAL OF THE LIST OF CANDIDATES FOR THE POST OF AD15 DIRECTOR-GENERAL (PERS(2017) 83 TO /4)

On a proposal from Mr OETTINGER, in agreement with the PRESIDENT, the Commission decided:

– to approve the list of four candidates, presented in alphabetical order, set out in point 1 of PERS(2018) 20/2, for the post of Director-General of the European Anti-Fraud Office, and to consider this list as the Commission proposal;

– to consult the European Parliament and the Council on this list;

- to ask Mr OETTINGER, the Member of the Commission in charge of the Budget and Human Resources, to communicate this decision, and the list of candidates, to the European Parliament and to the Council.

These decisions would take effect immediately.

9. COMMISSION DECISION ON A PROCEEDING UNDER ARTICLE 101 OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION AND ARTICLE 53 OF THE AGREEMENT ON THE EUROPEAN ECONOMIC AREA (CASE AT.40136 – CAPACITORS) (C(2018) 1768 TO /7; RCC(2018) 44; RCC(2018) 39)

Ms VESTAGER presented, for approval by the College, the decision to impose fines on the companies Elna, Hitachi AIC, Holy Stone, Matsuo, NEC Tokin, Nichicon, NCC, Rubycon and Sanyo, which the Commission had found to have infringed Article 101(1) of the Treaty on the Functioning of the European Union and Article 53 of the European Economic Agreement. She explained that, over a period of 14 years, these nine producers had established practices designed to restrict competition in the supply of aluminium and tantalum electrolytic capacitors, which were used in almost all electric or electronic products such as televisions, computers, smartphones and refrigerators. The Commission decision therefore required the companies in question to end this anti-competitive conduct immediately and to refrain from any similar conduct in future. It also imposed fines totalling €253 935 000.

She also reported on the Commission decision which was being proposed for adoption by written procedure that day (PE/2018/1694) to authorise, under the EU Merger Regulation, the acquisition of Monsanto by Bayer, one of the biggest merger operations ever examined by the Commission’s departments. The proposed decision followed an in-depth investigation into the planned acquisition during which over 2 000 different product markets and 2.7 million internal documents had been assessed. The aim of this exercise was to ensure that Monsanto did not strengthen its dominant position on certain markets where Bayer was a major competitor, in particular the markets for seeds, pesticides and digital agriculture. Approval of the acquisition had therefore been made conditional on the divestment of significant parts of the business worth over 6 billion euros.

To encourage companies to innovate in digital agriculture and to continue to develop new products meeting Europe's high regulatory standards, Ms VESTAGER pointed out that the proposed remedial measures included divestment of Bayer's global glufosinate-ammonium activities, because the company was deeply involved in the research aimed at developing substitutes for this compound.

She said that Bayer had proposed to divest this activity to BASF. The Commission would examine whether this proposal met all the requisite conditions and whether it posed any problems from a competition point of view. Bayer and Monsanto would not be able to implement the operation until the Commission had completed its review.

Looking beyond competition policy, she reminded the meeting that European citizens had expressed concerns about Bayer's acquisition of Monsanto in terms of consumer protection, food safety and ensuring the highest standards of protection for the environment and the climate. The Commission had received over a million emails and petitions. She stressed that these concerns, which came under the responsibility of Mr ANDRIUKAITIS, would not be neglected, even though the competition law case had now been closed. In any case, EU legislation on consumer protection and the environment would continue to apply to these companies. Lastly, Ms VESTAGER said that during its examination of the case, the Commission had cooperated with the competition authorities of a number of partner countries, all of which had arrived at the same conclusions, apart from the US authority, which had yet to take a decision, as the US market in the sectors concerned was very different.

Following this presentation, the Commission:

- took note of the opinions of the Advisory Committee on Restrictive Practices and Dominant Positions of 12 and 16 March 2018 in C(2018) 1768/4;

- took note of the final report of the Hearing Officer of 16 March 2018 in C(2018) 1768/3;

- adopted in the authentic language (English) the decision in C(2018) 1768/5 finding that the companies to which the decision was addressed had infringed Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the Agreement on the European Economic Area, requiring them to put an end to the infringements immediately and imposing on some of these companies fines totalling €253 935 000;

- decided that the decision in C(2018) 1768/5 would be notified to the companies concerned in the authentic language (English), together with the Hearing Officer's final report;

- adopted in the authentic language (English) Annexes III and IV, as set out in C(2018) 1768/6 and /7, concerning two of the companies in question and decided to notify them respectively to each of those companies;

- 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 to make the decision (with business secrets and other confidential information removed) available on the internet.

10. INTERINSTITUTIONAL RELATIONS
(RCC(2018) 34; RCC(2018) 38)

The Commission took note of the records of the meetings of the Interinstitutional Relations Group (IRG) held on Wednesday 14 and Friday 16 March 2018, distributed as RCC(2018) 34 and RCC(2018) 38.

It paid particular attention to the following points.

10.1. HORIZONTAL ITEM

i) Negotiations on an agreement with the United Kingdom setting out the arrangements for its withdrawal from the Union under Article 50 of the Treaty on European Union – 'European Commission draft Withdrawal Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community'
(SI(2018) 130)

The PRESIDENT invited Mr BARNIER to report on the latest developments in the negotiations he was leading on behalf of the European Union with the United Kingdom with a view to its withdrawal under Article 50 of the Treaty on European Union, in particular the points on which the two parties had reached agreement on 19 March.

Mr BARNIER reminded the meeting that on 28 February he had presented to the College the Draft Withdrawal Agreement translating into legal terms the Joint Report from the negotiators of the European Union and the United Kingdom of December 2017 and the Union's position on the other separation issues, which the Commission had adopted on that date. This text, which integrated in-depth discussions with the Member States and, once the Members of the College had been informed, at the meeting of the Interinstitutional Relations Group (IRG) of 14 March, had been sent to the British authorities on 15 March and had been the subject of intense negotiations in the last few days. The joint legal text being presented that day to the Members of the Commission demonstrated precisely for the first time the extent of the progress made on the legal arrangements for withdrawal. The points on which agreement had been reached were in green, the points on which there was agreement in principle but not yet agreement on the means were in yellow, and the points on which discussions were continuing, either because of discrepancies or disagreements or because more time was needed, were in white.

The Commission took note of this information and approved the line set out in SI(2018) 130.

10.2. LEGISLATIVE MATTERS

ii) Trilogues
(point 3.1 of the IRG record)

– Proportionality test before adoption of a new regulation of professions (Directive) – SCHWAB report – 2016/0404 (COD)

The Commission approved the line set out in SI(2018) 120/2.

– Establishment of the European Electronic Communications Code (Directive – recast) – DEL CASTILLO VERA report – 2016/0288 (COD)

The Commission approved the line set out in SI(2018) 131/2 and /3.

10.3. RELATIONS WITH THE EUROPEAN COUNCIL AND THE COUNCIL

iii) Programming of Council business
(SI(2018) 143)

The Commission took note of the information in SI(2018) 143 on the work of the Council between 22 March and 4 April.

iv) Non-legislative dossier
(point 4.1 of the IRG record)

– Draft Foreign Affairs Council Conclusions on Malicious Cyber Activities

The Commission took note of document SI(2018) 134 and approved the draft conclusions of the Foreign Affairs Council in the annex thereto for transmission to the Council.

v) Latest developments in the Council
(point 4.4 of the IRG record)

– EU list of non-cooperative third-country jurisdictions for tax purposes

The Commission approved the line set out in SI(2018) 121.

vi) Amendment of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (Directive) – MORIN-CHARTIER / JONGERIUS report – 2016/0070 (COD)

The PRESIDENT asked Ms THYSSEN to brief the Members on the latest interinstitutional developments regarding the proposal for a revision of the Posting of Workers Directive, presented by the Commission in 2016.

Ms THYSSEN referred to the latest trilogue meeting of 19 March, which had concluded with agreement on the last points disputed. This agreement could have the support of a large majority of 21 Member States. She welcomed the balanced outcome achieved, which was clear and applicable, even though this agreement was provisional and had to be confirmed at the Council and then Parliament. She reiterated that the principle of equal pay for equal work in the same country was now established and that the current compromise provided greater legal certainty for both employees and employers, while preserving the fundamental components of the agreement which the Member States had reached on 23 October 2017 within the Council (Employment, Social Policy, Health and Consumer Affairs). The revision of the Directive therefore clarified the rules applicable to the provision of services in the Single Market and offered better protection to workers' rights. She stressed that the final agreement secured at the end of the trilogue reinforced the EU's social dimension and that, in the long term, the implementation of the revised Directive would translate the principles of the European Pillar of Social Rights announced in November 2017, in particular with regard to fair working conditions.

In conclusion, she noted with satisfaction that the divisions between the Member States on this hitherto sensitive proposal were easing.

The PRESIDENT welcomed this significant outcome and congratulated Ms THYSSEN on her excellent work in this difficult area.

The Commission took note of this information.

10.4. RELATIONS WITH PARLIAMENT

vii) Action to be taken on Parliament's legislative resolutions and other resolutions of a legal nature

(SP(2018) 162)

The Commission decided to empower the Members of the Commission responsible for the sectors in question, in agreement with the PRESIDENT and Mr TIMMERMANS and, if necessary, with the other Members concerned to adopt the amended proposals for transmission to Parliament and the Council, as set out in SP(2018) 162, drawn up following the March 2018 part-session of Parliament, the contents of which were noted.

viii) Results of Parliament's March 2018 part-session

(SP(2018) 156; SP(2018) 157)

The Commission took note of the information in SP(2018) 156 and SP(2018) 157 on the proceedings of the part-session of Parliament held in Strasbourg from 12 to 15 March.

10.5. OTHER BUSINESS

ix) Draft Commission Regulation (EU) …/… of XXX amending Commission Regulation (EU) 1178/2011 of November 2011 as regards training outside approved training organisations
(point 7 of the IRG record)

The Commission approved the line set out in SI(2018) 125.

x) Ministerial meeting coordinating the fight against migrant smuggling and human trafficking (Niamey, 16 March 2018)
(point 7 of the IRG record)

The Commission approved the line set out in SI(2018) 141 to /3.

11. OTHER BUSINESS

COMMISSION DECISION ON THE ADMISSIBILITY OF THE PROPOSED CITIZENS' INITIATIVE ENTITLED 'BRITISH FRIENDS – STAY WITH US IN THE EU'
(C(2018) 1730)

Mr TIMMERMANS presented the draft decision being submitted that day for the Commission's approval on registration of the citizens' initiative entitled 'British friends – stay with us in the EU'. The aim of this citizens' initiative was to create a platform to enable British citizens who had not had the right to vote in the referendum on the UK's withdrawal from the Union, in particular because they were resident in another EU country, to make their voices heard. The initiative highlighted the fact that this referendum was not legally binding, its chief objective being to allow the British Parliament to ascertain the state of public opinion at a particular moment in time.

In accordance with the conditions for admissibility provided for in

Regulation (EU) 211/2011 on the citizens' initiative, the proposed action must, in order to be registered, manifestly fall within the Commission's powers to submit a proposal for a legal act for the purpose of implementing the Treaties.

Under Article 50(1) of the Treaty on European Union, any Member State could decide to withdraw from the Union in accordance with its own constitutional requirements. There was therefore no legal basis in the Treaties allowing the Commission to propose a legislative act relating to the internal decision-making process of a Member State in connection with notification of withdrawal from the EU under Article 50.

He therefore proposed to refuse the request for registration of this citizens' initiative on the grounds that it fell outside the framework of the powers conferred on the Commission by the Treaties. He reminded the meeting that in March 2017 the Commission had already rejected a similar initiative entitled 'Stop Brexit'.

In the course of a brief discussion, the Commission expressed its sympathy with this citizens' initiative, registration of which must nonetheless be refused for legal reasons.

The PRESIDENT noted the College's agreement on the need to reject the initiative.

However, he stressed how much the Commission regretted the UK's decision to withdraw from the European Union, and asked for this to be explicitly mentioned in the introductory part of the decision adopted by the College, in Recital 6.

Following this discussion, the Commission noted that the Citizens' Initiative entitled 'British friends – stay with us in the EU' did not fulfil the conditions for admissibility under Article 4(2) of Regulation (EU) 211/2011, read together with Article 2(1) thereof. The Commission therefore decided to refuse registration of the initiative, in accordance with document C(2018) 1730, and authorised Mr TIMMERMANS to sign the decision on its behalf, to notify the organisers of the initiative thereof in the authentic language (English), and to publish it, for information, in the Official Journal of the European Union.

12. PROPOSAL FOR A COUNCIL DECISION AUTHORISING THE COMMISSION TO APPROVE, ON BEHALF OF THE UNION, THE GLOBAL COMPACT FOR SAFE, ORDERLY AND REGULAR MIGRATION IN THE AREA OF IMMIGRATION POLICY (COM(2018) 168)

13. PROPOSAL FOR A COUNCIL DECISION AUTHORISING THE COMMISSION TO APPROVE, ON BEHALF OF THE UNION, THE GLOBAL COMPACT FOR SAFE, ORDERLY AND REGULAR MIGRATION IN THE FIELD OF DEVELOPMENT COOPERATION (COM(2018) 167)

Ms MOGHERINI briefly presented the two proposals for Council decisions being tabled for approval that day, whose purpose was to find a solution to a possible deadlock. She explained that during the intergovernmental negotiations on the Global Compact for Safe, Orderly and Regular Migration, in the UN, the European Union had found it impossible to speak with one voice because of the divergent unilateral position adopted by a Member State.

She regretted this state of affairs, which she felt could be damaging to European credibility on the world stage. The Union had occupied a key position in these negotiations since they were launched in 2016 and its partners expected it to play a leading role.

She therefore proposed continuing the efforts to reach a common position of the 28 Member States before the next cycle of negotiations opened on 3 April. She pointed out that the fallback solution of the 27 found at New York had been to allow Austria to speak on behalf of all the Member States – with the exception of the Member State in question – in order to enable the Union to promote its interests in the next negotiating cycles in the UN. She then referred to the proposals for decisions that would enable an end to be brought to the deadlock.

Mr TIMMERMANS drew attention to the fact that once the proposals for decisions being presented that day had been adopted by a qualified majority, they would allow the Union to continue the negotiations on the basis of the position agreed at the Council, and the Union delegation to exercise fully its coordination and representation function.

Mr AVRAMOPOULOS regretted the situation created by a single Member State in relation to this matter. The proposed approach, which had to be seen against a background of very specific circumstances relating to the negotiations on the Global Compact for Safe, Orderly and Regular Migration, in no way heralded a revision of the Union’s powers in external policy.

Following these presentations, the Commission adopted the proposals for Council decisions in COM(2018) 168 and COM(2018) 167 for transmission to the Council, and, for information, to the European Parliament and the national parliaments.

14. INTERINSTITUTIONAL RELATIONS (CONTINUED) (RCC(2018) 34; RCC(2018) 38)

RELATIONS WITH THE EUROPEAN COUNCIL AND THE COUNCIL

Results of the General Affairs Council (Brussels, 20 March 2018) and preparation for the European Council (Brussels, 22 and 23 March 2018)

At the PRESIDENT's request, Mr TIMMERMANS, Ms MOGHERINI and Mr KATAINEN informed the Commission of the main results of the General Affairs Council on Tuesday with a view to preparation of that week’s European Council. They referred in particular to the issue of rule of law in Poland, trade relations with the US, and relations with the Russian Federation and Turkey.

15. COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL – TIME TO ESTABLISH A MODERN, FAIR AND EFFICIENT TAXATION STANDARD FOR THE DIGITAL ECONOMY
(COM(2018) 146 TO /4; RCC(2018) 41)

16. PROPOSAL FOR A COUNCIL DIRECTIVE ON THE COMMON SYSTEM OF A DIGITAL SERVICES TAX ON REVENUES RESULTING FROM THE PROVISION OF CERTAIN DIGITAL SERVICES
(COM(2018) 148 TO /3; SWD(2018) 81 AND /2; SWD(2018) 82 AND /2; SEC(2018) 162; RCC(2018) 41)

17. PROPOSAL FOR A COUNCIL DIRECTIVE LAYING DOWN RULES RELATING TO THE CORPORATE TAXATION OF A SIGNIFICANT DIGITAL PRESENCE
(COM(2018) 147 TO /4; SWD(2018) 81 AND /2; SWD(2018) 82 AND /2; SEC(2018) 162; RCC(2018) 41)

18. COMMISSION RECOMMENDATION RELATING TO THE CORPORATE TAXATION OF A SIGNIFICANT DIGITAL PRESENCE
(C(2018) 1650 TO /4; RCC(2018) 41)

At the invitation of Mr TIMMERMANS, Mr DOMBROVSKIS explained the anomaly that the initiatives being tabled that day sought to remedy. Because of outdated tax rules based on the concept of the physical presence of companies, digital multinationals were taxed at a rate of only 9.5 %, compared to 23.2 % for multinationals in traditional sectors. He was therefore presenting the approach proposed by the Commission to guarantee fairer and more equitable taxation. This approach consisted of two strands.

Firstly, the Commission was proposing an interim and targeted solution whereby companies with worldwide turnover of more than €750 million and turnover in the Union of over €50 million would be subject to a Digital Services Tax. This tax, which would be set at 3 %, would apply to the provision of digital services that created value from user-generated content, for example the placement of advertising on a digital interface or intermediation services. It could generate annual revenue of €5 billion for the Member States.

Secondly, the Commission was proposing a long-term comprehensive and structural solution that consisted of introducing a common system for taxing digital activities in the Union so that companies were taxed where they could be deemed to have a significant digital presence. This presence was established if one of the following conditions was fulfilled: (i) annual revenue of over €7 million in a Member State, (ii) over 100 000 users in a Member State during a tax period or (iii) over 3 000 business contracts for digital services during a tax period.

Mr MOSCOVICI then remarked that the digital revolution was dramatically changing economies and the way in which businesses created value; this raised two issues, one legal and the other budget-related.

Firstly, as regards legal aspects, he felt it was necessary to address a loophole and adapt the current tax rules so that profits could be generated from digital activities without having a physical presence of any sort in a given country, as this would ensure that corporate tax could be charged on those activities. In his view, this legal loophole was contrary to the principle upheld by the Commission, whereby profits were taxed in the country where value was created. This loophole also led to unequal treatment depending on whether companies were operating in the traditional or digital economy. Therefore, the Commission was that day proposing that digital activities be included in the definition of corporate tax, using the three simple criteria already referred to, namely revenue, users and contracts, for which thresholds were set. He added that the ultimate goal was to include this proposal in national tax systems and in the future Common Consolidated Corporate Tax Base (CCCTB), which was currently being negotiated in the Council.

Next, as regards budgetary issues, he pointed to the significant losses suffered by Member States due to the current tax rules, given that the digital sector was growing exponentially and tax base erosion was set to rapidly become more widespread. He pointed out that certain Member States had already unilaterally adopted measures at national level to address this issue, and that this could potentially alter the functioning of the single market and mean that digital companies were subject to different and costly tax schemes within the EU. That was why the Commission was proposing to establish a temporary tax that would apply until the definition of significant digital presence came into force in the Member States. This temporary solution would apply to the turnover of companies whose profits, mainly through advertising, were generated thanks to users' data, such as search engines and social media platforms that used users' data to target specific adverts and the services provided by platforms that facilitated transactions between users.

He stressed that the proposal did not apply in any way to small companies or start-ups due to the two turnover thresholds, set at €750 million worldwide and €50 million in the EU. He added that with the 3 % Digital Services Tax, the Commission aimed to protect the profit margins of companies that were still developing, particularly in Europe.

As regards the political arguments that needed to be emphasised when presenting the proposal, he explained that the Digital Services Tax was not a tax on the giants of the digital world, nor was it an anti-American tax, as it did not target specific companies or nationalities. He added that it had been estimated that around 150 European, American and Asian companies would potentially be subject to the tax.

Mr MOSCOVICI also reminded the College that the proposals presented that day were the outcome of intensive consultations at European and international level with the Organisation for Economic Cooperation and Development and the G20, Mr MOSCOVICI having recently attended a meeting organised by the G20 in Buenos Aires. Given the slow progress made in these forums, he felt that the EU had to take the initiative and encourage its partners to move forward.

Lastly, he emphasised that it was extremely important to stress the interlinkage between the Commission's two proposals in all communication. It must be clearly stated that the tax would be temporary and would cease to exist once the overall structural tax solution was in place and that, in the Commission's view, this structural solution was preferable to the temporary solution; it was also necessary to garner support for this solution in Europe and the G20.

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

– the general importance of providing a level playing field for all operators in the digital market;

– the significant gaps in terms of the general tax rates applied to multinationals in the digital sector, the rate being 30 % in the United States and less than 10 % in many EU Member States;

– citizens' incomprehension given that multinationals in the digital sector were making record profits while paying less tax than ten years previously;

– the need to promote greater social justice in the digital sector in order to end the fiscal erosion that was putting pressure on State budgets;

– the longer-term possibility of establishing a tax system at global level for the digital sector that was tailored to the new market situation;

– questions on the real impact of a tax on revenue generated by the digital sector rather than on profits, particularly if a company was making a loss;

– the need for a rapid reaction at EU level and the importance of preventing fragmentation in the Digital Single Market due to the implementation of 28 different digital taxation models; in parallel, the need to avoid a situation whereby local companies supported the growth of global companies that did not pay their fair share of tax;

– a question about how the Council would respond to the Commission's proposals, given that taxation matters required unanimity;

– the risk that the US government would view the taxation of the digital sector as a hostile measure from the EU side towards the US multinationals in the sector.

Mr DOMBROVSKIS responded to a number of these comments by highlighting the fact that the proposals tabled that day by the Commission were also designed to put forward an innovative concept to foster debate at international level. He also explained that the proposals did not apply to certain financial services or certain structures such as crowdfunding platforms, which were covered by the Markets in Financial Instruments Directive (MiFiD) and whose activities were not of the same kind as advertising placement or intermediary services.

Mr MOSCOVICI admitted that there would probably be difficulties in the Council as regards the temporary tax solution, and it was therefore possible that the Member States would choose the structural solution instead. He added that the temporary tax would be applied to the activity in the user country, but that the idea was to tax profits in the future, using the Common Consolidated Corporate Tax Base. As regards the reaction of the US authorities, he took the view that they would not use the announcement of the Commission's proposals to escalate the current commercial tensions.

In conclusion, he reminded the College that, at the Digital Summit held in Tallinn in September 2017, the European Council had asked the Commission to propose legislative initiatives in that area, as it was now doing the day before the next European Council meeting on 22 and 23 March.

At the end of this discussion, the Commission:

– approved the Communication in COM(2018) 146/4 for transmission to Parliament and the Council, and, for information, to the European Economic and Social Committee, and to the national parliaments;

– adopted the proposals for a Council Directive in COM(2018) 148 and COM(2018) 147 for transmission to Parliament, the Council, the European Economic and Social Committee and the national parliaments, together with the impact assessment, the summary thereof and the opinion of the Regulatory Scrutiny Board in staff working documents SWD(2018) 81/2 and SWD(2018) 82/2 and in SEC(2018) 162, the contents of which were noted;

– approved the recommendation in C(2018) 1650/4 for notification to the Member States and for transmission, for information, to Parliament, the Council, the European Economic and Social Committee and the national parliaments.

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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 12.15.