



EUROPEAN COMMISSION

SECRETARIAT-GENERAL

PV(2014) 2100 final

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Strasbourg, 21 October 2014

TEXTE EN

MINUTES

of the 2100th meeting of the Commission

held in Brussels

(Berlaymont)

on Wednesday 8 October 2014

(morning)

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Single sitting: Wednesday 8 October 2014 (morning)

The sitting opened at 8.35 with Mr BARROSO, President, in the chair.

Present:

Mr BARROSO	Chair	
Baroness ASHTON	High Representative /Vice-President	
Mr ALMUNIA	Vice-President	
Mr ŠEFČOVIČ	Vice-President	
Mr BARNIER	Vice-President	Items 6 (in part) and 7
Mr OETTINGER	Vice-President	Items 6 (in part) and 7
Mr KATAINEN	Vice-President	Items 1 to 6
Mr POTOČNIK	Member	
Mr PIEBALGS	Member	Items 1 to 6
Ms VASSILIOU	Member	Items 6 (in part) and 7
Mr ŠEMETA	Member	
Mr DE GUCHT	Member	Item 6 (in part)
Ms GEORGIEVA	Member	Items 6 (in part) and 7
Mr HAHN	Member	
Ms HEDEGAARD	Member	
Mr FÜLE	Member	
Ms MALMSTRÖM	Member	
Mr BORG	Member	
Mr MIMICA	Member	
Mr NELLI FEROCI	Member	
Ms REICHERTS	Member	
Mr DOMINIK	Member	

Absent:

Mr KALLAS	Vice-President
Ms KROES	Vice-President
Ms GEOGHEGAN-QUINN	Member
Ms DAMANAKI	Member
Mr ANDOR	Member
Mr CIOLOŞ	Member

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

Mr STROTMANN	A member of Mr KALLAS's staff
Mr VAN ORANJE-NASSAU	Chef de cabinet to Ms KROES
Mr KÜTT	Chef de cabinet to Ms GEOGHEGAN-QUINN
Ms KIRCHNER	Deputy Chef de cabinet to Ms DAMANAKI
Mr GIBERT-MORIN	Chef de cabinet to Mr ANDOR
Mr HAEUSLER	Chef de cabinet to Mr CIOLOŞ

The following also sat in:

Mr SOBRAL	Deputy Chef de cabinet to the PRESIDENT	
Mr ROMERO REQUENA	Director-General, Legal Service	
Ms AHRENKILDE HANSEN	Commission Spokeswoman	
Ms BENÍTEZ SALAS	Bureau of European Policy Advisers	
Mr LAITENBERGER	Chef de cabinet to the PRESIDENT	Items 6 (in part) and 7 (in part)
Ms VANNINI	Adviser in the PRESIDENT's Office	Items 1 to 6
Mr KARNITSCHNIG	A member of the PRESIDENT's staff	
Mr MARTÍNEZ MONGAY	Chef de cabinet to Mr ALMUNIA	Item 6 (in part)
Ms NEMECKOVA	A member of Mr ALMUNIA's staff	Items 1 to 6 (in part)
Ms BATTISTA	A member of Mr OETTINGER's staff	Items 1 to 6 (in part)
Mr LAHTI	Chef de cabinet to Mr KATAINEN	Point 7
Mr VANHEUKELEN	Chef de cabinet to Mr DE GUCHT	Items 1 to 6 (in part)
Ms HRISTCHEVA	Chef de cabinet to Ms GEORGIEVA	Items 1 to 6 (in part)

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Mr BRUNET

Chef de cabinet to Mr FÜLE

Mr ITALIANER

Director-General of DG Competition

Items 1 to 6

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

1. AGENDAS

(OJ(2014) 2100/FINAL; SEC(2014) 508)

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(2014) 2100)

The Commission considered the Secretary-General's report on the weekly meeting of Chefs de cabinet held on Monday 6 October.

**3. APPROVAL OF MINUTES AND SPECIAL MINUTES OF 2099TH MEETING
(1 OCTOBER)**

(PV(2014) 2099; PV(2014) 2099, PART II AND /2)

The Commission approved the minutes of its 2099th meeting.

4. INTERINSTITUTIONAL RELATIONS

4.1. LEGISLATIVE MATTERS

- i) Amendment of Council Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity (Council Directive) – 2011/0092 (CNS)
(SI(2014) 348)**

The Commission approved the line set out in SI(2014) 348.

ii) Amendment of Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (Council Directive) - 2013/0188 (CNS)

(SI(2014) 349)

The Commission approved the line set out in SI(2014) 349.

iii) Fixing for 2015 of the fishing opportunities for certain fish stocks and groups of fish stocks applicable in the Baltic Sea (Council Regulation) – 2014/0254 (NLE)

(SI(2014) 351 and /2)

The Commission approved the line set out in SI(2014) 351/2.

iv) Prevention of the use of the financial system for the purpose of money laundering and terrorist financing (Directive) – KARIŇŠ & SARGENTINI report – 2013/0025 (COD)

(SI(2014) 357)

The Commission approved the line set out in SI(2014) 357.

v) 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)

(SI(2014) 360)

The Commission approved the line set out in SI(2014) 360.

vi) Measures to ensure a high common level of network and information security across the Union (Directive) – SCHWAB report – 2013/0027 (COD)

(SI(2014) 363 and /2)

The Commission approved the line set out in SI(2014) 363/2.

4.2. RELATIONS WITH THE EUROPEAN COUNCIL AND THE COUNCIL

vii) Programming of Council business

(SI(2014) 364)

The Commission took note of the information in SI(2014) 364 on the Council meetings between 9 and 22 October.

4.3. EXTERNAL RELATIONS

viii) The role of the European Union in the Food and Agriculture Organisation of the United Nations (FAO) after the Treaty of Lisbon – Updated Declaration of competences and new arrangements between the Council and the Commission for the exercise of membership rights of the European Union and its Member States

(SI(2014) 350 and /2)

The Commission approved the line set out in SI(2014) 350 and /2.

4.4. MISCELLANEOUS

ix) Ban on imports of fishery products from the European Union into Russia

(SI(2014) 354)

The Commission took note of the information in SI(2014) 354.

x) Safe Harbour arrangement and negotiations for an EU-US Data Protection Umbrella Agreement

(SI(2014) 355 and /2)

The Commission approved the line set out in SI(2014) 355/2.

xi) Extraordinary Chambers in the Courts of Cambodia (ECCC) – EU membership of the Principal Donors Group (PDG)

(SI(2014) 356)

The Commission approved the line set out in SI(2014) 356.

5. WRITTEN PROCEDURES, EMPOWERMENT AND DELEGATION OF POWERS

5.1. WRITTEN PROCEDURES APPROVED

(SEC(2014) 509 ET SEQ.)

The Commission took note of the Secretariat-General's memoranda recording decisions adopted between 29 September and 3 October.

5.2. EMPOWERMENT

(SEC(2014) 510 ET SEQ.)

The Commission took note of the Secretariat-General's memoranda recording decisions adopted between 29 September and 3 October.

5.3. DELEGATION AND SUBDELEGATION OF POWERS

(SEC(2014) 511 ET SEQ.)

The Commission took note of the Secretariat-General's memoranda recording decisions adopted under the delegation and subdelegation procedure between 29 September and 3 October, as archived in e-Greffe.

5.4. SENSITIVE WRITTEN PROCEDURES

(SEC(2014) 512)

The Commission took note of the sensitive written procedures for which the time limit expired between 6 and 10 October.

5.5. GENERAL EMPOWERMENT FOR THE EXERCISE OF CERTAIN POWERS IN RESPECT OF THE AGREEMENT TO BE GIVEN BY THE COMMISSION TO THE AGENCIES BEFORE THE ADOPTION OF IMPLEMENTING RULES GIVING EFFECT TO THE STAFF REGULATIONS IN ACCORDANCE WITH ARTICLE 110(2) THEREOF
(C(2014) 7229 AND /2)

The Commission granted general empowerment as set out in C(2014) 7229/2 to the Member of the Commission responsible for administration in order to adopt, on the Commission's behalf and under its responsibility, decisions concerning the exercise of certain powers in respect of the agreement to be given by the Commission to the agencies before the adoption of implementing rules giving effect to the Staff Regulations in accordance with Article 110(2) thereof.

6. MONITORING THE APPLICATION OF EUROPEAN UNION LAW

STATE AID – INDIVIDUAL CASE

(SEC(2014) 516; C (2014) 7142 TO /4; RCC(2014) 78)

– SA.34947 (2013/C) – UNITED KINGDOM – Support to Hinkley Point C Nuclear Power Station

Decision: Decision to close the formal investigation procedure under Article 108(2) of the Treaty on the Functioning of the European Union (TFEU)

on the grounds that the aid is compatible with the internal market

The PRESIDENT opened the discussion on the decision before the Commission in the case of state aid notified to it by the United Kingdom authorities concerning the construction of Hinkley Point C nuclear power station. Without going into the details of the case, which would be presented by Mr ALMUNIA, he noted that this was the first decision which the Commission had had to take on state aid for such a purpose.

While the decision touched on a politically sensitive topic, he stressed that its purpose was to provide a legal assessment of the compatibility of the proposed state aid with EU law, rather than to open up a general debate on the pros and cons of nuclear energy.

He reminded the meeting that the Commission had decided to exclude the nuclear industry from the Guidelines on state aid for environmental protection and energy 2014-2020, adopted in April 2014, on the grounds that it did not have sufficient experience to lay down conditions for the compatibility of state aid to this industry. As a result, such aid had to be assessed directly on the basis of Article 107 TFEU.

Lastly, he noted that another reason why this was the first such case for the Commission was that it was only fairly recently – in 2003 – that it had concluded that the state aid rules also applied to the nuclear sector.

He asked Mr ALMUNIA to present in more detail the decision laid before the Commission that day.

Mr ALMUNIA stressed the particular significance of the decision to be taken by the Commission. It would be ruling for the first time on the compatibility with EU law of state aid for the construction of a nuclear power plant, a project of considerable scope which would also be the first of its kind in the EU to benefit openly from state aid. The total cost of the plant, covering construction, running costs, waste treatment and decommissioning, was estimated at GBP 34 billion, of which GBP 17 billion

would come from an injection of own funds by the plant operator, a subsidiary of the group *Electricité de France (EDF)*, with the remaining GBP 17 billion being provided in the form of loans. The construction of the plant alone, which would take ten years, was expected to cost GBP 24.4 billion. *EDF* would have to disburse this amount before receiving the first grant provided as compensation under a ‘contract for difference’. In time the plant would produce 3.3 GWh of electricity, which would represent the largest volume of electricity produced by a nuclear power station in the UK and 7% of the country’s total generating capacity in 2023, when the plant was due to begin its operational lifetime of 60 years.

Mr ALMUNIA noted that, during its policy debate on the Guidelines on state aid in the environmental and energy fields in October 2013, the Commission had decided that state aid to the nuclear energy sector would be assessed directly on the basis of the Treaties, including the Euratom Treaty.

He then outlined the various aspects which had been thoroughly assessed by the Commission departments, in particular the need for and proportionality of the aid, and any possible distortion of competition.

He explained that the state aid for the construction of Hinkley Point C power station was necessary as it addressed a market failure: private operators were unable to carry out projects that entailed a cost and duration of such magnitude. Private-sector investment in such a project would not be feasible until after 2030 at the earliest, which would mean a ten-year delay in commissioning the plant. Moreover, no financing instrument currently available on the market covered a period of more than 15 years, compared with the 60-year operational lifetime expected of Hinkley Point C. The Chief Economist at the Directorate-General for Competition had applied no less than 24 econometric models before concluding that the aid was proportionate. The proposal for a Commission decision to authorise the state aid was therefore based on a particularly robust economic analysis. Mr ALMUNIA added that his departments had carried out numerous analyses and tested many

different scenarios in order to determine whether the private sector would be able to undertake such a project without government support. The conclusion of all these studies was that there was a market failure. Finally, he pointed out that a public call for expressions of interest in the project had been issued, to which only one tenderer, *EDF*, had ultimately responded.

The Commission's analysis of the proportionality of the state aid had focused particularly on the premium mechanism set up by the UK authorities. Mr ALMUNIA also noted that the estimated rate of return for the private operator was deemed to be reasonable in view of the risks incurred during the period of construction and commissioning of the plant.

As regards the credit guarantee for the project provided by the UK Treasury to cover loans of GBP 17 billion, the Commission had found the original terms insufficient given the risks involved in the project, and the UK had agreed to increase the guarantee fee to a more proportionate level.

Lastly, on the question of possible distortions of competition, he explained that here too his departments had applied a large number of econometric models before concluding that the state aid would not (a) have any distorting effect on prices, (b) be an obstacle to the internal market, (c) confer additional competitive advantages on *EDF* or (d) have any negative impact on the functioning of the market, for example by restricting capacity or limiting interconnection. Furthermore, the amount of electricity generated by Hinkley Point C as a proportion of total UK output would not be sufficient to cause any distortion of competition.

Summing up his presentation, Mr ALMUNIA stressed that the Commission's assessment had focused particularly on the mechanics of the state aid itself, in particular the guarantee fees and the 'contract for difference', including the two mechanisms for sharing gains between *EDF* and the UK. He also welcomed the excellent cooperation between the Commission departments and the UK authorities, which had led to adjustments being made and had now culminated in a proposal for

a decision that had a very sound basis.

The PRESIDENT asked the Director-General of the Legal Service to give his analysis and opinion on the decision submitted to the Commission.

The Director-General pointed out that the state aid in this case was not governed by the guidelines on state aid in the areas of the environment and energy, as decided by the Commission during its policy debate in October 2013 and when adopting the guidelines in April. Assessment of the compatibility of the state aid with European law must therefore be based on Article 107(3)(c) of the TFEU.

He then turned to the assessment criteria, which included (i) the pursuit of an objective of common European interest, saying that this criterion had been met by the fact that promoting nuclear energy was the objective of the Euratom Treaty still in force. Next, (ii) the existence of a market failure. This had been confirmed by the in-depth analysis carried out by the Directorate-General for Competition, and secondarily by the fact that only one tenderer replied in the end to the call for investors launched by the British authorities. As regards criterion (iii), the proportionality of the state aid, he pointed to the extremely thorough and sound method of modelling used to provide evidence that this criterion had been fulfilled and to account for the Commission's decision, if necessary, before the Court of Justice of the European Union. Lastly, he reported that the means used to assess criterion (iv), the absence of a distortion of competition conditions, complied with the rules.

Lastly, the Director-General confirmed that the proposal for a decision submitted by Mr ALMUNIA and his departments was convincing in legal terms, as were the arguments used to demonstrate that the state aid notified by the British authorities was investment aid and not operating aid. He concluded by saying that the Legal Service had, therefore, no objection to the proposed decision.

During the discussion which followed, the Commission raised the following main

points:

- the fact that the issue in the Commission decision being discussed that day was not to approve or reject the use of nuclear power in general, nor to decide what place it should be given, since this was not the purpose of the decision and each Member State was, moreover, free to choose its own energy mix; a reminder of the actual purpose of the decision which, for the Commission, was to decide whether the state aid notified was compatible with European law; emphasis on the Commission's responsibility as guardian of the Treaties and, in particular, of the internal market and competition rules;
- support by a majority for the arguments in the analysis justifying the criteria of common interest, the need for and the proportionality of the planned state aid and the absence of any distortion of competition conditions; the clarifications and modifications agreed on by the British authorities to meet certain previous concerns expressed by the Commission; support for the public funding proposed by the British authorities, which were regarded as balanced and justifiable;
- the emphasis on the very specific nature of the Hinkley Point C nuclear power project given its high cost, and the expected benefits in terms of electricity generation and security of supply in the particular energy context of the UK; emphasis, above all, of the fact that the project could not be achieved without state aid;
- for some, the need to take into account the precedent that would be set by this Commission decision, while others pointed out that any future planned state aid in the nuclear sector would in any case be examined on the basis of its own characteristics and merits;
- questions about possible alternatives to state aid to enable the private sector and financial markets to invest in the project, and about the duration of the guarantees (35 years) which the British authorities had granted to the chosen operator to

cover the capital invested;

- the concern to ensure that the proposed decision was in line with the Union's general policy objectives to complete the single energy market and contribute to the 'decarbonisation' of the European economy; in particular, the attention that should be paid, when responding to the market failure, to the signal sent out by the treatment of state aid in the field of nuclear energy, which was a mature technology, compared with state aid in the area of renewable energy, based on technologies that needed more time to become economically viable;
- the regret, expressed by some, that (i) all the long-term costs for the British Treasury had not been integrated into the calculation of the cost of the project, for instance the cost of storing the nuclear waste or of dismantling the plant at the end of its lifetime; and that (ii) the authorities had not issued an invitation to tender;
- the urgent need to create an internal electricity market given the very diverse situations in the Member States; the impact of the decision in terms of speeding up the introduction of a single electricity market by 2030, an issue still to be discussed by the Commission.

Mr ALMUNIA replied to the various comments by saying that he shared the Commission Members' concerns about the absence of an internal energy market, but he wondered whether such a market would be compatible with the provisions in Article 194 of the TFEU which gave Member States freedom to decide their energy mix.

As regards the arguments demonstrating the market failure, he referred to the analytic table annexed to the draft Commission decision. He also confirmed that it appeared to be impossible to meet the UK's future electricity needs if the Hinkley Point C project was not carried out.

Moreover, the amount of investments financed by state aid was higher in the renewable energy sector than in the nuclear energy sector, while the guarantees of

returns on investments covered a similar period (from 7 to 8 years) in both sectors.

The PRESIDENT thanked the Commission Members for this discussion, which would doubtless be seen in political or even ideological terms by public opinion and the media whereas in fact it was an objective decision by the Commission, as the guardian of the Treaties, in particular the Euratom Treaty, which was based on a very detailed legal and economic analysis of the compatibility of a state aid measure with European law. More generally, he reminded the meeting that the decision to contribute financially to the building of a nuclear power plant was that of a Member State government, not of the Commission.

The Commission decision on this case would, admittedly, create a precedent since this was the first time that it was giving its opinion on state aid in the nuclear sector. However, he stressed that all new proposals for state aid in the sector submitted to it subsequently would be assessed individually. This decision would have not determined future Commission decisions.

Following this exchange of views, the Commission adopted the decision set out in C(2014) 7142/4.

**7. COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS – ENLARGEMENT STRATEGY AND MAIN CHALLENGES 2014-15
(COM(2014) 700 TO /5; SWD(2014) 301 TO /3; SWD(2014) 302 TO /3; SWD(2014) 303 TO /3; SWD(2014) 304 TO /3; SWD(2014) 305 TO /3; SWD(2014) 306 TO /3; SWD(2014) 307 TO /3; RCC(2014) 79)**

Mr FÜLE presented the package of documents on the enlargement strategy 2014-2015, the content of which he had already outlined at the Commission meeting on 10 September.

He began by reminding the meeting of the goal the Commission had set itself five years earlier of strengthening the credibility of the enlargement policy and enhancing its power to bring about democratic transformation. He referred to the first two pillars highlighted in 2012 and 2013, respectively, under this new approach, namely the rule of law and fundamental freedoms, on the one hand, and competitiveness and good economic governance on the other. He explained that for the purpose of the present exercise a third pillar had been added to these two, namely public administration reform and the proper functioning of democratic institutions, in order to ensure that the progress made in the areas covered by these three interdependent pillars would in future be a decisive factor in analysing progress by the applicant countries.

He then reviewed the progress made by each applicant or potential applicant country and the challenges to be addressed in the coming period.

With regard to Montenegro, although some headway had been made in the accession negotiations, the country was lagging behind in some respects. He referred above all to the concerns about respect for freedom of expression and democratic pluralism in the country, and the delays in the reforms relating to the rule of law. In this connection, the Commission's report referred to the 'imbalance clause' which, in the event of delays in implementing Chapters 23 and 24 of the *acquis* relating to the rule of law, allowed the negotiation of other chapters to be frozen. While it would in fact not be applied at this stage, the reminder of this clause was designed to encourage actual implementation of the reforms needed in these fundamental areas, without which the pace of the negotiations would inevitably be slowed down.

With regard to Serbia, with which accession negotiations were now under way, screening of the integration of the Union *acquis* into national law was proceeding according to schedule. For the coming period, he stressed the importance of maintaining the pace of the priority reforms, not only as regards the rule of law but

also in the normalisation of relations with Kosovo¹, which needed to be given new momentum.

Turning to the former Yugoslav Republic of Macedonia (FYROM), he noted that despite some deterioration in the national political climate, the cumulative progress made in the political domain was sufficient for the Commission to maintain its recommendation of opening accession negotiations. However, the Macedonian authorities must do everything possible to bring themselves more into line with the Union, guarantee the rights of the political opposition and reach a negotiated settlement of the question of the designation of the country.

As regards Albania, which had obtained applicant country status in June, he confirmed that from now on attention must focus on the country's completion of the reforms needed in order to open accession negotiations.

He regretted the lack of progress made this year by Bosnia and Herzegovina, in the absence of genuine political will to implement the recommended reforms and of a European policy coordination mechanism. Given that a new government would be formed following the forthcoming legislative elections, the country might position itself more clearly and take the necessary socio-economic measures.

The initialling of the Stabilisation and Association Agreement with Kosovo in July was an important watershed, though Mr FÜLE pointed out the need for clarification of the political situation and the formation of a government as soon as possible. Among the challenges to be addressed were the reforms needed in the area of the rule of law and further steps towards normalising relations with Serbia.

¹ This designation was without prejudice to positions on status and was in line with UN Security Council Resolution 1244/99 and the International Court of Justice's opinion on Kosovo's declaration of independence.

Lastly, on the subject of Turkey, an important strategic partner for the Union in many respects, in particular given the current regional geopolitical context, Mr FÜLE gave a mixed report. On the one hand, some progress had been made in the area of reform, notably the democratisation measures announced in September 2013 and new efforts to reach a peaceful settlement of the Kurdish question. On the other, he referred to the Turkish government's reaction to allegations of corruption last December, which were a matter of considerable concern to the Union with regard to respect for the principles of the rule of law, the independence of the justice system and freedom of expression in Turkey. He referred to the roadmaps being drawn up, on the basis of peer review missions sent to Turkey by the Commission, which would serve as a guide for the measures to be taken in these key policy areas. He also reported a number of recent positive political developments which might give a new boost to the accession negotiations.

In conclusion, he noted the significant development of enlargement policy over the last five years, which had transformed an essentially technical process into a flagship EU foreign policy instrument. He wound up by stressing that one of the most important features of the policy was that when the applicant countries effectively implemented the recommended reforms, the Union, too, must be able to meet its commitments in this respect.

The Commission approved the communication in COM(2014) 700/4 and /5 for transmission to Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and, for information, to the national parliaments, together with the 2014 follow-up reports on Montenegro, Serbia, the former Yugoslav Republic of Macedonia, Albania, Bosnia and Herzegovina, Kosovo and Turkey contained in the staff working documents distributed as SWD(2014) 301/3, SWD(2014) 302/3, SWD(2014) 303/3, SWD(2014) 304/3, SWD(2014) 305/3, SWD(2014) 306/3 and SWD(2014) 307/3, the contents of which were noted.

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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 10.32.