



EUROPEAN COMMISSION

SECRETARIAT-GENERAL

PV(2016) 2154 final

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

Brussels, 17 February 2016

TEXTE EN

MINUTES

of the 2154th meeting of the Commission

held in Strasbourg

(Winston Churchill building)

on Tuesday 2 February 2016

(afternoon)

PV(2016) 2154 final

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

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TABLE OF CONTENTS

Attendance list	5-7
1. AGENDAS (OJ(2016) 2154/FINAL; SEC(2016) 67/FINAL)	8
2. WEEKLY MEETING OF CHEFS DE CABINET (RCC(2016) 2154).....	8
3. APPROVAL OF THE MINUTES AND SPECIAL MINUTES OF THE 2152 ND AND 2153 RD MEETINGS OF THE COMMISSION (19 JANUARY AND 27 JANUARY) (PV(2016) 2152; PV(2016) 2152, 2 ND PART; PV(2016) 2153; PV(2016) 2153, 2 ND PART)	8
4. INTERINSTITUTIONAL RELATIONS (RCC(2016) 12)	8
4.1. LEGISLATIVE MATTERS	9
4.2. RELATIONS WITH THE EUROPEAN COUNCIL AND THE COUNCIL	10
4.3. RELATIONS WITH PARLIAMENT	12
4.4. RELATIONS WITH NATIONAL PARLIAMENTS, THE OTHER INSTITUTIONS AND BODIES, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS.....	13
5. WRITTEN PROCEDURES, EMPOWERMENT AND DELEGATION OF POWERS.....	13
5.1. WRITTEN PROCEDURES APPROVED (SEC(2016) 68 ET SEQ.).....	13
5.2. EMPOWERMENT (SEC(2016) 69 ET SEQ.)	13
5.3. DELEGATION AND SUBDELEGATION OF POWERS (SEC(2016) 70 ET SEQ.).....	14
5.4. SENSITIVE WRITTEN PROCEDURES (SEC(2016) 71).....	14

6.	ADMINISTRATIVE AND BUDGETARY MATTERS (SEC(2016) 72).....	14
6.1.	SECRETARIAT-GENERAL / REGULATORY SCRUTINY BOARD – APPOINTMENT OF AD13/14 ADVISER (PERS(2016) 9)	14
6.2.	DG RESEARCH AND INNOVATION – LIST OF CANDIDATES FOR THE AD14 POST OF EXECUTIVE DIRECTOR OF THE FUEL CELLS AND HYDROGEN 2 JOINT UNDERTAKING (PERS(2015) 52 TO /4)	15
7.	COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL ON AN ACTION PLAN FOR STRENGTHENING THE FIGHT AGAINST TERRORIST FINANCING (COM(2016) 50 AND /2; (RCC(2016) 15).....	15
8.	COMMISSION IMPLEMENTING DECISION ESTABLISHING THE REPORT OF THE 2015 EVALUATION OF THE IMPLEMENTATION OF THE SCHENGEN <i>ACQUIS</i> IN THE FIELD OF MANAGEMENT OF THE EXTERNAL BORDER BY GREECE (C(2016) 450 TO /3; (RCC(2016) 17).....	16
9.	PROPOSAL FOR A COUNCIL RECOMMENDATION ON ADDRESSING THE SERIOUS DEFICIENCIES IDENTIFIED IN THE 2015 EVALUATION OF THE IMPLEMENTATION OF THE SCHENGEN <i>ACQUIS</i> IN THE FIELD OF MANAGEMENT OF THE EXTERNAL BORDER BY GREECE (COM(2016) 45 AND /2; (RCC(2016) 17).....	16
10.	OTHER BUSINESS.....	17
10.1.	STATE OF ONGOING DISCUSSIONS WITH THE UNITED KINGDOM.....	17
10.2.	'SAFE HARBOUR' – STATE OF PLAY (INFO(2016) 6; RCC(2016) 16).....	17
11.	DRAFT BUDGETARY PLAN OF PORTUGAL FOR 2016 – FOLLOW- UP AND OPINION OF THE COMMISSION	22

AD HOC EMPOWERMENT TO ADOPT THE OPINION OF THE
COMMISSION THAT WILL BE MADE NECESSARY BY THE
LATEST INFORMATION THAT MAY STILL PROVIDED BY THE
PORTUGUESE AUTHORITIES (C(2016) 750).....22

Single sitting: Tuesday 2 February 2016 (afternoon)

The sitting opened at 13.06 with Mr JUNCKER, President, in the chair. It was adjourned at 13.47 and resumed at 13.54.

Present:

Mr JUNCKER	President	
Mr TIMMERMANS	First Vice-President	
Mr ANSIP	Vice-President	Items 1 to 11 (in part)
Mr ŠEFČOVIČ	Vice-President	
Mr DOMBROVSKIS	Vice-President	
Mr KATAINEN	Vice-President	
Mr OETTINGER	Member	
Mr HAHN	Member	
Mr ARIAS CAÑETE	Member	
Mr VELLA	Member	Items 1 to 11 (in part)
Mr ANDRIUKAITIS	Member	
Mr AVRAMOPOULOS	Member	Items 1 to 11 (in part)
Ms THYSSEN	Member	
Mr MOSCOVICI	Member	
Mr STYLIANIDES	Member	Items 10 (in part) and 11
Mr HOGAN	Member	
Lord HILL	Member	
Ms BULC	Member	
Ms BIENKOWSKA	Member	
Ms JOUROVÁ	Member	
Mr NAVRACSICS	Member	
Ms CREȚU	Member	
Ms VESTAGER	Member	
Mr MOEDAS	Member	

Absent:

Ms MOGHERINI	High Representative / Vice-President
Ms GEORGIEVA	Vice-President
Ms MALMSTRÖM	Member
Mr MIMICA	Member

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

Mr MANSERVISI	Chef de cabinet to Ms MOGHERINI
Ms GROS-TCHORBADJIYSKA	A member of Ms GEORGIEVA's staff
Ms EICHHORN	A member of Ms MALMSTRÖM's staff
Mr ČAJO	A member of Mr MIMICA's staff

The following also sat in:

Ms MARTÍNEZ ALBEROLA	Deputy Chef de cabinet to the PRESIDENT	
Mr ROMERO REQUENA	Director-General, Legal Service	
Mr PESONEN	Director-General, DG Communication	
Ms BERTAUD	Commission Spokesperson's Service	
Mr SWIEBODA	European Political Strategy Centre	
Mr THOLONIAT	Adviser in the PRESIDENT's Office	
Ms ROUCH	Adviser in the PRESIDENT's Office	
Ms SUTTON	Deputy Chef de cabinet to Mr TIMMERMANS	Items 1 to 10
Ms CHAPUIS	A member of Mr ANSIP's staff	Item 10 (in part)
Mr SUARDI	Deputy Chef de cabinet to Mr DOMBROVSKIS	Item 11
Mr GIAKOUMIS	A member of Mr STYLIANIDES's staff	Items 1 to 10 (in part)
Ms NIKOLAY	Chef de cabinet to Ms JOUROVÁ	Item 10 (in part)
Mr DEROOSE	Deputy Director-General, DG Economic and Financial Affairs	Item 11

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

1. AGENDAS

(OJ(2016) 2154/FINAL; SEC(2016) 67/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(2016) 2154)

The Commission considered the Secretary-General's report on the weekly meeting of Chefs de cabinet held on Monday 1 February.

3. APPROVAL OF THE MINUTES AND SPECIAL MINUTES OF THE 2152ND AND 2153RD MEETINGS OF THE COMMISSION (19 JANUARY AND 27 JANUARY)

(PV(2016) 2152; PV(2016) 2152, 2ND PART; PV(2016) 2153; PV(2016) 2153, 2ND PART)

The Commission approved the minutes of its 2152nd meeting, and decided to hold over for one week approval of the minutes of its 2153rd meeting.

4. INTERINSTITUTIONAL RELATIONS

(RCC(2016) 12)

The Commission took note of the record of the meeting of the Interinstitutional Relations Group (IRG) held on Friday 29 January (RCC(2016) 12).

It paid particular attention to the following points.

4.1. LEGISLATIVE MATTERS

i) European Parliament dossiers – February I part-session

(point 3.2 of the IRG record)

Ordinary legislative procedure – First reading

- Implementation of the safeguard clause and the anti-circumvention mechanism providing for the temporary suspension of tariff preferences of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part (Regulation) SCHOLZ report – 2015/0079 (COD).

The Commission approved the line set out in SP(2016) 57 and /2.

- Implementation of the anti-circumvention mechanism providing for the temporary suspension of tariff preferences of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part (Regulation) – LANDSBERGIS report – 2015/0080 (COD).

The Commission approved the line set out in SP(2016) 58 and /2.

- European Platform to enhance cooperation in the prevention and deterrence of undeclared work (Decision) – PIRINSKI report – 2014/0124 (COD)

The Commission took note of the compromise text in SP(2016) 59, further to note SI(2015) 437/2, which it had approved on 11 November 2015.

Implementing acts and measures

- Draft Commission Regulation amending Commission Regulation (EC) 692/2008 implementing and amending Regulation (EC) 715/2007 of the European Parliament and of the Council on type-approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information – Objection pursuant to Rule 106.

The Commission approved the line set out in SP(2016) 60, further to document SP(2016) 3, which it had approved on 13 January.

- Authorisation for the placing on the market of products containing, consisting of, or produced from genetically modified soybean (MON 87708 x MON 89788, MON 87705 x MON 89788, FG 72) pursuant to Regulation (EC) 1829/2003 of the European Parliament and of the Council on genetically modified food and feed (Commission Implementing Decision) – Objection pursuant to Rule 106

The Commission approved the line set out in SP(2016) 76.

4.2. RELATIONS WITH THE EUROPEAN COUNCIL AND THE COUNCIL

ii) Programming of Council business

(SI(2016) 28)

The Commission took note of the information in SI(2016) 28 on the Council meetings between 4 and 17 February.

iii) Non-legislative dossiers

(point 4.1 of the IRG record)

- UN International Conference Supporting Syria and the Region (London, 4 February)

The Commission approved the line set out in SI(2016) 18.

- Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo¹, of the other part (Council Decision) – LUNACEK report – 2015/0094 (NLE)

The Commission approved the line set out in SI(2016) 19.

- *Issues paper 'European Climate Diplomacy after COP21'*

The Commission approved the line set out in SI(2016) 20 and /2.

- *Bangladesh country fiche on migration*

The Commission approved the line set out in SI(2016) 25/2.

- Preparation of the summit between the European Union and India – *'EU-India Agenda for Action 2020'*

The Commission approved the line set out in SI(2016) 26.

iv) Preparation of the informal meeting of Ministers for Development (Amsterdam, 1 and 2 February)

(point 4.2.1 of the IRG record)

- *Preliminary outcomes of the public consultation 'Towards a new partnership between the European Union and the African Caribbean and Pacific countries after 2020'*

¹ This designation was without prejudice to positions on status, and was in line with UN Security Council Resolution 1244/1999 and the International Court of Justice Opinion on the Kosovo declaration of independence.

The Commission took note of document SI(2016) 21.

4.3. RELATIONS WITH PARLIAMENT

v) Action taken on non-legislative resolutions adopted by Parliament at its October III 2015 part-session

(point 5.6.2 of the IRG record)

The Commission approved document SP(2016) 67 on the action taken on the non-legislative resolutions adopted by Parliament at its October III 2015 part-session, for transmission to Parliament.

vi) Action taken on legislative opinions and non-legislative resolutions adopted by Parliament at its December I and II 2015 part-sessions

(point 5.6.3 of the IRG record)

The Commission approved document SP(2016) 68 on the action taken by the Commission on the legislative opinions and non-legislative resolutions adopted by Parliament at its December I and II 2015 part-sessions, for transmission to Parliament.

vii) Action taken on the non-legislative resolution on the draft Commission Implementing Regulation adopting a list of invasive alien species of Union concern

(point 5.6.4 of the IRG record)

The Commission approved document SP(2016) 74 on the action taken by the Commission on Parliament's resolution on the list of invasive alien species of concern adopted by Parliament at its December II 2015 part-session, for transmission to the European Parliament once the Commission has adopted the action taken on the other non-legislative resolutions adopted by Parliament at its December II 2015 part-session, together with the other action taken.

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

viii) Reply to the Contribution of the 54th Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (Luxembourg, 29 November to 1 December 2015)

(point 6.1.3 of the IRG record)

The Commission approved document SNP(2016) 6 containing its reply to the Contribution of the 54th Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC), for transmission to the Presidency of COSAC.

5. WRITTEN PROCEDURES, EMPOWERMENT AND DELEGATION OF POWERS

5.1. WRITTEN PROCEDURES APPROVED
(*SEC(2016) 68 ET SEQ.*)

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

5.2. EMPOWERMENT
(*SEC(2016) 69 ET SEQ.*)

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

5.3. DELEGATION AND SUBDELEGATION OF POWERS

(SEC(2016) 70 ET SEQ.)

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

5.4. SENSITIVE WRITTEN PROCEDURES

(SEC(2016) 71)

The Commission took note of the sensitive written procedures for which the time limit expired between 1 and 5 February.

6. ADMINISTRATIVE AND BUDGETARY MATTERS

(SEC(2016) 72)

ADMINISTRATIVE MATTERS

(PERS(2016) 7)

6.1. SECRETARIAT-GENERAL / REGULATORY SCRUTINY BOARD – APPOINTMENT OF AD13/14 ADVISER

(PERS(2016) 9)

The Commission had before it the list of applications under Article 29(1)(a)(i) and (iii) of the Staff Regulations for the post of Adviser (Regulatory Scrutiny Board) in the Secretariat-General.

The Commission took note of the opinion of the Consultative Committee on Appointments of 29 January 2016 (PERS(2016) 9).

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 the PRESIDENT in agreement with Mr TIMMERMANS and Ms GEORGIEVA, it then decided to appoint Mr Bernard NAUDTS to the post.

This decision would take effect on 1 February 2016.

6.2. DG RESEARCH AND INNOVATION – LIST OF CANDIDATES FOR THE AD14 POST OF EXECUTIVE DIRECTOR OF THE FUEL CELLS AND HYDROGEN 2 JOINT UNDERTAKING (PERS(2015) 52 TO /4)

The Commission, on a proposal from Ms GEORGIEVA, in agreement with the PRESIDENT and after consulting Mr MOEDAS and Mr ANSIP, Mr DOMBROVSKIS, Mr KATAINEN and Mr ŠEFČOVIČ, decided:

- to approve the list before it, made up of two candidates presented in order of preference, set out in point 2 of PERS(2016) 7, for the post of Executive Director of the 'Fuel Cells and Hydrogen 2' (FCH 2) Joint Undertaking, and to consider this list as the Commission proposal;
- to instruct Mr MOEDAS, the Commissioner for Research, Science and Innovation, to notify this list to the Governing Board of the 'Fuel Cells and Hydrogen 2' Joint Undertaking.

These decisions would take effect immediately.

7. COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL ON AN ACTION PLAN FOR STRENGTHENING THE FIGHT AGAINST TERRORIST FINANCING (COM(2016) 50 AND /2; (RCC(2016) 15)

The Commission approved the communication in COM(2016) 50/2, for

transmission to the European Parliament and the Council and, for information, to the national parliaments.

**8. COMMISSION IMPLEMENTING DECISION ESTABLISHING THE REPORT OF THE 2015 EVALUATION OF THE IMPLEMENTATION OF THE SCHENGEN *ACQUIS* IN THE FIELD OF MANAGEMENT OF THE EXTERNAL BORDER BY GREECE
(C(2016) 450 TO /3; (RCC(2016) 17)**

The Commission:

- adopted, in the authentic language (Greek), the Commission implementing decision in C(2016) 450/3 and the report annexed thereto;
- decided to notify the decision and the annexed report to the Hellenic Republic;
- decided to transmit the decision and the annexed report, for information, to the European Parliament and the Council.

**9. PROPOSAL FOR A COUNCIL RECOMMENDATION ON ADDRESSING THE SERIOUS DEFICIENCIES IDENTIFIED IN THE 2015 EVALUATION OF THE IMPLEMENTATION OF THE SCHENGEN *ACQUIS* IN THE FIELD OF MANAGEMENT OF THE EXTERNAL BORDER BY GREECE
(COM(2016) 45 AND /2; (RCC(2016) 17)**

The Commission adopted the proposal for a Council recommendation in COM(2016) 45/2, for transmission to the Council.

10. OTHER BUSINESS

10.1. STATE OF ONGOING DISCUSSIONS WITH THE UNITED KINGDOM

The PRESIDENT referred to the letter that the President of the European Council, Donald Tusk, had sent that morning to the Heads of State or Government of the 28 Member States of the European Union. In this letter, Mr Tusk presented a proposed new arrangement for the United Kingdom in the European Union, which had been drawn up in close cooperation with the Commission. The PRESIDENT asked the Members to examine the content of this letter and of the attached draft decision, which would be submitted to EU leaders at the European Council meeting on 18 and 19 February. He suggested returning to this issue in more detail at the Commission's next meeting.

The Commission took note of this information.

10.2. 'SAFE HARBOUR' – STATE OF PLAY (INFO(2016) 6; RCC(2016) 16)

Mr TIMMERMANS set out the state of play of the negotiations with the American authorities on the drawing-up of a new arrangement intended to replace the current Safe Harbour arrangement. He reminded the College that it had already been apprised of the progress of the talks on 2 December, and that the dual objective was to ensure full protection of the fundamental rights of European citizens whose personal data were transferred across the Atlantic, and to provide a framework of legal certainty for European undertakings.

He noted the positive progress in negotiations with the American authorities and the fact that exchanges had intensified over the past days and weeks. Without prejudice to a number of aspects still to be settled, he considered that the assurances gained and the additional measures and safeguards agreed should make it possible to ensure the strength and viability of the draft future

arrangement regulating the flow of transatlantic data for commercial purposes.

In particular, he referred to the American authorities' proposal to set up a mediation structure for legal challenges by European citizens concerning access to their personal data for national security purposes. He stressed that the structure would be under the responsibility of the American Secretary of State, as confirmed to him by Mr John Kerry.

On a more general note, Mr TIMMERMANS considered that the arrangement met the criteria set out by the Court of Justice of the European Union in the *Schrems* case (C-362/14), while setting out a framework of legal certainty which was essential for European undertakings and the European economy. On this basis, he therefore supported the proposal to give Ms JOUROVÁ a mandate to conclude the negotiations.

Mr ANSIP, for his part, insisted on the significant added value resulting from the dynamic nature of the agreement, in particular thanks to the setting-up of an annual joint review, which would make it possible, if necessary, to identify and correct any problem in the actual application by the American authorities of the principles and safeguards provided for. Furthermore, he mentioned the increased protection provided by the proposed approach in terms of administrative challenges, the mediation structure and the possibility of having an arbitration procedure as a last resort. Moreover, he considered the acceptance of this package at the highest political level to be further evidence of the binding nature of the future agreement. To conclude, he stated that, for all these reasons, the future arrangement would be fundamentally different from the one which had preceded it. He said that he was ready to defend it and, consequently, confirmed his support for Ms JOUROVÁ.

Ms JOUROVÁ reminded the Members of the Commission that the negotiations held since last December had mainly concerned the few

remaining questions with regard to the recommendations made by the EU to correct the weak points in the previous safe harbour arrangement, i.e. the points relating to restrictions on access to personal data for national security purposes. The criteria set out by the Court of Justice of the European Union in its judgment of 6 October 2015 in the *Schrems* case (C-362/14) had made it possible to structure the talks with the American authorities in terms of the provisions required to meet those criteria.

On this point, Ms JOUROVÁ mentioned the explanations and assurances provided by the American authorities to show that access to data for national security purposes was restricted, under American law, to what was strictly necessary and proportionate. As an example, she referred to the provisions on the right to protection which had been introduced into American law in recent years and which were irreversible.

She also stressed the significance of the mediation arrangement specifically provided for the EU in order to supplement the existing arrangement under American law with a view to meeting the criterion set out by the Court for legal remedy for European citizens with regard to access to personal data for national security purposes. She noted the fact that the new arrangement had been tailor-made and was a genuine breakthrough for individuals' right to legal remedy.

Ms JOUROVÁ specified that all these measures had been confirmed at the US's highest political level and she, too, welcomed the dynamic nature of the proposed future arrangement, in particular the fact that the annual joint review made it possible to combine reasonable trust with the possibility of carrying out concrete checks and, if there was a proven need to do so, to suspend application of the agreement.

In general, she considered that the proposed new arrangement represented a balance between the right to privacy, the right to security, and undertakings'

legitimate interests, although a certain number of aspects were still to be settled, including questions relating to the role of the Data Protection Authorities in Member States in the event of an arbitration procedure in the United States.

Finally, in view of the fundamentally different nature of the future arrangement, Ms JOUROVÁ suggested calling it the ‘EU-US Privacy Shield’ and possibly designing a label for it, to be displayed by undertakings that adhered to its protection standards.

On this basis, she proposed to the Members of the Commission that a draft decision be drawn up to take note of the adequacy of the protection proposed in the United States (‘Adequacy decision’). She specified that, by taking into account all the relevant details, this draft decision would provide a clear and solid basis for the Commission to assume fully its responsibilities.

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

- support from the members of the Commission for the balance struck by the described arrangement between the right to the protection of fundamental rights and privacy on the one hand, and the taking into account of the commercial and economic issues facing European businesses on the other; the observation that the mechanisms presented by Ms JOUROVÁ, Mr ANSIP and Mr TIMMERMANS fundamentally altered the very nature of the future arrangement compared with the previous version; hence the appropriateness of renaming it;
- the need for a sound, well-reasoned communication strategy on this sensitive, complex matter; caution as regards the connotations and extreme views that were bound to arise in this context;
- the importance of clearly explaining the planned measures for ensuring

that access to data for national security purposes in the United States was strictly necessary and proportionate; the added guarantee arising from the fact that these measures often corresponded to rules that already existed in US law;

- the value of the dynamic nature of the agreement and the annual joint review mechanism in particular, which would also help provide a response to changes, for example digital development;
- the need to support the digitisation process currently in full swing in all economic sectors through greater regulatory convergence in the EU; the subsequent hope of gradually moving towards closer coordination between Member States' data protection authorities and even, eventually, a single agency.

Ms JOUROVÁ reiterated her desire to strike the best possible balance between the fundamental rights of EU citizens, namely the right to privacy and the right to security, and the legitimate interests of businesses. She believed the proposed arrangement met this triple objective by protecting, in the United States, all rights enjoyed by EU citizens in terms of personal data protection, while maintaining transatlantic flows of data essential for businesses.

The PRESIDENT thanked Ms JOUROVÁ, Mr ANSIP and Mr TIMMERMANS for their presentations and the work accomplished in recent months. He noted the unanimous support of the members of the Commission for the proposal to develop, on this basis, a draft new decision acknowledging the adequacy of the arrangement agreed with the US authorities, which would undergo the usual adoption procedure in due course.

The Commission took note of this information and guidance and of the note distributed as INFO(2016) 6.

11. DRAFT BUDGETARY PLAN OF PORTUGAL FOR 2016 – FOLLOW-UP AND OPINION OF THE COMMISSION

AD HOC EMPOWERMENT TO ADOPT THE OPINION OF THE COMMISSION THAT WILL BE MADE NECESSARY BY THE LATEST INFORMATION THAT MAY STILL PROVIDED BY THE PORTUGUESE AUTHORITIES

(C(2016) 750)

Mr DOMBROVSKIS and Mr MOSCOVICI presented to the Commission a status report on the evaluation work and the ongoing talks with the Portuguese authorities on Portugal's Draft Budgetary Plan for 2016, submitted to the Commission by the euro-area country on 22 January.

The Commission discussed the possible outcomes given the schedule, and the need to comply with the rules of the Stability and Growth Pact and to ensure equal treatment for all Member States involved.

The Commission decided to empower Mr MOSCOVICI, Commissioner for Economic and Financial Affairs, Taxation and Customs, in agreement with the PRESIDENT and Mr DOMBROVSKIS, Commissioner for the Euro and Social Dialogue, to adopt, on behalf of the Commission and under its responsibility, by 5 February 2016 at the latest, the opinion of the Commission that will be made necessary by the latest information that may still be provided by the Portuguese authorities, and according to the terms set out in document C(2016) 750.

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The Commission's other discussions on certain agenda items are recorded in the special minutes.

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The meeting closed at 15.11.