



EUROPEAN COMMISSION

SECRETARIAT-GENERAL

PV(2008)1822 final

Brussels, 19 March 2008

EXCERPTED

MINUTES

of the 1822nd meeting of the Commission

held in Strasbourg

(Winston Churchill)

on Tuesday 11 March 2008

(afternoon)

PV(2008)1822 final

13. COMMISSION RECOMMENDATION TO THE COUNCIL TO AUTHORISE THE COMMISSION TO BEGIN NEGOTIATIONS FOR THE CONCLUSION OF AN AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND THE UNITED STATES CONCERNING CERTAIN CONDITIONS OF ACCESS TO THE AMERICAN VISA WAIVER PROGRAM (SEC(2008)335 TO /4; SEC(2008)336)

The PRESIDENT began by highlighting the usefulness for the Commission to hold a policy debate on this highly sensitive matter. He reminded everybody that the issues they were addressing had been the subject of difficult discussions between the Member States and the Commission, on account of their political implications in terms of security and data protection, went to the very foundations of the Schengen system and concerned the EU's relations with one of its principal partners. He therefore stressed the importance for the Commission to promote a balanced approach, that would unite the Member States rather than divide them.

He also noted that the most recent contacts with the American negotiators revealed a better understanding not only of the sensitivity of these questions for the Union but also of the need to give due heed to the Community dimension.

The PRESIDENT expressed his support for the text of the recommendation to the Council as presented by Mr FRATTINI, which took into account the various political sensitivities and presented a clear line from the legal angle, preserving the interests of both the Community and the Member States.

Mr FRATTINI likewise referred to the sensitive nature of these questions, which were not new as the Commission had been systematically raising them for a number of years in the dialogue with the American partners. There had, however, been developments in the situation since August 2007, first with the legislative revision of the American Visa Waiver Program, driven by security considerations and involving the introduction of an electronic travel authorisation system, and second with the United States' apparent option of a bilateral approach with Member States.

He recalled that the Commission's intention continued to be that all the EU Member States, without distinction, should be covered by the American Visa Waiver Program. He noted that the new American legislation applied to all the Member States, whether already party to the American Visa Waiver Program or aspiring to join it, and therefore considered it unwise for the Member States to negotiate the measures for implementing this new legislation bilaterally. In this connection he took the view that the memorandum of understanding with the United States signed by a Member State on 26 February last, which should now be followed by implementing provisions, was a document of a political nature. He added that the situation had been discussed, in the Council, by the Joint Committee at ambassador level, which had agreed, on 5 March, on a common approach to be applied in contacts with the United States. He emphasised that a distinction should be made, and explained to the American partners, between aspects that were a Community competence and would therefore have to be the subject of an agreement between the European Community and the United States, and other aspects on which bilateral negotiations between the Member States and the United States were in order.

Mr FRATTINI announced in conclusion that the matter would be considered the following day at a special meeting of the Permanent Representatives Committee and that the issue would be raised at the ministerial troika meeting with the United States on 13 March.

Ms FERRERO-WALDNER noted in turn that these were extremely sensitive matters for Europeans and Americans alike; she felt that some degree of flexibility was required on both sides. She reported briefly on the meeting of the troika with the United States at Foreign Minister level, held on 6 March, and pointed out that the item had also been raised during the ministerial lunch at the Council meeting (General Affairs and External Relations), on 10 March last. She felt that it was sometimes difficult for non-member countries to grasp the concept of Community competence and how it should be exercised. She also warned against any development that would mean a step backward for the Member States already eligible for the American Visa Waiver Program. Finally she expressed her support for the recommendation to the Council as proposed by Mr FRATTINI.

The Commission held an in-depth discussion which focused on the following aspects:

- the unanimous support for the draft recommendation to the Council together with negotiating directives, which came at an appropriate time;
- the good balance between the setting of clear objectives and certain factors of flexibility, which lent credibility and realism to the proposed approach;
- certain timing considerations;
- the sensitive nature of the issue, particularly for some members of the public, and its political importance at Community and Member State levels, and also for relations between the EU and the United States;
- the importance of a Community approach based on solidarity that offered a better guarantee of results and preserved the credibility of the Union;
- the need to ensure strict compliance with the Community *acquis* and competences;
- the importance of preserving the integrity of the Schengen system;
- as regards the inter-relationship between Community competence and Member States' competence, the exemplary nature of this dossier for other areas of Community policies;
- the link that could be made between this dossier and the ratification process of the Treaty of Lisbon;
- the importance of respecting fundamental rights, particularly the protection of personal data, while at the same time facilitating travel;
- the relevance of the agreement on the treatment and transfer of personal data (PNR) by airlines;
- the possible parallels between this dossier and the open skies agreement ;

- the application of the principle of reciprocity as regards the visa arrangements between the EU and the United States;
- the need for an American visa waiver scheme that had the same rules for all European citizens, with no discrimination or differentiation by Member State of origin;
- the encouraging signals received from the American negotiators for taking into account the positions of the Union and reaching an outcome that was satisfactory for both parties;
- the importance of communicating and explaining to the public what the matter really involved and what was at stake.

After this discussion the Commission adopted the recommendation to the Council in SEC(2008)335/4, for transmission to the Council.

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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 14.45 hours.