

Part A

**CONFIDENTIAL**  
(Circulate under cover and notify REGISTRY of movement)

Begins: 13/10/80.  
Ends: 13/3/81.

  
PO -CH /GH/0086  
  
PART A

PO -CH /GH/0086  
PART A

Chancellor's (Howe) Papers:  
FINANCE COUNCIL 1981

Disposal Directions: 25 years

*D. Allen*  
26/7/95.

Mr Burch 1/35 (C) Reference B 1

EUROPEAN COMMUNITIES  
THE COUNCIL

Brussels, 13 October 1980 (16.10)

8788/2/80	
REV 2	
	RESTREINT

SURE 13

TEXTS

from: Working Party on Economic Questions (Establishment and Services)  
on : 9 and 10 October 1980  
for : Permanent Representatives Committee

No. prev. doc. 8789/80 SURE 14      No. Cion prop. R/95/76 (ES 3)  
(COM(75) 516 final  
+ fin.2 (f,d,e)  
R/467/78 (ES 17)  
(COM(78) 63 final)

Subject: Proposal for a second Council Directive on the co-ordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services

Delegations will find attached:

- Annex I: the Articles of the Directive with delegations' comments given in footnotes;
- Annex II: Annex I to the Directive;
- Annex III: Annex II to the Directive.

Article 1

## Scope

1. The object of this Directive is:
  - (a) to supplement the first Council Directive of 24 July 1973 on the co-ordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance;
  - (b) to lay down provisions to facilitate the effective exercise of freedom to provide services by the undertakings and in respect of the classes of insurance covered by that first co-ordinating Directive. <sup>(1)</sup>
2. This Directive shall not affect the insurance policies of the institutions under public law referred to in Article 4 of the first co-ordinating Directive and the risks to be covered by such institutions.
3. Paragraph 1(b) shall not apply to insurance policies covering risks in class 10 in point A of the Annex to the first co-ordinating Directive. <sup>(2)</sup>

---

(\*) Articles renumbered owing to insertion of a new Article 3.

- (1) General reservation by the Irish delegation (see 8789/80 SURE 14, p. 3, point A).
- (2) The German delegation asked that a reference to nuclear risks and those connected with pharmaceutical products be added. The Danish delegation asked that a reference to industrial accidents be added. The Italian delegation wanted the exclusion to take in the insurance of "sea, lake and river and canal vessels". The French delegation pointed out that if an exception were made for one compulsory class such as motor insurance the same arrangements should apply to other compulsory insurance (see 8789/80 SURE 14, pp. 4 to 6).

Article 2

Definitions

1. For the purposes of this Directive:

(a) "first co-ordinating Directive"

means the first Council Directive referred to in Article 1(a);

(b) "undertaking"

means any undertaking which has received official authorization under Article 6(2)(a) [or (b)] (1) of that Directive;

[ (c) "provision of services"

means the covering of a risk by an undertaking established in a Member State

- when the policy-holder is ordinarily resident or has its central administration in another Member State, or ] (2)

[ - when the risk is situated in another Member State. ] (3)(4)

5

(1) Reservations by the German, French, Italian and Luxembourg delegations (see 8789/80 SURE 14, p. 7).

(2) Proposal by the Chair.

The French delegation entered a categorical reservation on any definition of the provision of services based on the criterion of the residence of the policy-holder.

(3) The Commission representatives wanted the definition of the provision of services to include the two hypotheses referred to in the first and second indents.

(4) The Belgian delegation submitted an alternative proposal to be read in conjunction with its definition of the location of insurance business (see 2(a) below). That proposal reads as follows:

"provision of services:

direct insurance business carried on within the territory of a Member State by an undertaking from one of its establishments situated in the territory of another Member State".

See 8789/80 SURE 14, pp. 8-11.

[(d) "Supervisory authority"]

means:

- in the case of the head office, the authority competent to supervise insurance as referred to in Article 6(2)(a) of the first co-ordinating Directive;
- in the case of agencies and branches, the authority competent to supervise insurance as referred to in Article 6(2)(b) of that Directive.

These authorities are hereinafter referred to as the Supervisory authorities of the State of authorization.]<sup>(1)</sup>

2. For the purposes of this Directive and of the first co-ordinating Directive:

[(a) "direct insurance business within the territory of a Member State"]

means the underwriting by an undertaking of a contract of insurance with a policy-holder whose habitual residence or central administration is in that Member State.]<sup>(2)</sup>

<sup>(1)</sup> The German and French delegations were in favour of deleting this subparagraph. It should in any case be noted that the maintenance of the second indent is linked to the maintenance of the reference to Article 6(2)(b) of the first Directive included in Article 2(b) above.

<sup>(2)</sup> Text proposed by the Belgian delegation. The representatives of the Commission's Legal Service entered a categorical reservation, if the criterion of the location of the risk were to be adopted, the Belgian delegation proposed the following wording:

"the covering of risks situated in that territory"

(see 8789/80 SUR 14, pp. 10 and 11).

.../...

(b) "Member State in which the risk is situated" means:

- the Member State in which the property is situated, where the insurance relates to buildings or their contents;
- the Member State of registration, where the insurance relates to registered vehicles;
- [ the Member State in which the insurer is established, in the case of policies of a duration of [3] [6] months or less covering travel or holiday risks, whatever the classes concerned with the exception of risks in class 7 and those relating to the business activity of the policy-holder; ] (1)
- the Member State in which the machine is located at the time of the issue in the case of machine-issued policies of a duration of 3 months or less covering the risks referred to in the above indents;
- the Member State in which the policy-holder has his habitual residence or, if the policy-holder is a legal person, the Member State in which the establishment to which the contract relates is situated, in all cases which are not explicitly covered by the foregoing indents.

(1) Provisional reservation by the German delegation.



TITLE II

PROVISIONS SUPPLEMENTING THE FIRST CO-ORDINATING DIRECTIVE

Article 3 (new)

Establishment

Each Member State shall require that an insurance undertaking seek the authorization referred to in Article 6 of the first co-ordinating Directive if it has a centre of operations in that Member State which [holds a standing commission from the undertaking] <sup>(1)</sup> to [present,] <sup>(2)</sup> conclude and [or] <sup>(3)</sup> execute contracts of insurance.

---

(1) The French delegation would prefer to replace these words with: "is permanently entitled on behalf of the undertaking".

(2) The French, German and Danish delegations requested the addition of "present" and the substitution of "or" for "and".

The other delegations and the Commission representative felt that those alterations would extend the scope of the provision excessively.

(3) The Netherlands delegation would prefer the following wording: "on the undertaking's behalf concludes and executes".

Article 4 (ex Article 3)

Technical reserves

1. Member States shall take all steps necessary to ensure that at least the following principles are observed in calculating the technical reserves:
- (a) The unearned premium reserve shall be calculated, in principle, on a time basis. The calculation may, however, be made by approximate methods if these lead to approximately the same results as individual calculations. The gross premiums shall be taken as the basis for the calculation. The resulting unearned premium reserve shall then in principle be reduced by agents' commission and other representatives' charges (agency costs). Member States shall determine what is meant by deductible agency costs.
  - (b) A reserve for potential losses from current business shall be formed if, on the basis of experience, having regard to the frequency and average cost of claims incurred during the financial year, insurance payments are likely to exceed the corresponding net premiums.

(c) For the purposes of calculating the reserve for outstanding claims, the future gross expenditure on claims shall be estimated individually on the basis of known outstanding claims.

Member States may permit flat-rate methods of calculation instead of individual calculation where

- the number of similar outstanding claims is so great that the flat-rate method leads to a result which is not significantly different from that obtained by individual calculation, or
- the nature of the risks listed in classes 3, 4, 5, 6, 7, 11 and 12 in point A of the Annex to the first co-ordinating Directive does not permit individual calculation.

A reserve for late claims shall be formed for claims incurred but not yet reported to the insurer; it shall be calculated on the basis of experience in previous years, having regard to the probable trend of claims expenditure.

(d) As regards the risks listed in classes 4, 5, 6, 7, 11 and 12 in point A of the Annex to the first co-ordinating Directive, unearned premium reserves and reserves for outstanding claims may be combined.

2. Systems based on an account over a period not exceeding three years shall be considered as equivalent to the system described in the preceding paragraph for unearned premium reserves and reserves for outstanding claims.

3. Undertakings shall form equalization reserves for the credit, hail and frost classes and for the storm and natural forces other than storm risks, where such risks are included in the hail and frost classes.

The equalization reserve shall each year receive 75% of any underwriting profit for that financial year. However, in the case of credit insurance, the amount involved may not exceed 12% of the net premiums for the same financial year. This transfer shall no longer be obligatory when the reserves have reached:

- in the case of credit insurance, 150% of the highest annual amount of net premiums received during the last five financial years, and
- in the case of the other classes of insurance, 200% of the amount of net premiums for the last financial year.

Any underwriting loss which may occur in a given financial year in these classes of insurance shall be met from the reserve.

4. The reserves referred to in this Article shall be disregarded for purposes of calculating the solvency margin and shall be under exemption from any liability to tax. ] (1)

(1) Delegations agreed to review this Article in the light of the report on technical reserves from the Conference of supervisory authorities (paragraphs 1 and 2); they were favourably inclined towards paragraph 3.

The United Kingdom delegation entered a reservation on tax exemption (paragraph 4).

Article 5 (ex Article 4)

Law applicable to the contract

This Article concerns the law applicable to contracts of insurance covering risks situated within the Member States of the Community.

1. Where a policy-holder has his habitual residence or central administration within the territory of the Member State in which the risk is situated, the law applicable to the contract of insurance is governed by that Member State.
2. Where a policy-holder has his habitual residence or central administration in one Member State and the risk is situated in another Member State, the parties to the contract of insurance may choose which of the laws of those two Member States shall apply to the contract. <sup>(1)</sup>
3. Where a policy-holder pursues an independent commercial, industrial [or agricultural] <sup>(2)</sup> activity [or an independent liberal profession] <sup>(3)</sup> and where the contract covers two or more risks relating to these activities and situated in different Member States, the legislation of the Member States shall provide that the freedom of choice of the law applicable to the contract shall extend to the laws of those Member States and of the Member State in which the policy-holder has his habitual residence or central administration.

- (<sup>1</sup>) Reservation by the Luxembourg and French delegations on the principle of choice of law. Reservation by the German delegation on the application of these provisions to compulsory insurance (see 8789/80 SURE 14, pp. 12 and 13).
- (<sup>2</sup>)(<sup>3</sup>) The Working Party agreed to delete "agricultural", on the understanding that large-scale agriculture, in particular that oriented towards the food industry, could be covered by the broader expression "industrial activity". The United Kingdom delegation, however, maintained its reservation on the deletion of "agricultural", which it could withdraw if the reference to a liberal profession were retained in the text. At present the German and Luxembourg delegations had reservations on the inclusion of liberal professions.

4. Nevertheless, where all the Member States referred to in paragraphs 2 and 3 grant greater freedom of choice of the law applicable to the contract, that freedom shall be maintained.

5. Where the policy-holder pursues one of the activities referred to in paragraph 3 and where the risk to be covered relates to that activity and comes under class 4, 5, 6, 7, [11 or 12] <sup>(1)</sup> in point A of the Annex to the first co-ordinating Directive, the parties to the contract may choose any law. <sup>(2)</sup>

[6. The choice referred to in paragraphs 2, 3 and 5 must be explicit or be clearly derived from the provisions of the contract or the circumstances of the case. If this is not so, or if no choice has been made, the contract shall be governed by the law of the country with which it is most closely connected. Nevertheless, a severable part of the contract which has a closer connection with another country may by way of exception be governed by the law of that other country. [The contract shall be presumed, unless proved otherwise, to be most closely connected with the Member State in which the risk is situated.] <sup>(3)</sup> <sup>(4)</sup>

---

(1) Provisional reservations by the German and Italian delegations.  
(2) Reservations by the French and Luxembourg delegations; see note 1 on page 9a.  
(3) Provisional reservation by the Netherlands delegation.  
(4) The Danish delegation reserved its position on this paragraph until Article 5 (consumer contracts) of the private international law convention on contractual obligations was incorporated into Annex I to the Directive.



7. In all cases where a choice of the law applicable to the contract may be made, the provisions contained in Annex I shall apply.

The expressions "the law applicable to contracts" and "the law applicable to the contract" shall be interpreted in accordance with the provisions contained in the first two paragraphs of Annex I.

[8. The choice of the law applicable to the contract may in no case affect the rights of third parties.] (1)

---

(1) The Belgian and United Kingdom delegations entered reservations on this paragraph as they considered it impossible to apply in practice in this form.

The Commission representatives proposed that in order to clarify the purpose and scope of this paragraph an additional recital reading as follows be inserted:

"Whereas the rights of injured third parties may be determined either by means of the provisions of the contract of insurance or by the law applicable to those parties pursuant to the rules of private international law; whereas the determination of the law applicable to the contract of insurance may thus under no circumstances affect those rights".

Article 6 (ex Article 5)

Law applicable

Whatever law applies to the contract under Article 5, an undertaking must comply with those public policy provisions in force in the Member State where the risk is situated to which the undertakings established in that Member State are subject. ] (1)

(1) This text was proposed by the Chair in connection with the definition of the provision of services based on the criterion of the policyholder's residence (Article 2(c), first indent).

The Belgian delegation considered that this provision should be inserted in Title III of the Directive.

The Danish delegation proposed the following alternative text:

"Article 6

Whatever law applies to a contract under Article 5, an insurance undertaking must comply with

- (a) the provisions of the law in force in the Member State referred to by the third paragraph of Article 60 of the EEC Treaty and
- (b) without prejudice to subparagraph (a), the provisions of the law in force in the Member State in which the risk is situated governing the protection of third parties and applicable to every insurance undertaking established within the territory of that Member State [insofar as an undertaking is not subject to similar prescriptions in the Member State in which it is established]."

For delegations' positions see 8789/80 SURE 14, pp. 13, 14 and 15.

Article 7 (ex Article 6)

Conditions of operation

(1) 1. Notwithstanding Articles 8(3) and 10(3) of the first co-ordinating Directive, Member States may no longer apply provisions which require prior [or ex post facto]<sup>(2)</sup> approval of general and special policy conditions and premium rates to contracts covering one or more of the risks in classes [4, 5, 6, 7, 8, 9, 11, 12, 13 [except for nuclear risks]<sup>(3)</sup>, 14, 15 and 16]<sup>(4)</sup> in point A of the Annex to the first co-ordinating Directive, where the policy-holder pursues an independent commercial, industrial [or agricultural]<sup>(5)</sup> activity [or an independent liberal profession]<sup>(5)</sup> and where the contract covers a risk relating to such activity.

2. The provisions of paragraph 1 shall not prevent the supervisory authority which grants the authorization from having the ability to require ex post facto notification of general and special insurance policy conditions, premium rates and any other documents necessary for normal supervision purposes.

Similarly, the provisions of paragraph 1 shall not prevent the competent authorities of the Member State in which the undertaking is authorized from having the ability to require that undertaking to supply any document necessary for checking compliance with the mandatory rules in force in that State and particularly with provisions relating to risk prevention and public safety policy in general and prices policy in general.]

- (1) The Irish delegation still had a general reservation until a definite wording was decided on for Articles 9 and 10.  
For the problem of the Article's coverage, see 8789/80 SURE 14, pp. 16 and 17.
- (2) Reservation by the Italian delegation and provisional reservation by the French delegation.
- (3) Provisional reservation by the United Kingdom delegation.
- (4) See 8789/80 SURE 14, p. 17.
- (5) The Luxembourg delegation entered a reservation on the reference to liberal professions in connection with the inclusion of class 8. The United Kingdom delegation could agree to the deletion of "agricultural" if the reference to a liberal profession were retained (see footnotes 2 and 3 on p. 9a).

3. Paragraph 1 shall not apply to Member States in respect of those risks for which they have made insurance cover compulsory (1).

4. The provisions of paragraph 1 shall not impede the application of provisions which do not require the approval of general insurance conditions for insuring buildings against fire but which provide that the legal effect of approval of the conditions shall be such that an insurance policy taken out under approved conditions is valid vis-à-vis mortgages or other holders of rights over the immovable property concerned in respect of whom the owner is obliged to insure that property against fire. (2)

Article 8 (ex Article 7)

Supervision

Each Member State shall take all steps necessary to ensure that the authorities responsible for supervising insurance undertakings have the powers and means necessary for supervision of the activities of insurance undertakings established on their territory, including activities engaged in outside that territory, in accordance with the provisions of the Council Directives governing these activities and for the purpose of seeing that they are implemented. (3)

29

- 1) New paragraph proposed by the Commission (see 8789/80 SURE 14, p. 20).
- (2) The addition of this paragraph was called for by the Danish delegation, which could drop its request if class 8 were deleted in Article 7(1).
- (3) The German delegation proposed that the following statement be entered in the Council minutes:

"The Council considers that the powers and means referred to in Article 8 must enable the responsible supervisory authorities:

- to make detailed enquiries about the whole range of the undertaking's business, by seeking information or requesting business documents, by carrying out investigations in the business premises of the undertaking or its intermediaries, or by attending meetings of the undertaking's executive bodies;
- to take any measures with regard to the undertaking which are appropriate and necessary to ensure that the conduct of its business remains in conformity with the scheme of operations and the legal and administrative provisions with which the undertaking has to comply in each Member State and to prevent or remedy any irregular situations which constitute a risk to the interests of policy-holders;
- to implement the required measures, if necessary on a compulsory basis."

TITLE III

PROVISIONS TO FACILITATE THE EFFECTIVE EXERCISE OF  
FREEDOM TO PROVIDE SERVICES (\*)

Article 9 (\*\*)(ex Article 8)

Conditions of admission

1. Save as provided in Article 3, any undertaking which complies with the provisions of the first Directive and wishes to provide services on the territory of another Member State shall seek authorization for that purpose from the supervisory authority of the Member State [in which it is established].<sup>(2)</sup> Authorization shall be given individually for each class of insurance and for each Member State.

(a) An undertaking seeking authorization to provide services from the territory of the Member State in which its head office is located shall give the competent authorities of that State proof that it possesses the solvency margin provided for in Article 16 of the first co-ordinating Directive.

- 
- (\*) The Belgian delegation wanted it to be specified at the beginning of this Title that the provisions of Title II and the first co-ordinating Directive applied to business involving the provision of services, save as provided in Title III.
  - (\*\*)
    - (1) General reservations by the United Kingdom and Netherlands delegations.
    - (2) Reservations by the Italian, German, Belgian and French delegations; see 8789/80 SURE 14, p. 18.

23

[(b) An undertaking seeking authorization to provide services from the territory of a Member State which has authorized the opening of an agency or branch in accordance with Article 10 of the first co-ordinating Directive must submit to the competent authorities of that State a certificate issued by the competent authorities of the head office country, attesting that it possesses the solvency margin provided for in Article 16 of the same Directive.]<sup>(1)</sup>

2. The said undertaking shall submit to the competent authorities either of the head office State in the case referred to in paragraph 1(a) [or of the State of the agency or branch in the case referred to in paragraph 1(b)]<sup>(1)</sup> a scheme of operations containing the following particulars:

- (a) the Member State(s) on whose territory it intends to provide services;
- (b) the nature of the risks which it intends to insure on the territory of that State or those States and the premium rates it intends to apply;
- (c) the general and special policy conditions.

---

<sup>(1)</sup> Reservations by the Italian, French, Luxembourg and German delegations (see note 1 on p. 2a above and point 2 on p. 7 of 8789/80 SURE 14).



[(d) the information which the supervisory authorities of the Member State on whose territory the undertaking intends to provide services request from undertakings established there.] (1)

However, the particulars referred to in (b) and (c) above shall not be required with regard to the risks in classes 4, 5, 6, 7 and 12 in point A of the Annex to the first Directive nor shall the premium rates referred to in (b) above be required with regard to the risks in classes 14 and 15 in point A of that Annex. The particulars referred to in (b) and (c) need not be required in the case of risks in class 11 in the same point.

The supervisory authority [may also require] (2) the following information to be supplied:

- (e) estimates relating to management expenses;
- (f) estimates relating to premiums and to claims, in respect of the new business.

---

(1) The Luxembourg, Netherlands and United Kingdom delegations, together with the Commission representatives, would like this subparagraph deleted.

(2) The Danish delegation wanted this replaced by "shall require".

.../...

3. The particulars in the scheme of operations referred to in subparagraphs (a), (b), (c) and [(d)] <sup>(1)</sup> of the preceding paragraph shall be forwarded to the competent authorities of the State on whose territory the undertaking intends to provide services. The authorities in question shall make known their opinion to the authority responsible for giving the authorization within 3 months of receipt of the documents. [For the authorization to be granted, the opinion must convey their assent.] <sup>(2)</sup>

Any dissenting opinion and any decision to refuse an authorization shall be accompanied by the precise grounds for doing so and notified to the undertaking in question.

In the absence of any comment within the abovementioned period of time the opinion of the authorities consulted shall be deemed to be favourable.

Assent may be refused only if under the same circumstances the supervisory authority of the country of operation would refuse authorization to an undertaking established on its territory. ]] <sup>(3)</sup>

Article 10 (ex Article 9)

Conditions for operating

[(\*) 1. If a supervisory authority notes that the rules in force in its State are being violated by an undertaking providing services on its territory, it [shall refer] <sup>(4)</sup> its grounds for complaint to the supervisory authority of the authorizing State and shall propose suitable measures for putting an end to the situation.

- (1) See footnote 1 on page 17.
- (2) Reservation by the United Kingdom and Netherlands delegations and the Commission representatives.
- (3) The Danish delegation proposed the addition of two new paragraphs worded as follows:

"4. Where an authorization issued pursuant to paragraphs 1 to 3 is not issued in the official language or languages of the State in which the undertaking intends to provide services, a sworn translation shall accompany it.

Documents which are to be forwarded pursuant to the first sentence of the first subparagraph of paragraph 3 shall likewise be translated unless otherwise agreed by the authorities in question.

5. The right to apply to the courts, granted in Article 12 of the first Directive to persons whose applications for authorization have been refused, can be exercised only before the courts of the State which delivered the opinion within the meaning of paragraph 3 insofar as such application to the courts concerns the particulars or assessments given in that opinion."

As this proposal was tabled at the last meeting, the Working Party was unable to make known its views on it.

- (\*) The Italian delegation, with the support of the French, Irish, Belgian and German delegations, requested the addition of a new paragraph 1; see 8789/80 SURE 14, pp. 13, 14 and 15.
- (4) Reservations by the Belgian and United Kingdom delegations which would like this provision to be optional.

To make it clear that this clause does not prevent informal contact between an insurer underwriting services business and the supervisory authority of the Member State in which it is underwritten, the Commission representatives proposed a statement in the Council minutes as follows:

"The Council hereby states that the procedure laid down in Article 10 does not prevent the supervisory authorities of the Member State in which services are provided from making direct contact with the undertaking providing them."

2. The authorizing supervisory authority shall require the undertaking to provide it with any documents necessary to establish whether the complaint is justified. [The information so obtained shall be passed on to the supervisory authority of the Member State in which the services are being provided.] (1)
3. The supervisory authority of the authorizing State shall take all the appropriate measures, which may extend to withdrawal of the authorization referred to in Article 9, to put an end to the infringements of which it has thus been notified. It shall inform the supervisory authority of the Member State on whose territory the undertaking provides services thereof.
4. If, in spite of the measures thus taken by the authorizing State or where such measures prove inadequate or no measures have been taken by that State, the undertaking persists in violating the rules referred to in paragraph 1, the Member State in which the services are being provided may, after having informed the supervisory authority of the authorizing State, take such appropriate measures as are strictly necessary to put an end to the situation [; these may go as far as a ban on operation] (2).] (3)

---

(1) Provisional reservation by the United Kingdom delegation.  
(2) Reservations by the Netherlands and United Kingdom delegations.  
(3) Reservations on the Article as a whole by the Netherlands and United Kingdom delegations.

Article 11 (ex Article 10)

Compulsory insurance

1. Whatever law is applicable to the contract under Article 5, contracts concluded by way of freedom to provide services that cover a risk for which insurance is compulsory in a particular Member State must comply with the provisions specific to such compulsory insurance obtaining in that Member State.
  
2. In particular:
  - (a) where the Member State requires proof that the obligation to take out insurance has been complied with, it shall accept for this purpose a statutory certificate issued by an insurer operating by way of freedom to provide services;
  
  - (b) if in that Member State the insurer has to notify certain competent authorities when cover ceases, termination of cover shall not be invocable against injured third parties until one month after the date on which the competent authorities receive such notification from the insurer.
  
3. Each Member State shall provide the Commission with a list of those types of insurance which are compulsory under its legislation. The lists shall be published and subsequently updated in the Official Journal of the European Communities <sup>(1)</sup>.

---

<sup>(1)</sup> See 8789/80 SURE 14, pp. 19, 20 and 21.

Article 12 (ex Article 11)

Information for policy-holders

[Where insurance is presented by way of freedom to provide services, the proposer must be informed [ , before committing himself, ] (2) that the contract will be concluded with a head office, agency or branch not established in the Member State in which the service is provided. ] (1)

Any documents issued to the policy-holder must contain the information referred to in the preceding paragraph.

Furthermore, the policy or any other document evidencing cover must specify the address of the insurance establishment which is actually providing the cover.

[The requirements in the first two paragraphs shall not apply to the contracts referred to in Article 5(3) and (5). ] (3)

- 
- (1) Reservation by the Netherlands delegation which considered this clause discriminatory.
  - (2) Reservation by the United Kingdom delegation linked to some extent with the scope of the exception in the final paragraph.
  - (3) The Italian and Danish delegations were in favour of deleting this paragraph.

30

Article 13 (ex Article 12)

Special operating account

1. The supervisory authority for the head office shall require it to keep, for each class of insurance and for each Member State, a special operating account in respect of all business transacted by way of freedom to provide services, including that transacted by its agencies and branches. This account must include the items set out in the Annex.
2. The supervisory authority for the head office shall, if the supervisory authority of the Member State in which the service is provided so requests, forward a copy of the special operating account to the latter.
3. In the case of undertakings keeping their accounts in accordance with the system provided for in Article 4(2), the operating account may be restricted to the net premiums received, less brokerage, and the claims paid during the calendar year, set out by class of insurance and country of origin. ] (1)

31

(1) The French, Italian, German, Irish, Danish and Luxembourg delegations were basically in favour of the approach in this Article but could agree to some classes being combined so as to streamline to some extent the information system laid down in Annex II to the Directive.

The Danish delegation requested that each agency and branch should also keep a special operating account for business transacted by way of freedom to provide services, as it felt that this requirement followed from Article 15 of the first co-ordinating Directive and from Article 14(1) of this Directive.

The Italian and French delegations were anxious that the supervisory authorities should be able to obtain from insurers who underwrite services business the same information as they obtained from those operating via establishment.

The Netherlands, Belgian and United Kingdom delegations felt that this Article made very heavy demands on insurers, which were not always necessary; they would therefore favour a clause giving supervisory authorities the option of requiring information from insurers about their services business, while leaving it to the Conference of Supervisory Authorities to decide what kinds of information could be requested. The Commission could go along with this approach. The Belgian delegation's position was, however, distinctive in holding that it should be possible for such information to be requested directly from the insurer by the supervisory authority of the country in which services were supplied.



Article 14 (ex Article 13)

Technical reserves

1. The technical reserves relating to contracts concluded by way of freedom to provide services shall be subject to the rules laid down by the State of establishment or, failing such rules, shall be in accordance with established practice in that State. ] (1)

2. [Such technical reserves must be covered by equivalent and matching assets. They may be localized without restriction anywhere in the Community. ] (2)

(3)

(1) Six delegations were in agreement. The Belgian delegation thought that reserving should follow the rules of the country in which services were provided. Unless co-ordination under Article 4 was satisfactory, the French and Italian delegations would go along with the Belgian delegation.

(2) - Localization

The Netherlands, German and United Kingdom delegations agreed to the Commission proposal.

The Belgian, Irish and Italian delegations were in favour of localization of assets in either the country of establishment or the country serviced.

The French and Luxembourg delegations felt that the assets should be localized in the Member State whose supervisory authorities supervised the technical reserves.

The Danish delegation was in favour of localization of assets in the country of risk only, for industrial accident policies.

- Matching assets

The Commission representatives suggested appending to the Directive the results of the Conference of Supervisory Authorities.

(3) At the meeting on 11 and 12 September, the Danish delegation submitted a proposal for an Article 14a which the Working Party did not manage to discuss. The proposal reads as follows:

"Article 14a

Notwithstanding the provisions of this Directive a Member State shall be entitled to retain or introduce rules requiring an insurer, under equivalent conditions to those for insurers established in that Member State, to join any pools, guarantee schemes or other similar schemes designed to afford policy-holders or injured parties further guarantees that their claims on insurance by law or under an insurance policy can be met, where the insurer:

- (a) covers a risk situated within the territory of the Member State concerned; or
- (b) underwrites an insurance policy for a policy-holder resident or established within the territory of that Member State; or
- (c) has underwritten insurance which is compulsory for the policy-holder under the law of the Member State concerned irrespective of whether either or both of the parties to the insurance policy is established or resident outside the territory of that Member State and regardless of whether the risk as defined in Article 2 of this Directive is situated within the territory of that Member State."

Article 15

Tax treatment

All insurance contracts [concluded by way of freedom to provide services] <sup>(1)</sup> shall be subject solely to the tax system in force in the Member State where the service is provided within the meaning of Article 2(1)(c).

The insurance establishment covering the risk shall collect the indirect taxes and parafiscal charges due in this connection and shall pay them to that Member State in accordance with the rules laid down by that State. That Member State may require that the insurance establishment appoint a [correspondent established within its territory and obliged to supply it with any information necessary for the correct collection of the taxes referred to in the previous sentence] <sup>(2)</sup> [a tax representative established within its territory and jointly and severally responsible for payment of the taxes referred to in the previous sentence] <sup>(2)</sup>.

<sup>(3)</sup><sup>(4)</sup>

- (1) The Belgian and French delegations would be in favour of deleting all reference to the freedom to provide services and of inserting the text thus amended into Title II of the Directive as a general provision.
- (2) After the idea of a correspondent or tax representative had been suggested at the meeting by the Italian delegation, the other delegations gave their initial reactions subject to more detailed examination. The Danish and German delegations were in favour of the "correspondent". The Belgian, French, Italian and Luxembourg delegations were in favour of the "responsible" tax representative. The Irish, Netherlands and United Kingdom delegations were not in a position to comment.

The Commission representatives said that if the insurance establishment did not comply with its obligations under the second paragraph the provisions of Article 10 would apply.

- (3) All delegations and the Commission representatives considered it essential to give a reminder in a recital of the need to harmonize the systems at present in force in the insurance field.
- (4) The Danish delegation felt that in the case of parafiscal levies the system applicable would be that referred to in the Article 14a which it had proposed.

Article 16 (ex Article 15)

Non-member countries

The Member States may grant the authorization referred to in Article 9 to the agencies and branches, established within their territories, of undertakings the head offices of which are situated in non-member countries. Such authorization shall be conditional upon the agreement of the Member State in which services are provided.

Where the non-member country concerned has concluded an agreement with the Community on the basis of Article 29 of the first co-ordinating Directive, authorization shall be granted subject to the conditions imposed in Article 9. <sup>(1)</sup>

TITLE IV

FINAL PROVISIONS

Article 17 (ex Article 16)

The Commission and the competent authorities of the Member States shall collaborate closely for the purpose of facilitating the supervision of direct insurance within the Community and of examining any difficulties which might arise in the application of this Directive. <sup>(2)</sup>

---

<sup>(1)</sup> New proposal from the Commission departments reflecting an approach to which most delegations reacted favourably. The Belgian and Danish delegations maintained a reservation in connection with the authorization procedure. The French, Italian and Irish delegations entered a reservation on the principle.

<sup>(2)</sup> The United Kingdom delegation said it would be proposing an amendment to this text so as to mention the benefits, as well as the supervision requirements and difficulties, which could arise from the Directive.

.../...

Article 18 (ex Article 17)

∟ The Commission shall forward to the Council regular reports, the first being made ∟ within five years of notification of this Directive, ∟ (1) on the development of the market in insurance transacted by way of freedom to provide services. ∟ (2)

Article 19 (ex Article 18)

Member States shall amend their national provisions to comply with this Directive within ∟ eighteen ∟ (3) months of its notification and shall forthwith inform the Commission thereof.

The provisions thus amended shall be applied within ∟ twenty-four ∟ (3) months of notification.

(4)

Article 20 (ex Article 19)

Upon notification of this Directive, Member States shall ensure that the texts of the main laws, regulations or administrative provisions which they adopt in the field covered by this Directive are communicated to the Commission.

(1) It was agreed that when the Directive was adopted this phrase would be replaced by the relevant date.

{2} Provisional reservation by the Irish delegation.  
{3} The Danish, Italian and Irish delegations wanted both periods to be extended, the German, French, Netherlands and Luxembourg delegations the first period only. The United Kingdom delegation thought the periods were adequate and was firmly opposed to any extension, especially of the second one. It was agreed, as for Article 18, that the periods would be replaced by the relevant dates.

(4) The Danish delegation thought an Article 19a should be inserted, stipulating that the provisions of the Directive could not apply retroactively.

.../...

38

Article 21 (ex Article 20)

This Directive is addressed to the Member States.

Done at

For the Council

The President

---

Annex I to the Directive:

1. The law applicable to a contract by virtue of Article 5 shall govern [in particular] <sup>(1)</sup>:

- (a) interpretation,
- (b) performance,
- (c) within the limits of the powers conferred on the court by its procedural law, the consequences of breach, including the assessment of damages insofar as it is governed by rules of law,
- (d) the various ways of extinguishing obligations, and prescription and limitation of actions.

Scope of  
the  
Applicable  
law

(Art. 10)

In relation to the manner of performance and the steps to be taken in the event of defective performance, regard shall be had to the law of the country in which performance takes place.

<sup>(1)</sup> The Belgian delegation would like this word to be deleted.



Exclusions  
from  
scope  
Art. 1(2))

2. [The following matters do not fall within the scope of Article 5] <sup>(2)</sup>:

(a) questions involving the status or legal capacity of natural persons, without prejudice to paragraph 6 of this Annex,

[ (b) contractual obligations relating to wills and succession rights in property arising out of a matrimonial relationship, rights and duties arising out of a family relationship, parentage, marriage or affinity and maintenance obligations in respect of children who are not legitimate,

(c) obligations arising under bills of exchange, cheques, promissory notes and other negotiable instruments, ] <sup>(3)</sup> <sup>(4)</sup>

(d) arbitration agreements and agreements on the choice of court,

(e) the creation, by registration or otherwise, legal capacity, internal organization or winding-up of companies and other bodies corporate or unincorporate and the personal liability of officers and members as such for the obligations of the company or body corporate or unincorporate,

(f) the question whether an agent was able to bind a principal, or an organ to bind a company or body corporate or unincorporate, to a third party,

(2) The French delegation suggested the following amendment:  
"The law applicable to a contract by virtue of Article 5 shall not govern".  
(3) The French delegation suggested the addition of these subparagraphs which correspond to Article 1(b) and (c) of the private international law Convention.  
(4) Provisional reservation by the Irish delegation.

- (g) the constitution of trusts and the relationship between settlors, trustees and beneficiaries,
- (h) evidence and procedure, without prejudice to paragraph 9 of this Annex,
- (i) the exercise of the rights of third parties.

3. In the application of Article 5 <sup>(4)</sup> [and without prejudice to the application of Article 10 and Article 7], effect may be given to the mandatory rules of the law of any country with which the situation has a significant connection, if and insofar as, under the law of that country, those rules must be applied whatever the law applicable to the contract. In considering whether to give effect to these mandatory rules, regard shall be had to their nature and purpose and to the consequences of their application or non-application.

Mandatory  
Rules  
(Article 7)

Nothing in the preceding subparagraph shall restrict the application of the rules of the law of the forum in a situation where they are mandatory irrespective of the law otherwise applicable to the contract.

<sup>(4)</sup> New text proposed by the Commission representatives.  
The French and Irish delegations would prefer a provision of this nature to be inserted in the text of the Directive itself.

4. The existence and validity of a contract, or of any term of a contract, shall be determined by the law which would be applicable under Article 5 [(2) and (3)]<sup>(5)</sup> if the contract or term were valid.

Material  
Validity  
(Article 8)

Nevertheless a party may rely upon the law of the country in which he has his habitual residence to establish that he did not consent if it appears from the circumstances that it would not be reasonable to determine the effect of his conduct in accordance with the law specified in the preceding paragraph.

5. (a) A contract concluded by persons who are in the same country is formally valid if it satisfies the formal requirements of the law which governs it under Article 5 [(3) and (5)] or of the law of the country where it is entered into. This paragraph applies if the persons in the same country are the parties to the contract themselves or their agents.
- (b) A contract concluded between persons in different countries is formally valid if it satisfies the formal requirements of the law which governs it under Article 5 [(3) and (5)] or of the law of one of those countries.
- (c) An act intended to have legal effect relating to an existing or contemplated contract is formally valid if it satisfies the formal requirements of the law which under Article 5 [(3) and (5)] governs or would govern the contract or of the law of the country where the act was done.

Formal  
validity  
(Article 9)

<sup>(5)</sup> Reservation by the Danish delegation.

83

Incapacity  
(Article 11)

6. In a contract entered into between persons who are in the same country, no natural person who would have capacity under the law of that country may invoke his incapacity resulting from another law against the other party to the contract who, in good faith and without negligence, contracted without suspecting his lack of capacity.

Voluntary  
Assignment  
(Article 12)

7. The mutual obligations of assignor and assignee under a voluntary assignment of a right shall be governed by the law which under Article 5(3) and (5) applied to the contract between them. <sup>(6)</sup>

The law governing the right to which the assignment relates shall determine its assignability, the relationship between the assignee and the debtor, the conditions under which the assignment can be invoked against the debtor and any question whether the debtor's obligations have been discharged.

Subrogation  
(Article 13)

8. Where a person ("the creditor") has a contractual claim upon another ("the debtor"), and a third person has a duty to satisfy the creditor, or has in fact satisfied the creditor in discharge of that duty, the law which governs the third person's duty to satisfy the creditor shall determine whether the third person is entitled to exercise against the debtor the rights which the creditor had against the debtor under the law governing their relationship and, if so, whether he may do so in full or only to a limited extent.

The same rule applies where several persons are subject to the same contractual claim and one of them has satisfied the creditor.

<sup>(6)</sup> Clashes with Article 21 of the first Directive on non-life insurance - see 4592/80 SURE 2.

44

Burden of  
Proof

(Article 14)

9. The law governing the contract under Article 5(3) and (5) shall apply to the extent that it contains, in the law of contract, rules which raise presumptions of law or determine the burden of proof.

An act intended to have legal effect may be proved by any mode of proof recognized by the law of the forum or by any of the laws referred to in paragraph 5 of this Annex under which that act is formally valid, provided that such mode of proof can be administered by the forum.

Exclusion  
of Renvoi

(Article 15)

10. The application of the law of any country specified by this Directive means the application of the rules of law in force in that country other than its rules of private international law.



Annex II to the Directive:I. Special operating account by country <sup>(1)</sup>

- A. Premiums: 1. unearned premium reserve  
(at 1 January)
2. written premiums for the year
3. unearned premium reserve  
(at 31 December)
4. earned premium total
- B. Claims : 1. reserve for claims outstanding  
(at 1 January)
2. claims paid during the year
3. reserve for claims outstanding  
(at 31 December)
4. claims total for the year
- C. Commission paid
- D. Management expenses
- E. Other overheads
- F. Profit or loss

II. Special operating account by class of insurance <sup>(1)</sup>

(A to F: as above)

---

<sup>(1)</sup> See footnote to Article 13 on page 22a of the text of the Directive.

23 February 1981

336645A BME D

262405 TRSY G

MONDAY 23 FEBRUARY 1981

TELEX TO:-

STAATSSKRETAER HORST SCHULMANN  
BUNDES-MINISTERIUM DER FINANZEN

M JEAN-YVES HABERER  
DIRECTEUR-GENERAL TRESOR  
PARIS

MR BERYL SPRINKEL  
UNDER-SECRETARY DESIGNATE FOR MONETARY AFFAIRS  
US TREASURY, WASHINGTON

MR TAKEHIRO SAGAMI  
VICE MINISTER  
MINISTRY OF FINANCE, TOKYO

MR MATTHOFFER HAS KINDLY MADE A CHANGE IN HIS ARRANGEMENTS WHICH PERMITS US TO HOLD THE G5 MEETING AT 1500 ON SUNDAY 12 APRIL AT 11 DOWNING STREET, LONDON, WITH DINNER AT ABOUT 1930. OUR INFORMATION IS NOW THAT THIS DATE IS ACCEPTABLE TO ALL. COULD I PLEASE ASK YOU TO NOTIFY YOUR MINISTER AND CENTRAL BANK GOVERNOR ACCORDINGLY.

IT MAY BE USEFUL IF I RECORD BELOW THE AGENDA ITEMS FOR THE G5 ON WHICH WE AGREED ON 19 FEBRUARY. I EXPECT SIR GEOFFREY HOWE WILL HOWEVER SEND A DEFINITIVE AGENDA NEARER THE TIME OF THE MEETING. THIS GIVES US THE OPPORTUNITY TO ADD TO THE LIST IN THE LIGHT OF DEVELOPMENTS IN THE NEXT 6 WEEKS OR SO. IF YOU WISH DURING THAT TIME TO PROPOSE ADDITIONS TO OUR 19 FEBRUARY LIST, PLEASE LET ME KNOW.

1. IMF BORROWING, INCLUDING IN PARTICULAR THE SUGGESTED SHORT TERM LOANS BY OECD COUNTRIES TOTALLING 1 BILLION SDR'S: AND THE QUESTION OF MARKET BORROWING:
2. SAUDI IMF QUOTA:
3. IMF AND THE PLO:
4. SDR ALLOCATION IN NEXT PERIOD:
5. WORLD BANK: POSITION ON IDA VI AND EXPIRY OF 'BRIDGING' ARRANGEMENTS AT 31 MARCH 1980:
6. ENERGY AFFILIATE:
7. MONETARY POLICY: INTEREST RATES AND EXCHANGE RATES.

KIND REGARDS  
KEN COUZENS

H.M. TREASURY  
LONDON

336645A BME D

262405 TRSY G

47

cc Sir Douglas Wass  
 Mr Barratt  
 Mr Hancock  
 ✓ Mrs Hedley Miller  
 ✓ Mr Layelle  
 Mr Mountfield  
 Mr St Clair  
 Mr Anson - UKTSD

1 *[Signature]*  
 2 *[Signature]*

CHANCELLOR

G5 DEPUTIES MEETING: 19 FEBRUARY

Your kindness in allowing us to use Number 11 for this meeting was appreciated by all the participants. I need not bother you with the full record, but you may like to know the salient conclusions. They were largely related to the policies of the new US Administration.

2. IMF Borrowing. The IMF may now be able to borrow up to 4bn SDRs from the Saudis at market rates in 1981 and again in 1982, with the possibility of something similar in 1983. This may be medium term money, perhaps with maturities up to 7 years. One Saudi condition will be OECD participation. It is expected that this would be satisfied by arranging say 1 bn SDRs of short term loans from governments or central banks at market rates. The Saudis seem to want OECD participation in order to safeguard their lending, rather than to match it as to amount or terms. They do not wish to be singled out as lenders and after the freezing of Iranian assets they may see some extra protection, irrationally or otherwise, in having OECD company in this IMF borrowing operation.

3. The problem is that the Americans are saying they have no legal powers to participate in this short term lending to the IMF. The rest of us are ready to make some contribution. It seems wrong that the Americans should stand aside from an operation of this sort and we pressed them to think again. This is likely to come up at the G5 meeting on April 12.

4. Saudi Special Quota Increase. The Japanese are now ready to concede a special quota increase to the Saudis outside the 8th Quota Review, notwithstanding their own complaints about the inadequate Japanese quota.

454/2



There was therefore general agreement that the Saudis should be given a quota increase to at least 3%, which is what they need to give them a permanent right to elect their own Executive Director, whether they are a major creditor of the Fund or not. The Saudis are asking for a quota of 2124 SDRs and there has been a suggestion of 1917 SDRs from the IMF staff. But the Italians have a quota of 1860 SDRs and do not want the Saudis to jump over them. A Saudi quota of 1850 or 1860 SDRs would be enough to give them their 3%. It was agreed to make an attempt to avoid giving the Saudis more than 1860, but I guess they will not accept that. You may hear more of this in the Community and at the G5 meeting. I am inclined to think that in the end the Italians will lose out and there will be general agreement to go to 1917, but no further.

5. SDR Allocation. Sprinkel opposed any new SDR allocation, on the ground that there was no shortage whatever of international liquidity and an allocation would simply postpone necessary adjustment by LDCs. The conclusion reached was that if the Americans were prepared to take the lead in saying no to any allocation, the rest of us would be prepared to support them. However, it will certainly be necessary to establish at the G5 that all 5 countries really are prepared to stand firmly on this position. I fear the French may try to have it both ways by saying they support the American opposition to a general allocation but would favour a limited one beamed on the LDCs.

6. IDA VI and World Bank General Capital Increase. The Americans are re-arranging their proposed budgetary appropriations for IDA VI by sharply reducing the figure for 1981 and sharply increasing the figure for 1983, without however altering their commitment to a total of \$3.24 billion. Nobody yet knows what this change in appropriations will do to actual disbursements to IDA. It might have very little effect, but we cannot be sure. Disbursements of course interest us much more than appropriations.

7. Similarly, the Americans propose to spread their contributions of paid-in capital to the General Capital Increase evenly over the 6 years 1982-87, instead of front loading them as the Carter Administration had proposed.

8. There was general agreement that the World Bank would have to scale down its ideas substantially from the levels envisaged by Mr McNamara. There was also agreement among the non-American 4 that we should make no further bridging contributions to IDA VI beyond the end of March. The Germans would see this as maintaining some pressure on Congress to approve the Administration's revised proposals. We would see it as signalling the need for caution to the World Bank, though in fact they can go on planning even if they have to accept a pause in commitments. There would only be serious trouble if Congress further delayed approval in principle to the US contribution to IDA VI.

9. Energy Affiliate. The Americans have already issued a statement in the Board of the World Bank saying they cannot now support or contribute to an Energy Affiliate. They make it clear however that they are not necessarily ruling out the idea for all time. Sprinkel in fact argued that a large energy programme by the World Bank was not necessary and that the private sector (ie the oil companies) had ample access to funds. From the European side there was argument that there were opportunities for energy investments in the LDCs which, because they were small or might be regarded by the oil companies as politically insecure, could usefully be taken up by the World Bank.

10. I made the point that an Energy Affiliate without the United States could hardly have much future as a market borrower. I also put it to Sprinkel that while the UK would fully understand the American view on the SDR allocation and on the Energy Affiliate, if the US proposed to take a negative line on both of these it would be highly desirable that they should balance that both by getting the scaled down IDA VI contribution speedily through Congress if they could, and by participating in the (costless) short term loan operation for the IMF.

11. The Energy Affiliate question is likely to come up again at the G5 on April 12. The Americans may come under considerable pressure from the French and Germans on this. I believe the US position on the SDR allocation is quite right and on the Energy Affiliate is very understandable and possibly of some value to us in public expenditure

terms. We can also have entire sympathy with the desire they have so far indicated to avoid "irrelevancies" like the global negotiations and some of the rather aid oriented activities of the IMF. But all this makes it the more necessary to play down the aid component of the Ottawa Summit and to neutralise the proposed Mexico Summit. There is nothing new of any consequence in prospect for the LDCs, except perhaps more IMF lending.

12. Interest Rates and Monetary Policy. We had a long discussion about this, mainly between Schulmann and Sprinkel. Schulmann sought to persuade Sprinkel to approach policy in a more eclectic and less purely monetary way. Sprinkel replied to German and French preoccupations about US interest rate policy by saying that he expected US interest rates to fall because he expected a return of recession in the middle of 1981. He also expected that interest rates would come down because inflation would fall. It was clear from this and other conversations that he attached much more importance to the impact of recession on inflation and interest rates than to the impact of the public deficit. He was remarkably frank in conceding that that deficit might rise. But of course the absolute levels of both public expenditure and of the public deficit relative to GNP are a good deal lower in the United States than they are in Western Europe. Hans Matthöfer has already given notice that he will want to raise the topic of US interest rates and monetary policy at the G5.

13. G5 on 12 April. As you know, Sunday 12 April has now been agreed, after enormous difficulty, as the date for the G5 in London. I have already circulated a first shot at an agenda but invited comments nearer the time of the meeting. Perhaps I may ask you to circulate a definitive agenda a couple of weeks before 12 April.

14. The Germans seem anxious to arrange a meeting between Messrs. Matthöfer, Monory and yourself in the margins of the next ECOFIN to discuss a common line at the G5. This may prove difficult.

In any event, it may not much suit us. The aim could be to prevent us agreeing too much with the Americans, though it could also relate to a common line on Japanese exports.

KEC

K E COUZENS  
24 February 1981

EUROPEAN COMMUNITIES  
THE COUNCIL

Brussels, 25 February 1981 (04.03)

(C) Reference D

5094/81	
	RESTREINT

SURE 8

COVER NOTE

to: Note from the Luxembourg delegation

No. prev. doc. 8788/2/80  
REV 2 SURE 13

No. Cion doc. R/95/76 (ES 3)  
(COM(75) 516 final +  
fin. 2 (f,d,e))  
R/467/78 (ES 17)  
(COM(78) 63 final)

Subject: Proposal for a second Council Directive on the co-ordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services

- statement of the Luxembourg delegation's position

The Luxembourg delegation has sent the General Secretariat of the Council the attached note describing the special situation of the Grand Duchy of Luxembourg.

Luxembourg's special situation

As has been stated several times, the latest being in the report from the Working Party on Economic Questions (Establishment and Services) to the Permanent Representatives Committee (8789/80 SURE 14), the Luxembourg delegation has pointed out that the draft Directive overlooks a Council statement at the time of adoption of the general programme for the abolition of restrictions on freedom to provide services (1338/61 (ES 24) Annex II p. 3) to the effect that special attention was to be paid to the situation of the Grand Duchy of Luxembourg on geographical grounds.

The Luxembourg delegation attaches particular importance to a special arrangement being arrived at for Luxembourg both to comply with the unanimous will of the Council at that time and in the overriding economic interest of the country. Failure to adopt special provisions under the Directive will remove the majority of insurance business on Luxembourg's territory from the control both of its supervisory authorities and of its tax authorities.

1. The spirit of the Directive

It has always been maintained that freedom to provide services would de facto, if not de jure, apply only to insurance covering what it has been agreed to term "large risks".

For this reason, there was protracted discussion on the idea of defining large risks by some quantitative factor (risk size in terms of sum insured, etc.), which even appeared in various documents. The idea was subsequently dropped when it proved impossible for delegations to agree on the factors put forward.

Nevertheless the original spirit of the Directive still obtains inasmuch as, even without any explicit quantitative factor, insurers will in practice be interested only in large risks for the purposes of such "services" business, at least in the case of large and medium-sized countries.

For it is scarcely conceivable that an insurer from one country should go hundreds or even thousands of miles out of his way to cover a bulk-business risk.

Whereas, simply because of cost, the covering of bulk-business risks as services business will be negligible if not nil for the large countries (except perhaps in their border areas), the case is different for Luxembourg where, given the extremely small distances involved, the whole country can easily be covered by salesmen from across the border for insurers with no base in Luxembourg and all bulk-business risks are coverable as services business (see the diagram on page 7).

55

2. Distortion of competition

Failure to make allowance for Luxembourg's special situation is bound to result in competition being distorted in a manner damaging to insurers with a base in Luxembourg.

(a) Distortion owing to geographical situation

While in theory freedom to provide services will enable Luxembourg insurers to operate in the foreign areas on their borders on the same terms as their foreign competitors on the Luxembourg market, in practice this will not be so, for those border areas do not really have the same insurance potential as the Grand Duchy.

The region in question is predominantly rural and sparsely populated, whereas Luxembourg presents foreign insurers with a heavily industrialized area of high population density.

(b) Distortion owing to investment of technical reserves

Luxembourg based insurers are required under its legislation to cover their technical reserves by matching assets localized within the country. To ensure that foreign insurers with a base in Luxembourg, which make up nearly 50% of the market (a far higher percentage than comparable figures for other Community Member States), do not simply repatriate assets to their own countries, the 1973 Establishment Directive already incorporates special provisions in this respect for such insurers' investments (Article 15(2), 2nd subparagraph).

.../...



If nearly 50% of investment by Luxembourg-based insurers is not to be lost to the country's economy it is essential that a similar step be taken under the present Directive.

There is even a risk of foreign insurers' present branches in Luxembourg being abandoned by the foreign parent companies, with all of their present business being switched to services business underwritten from parent companies' agencies in areas bordering on Luxembourg.

Such a situation, which must be far from what the Directive intends, would pose very serious problems for Luxembourg as regards both public finance and employment in the insurance industry.

(c) Distortion regarding general conditions and premium rates

Luxembourg's legislation provides for prior approval of the general conditions and premium rates offered by Luxembourg-based insurers for bulk-business risks. Prior approval is justified both in the interests of insurers' solvency and, especially, for the sake of protecting policy-holders, those covered by insurance and injured parties.

If, as provided in the draft Directive, prior approval of general conditions and premium rates is no longer to be possible, at least for services business, the authorities who are bound to protect Luxembourg policy-holders will no longer be able to do so.

To take an extreme case, it is even conceivable that Luxembourg-based foreign insurers prohibited from offering a particular policy at a given rate might get around this by offering precisely the same product to customers resident in Luxembourg as services business via one of their agencies just across the border.

(d) Fiscal distortion

While the problem of failure to pay taxes and similar charges levied on insurance policies underwritten as services business applies to all Member States, the loss of tax revenue from evasion is marginal in relation to the total revenue from this source in the large countries.

As previously pointed out however, services business will have a considerably greater impact in Luxembourg and the tax evasion risk will perforce be that much greater.

.../...

Conclusions:

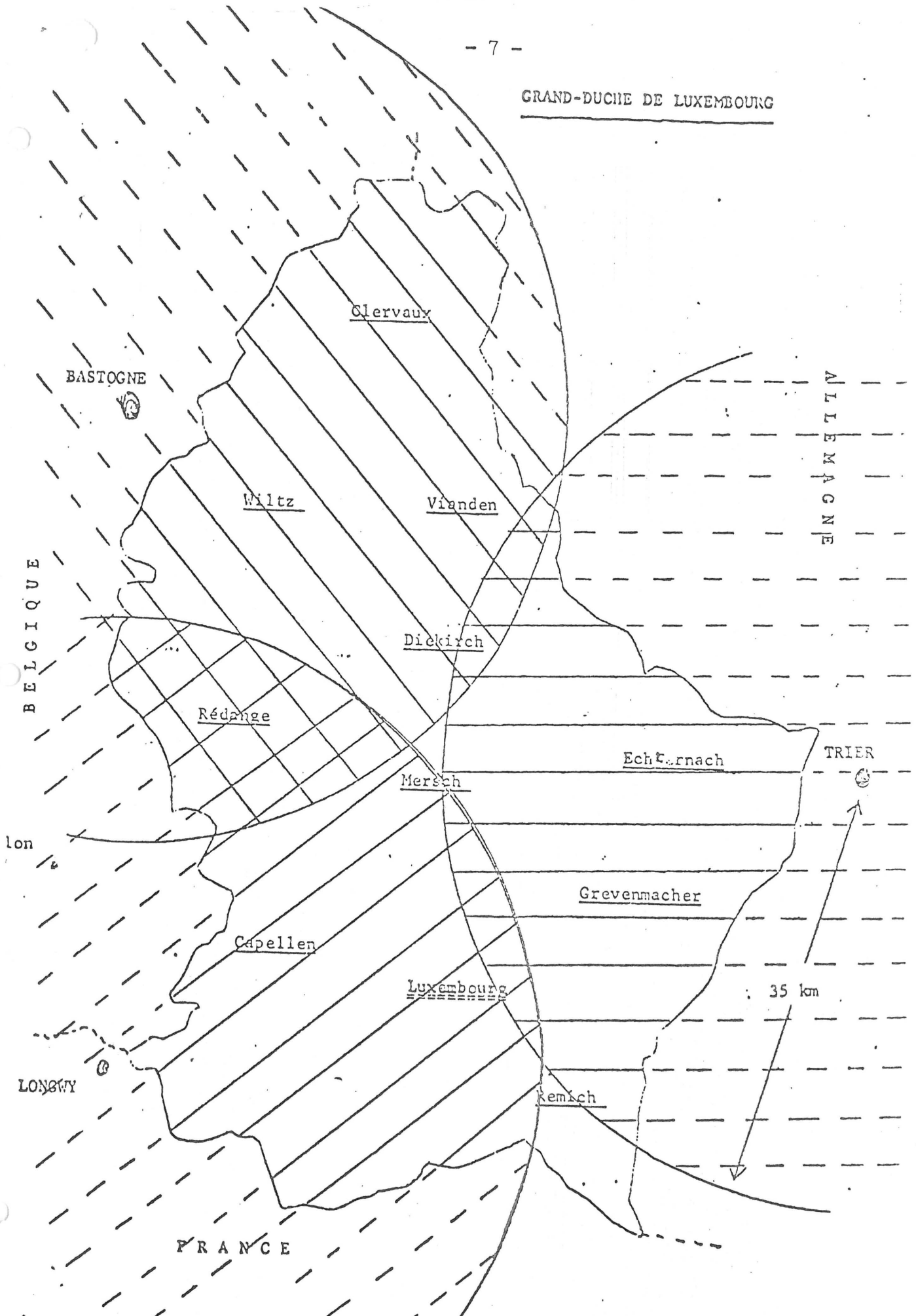
Although the Luxembourg delegation continues to uphold freedom to provide services for large risks, it does call for allowance for the special geographical situation giving rise to extremely unfavourable consequences for Luxembourg on its home market in the case of bulk-business risks.

The Luxembourg delegation cannot give blanket agreement to the Directive unless special provisions are included to ensure that bulk business underwritten as services business will comply with the conditions obtaining in the country serviced.

The Luxembourg delegation will be wanting to propose clauses for inclusion in the Directive once certain general problems have been resolved (branches, authorization, law applicable and compulsory insurance).

59

GRAND-DUCHE DE LUXEMBOURG



BASTOGNE

ALLEMAGNE

BELGIQUE

Wiltz

Vianden

Diekirch

Rédange

Echternach

TRIER

Mersch

lon

Grevenmacher

Capellen

35 km

Luxembourg

LONGWY

Remich

FRANCE

35 km

© Reference E

60

EUROPEAN COMMUNITIES  
THE COUNCIL

Brussels, 3 March 1981  
(06.03)

5229/81
RESTREINT
SURE 9

NOTE

from : Permanent Representation of Denmark  
dated: 2 March 1981  
to : Permanent Representatives Committee

No. prev. doc.  
8788/2/80 REV 2 SURE 13

No. Cion prop. R/95/76 (ES 3)  
(COM(75) 516 final  
+ fin. 2 (f,d,e))  
R/467/78 (ES 17)  
(COM(78) 63 final)

Subject: Proposal for a second Council Directive on the co-ordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services

The Danish delegation has forwarded to the Secretariat the Note annexed hereto on problems involved in the choice of law applicable to contracts under the above Directive.

ANNEX

NOTE FROM THE DANISH DELEGATION

1. The EEC Convention of 19 June 1980 on the law applicable to contractual obligations achieved agreement on a significant degree of harmonization of the private international law rules of the Member States of the Community in the field of contract law. This harmonization included insurance contracts concerning risks situated outside the Community, whereas insurance contracts concerning risks situated within the Community were excluded since the rules on the choice of the law covering risks of this type were still to be drawn up by the Working Party on the second Directive on non-life insurance.
  
2. The Danish delegation agrees that an effort should be made also to draw up common rules on the choice of law for contracts concerning risks situated within the Community.

As has been demonstrated by the discussions of the Working Party on Economic Questions and the Permanent Representatives Committee, the Danish delegation does, however, regard the rules on the choice of law and on conflict of laws contained in the proposal for a second Directive on non-life insurance as unacceptable. It has always thought that the proposal for a Directive provides a solution marred by a great degree of unclarity and entailing consequences which it would be difficult to accept either politically or in practice. The Danish delegation refers to the detailed arguments given in the documents of the Council Working Party, and to the Danish delegation's overall position as stated in 5400/79 SURE 7, page 7 and 8500/79 SURE 15, Annex II, while pointing out that the views contained therein have never been examined in detail by the Working Party.

This problem regarding rules on the choice of law has led to the Danish delegation entering a general reservation on the whole Directive. This reservation is given in 9193/79 SURE 18 and has been repeated at Permanent Representatives Committee level (see 10020/80 CRS/CRP 34 SURE 17 EXT 1).

3. For any harmonization of the private international law of the Member States concerning insurance contracts to be regarded as satisfactory, the Danish delegation thinks it necessary that in particular the following basic conditions should be met.

(a) The rules drawn up must have a clearly defined scope.

- (b) The rules must reflect genuine harmonization.
  - (c) The rules must not be so complicated that they cannot be applied by those for whom they are intended.
  - (d) As regards consumer insurance, the rules must take adequate account of the need to protect consumers.
  - (e) As regards industrial and commercial insurance, the parties must be given a reasonable degree of freedom in the choice of law.
  - (f) Questions concerning compulsory insurance must be solved in an appropriate way.
  - (g) The rules drawn up may only diverge from the principles on which the Convention of 19 June 1980 on the choice of law is based if there is a valid reason for so doing.
4. The Danish delegation thinks that the provisions on the choice of law contained in the proposal for a second Directive (Articles 5 and 6 and Annex I) do not comply with the conditions set out in point 2.



The following examples may be given:

Re (a): Taking Article 5 in conjunction with Article 1, it is not clear whether the provisions also apply to insurance activities not covered by the first Directive on non-life insurance. For example, the first Directive on non-life insurance does not cover insurance activities carried out by an insurance company established outside the Community and which has neither a subsidiary nor an agency within the Community. It is not specified whether the rules on the choice of law are also to apply where insurance contracts are entered into with such a company. The same uncertainty arises regarding forms of insurance activity and classes of insurance not covered by the first Directive.

Re (b): Article 5(1) provides that if the policy-holder has his habitual residence or central administration within the territory of the Member States in which the risk is situated, it is the international private law rules of that State which determine the law governing the insurance contract.

As the Danish delegation has indicated on several occasions, it is not desirable to have rules referring to the private international law of a third country. Such rules do not constitute any harmonization and can complicate things for the parties and the courts.

Article 5(1) is, moreover, in contradiction with point 10 in Annex I.

Re (c): The whole structure of Articles 5 and 6 together with the provisions in Annex I, is unnecessarily complicated. Moreover, the rules seem to be technically inadequate, and the scope of Article 6 is extremely unclear. It should be pointed out in this connection that the Danish delegation thinks it of paramount importance to ensure that Danish law on marketing, and on the special treatment by an arbitration board of complaints from consumers and others, can be applied to insurance policies marketed in Denmark, regardless of where the risk is situated.

Re (d): Until a suitable wording has been found for Article 5(1), and the scope of Article 6 has not been clarified, it will be difficult to determine whether the provisions sufficiently safeguard consumer interests.

Re (e): There should be a more detailed examination of whether the rules take sufficient account of the need of the larger commercial operators to be able to conclude agreements on the choice of law.

For example, the rules prevent commercial operators from concluding agreements on the application of the law of the country of origin of the insurance company, and prevent the conclusion of agreements on the application of the law of a third country in the case of product liability insurance and credit or fidelity insurance.

Re (f): In the Danish delegation's opinion, these questions  
and (g) have not been fully discussed by the Working Party.

With more particular reference to the choice of law in the case of compulsory insurance, it should be noted that the rules in Articles 5 and 6 do not always result in the law of the country where the insurance is compulsory being applied.

5. Drawing up rules which are acceptable and can be applied in practice requires a further full examination of all the problems. In view of the specific and difficult nature of the subject, the Danish delegation would prefer to entrust a Working Party consisting of experts in private international law with the task of preparing a set of appropriate rules on the choice of law. Otherwise, the Danish delegation would stress that it is extremely sceptical as to the possibility of achieving a satisfactory result.
  
6. If in order to adopt the second Directive on non-life insurance it were necessary to wait for a further examination of Articles 5 and 6 of the proposal to be completed, adoption of the Directive would be considerably delayed. In order to avoid such a delay, the Danish delegation has on several occasions proposed taking out the rules concerning the choice of law and including them in a separate Directive (see 5400/79 SURE 7 p. 7 and Working Document No 1 of 13 July 1979).

The Danish delegation would like to repeat this proposal so that the drawing up of the necessary supervisory provisions is not impeded or delayed by the problems arising in respect of rules on the choice of law. This is a procedure which the Council has followed in the past when it has become clear that a specific problem threatened to impede or delay the adoption of a Directive on which agreement had otherwise been reached. This was done in the case of the third Council Directive of 9 October 1978 concerning mergers of public limited liability companies (see OJ No L 295, 20.10.1978, p. 36), when the Council decided to postpone the solution of problems involved in the scission of public limited liability companies and deal with them in a separate Directive.

If this procedure is adopted, there should, as in the case of the third company Directive, be a statement in the Council minutes that examination of the problems involved in the choice of law and the law applicable will be continued (see R/2260/78 (ES 104) Annex II, point 17).

7. In conclusion, the Danish delegation therefore proposes that the Council should decide that:

- (a) Articles 5 and 6 and Annex I should be taken out of the proposal for a Directive and included in a separate Directive,
- (b) the following statement should be included in the minutes of the Council meeting at which the second Directive on non-life insurance is adopted:

"The Council and the Commission state that the Commission's original proposal will continue to be examined as far as the rules on the law applicable are concerned.",

- (c) that a Working Party should embark as soon as possible on an examination of a proposal for a Directive on the law applicable to insurance contracts,
  - (d) that this Working Party should give priority to examination of the proposal for a Directive on insurance contracts,
  - (e) the Working Party should consist of experts in private international law.
-

Brussels, 10 March 1981  
(13.03)

5343/81

RESTREINT

JUR 57  
SURE 11

LEGAL OPINION

Subject: Proposal for a second Council Directive on the co-ordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services

- possibility of limiting the effective exercise of freedom to provide services to the business of the head office

At the meetings of the ad hoc Working Party of Counsellors on 20 and 24 February 1981 the Council Legal Service was asked to give an opinion on the following question:

Can the provisions of the Directive be limited to facilitating the effective exercise of freedom to provide services to business carried out by the head office of the undertaking (to the exclusion of the business carried out by its agencies and branches)?

This note sets out to reply to this question.

1. The restriction of the effective exercise of freedom to provide services to the head office of undertakings or the extension of such exercise to their agencies and branches is reflected in the text of the Directive by the inclusion of such agencies and branches in, or their omission from, the definitions in Article 2.

.../...

5343/81

JUR 57  
SURE 11

hip/AH/gj

E

R

At the present stage of the proceedings <sup>(1)</sup> this Article is worded as follows:

"Article 2

1. For the purposes of this Directive:

(a) "first co-ordinating Directive"

means the first Council Directive referred to in Article 1(a);

(b) "undertaking"

means any undertaking which has received official authorization under Article 6(2)(a) [or (b)] of that Directive;

(c) "....."

The deletion of the reference to Article 6(2)(b) would serve to make the Directive applicable only to business carried out by the head office <sup>(2)</sup>.

---

<sup>(1)</sup> Unless otherwise stated, references are to the proposal as worded in 8788/2/80 REV 2 of 13 October 1980

<sup>(2)</sup> The first Directive referred to is the Council Directive of 24 July 1973 on the co-ordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance (OJ No L 228 of 16.8.1973).

One of the aims of this co-ordination was to make the taking-up of the business of direct insurance on the territory of a Member State subject to an official authorization.

Under Article 6(2) of this Directive this authorization must be sought by

(a) any undertaking which establishes its head office in the territory of such State;

(b) any undertaking whose head office is situated in another Member State and which opens a branch or agency in the territory of the Member State in question.

.../...



The inclusion of this reference would mean that the provisions in question were to apply both to business carried out by the head office and to that carried out by agencies and branches, which are bodies deriving from the head office without being legally separate from it.

Operations concerning the provision of services themselves are to be covered by the provisions in Title III of the proposal for a Directive (Articles 9 to 16).

- 2. The purpose of Title III of the proposal is to introduce into Member States' legislation a set of provisions designed to facilitate the effective exercise of freedom to provide services by co-ordinating the laws relating to the pursuit of self-employed activities.

This co-ordination is based on Article 57(2) of the EEC Treaty, which is made applicable to freedom to provide services by Article 66 of that Treaty. These are two of the Articles cited as the legal justification for the proposal for a second Directive.

Under Article 57(2) the Council is required, before the end of the transitional period, to issue directives for the co-ordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking up and pursuit of activities as self-employed persons. It will be remembered that, in its Judgment delivered on 3 December 1974 in case 33/74 <sup>(1)</sup>, the Court, in acknowledging that the first paragraph of Article 59 and the third paragraph of Article 60 of the EEC Treaty had direct effect insofar as they seek to abolish any discrimination against a person providing a service by reason of his nationality, made it clear that it was still the object (that is, even after the end of the transitional period) of the directives based on Article 57(2).

"... to resolve the specific problems resulting from the fact that where the person providing the service is not established, on a habitual basis, in the State where the service is performed he may not be fully subject to the professional rules of conduct in force in that State."

Since the Council still at this stage retains the power to adopt provisions with a view to resolving these specific problems, what the question raised by the Working Party amounts to is whether such provisions could be limited to partially resolving these problems, namely those resulting from provision of services by the head office of the undertaking only.

3. At the meetings of the ad hoc Working Party of Counsellors, the following arguments were put forward in support of an affirmative reply to this question:

---

<sup>(1)</sup> Van Binsbergen v Bedrijfsvereniging Metaalnijverheid, Reports 1974, p. 1299

- (a) the obligation to abolish restrictions on freedom to provide services within the Community is laid down in the first paragraph of Article 59 of the Treaty only in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended. Since the scope of such an obligation is limited to the abolition of restrictions concerning natural persons ("nationals"), the Council would be quite free to abolish in stages the restrictions relating to legal persons and thus to exclude from such abolition at the initial stage restrictions relating to the operations of agencies and branches.
- (b) the provisions adopted by the Council on the basis of Article 57(2) could legitimately be limited to facilitating the effective exercise of freedom to provide services only in respect of the business of the head office of the undertaking, with a view for instance to avoiding distortions of competition and ensuring effective protection for consumers (policyholders).

o

o

o

(a) Pursuant to the first paragraph of Article 58 of the Treaty, companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community are, for the purposes of the chapter relating to the right of establishment, to be treated in the same way as natural persons who are nationals of Member States.

Moreover, according to Article 66 of the Treaty this provision applies to the matters covered by the chapter of the Treaty relating to services.

Thus the words "nationals of Member States" in the first paragraph of Article 59 cover without distinction both natural persons and the companies and firms defined in Article 58 of the Treaty.

.../...

The abolition of restrictions on freedom to provide services provided for in the first paragraph of Article 59 of the Treaty is to be carried out "within the framework of the provisions" in the chapter on services. According to the general programme which sets out, pursuant to Article 63, the general conditions and the stages for the abolition of the restrictions, such abolition is to be carried out for the benefit of the different types of person providing services (natural persons and companies or firms) "subject to the condition that the service is carried out either personally by the person contracting to provide it or by one of his agencies or branches established in the Community" <sup>(1)</sup>. Thus no distinction is drawn in the programme between the operations of the head office of an undertaking and those of its agencies or branches.

It is not therefore possible to use the wording of the first paragraph of Article 59 of the Treaty as an argument for excluding the business of agencies and branches from the abolition of restrictions on the freedom to provide services.

- (b) The arguments put forward as justification for restricting freedom to provide services to operations carried out by the head office of the undertaking consist in allowing that the Council may, acting on the basis of Article 57(2), pursue objectives additional to those covered by the ones in that Article: while the purpose set forth in this Article is to "facilitate the taking up and pursuit of activities as self-employed persons", the additional objectives would be to prevent distortions of competition and to afford policy holders effective protection.

In its judgement referred to above <sup>(2)</sup>, the Court of Justice limited the scope of the directives adopted on the basis of Article 57(2) of the Treaty to the resolution of

---

<sup>(1)</sup> see Title I, OJ No 2, 15.1.1962, p. 32

<sup>(2)</sup> Judgement Van Binsbergen, Reports 1974, p. 1294  
5343/81

problems "resulting from the fact that where the person providing the service is not established, on a habitual basis, in the State where the service is performed he may not be fully subject to the professional rules of conduct in force in that State".

In principle there is certainly no denying the Council's right to take account of objectives such as the prevention of distortions of competition and the protection of policyholders <sup>(1)</sup> when seeking a solution to these problems. At the same time the pursuit of such objectives must not run counter to the provisions of the Treaty and there must be objective justification.

- (i) To limit freedom to provide services to the business of the head office might run counter to a specific provision in the Treaty (second paragraph of Article 60), which states that the person providing a service (for the nouce, the insurer) may, in order to do so, temporarily pursue his activity in the State where the service is provided, under the same conditions as are imposed by that State on its own nationals <sup>(2)</sup>.

In the case in point these conditions are that the business is carried out through agencies and branches; accordingly, any Member States which prohibited the business of agencies and branches - established in the other Member States \* in exercise of the freedom to provide services, while authorizing business carried out within their territory by agencies and branches having their

---

<sup>(1)</sup> In a statement in the minutes of the meeting at which it adopted the General programme for the abolition of restrictions on freedom to provide services, the Council recognized the need to safeguard the interests of policy holders and third party beneficiaries (1338/61, p. 3).

<sup>(2)</sup> As stated above, the latter cover without distinction, within the meaning of the Treaty, both natural persons and the companies or firms defined in Article 58 of the Treaty.

.../...

head office in that territory, would not be guaranteeing the right to pursue insurance activities in exercise of the freedom to provide services under the same conditions as it imposed on its own nationals.

- (ii) The Court of Justice has had occasion in its case law to draw attention to the "particular nature of certain services to be provided" and the consequences arising out of this as regards the compatibility with the Treaty of "specific requirements" imposed on persons providing services <sup>(1)</sup>.

It therefore seems lawful for the Council to seek to reconcile the requirements of freedom to provide services with the requirements of protecting individuals, for whom such services are intended, although there must clearly be objective grounds for taking the second factor into consideration.

In the present case the Council Legal Service does not consider, at the present stage of the proceedings, that objective grounds have been adduced to demonstrate that policyholders are better protected when the service is provided from the head office than when it is provided from agencies and branches.

---

<sup>(1)</sup> See Judgment of 18.1.1979 in Joined Cases 110 and 111/78 (Ministère Public and others v Van Wesemael (Reports 1979, p. 35); paragraph 28 of the grounds of this judgment reads as follows:

"taking into account the particular nature of certain services to be provided, such as the placing of entertainers in employment, specific requirements imposed on persons providing services cannot be considered incompatible with the Treaty where they have as their purpose the application of professional rules, justified by the general good or by the need to ensure the protection of the entertainer, which are binding upon any person established in the said State, insofar as the person providing the service is not subject to similar requirements in the Member State in which he is established."

(iii) the abolition of distortions of competition falls within the objectives of the Treaty in the same way as the abolition of obstacles to the freedom to provide services (see Article 3(c) and (f)). The Institutions of the Communities, like the Member States, are required to ensure that their activities include the pursuit of these objectives. In the case in point the provisions to be adopted by the Council must take into account the need to reconcile the two objectives in Article 3(c) and (f) of the Treaty without one necessarily being sacrificed to the other <sup>(1)</sup>.

The Council Legal Service does not see why, if agencies and branches are given the entitlement to the effective exercise of freedom to provide services, this should result in distortions of competition.

4. In conclusion, the Council Legal Service does not consider at the present stage of the examination of this matter that there can be any objective grounds for justifying the limitation of freedom to provide services to business carried out by the head office, when the effect of such limitation would be to exclude from the Directive - which, broadly speaking, is to be adopted for the whole Community - business performed in exercise of the freedom to provide services by agencies and branches.

Accordingly, the Directive in question could not validly exclude the business of agencies and branches from freedom to provide services.

---

<sup>(1)</sup> see judgment of the Court of 21.2.1973 in case 6/72 (Europemballage et Continental Can v Commission, Reports 1973, p. 215 and in particular pp. 245-246).

LE CONSEIL

5343/81	
	RESTREINT

JUR 57

SURE 11

AVIS JURIDIQUE

Objet : Proposition de deuxième directive du Conseil portant coordination des dispositions législatives, réglementaires et administratives concernant l'assurance directe autre que l'assurance sur la vie et fixant les dispositions destinées à faciliter l'exercice effectif de la libre prestation de services

- possibilités de limiter l'exercice effectif de la libre prestation de services aux opérations du siège social

Lors des réunions du Groupe ad hoc des conseillers en date des 20 et 24 février 1981, un avis du Service juridique du Conseil a été demandé sur la question suivante :

Les dispositions de la directive peuvent-elles se limiter à faciliter l'exercice effectif de la libre prestation de services pour les seules opérations du siège social de l'entreprise (à l'exclusion des opérations des agences et succursales de celle-ci) ?

La présente note a pour objet de répondre à cette question.

1. La limitation de l'exercice effectif de la libre prestation de services au siège social des entreprises ou l'extension d'un tel exercice aux agences et succursales de celles-ci se reflètent dans le texte de la directive par l'inclusion ou l'omission de telles agences ou succursales dans les définitions figurant à l'article 2. .../...



A l'état actuel des travaux (1), cet article est ainsi rédigé :

"Article 2

1. Au sens de cette directive, il faut comprendre par :

a) première directive de coordination

la première directive du Conseil visée à l'article 1er sous a).

b) entreprise

Toute entreprise ayant reçu l'agrément administratif conformément à l'article 6 paragraphe 2 sous a) [ou b)] de cette directive.

c) .....

La suppression de la référence au b) de l'article 6 paragraphe 2 aurait pour effet de ne rendre applicables les dispositions de la directive qu'aux opérations du siège social (2).

.../...

---

(1) Sauf indication contraire, les références sont faites au texte de la proposition tel qu'il est repris au doc. 8788/2/80 Rév. 2 du 13 octobre 1980.

(2) La "première directive" à laquelle il est fait allusion est la directive du Conseil du 24 juillet 1973 portant coordination des dispositions législatives, réglementaires et administratives concernant l'accès à l'activité de l'assurance directe autre que l'assurance sur la vie et son exercice (J.O. n° L 228 du 16.8.1973).

Cette coordination a notamment pour objet de soumettre à un agrément administratif l'accès à l'activité de l'assurance directe sur le territoire d'un Etat membre.

Aux termes de l'article 6 par. 2 de cette directive, cet agrément doit être sollicité par

a) l'entreprise qui fixe son siège social sur le territoire de cet Etat;

b) l'entreprise dont le siège social se trouve dans un autre Etat membre et qui ouvre une succursale ou une agence sur le territoire de l'Etat membre intéressé.

L'inclusion de cette référence entraînerait l'application des dispositions en question tant aux opérations du siège social qu'à celles des agences et succursales, qui sont constituées par des entités émanant du siège sans en être juridiquement distinctes.

S'agissant d'opérations effectuées en prestation de services, elles sont destinées à être couvertes par les dispositions reprises au Titre III de la proposition de directive (art. 9 à 16).

2. Le Titre III de la proposition indiquée ci-dessus a pour objet d'introduire, dans la législation des Etats membres, un ensemble de dispositions destinées à faciliter l'exercice effectif de la libre prestation de services par la coordination des législations relatives à l'exercice des activités non salariées.

Cette coordination s'effectue sur la base de l'article 57 paragraphe 2 du traité CEE, qui est rendu applicable à la libre prestation de services par l'article 66 du même traité. Ces deux articles figurent parmi ceux qui sont retenus en tant que fondement juridique de la proposition de deuxième directive.

.../...

Aux termes de l'article 57 paragraphe 2, le Conseil est tenu d'arrêter, avant l'expiration de la période de transition, les directives visant à la coordination des dispositions législatives, réglementaires et administratives des États membres concernant l'accès aux activités non salariées et l'exercice de celles-ci. On rappellera que, dans son arrêt rendu le 3.12.1974 dans l'affaire 33/74 (1), la Cour, en reconnaissant un effet direct aux articles 59, alinéa 1er et 60, alinéa 3 du traité CEE dans la mesure où ils visent à l'élimination de toutes discriminations à l'encontre du prestataire en raison de sa nationalité, a précisé qu'il appartient encore (c'est-à-dire même après l'expiration de la période de transition) aux directives fondées sur l'article 57 par. 2.

".... de résoudre les problèmes spécifiques résultant de la circonstance qu'à défaut d'établissement permanent, le prestataire pourrait ne pas être pleinement soumis aux règles professionnelles en vigueur dans l'Etat où la prestation est exécutée."

Le Conseil disposant encore à l'heure actuelle d'une compétence pour arrêter des dispositions en vue de résoudre ces problèmes spécifiques, la question soulevée par le Groupe revient à savoir si ces dispositions peuvent se limiter à une solution partielle de ces problèmes, à savoir ceux qui résultent des prestations de services effectuées uniquement par le siège social de l'entreprise.

3. Lors des réunions du Groupe ad hoc des conseillers, les arguments suivants ont été avancés à l'appui d'une réponse affirmative à cette question :

---

(1) Van Binsbergen c/Bedrijfsvereniging Metaalnijverheid, Recueil 1974, p. 1299

a) l'obligation de supprimer les restrictions à la libre prestation de services à l'intérieur de la Communauté n'est prévue par le texte de l'article 59 alinéa premier du traité qu'à l'égard des ressortissants des Etats membres établis dans un pays de la Communauté autre que celui du destinataire de la prestation. La portée d'une telle obligation étant donc limitée à la suppression des restrictions concernant les personnes physiques ("ressortissants"), le Conseil serait libre de procéder à une suppression par étapes des restrictions concernant les personnes morales et d'exclure ainsi dans un premier temps de cette suppression les restrictions concernant les opérations des agences et succursales.

b) les dispositions arrêtées par le Conseil sur la base de l'article 57 paragraphe 2 pourraient valablement se limiter à faciliter l'exercice effectif de la libre prestation de services pour les seules opérations du siège social de l'entreprise en vue notamment d'éviter des distorsions de concurrence et de protéger d'une manière efficace les consommateurs (assurés).

o  
o

a) En vertu du premier alinéa de l'article 58 du traité, les sociétés constituées en conformité avec la législation d'un Etat membre et ayant leur siège statutaire, leur administration centrale ou leur principal établissement à l'intérieur de la Communauté sont assimilés, pour l'application des dispositions du chapitre relatif au droit d'établissement, aux personnes physiques ressortissant des Etats membres.

Il résulte par ailleurs de l'article 66 du traité que cette disposition est applicable à la matière régie par le chapitre du traité relatif aux services.

Les termes "ressortissants d'un Etat membre" figurant au premier alinéa de l'article 59 couvre donc indistinctement tant les personnes physiques que les sociétés définies à l'article 58 du traité.

79

Quant à la suppression des restrictions à la libre prestation de services prévue par l'article 59 alinéa premier du traité, elle est à réaliser "dans le cadre des dispositions" figurant au chapitre relatif aux services. Or, le programme général fixant, aux termes de l'article 63, les conditions générales et les étapes de la suppression des restrictions, prévoit que celle-ci soit réalisée au bénéfice des différents prestataires (personnes physiques et sociétés) "à condition que le service soit exécuté par le prestataire lui-même ou par une de ses succursales ou agences également établies dans la Communauté"(1) Aucune distinction n'est donc faite dans ce programme entre les opérations du siège social de l'entreprise ou de ses agences ou succursales.

Il n'est donc pas possible de tirer argument du texte du premier alinéa de l'article 59 du traité pour exclure les opérations des agences et succursales de la suppression des restrictions à la libre prestation de services.

- b) Les arguments invoqués afin de justifier une liberté de prestation de services limitée aux seules opérations du siège social de l'entreprise consistent à admettre que le Conseil puisse, en statuant sur la base de l'article 57 par. 2, poursuivre des objectifs complémentaires par rapport à ceux qui relèvent de ceux qui figurent à cet article : alors que la finalité énoncée par celui-ci est celle de "faciliter l'accès aux activités non salariées et leur exercice", les objectifs complémentaires consisteraient à éviter les distorsions de concurrence et à protéger les assurés d'une manière efficace.

Dans son arrêt rappelé ci-dessus (2), la Cour de justice a circonscrit le champ d'application des directives arrêtées

.../...

(1) v. Titre I, J.O. n° 2 du 15.1.1962, p. 32

(2) arrêt Van Binsbergen, Recueil 1974, p. 1294

sur la base de l'article 57 paragraphe 2 du traité à la solution des problèmes "résultant de la circonstance qu'à défaut d'établissement permanent, le prestataire pourrait ne pas être pleinement soumis aux règles professionnelles en vigueur dans l'Etat où la prestation est exécutée".

On ne saurait certes exclure en principe qu'en recherchant une solution à ces problèmes, il soit permis au Conseil de tenir compte de finalités comme l'élimination des distorsions de concurrence et la protection des assurés (1). Encore faut-il que la poursuite de telles finalités n'aille pas à l'encontre des dispositions du traité et soit justifiée par des raisons objectives.

- i) Une limitation de la libre prestation de services aux opérations du siège social des entreprises risque d'aller à l'encontre d'une disposition expresse du traité (art. 60, deuxième alinéa); aux termes de celle-ci, le prestataire (en l'espèce l'assureur) peut, pour l'exécution de sa prestation, exercer, à titre temporaire, son activité dans le pays où la prestation est fournie, dans les mêmes conditions que celles que ce pays impose à ses propres ressortissants (2).

Or, ces conditions sont dans le cas d'espèce constituées par le fait d'opérer par la voie d'agences et succursales; il en résulte que les Etats membres qui interdiraient les opérations des agences et succursales - établies dans les autres Etats membres - effectuées en libre prestation de services alors qu'ils autoriseraient les opérations effectuées à l'intérieur de leur territoire par les agences et

.../...

- 
- (1) Par une déclaration inscrite au procès-verbal du Conseil lors de l'adoption du Programme général pour la suppression des restrictions à la libre prestation de services, le Conseil a reconnu la nécessité que les intérêts des assurés et des tiers bénéficiaires soient sauvegardés (doc. 1338/61, p. 3).
  - (2) Comme indiqué ci-dessus ceux-ci couvrent indistinctement, au sens du traité, tant les personnes physiques que les sociétés définies à l'article 58 du traité.

succursales des entreprises ayant leur siège social dans ce territoire ne garantiraient pas l'exercice de l'activité d'assurance en libre prestation de services dans les mêmes conditions que celles qu'ils imposent à ses propres ressortissants.

- ii) la Cour de justice a eu l'occasion de rappeler dans sa jurisprudence la "nature particulière de certaines prestations de services" et les conséquences qui en découlent quant à la compatibilité avec le traité des "exigences spécifiques" imposées aux prestataires. (1)

Il apparaît donc légitime pour le Conseil de chercher à concilier les exigences de la libre prestation de services avec celles de la protection des particuliers, destinataires de ces prestations, la prise en considération de ce second élément devant évidemment être justifiée sur la base de raisons objectives.

En l'espèce il n'apparaît pas au Service juridique du Conseil, en l'état actuel des travaux, que des raisons objectives aient été avancées qui permettent de justifier que les assurés soient mieux protégés lorsque la prestation est effectuée à partir du siège social que lorsqu'elle est effectuée à partir des agences et succursales.

.../...

---

(1) cf. arrêt du 18.1.1979 dans les affaires jointes 110 et 111/78 (Ministère public et autres c/Van Wesemael (Rec. 1979, p. 35); l'attendu 28 de cet arrêt est ainsi rédigé :

"compte tenu de la nature particulière des prestations de services, telles que le placement d'artistes du spectacle, on ne saurait considérer comme incompatibles avec le traité des exigences spécifiques imposées aux prestataires, qui seraient motivées par l'application de règles professionnelles, justifiées par l'intérêt général ou par la nécessité d'assurer la protection de l'artiste, incombant à toute personne établie sur le territoire dudit Etat, dans la mesure où le prestataire ne serait pas soumis à des prescriptions similaires dans l'Etat membre où il est établi."

iii) l'élimination des distorsions de concurrence rentre dans les objectifs du traité tout aussi bien que l'abolition des obstacles à la libre prestation de services (cf. art. 3 sous c) et f)). Les institutions des Communautés sont tenues, comme les Etats membres, d'assurer dans leur action la poursuite de ces objectifs. Dans le cas d'espèce, les dispositions à arrêter par le Conseil doivent tenir compte de la nécessité de concilier les deux objectifs qui figurent à l'article 3 c) et f) du traité sans que l'un doive être nécessairement sacrifié au profit de l'autre (1).

Or, le Service juridique du Conseil ne voit pas les raisons pour lesquelles l'admission des agences et succursales à l'exercice effectif de la libre prestation de services provoquerait des distorsions de concurrence.

4. En conclusion, il ne semble pas au Service juridique du Conseil, au stade actuel de l'examen de cette question, qu'une limitation de la libre prestation de services aux opérations du siège puisse être justifiées par des raisons objectives lorsqu'elle a pour effet d'exclure des dispositions de la directive à arrêter, d'une manière générale, pour toute la Communauté, les opérations effectuées en libre prestation de services par des agences et succursales.

Dans ces conditions, la directive indiquée ci-dessus ne saurait valablement exclure les opérations des agences et succursales de la libre prestation de services.

---

(1) cf. l'arrêt de la Cour du 21.2.1973 dans l'affaire 6/72 (Europemballage et Continental Can c/Commission, Recueil 1973, p. 215 et notamment p. 245-246).



Brussels, 10 March 1981 (13.03)

5371/81	
	RESTREINT

83

ECOFIN 17  
AGRIFIN 86

NOTE FROM THE PRESIDENCY

Subject: Economic and financial aspects of the Commission proposals on the fixing of prices for certain agricultural products and on certain related measures for the 1981/1982 marketing year

In accordance with the brief received from the Permanent Representatives Committee on 19 February 1981 the AGRI/FIN Working Party met on 5 and 9 March 1981 to examine the economic and financial aspects of the Commission proposals on the fixing of prices for certain agricultural products and on certain related measures for the 1981/1982 marketing year.

The Working Party geared its examination to the four questions contained in the brief from the Permanent Representatives Committee. It would emphasize that the positions adopted by delegations on these four questions must not be seen in isolation but taken as a whole.

.../...

1. Do the farm proposals for the 1981/1982 marketing year reflect the Member States' general policy on financial and economic matters, particularly with regard to the fight against inflation and the restrictions on public expenditure?

The economic background to the Commission proposals is as follows:

- (a) in 1980 inflation gained considerable momentum, reaching an average of 12.1% in the Community; the 1981 estimates indicate an average of around 10.4% <sup>(1)</sup>;
- (b) in 1980 production prices in agriculture increased by 7%, whereas the price of inputs rose by 12%. In 1979 the figures were 6% for prices and 8.9% for inputs;
- (c) as regards the trend of spending on agriculture in the Community, an average increase of 23% between 1975 and 1979 was followed by an increase of 8.4% from 1979 to 1980. The 1981 budget provides for an increase in agricultural expenditure of 13.9% compared with actual expenditure in 1980 <sup>(2)</sup>;
- (d) on average public expenditure in the Member States rose by 14.7% in 1980; the 1981 estimates show an average increase of 12%.

---

<sup>(1)</sup> The rate of inflation should fall to approximately 8% in December 1981.

<sup>(2)</sup> The agricultural expenditure planned in the 1981 budget allows for the effects of Greek accession and the full impact of the new market organization for sheepmeat. The impact of these two factors is estimated at 450 million ECU, or approximately 3.5% of EAGGF/Guarantee expenditure.

Several delegations feel that on the whole the Commission proposals are fully compatible with the general financial and economic policies of the Member States, as regards both the fight against inflation and restrictions on public expenditure. In particular:

- these delegations stressed the seriousness of the problems facing agriculture and the need to provide an adequate response this year. Because of the modest rate of increase in farm prices farmers had in recent years made a much greater contribution to fighting inflation than other sectors of the economy, and this trend must be corrected. It was also pointed out that the agricultural prices policy must ensure adequate productivity in order to avoid negative effects in the medium term, on both inflation and public expenditure;
- some delegations drew attention to the dangers of an inadequate pricing policy for the common agricultural policy, in particular if it led Member States to take national support measures;
- the Italian delegation considers that the Commission's approach, based on the average trend of inflation in the Community, is inappropriate, since the rate of inflation varies considerably from one Member State to another, with different repercussions on incomes. In its opinion the Commission proposals are acceptable in terms of fighting inflation but do not take account of the need to safeguard the incomes of Italian farmers. If prices were inadequate it might be necessary to provide supplementary aid from national budgets or Community budget;

.../...

- some delegations drew attention to the fact that the Commission proposals offered the possibility of using MCAs to modulate price increases in the different Member States.

Two delegations, however, drew attention to the fact that if the aim was to strike a significant blow against inflation it was necessary to think in terms of Community objectives on price increases, instead of fuelling inflationary pressures in the future by trying to compensate for past increases. They also pointed out that several Member States were making considerable efforts to restrict the growth of public expenditure. Comparable efforts must also be made at Community level. In particular:

- the German delegation pointed out that according to the multiannual financial estimates the price increase should not be more than 6%. At national level, Germany intended to limit public expenditure to 5.2% in 1981. Lastly, it commented that the farm price proposals could not be assessed solely in terms of farm incomes;
- the United Kingdom delegation took the view that throughout the negotiations a constant check should be kept on the compatibility of agricultural decisions with economic and financial priorities.

2. What effect do these proposals have on the trend of farmers' incomes, bearing in mind the need to ensure greater convergence of the Member States' economies?

In support of its proposals, the Commission pointed to the substantial, real fall in farm incomes in 1980, following on a less steep drop in 1979 and three years of a moderate price policy in the face of a considerable increase in costs. To take account of the different national situations the Commission proposed in particular that the increase for Mediterranean products be higher than for other products and that positive MCAs be reduced or abolished. Lastly, the Commission representative pointed out that the price policy was coupled with structural policies to assist the weakest producers.

Several delegations found the Commission proposals on agricultural prices inadequate. In their opinion not only would they fail to reverse the two-year old trend of a drop in the purchasing power of farm incomes but, if endorsed, they would subsequently worsen the position of agriculture in relation to the other sectors of the economy. Some delegations also felt that the whole set of Commission proposals did not help sufficiently in reducing the disparities between the different agricultural regions of the Community. This was particularly serious for those Member States in which agriculture was of the utmost importance in terms of employment and gross domestic product, for difficulties here went a long way to depressing the rest of the economy.

Conversely, it was argued that farmers' incomes did not depend solely on price increases, but also on structural alterations and an upturn in the economy as a whole. The price policy must

also ensure a satisfactory balance of agricultural production in terms of supply and demand. In the present economic situation it should also be remembered that unemployment problems were less acute in agriculture than in other sectors.

3. Do these proposals reflect the Community's budgetary requirements bearing in mind the existence of the 1% limit on VAT revenue and the problem posed by the fact that a relatively large proportion of the budget is given over to agricultural expenditure?

According to the Commission's calculations the overall financial impact of its proposals for the 1981/1982 marketing year (12 months) will be as follows:

- Supplementary expenditure	+ 1,547 million ECU
- Savings	- 703 million ECU
Financial impact on agricultural expenditure	+ 844 million ECU <sup>(1)</sup>
	=====

The budgetary impact of the proposals for the financial year 1981 is estimated at 255 million ECU.

In 1981 the Commission intends to make savings of some 400 million ECU in respect of market management which will be reflected in the 1981 appropriations of the Guarantee Section of the EAGGF.

The Commission feels that if its agricultural proposals are endorsed they will be compatible with short-term budgetary restraints:

for 1981 the possibility of a supplementary budget for the EAGGF/Guarantee Section can be ruled out;

for 1982 there should be some margin for expanding other Community activities, given the expected rate of growth of own resources <sup>(2)</sup>; however, this possibility will be limited by the

<sup>(1)</sup> According to the Commission's calculations its proposals would entail a gross increase in own resources of 321 million ECU over 12 months. This estimated increase was not calculated in relation to the multiannual estimates.

<sup>(2)</sup> Own resources increase by roughly 10% per annum, i.e. 2,000 MEUA from 1981 to 1982.

budgetary repercussions of the agricultural price decisions for 1982/1983, any changes in the situation on the world markets and on the monetary front, as well as the volume of payments automatically arising from past commitments in particular as regards the structural funds.

The Commission acknowledged that it was of course too soon to say how these considerations would be affected by a more far-reaching reorganization of the structure of the budget (brief of 30 May).

On the whole delegations agreed with the Commission's analysis for the financial year 1981, but there were differences of opinion regarding the outlook for 1982.

In particular:

- several delegations take the view that the available estimates indicate that the Commission proposals will not pose any budget problems in 1982 as regards either the limit on own resources or Community policies to be pursued in other sectors. The present world situation is better than forecast for several significant products and the monetary trend is also favourable, so that, if these conditions continue, further savings may be expected in 1981; this could have the effect of reducing the Community rate of VAT for that year;
- some delegations pointed out that the 1% limit on VAT was not a valid criterion for assessing the Commission proposals. It existed and would have to be complied with in 1981 and 1982 but it could not be regarded as an absolute, hard-and-fast limit;



87

- other delegations feel, however, that the Commission proposals could have a much greater financial impact in 1982 than at present forecast, owing to the many imponderables involved. Hence it is not certain that the 1% VAT limit can be observed in 1982. The German and United Kingdom delegations consider that to avoid any budgetary problems the budget procedure should be improved so that action can be taken in good time. Lastly, the United Kingdom delegation stressed the importance which it attaches to ensuring that the decisions to be taken on agriculture do not interfere with the decisions to be taken on reorganizing the structure of the budget in accordance with the brief issued by the Council on 30 May 1980.

4. Do these proposals provide a satisfactory solution to the problem posed by positive MGAs?

The Commission proposes a five-point reduction in the positive monetary compensatory amounts applied in Germany and in the United Kingdom and the abolition of positive monetary compensatory amounts in the Benelux countries. It considers that this measure is needed to correct distortions in competition in trade and, in real income terms, to achieve a more equitable situation between producers in the different Member States.

These Commission proposals evoked the following reactions:

- the French delegation, with the support of some other delegations, felt that the Council should decide by the next marketing year that all positive MCAs, old or new, must be abolished within two years;
- some delegations advocated progressively abolishing positive MCAs as quickly as possible;
- the Italian delegation was in favour of abolishing all positive MCAs as of the next marketing year;
- the German delegation, while in agreement with the principle of dismantling MGAs was opposed to any automatic machinery for so doing. It pointed out that a recent Commission survey had failed to prove that the existence of MCAs in 1979 and 1980 had resulted in distortion of competition;
- the United Kingdom delegation also agreed in principle with the abolition of MCAs, but pointed to the high level of inflation in the United Kingdom and recent movements in the exchange rate for the pound, which had involved substantial upward or downward variations in MCAs.

*Did not refer own  
POS = programs*

FCO  
 PS/LORD PRIVY SEAL  
 PS/MR RIDLEY  
 MR BULLARD  
 MR HANNAY  
 LORD BRIDGES

RESIDENT CLERK  
 HD/ECD(I) (4)  
 HD/NEWS  
 HD/ERD  
~~HD/.....~~  
~~HD/.....~~

PLUS FCO

DESKBY130900Z  
 ADVANCE COPY  
 (26x) IMMEDIATE  
 DUAL FILE

CABINET OFFICE

MR M D M FRANKLIN  
 MR D M ELLIOTT  
 MR RHODES  
 MR A M GOODENOUGH  
 MR WENTWORTH

D.O.T.

PLUS OGDS

H M TREASURY

SIR K COUZENS  
 MR. ASHFORD  
 MR. FITCHEN, MR. HANCOCK  
 MR. SCHOLES, MR. D.R. ROBERTS

M.A.F.F.

SIR B HAYES  
 MR. ANDREWS, MR. HADDON,  
 MR. DICKINSON.

RESTRICTED

FRAME ECONOMIC

FRAME AGRICULTURE

DESKBY 130900Z

FM UKREP BRUSSELS (122022Z MAR 81)

TO IMMEDIATE F C O

TELEGRAM NUMBER 881 OF 12 MARCH 1981

INFO SAVING BRUSSELS COPENHAGEN THE HAGUE ROME DUBLIN PARIS BONN  
 LUXEMBOURG ATHENS

COREPER (AMBASSADORS): 12 MARCH

PREPARATION OF ECOFIN COUNCIL (MIPT NOT TO ALL)

ECONOMIC AND FINANCIAL ASPECTS OF AGRICULTURAL PRICE FIXING

SUMMARY

1. DRAFT CONCLUSIONS PREPARED BY DUTCH PRESIDENCY CRITICISED BY ITALY, IRELAND, DENMARK AND GREECE FOR NOT BEING ROBUST ENOUGH ON NEED TO MAINTAIN FARM INCOMES AND BASIC PRINCIPLES OF CAP. GERMANY AND UK SUPPORTED PRESIDENCY APPROACH WHILE SUGGESTING AMENDMENTS TO STRENGTHEN MESSAGE ABOUT BUDGETARY AND ECONOMIC IMPLICATIONS. DRAFTING GROUP TO MEET TOMORROW TO PREPARE NEW DRAFT FOR CONSIDERATION AT ECOFIN COUNCIL ON MONDAY.

1. AIL

2. RUGGIERO (ITALY), FINANCE MINISTERS WOULD ONLY DEBATE THE SUBJECT FOR A COUPLE OF HOURS. THERE WAS A STRONG DANGER THAT NO AGREEMENT WOULD BE REACHED OR A BLAND AND USELESS TEXT WOULD EMERGE. THERE WAS ALSO A DANGER OF THE COUNCIL DEVELOPING A SPLIT PERSONALITY. RUTTEN (PRESIDENCY) SAID THE PURPOSE OF THE ECOFIN DISCUSSIONS WAS TO UNDERLINE THE RELATIONSHIP BETWEEN AGRICULTURE PRICES DECISIONS AND OTHER COMMUNITY AND NATIONAL ECONOMIC DECISIONS. AGRICULTURAL DECISIONS SHOULD NOT BE TAKEN IN A VACUUM BUT IT WAS NOT INTENDED THAT FINANCE MINISTERS SHOULD LIMIT THE POSSIBILITIES FOR OTHER COUNCILS TO TAKE DECISIONS.

3. DILLON (IRELAND) SUPPORTED RUGGIERO. ONE COUNCIL COULD NOT TELL ANOTHER WHAT TO DO. HE COULD AGREE TO DISCUSSION BASED ON AGRIFIN GROUP REPORT (5371/81) BUT NOT ON BASIS OF WHAT HE CALLED VAGUE THOUGHTS ON 30 MAY MANDATE.

4. MATHIAS (GERMANY) AND I SPOKE IN SUPPORT OF THE PRESIDENCY'S GENERAL APPROACH. IT WAS IMPORTANT TO BRING FACTORS NOT IN THE AGRICULTURAL FIELD TO THE ATTENTION OF AGRICULTURAL MINISTERS. I SAID THAT THE CONCLUSIONS SHOULD SAY EXPRESSLY THAT AGRICULTURAL COLLEAGUES SHOULD TAKE NOTE OF GUIDELINES AND ARRANGE FOR A FURTHER CONSULTATION IF THEY SAW ANY DIFFICULTY ABOUT TAKING DECISIONS WITHIN THEM.

5. DISCUSSION WAS THEN TAKEN UP WITH AMENDMENTS TO THE DUTCH TEXT. ONLY SOME WERE CIRCULATED. FOLLOWING WERE MAIN POINTS ON WHICH PEOPLE WANTED AMENDMENTS:

A) FIGHT AGAINST INFLATION AND PRICES

ITALY: SPECIAL ACCOUNT NEEDED TO BE TAKEN OF REGIONAL VARIATIONS IN INFLATION RATE. ONE MEMBER STATE HAD ALREADY INTRODUCED NATIONAL INCOME AIDS. IF FAR PRICE PROPOSALS WERE NOT ADEQUATE PUBLIC EXPENDITURE MIGHT ALSO HAVE TO BE INCREASED IN OTHERS. A BETTER REGIONAL BALANCE WAS NEEDED.

IRELAND: AGRICULTURE POLICY MAKES AN IMPORTANT CONTRIBUTION TO FIGHT AGAINST INFLATION. PRICE PROPOSALS DO NOT COVER RATE OF INCREASE OF INPUT COSTS. SPECIAL DIFFICULTIES FOR COUNTRIES WITH LARGE FARMING SECTOR.

GERMANY: AGRICULTURAL PRICE INCREASES SHOULD BE LESS THAN THE GENERAL LEVEL OF PRICE INCREASES IN COUNTRIES WITH LOW INFLATION RATES.

## B) BUDGET AND 1 PER CENT CEILING

GERMANY AND UK: GROWTH IN AGRICULTURAL EXPENDITURE MUST BE MARKEDLY LOWER THAN GROWTH IN OWN RESOURCES BASE. ESSENTIAL TO HAVE COMMISSION'S FORECAST FOR 1982.

FRANCE: DIFFICULT BUDGETARY SITUATION REFERRED TO DOES NOT EXIST. THERE IS NO GENERAL POLICY TO REDUCE THE SHARE OF AGRICULTURAL SPENDING IN THE BUDGET.

BELGIUM: NEED TO LOOK AT OBJECTIVE FACTS, NOTE APPROACH OF 1 PER CENT CEILING AND SHARE OF AGRICULTURE BUDGET IN TOTAL COMMUNITY BUDGET.

ITALY AND IRELAND: 1 PER CENT LIMIT NOT A REAL CONSTRAINT. COMMUNITY OWN RESOURCES COULD BE INCREASED.

## C) MCAS

DENMARK AND IRELAND: STRONGER STATEMENT NEEDED ON DISMANTLING POSITIVE MCA.

ITALY: SUBSTANTIAL REDUCTION OF GERMAN MCA ESSENTIAL.

GERMANY: GRADUAL ABOLITION OF MCAS MUST TAKE ACCOUNT OF DEVELOPMENT OF PRICES AND INCOME IN AGRICULTURE.

UK: NOT SUBSCRIBED TO GENTLEMAN'S AGREEMENT ON MCAS, UK MCAS NOT LIKE FIXED MCAS: POUND SUBJECT TO CONSIDERABLE FLUCTUATION: MCAS PROVIDE EXTRA REVENUE.

FRANCE: KEY TO EXERCISE LAY IN FIRM STATEMENTS ON MCAS. BUDGETARY ADVANTAGE OF UK MCAS ILLUSORY SINCE 75 PER CENT WOULD BE RETURNED TO UK IN THE FOLLOWING YEAR.

## D) ECONOMIES

FRANCE: CONTRADICTION TO SUGGEST THAT ALL INCREASES IN EXPENDITURE SHOULD BE FINANCED FROM SAVINGS. UNDERMINES THE WHOLE PURPOSE OF HAVING OBLIGATORY EXPENDITURE. COMMUNITY PREFERENCE EFFECTIVELY APPLIED WOULD LEAD TO SUBSTANTIAL ECONOMIES.

IRELAND, DENMARK AND GREECE: STATEMENTS ABOUT ECONOMIES NOT ACCEPTABLE, GENERAL OPPOSITION.

ITALY: SUPPORT ECONOMIES MEASURES IN PRINCIPLE BUT MUST CONCENTRATE ON REDUCTION OF SURPLUSES.

PRESIDENCY: ESSENTIAL TO MAKE SAVINGS IN AGRICULTURAL SECTOR TO AVOID GROWTH OF PROPORTIONATE SHARE OF AGRICULTURE IN BUDGET.

BELGIUM: HELPFUL TO INCLUDE COMMISSION'S VIEW THAT THERE WOULD BE NO SUPPLEMENTARY BUDGET IN 1981 FOR AGRICULTURE.

## GENERAL

6. FRANCE, ITALY, IRELAND AND DENMARK ALL INSISTED ON THE NEED NOT TO UNDERMINE THE THREE BASIC PRINCIPLES OF THE COMMON AGRICULTURAL

6. FRANCE, ITALY, IRELAND AND DENMARK ALL PROPOSED ON THE NEED NOT TO UNDERMINE THE THREE BASIC PRINCIPLES OF THE COMMON AGRICULTURAL POLICY.

CONCLUSION

7. THE TEXT PROPOSED BY THE PRESIDENCY, TOGETHER WITH AMENDMENTS, WILL BE CONSIDERED BY A DRAFTING GROUP ON FRIDAY. AGREEMENT ON A TEXT WILL CLEARLY NOT BE POSSIBLE. THE AIM IS TO HAVE A SET OF DRAFT CONCLUSIONS FOR SUBMISSION TO FINANCE MINISTERS ON MONDAY, WHO WILL THEN DECIDE WHETHER TO DO FURTHER WORK ON DRAFTING CONCLUSIONS, OR ABANDON THE ATTEMPT ~~TO~~ HAVE A GENERAL DISCUSSION.

420  
FCO ADVANCE TO:-

FCO - HANNAY, SPRECKLEY  
CAB - FRANKLIN, WENTWORTH  
MAFF - ANDREWS, HADDON, DICKINSON  
TSY - FITCHEW, HANCOCK, SCHOLLES

FCO PASS SAVING COPENHAGEN ROME DUBLIN PARIS BONN ATHENS

BUTLER

[Advanced and passed Savings, as requested]

NNNN

Brussels, 15 February 1980 (18.03)

5081/80		
		RESTREINT

42

PV/CONS 5  
ECOFIN 9

TREASURY  
24 FEB 1980  
162 CS

D R A F T  
M I N U T E S

of the 624th meeting of the Council  
held in Brussels on Monday 11 February 1980

MINUTES  
OF  
ECOFIN  
11/2/80

93

- Financial consequences of measures proposed by the Commission under the common agricultural policy  
(4826/80 ECOFIN 5 AGRIFIN 47, 4840/80 ECOFIN 6 AGRIFIN 48)

The Council adopted the conclusions annexed hereto.

- Export credits: interest rates under the Arrangement on guidelines for officially supported export credits  
(4792/80 CCG 9, 4793/80 CCG 10)

Following discussion, the Council instructed the Permanent Representatives Committee to continue its examination of this item.

- Other business

- = Date of the next Council meeting on economic and financial questions

The Council agreed to hold its next meeting on economic and financial questions on Monday 17 March 1980.

---



Conclusions of the ECO/FIN Council of 11 February 1980  
on the financial consequences of measures proposed  
by the Commission under the common  
agricultural policy

- I. The Council, bearing in mind the conclusions of the European Council in Dublin, took note of the proposals made by the Commission on 4 December 1979 for improving the common agricultural policy with a view to helping to balance the markets and streamlining expenditure. It approved the Commission's objective of resolving the specific problems arising, in the interest of safeguarding the common agricultural policy and its economic and social merits, while respecting its principles and taking account of current budgetary difficulties. This goal presupposed substantial savings and a prudent price policy.
- II. The Council considered it to be desirable that the discussions on the Commission's proposals should be guided by the following principles:
1. An improvement of the common agricultural policy with the aim of considerably reducing the growth rate of agricultural expenditure was absolutely essential also in order to ensure that the 1% own resources limit was not exceeded, having regard to the resources required for other policies.

95

2. Subject to the examination of the assessment announced by the Commission of the foreseeable development of market organization expenditure in the event of its proposals being implemented and taking growth in expenditure over the last few years as a basis, it would be necessary to take measures leading to substantial savings, reaching the order of magnitude proposed by the Commission.

3. In this connection, the Council was of the opinion that the measures should be directed particularly at surplus products; it requested the Commission to see whether further savings might be achieved by means of the more efficient use of the market organization instruments.

III. The Council requested the Permanent Representatives Committee and the AGRI/FIN Working Party to continue examining the financial aspects of the improvement of the common agricultural policy and to report back to the Council at the very earliest opportunity, in preparation for further discussions.

---

Letter from UNICE (European Industry Confederation)  
to President of Council of Ministers

D  
96

10/3/81

Freedom to provide services in the insurance sector

Now that the Council of Ministers intends to examine certain fundamental questions arising in connection with the proposal for a directive aiming to establish freedom to provide services in the insurance sector, UNICE would like to take the opportunity of informing you of its views on the matter.

In connection with its competitive position on world markets, it is in the interest of European Industry, as a policy holder, to be able to cover its risks with those insurance companies which offer the cover it requires on the most favourable terms. This is only possible if the European Community establishes the freedom to provide services in the insurance sector. In fact, only this freedom to provide services will enable policy holders to have access to offers made by insurance companies in the various countries of the Common Market without it being necessary for these companies to be established in the country of the policy holder or that where the risk arises.

UNICE deplores the fact that more than 20 years after the implementation of the Treaty of Rome, and contrary to the provisions of this Treaty, one of its main objectives has not yet been attained. UNICE therefore urges the Council of Ministers to adopt without delay the directive abolishing restrictions to the freedom to provide services in the insurance sector.

UNICE urges, moreover, that the directive when adopted should effectively eliminate existing restrictions so as to bring about real progress in this field, and so that the right to provide services in another Member State shall not be made subject by that State to conditions comparable with those of establishment. UNICE is concerned, in this connection, about statements made during the preparation of the directive about keeping certain restrictions, on the grounds of protecting policy holders and consumers in particular, which would be disastrous as regards achieving freedom to provide services.

While appreciating the fact that consumers might wish to have protection, especially in the form of approval by their national authorities of general and specific insurance policy conditions, UNICE would point out that it has always claimed that the position of holders of policies covering industrial and trade risks is different. Enterprises are capable of assessing, or can get professional advice in assessing the risks they run in having insurance policies whose general and specific conditions have not been previously approved by national administrations. Hence the Directive should at least leave

it to enterprises to decide whether they wish to make use of insurance contracts offered in connection with the freedom to provide services, the conditions of which have not been previously approved by the national authorities, or whether they prefer offers on conditions already approved by the national administrations.

UNICE very much hopes that the Council of Ministers will now take the political decision to ensure, in an effective way, freedom to provide services in the insurance sector, and thus cease to suffer a situation which is incompatible with the provisions of the Treaty of Rome.

-----



(C)

Reference A

COMMUNAUTÉS EUROPÉENNES  
LE CONSEIL

Bruxelles, le 12 mars 1981

5439/81	
	RESTREINT

98

SURE 12  
FISC 13

RAPPORT

du Comité des représentants permanents  
au Conseil

n° doc. préc.

8788/2/80 SURE 13 REV 2  
4958/81 SURE 6  
5267/81 CRS/CRP 9 SURE 10 EXT 1

n° prop. Cion

R/95/76 (ES 3)  
(COM/75 516 final  
+ fin. 2 (f,d,e)  
R/467/78 (ES 17)  
(COM/78 63 final)

objet : Proposition de deuxième directive du Conseil portant coordination des dispositions législatives, réglementaires et administratives concernant l'assurance directe autre que l'assurance sur la vie et fixant les dispositions destinées à faciliter l'exercice effectif de la libre prestation des services

INTRODUCTION

La proposition de la Commission, transmise au Conseil le 30.12.1975 (1) et modifiée en vertu de l'article 149 alinéa 2 du traité le 16.2.1978 (2), est en discussion au sein des instances du Conseil depuis quatre ans.

(1) JO n° C 32 du 12.2.1976, p. 2  
(2) doc. R/467/78 (ES 17)

.../...

Bien que les problèmes techniques ne soient pas encore tous résolus, le Comité des représentants permanents a discuté des points fondamentaux de la proposition de directive au cours de sept réunions depuis le mois d'octobre 1980. Le Comité est parvenu à la conclusion que certains de ces points appellent un débat et une solution au niveau politique et a dès lors convenu de soumettre le présent rapport au Conseil.

RESERVES GENERALES

Les délégations danoise, irlandaise et luxembourgeoise marquent leurs réserves générales à l'égard de cette directive. La dernière de ces délégations a transmis au Secrétariat un document exposant la situation particulière de son pays, diffusé sous la cote 5094/81 SURE 8 + COR. 1 (f).

La délégation irlandaise rappelle pour sa part la déclaration du Conseil des 18/19 décembre 1978 selon laquelle "il pourrait être nécessaire de retenir une solution autorisant temporairement l'Irlande à ne pas appliquer intégralement les dispositions du titre III de la directive concernant la libre prestation de services". Cette délégation a indiqué qu'une période de suspension de cinq ans pourrait constituer pour elle une solution satisfaisante.

.../...

QUESTIONS SOUMISES AU CONSEIL

1. AGREMENT

AUTHORISATION

Plusieurs délégations sont d'avis que c'est le problème "clé" de la directive et ont indiqué que si une solution satisfaisante était adoptée concernant la procédure d'agrément, les soucis qui existent quant à la prestation de services par les agences et succursales pourraient être apaisés et un accord sur ce dernier problème ainsi que sur les autres questions restant encore ouvertes pourrait plus facilement être atteint.

A la suite des débats au sein du Comité des représentants permanents, la situation actuelle peut se résumer ainsi :

- huit délégations estiment qu'un agrément spécifique est indispensable pour opérer en voie de prestation de services. Toutes ces délégations, certaines déjà à titre de compromis, peuvent suivre la proposition de la délégation italienne qui prévoit un agrément délivré par les autorités de l'Etat membre de l'établissement après avis conforme des autorités de l'Etat membre où la prestation sera effectuée.
- Deux délégations <sup>UK</sup> (RU et NL) sont d'avis que toute entreprise établie dans un Etat membre de la Communauté au sens de la première directive de coordination peut opérer en prestation de services ; elles ne voient donc pas la nécessité d'un agrément spécifique et ne peuvent en tout cas marquer leur accord sur une procédure d'agrément qui confie quelque rôle que ce soit aux autorités de l'Etat membre de la prestation.

.../...



- 101
- Les représentants de la Commission seraient en principe d'accord sur la position de ces deux dernières délégations, mais s'interrogent, dans le souci de venir à la rencontre des autres délégations, sur la possibilité de prévoir, d'une part, un agrément donné par les autorités de l'Etat membre où l'entreprise est établie après information des autorités de l'Etat membre de la prestation, et, d'autre part, un système d'échange d'informations "a posteriori" entre autorités de contrôle assorti d'un mécanisme de sauvegarde en cas d'abus.

Le Conseil est appelé à se prononcer sur :

- l'opportunité d'un agrément spécifique pour la prestation de services
- dans l'hypothèse positive comportant un agrément délivré par les autorités de l'Etat membre d'établissement, le rôle éventuel à confier aux autorités de contrôle de l'Etat membre où la prestation sera effectuée :

= avis conforme

= simple information.

- *the advisability of a separate authorisation for the provision of services*
- *on the assumption of an authorisation issued by the authorities in the country of establishment the powers to be entrusted to the supervisory authorities of the country where services are to be provided*

.../...

- = *to give a favourable opinion*
- = *merely to be informed*

5439/81

bl

F

2. AGENCES ET SUCCURSALES

Les délégations du Royaume-Uni, des Pays-Bas, de la Belgique, du Danemark et de la Grèce appuient la proposition de la Commission qui accorde la liberté de prestation de services à toutes les entreprises visées à la première directive de coordination, à savoir les sièges et les agences/succursales.

Les délégations allemande, italienne, française, luxembourgeoise et irlandaise ne souhaitent accorder la liberté de prestation qu'aux sièges sociaux.

Compte tenu de la complexité des arguments juridiques avancés de part et d'autre, les délégations ont demandé au service juridique du Conseil d'établir une note à ce sujet. L'avis du service juridique est diffusé sous la cote 5343/81 JUR 57 SURE 11.

Le Conseil est appelé à décider si les agences et succursales pourront bénéficier de la liberté de prestation de services.

*Should agencies and branches be able to take advantage of freedom to provide services?*

.../...

3. QUESTION FISCALE

Le projet de texte de la directive, tel qu'il résulte des travaux du Comité, prévoit à l'article 15 que tout contrat d'assurance conclu en libre prestation de service est exclusivement soumis au régime fiscal en vigueur en la matière dans l'Etat membre où la prestation est effectuée. A l'heure actuelle et compte tenu de l'exonération des contrats d'assurance de la TVA prévue dans la sixième directive TVA (1), les contrats d'assurance sont frappés dans huit Etats membres par des taxes spécifiques, alors que dans deux Etats membres ces contrats ne sont pas taxés.

Seule la délégation française s'oppose à cette solution. Elle demande par contre l'application de la TVA aux contrats d'assurance, étant entendu que, pendant une période transitoire, chaque Etat aurait le choix entre l'application de la TVA ou d'une taxe spécifique.

Huit délégations - la délégation hellénique ayant réservé sa position - se sont opposées à la proposition française en raison de graves problèmes que soulèverait une modification de la sixième directive TVA. Dès lors, ces délégations se sont prononcées en faveur du maintien du régime actuel de taxes spécifiques.

Dans ces conditions, le Conseil est appelé à se prononcer sur la question de savoir s'il y a lieu de prévoir la TVA comme système de taxation en matière d'assurance en lieu et place du régime actuel prévoyant soit des taxes spécifiques, soit la non-taxation.

(1) JO n° L 145 du 13.6.1977, p. 1

*Should VAT be envisaged as the system of taxation for insurance, in place of the existing arrangements involving specific taxes or no taxes at all. kim* .../... F

4. DROIT APPLICABLE AU CONTRAT

La délégation danoise estime que les dispositions concernant le droit applicable au contrat, actuellement contenues dans les articles 5 et 6, devraient être soit fondamentalement modifiées soit supprimées dans le corps de la directive et faire en revanche l'objet d'une directive distincte qui devrait être mise sur pied par un groupe d'experts en droit international privé. Pour exprimer ses réflexions à ce sujet, cette délégation a transmis une note qui a été diffusée sous la cote 5229/81 SURE 9.

Il est suggéré au Conseil de prendre acte de la position de la délégation danoise et de donner mandat au Comité des représentants permanents d'approfondir la discussion de ce point.

*The Council should take note of the Danish position and instruct COREPER to go into the matter further.*

Le Comité des représentants permanents tient à informer le Conseil que restent encore à résoudre, dans le cadre de cette proposition de directive, de nombreux problèmes et notamment celui du traitement des assurances obligatoires sur lequel il poursuit activement ses travaux.

*COREPER has yet to resolve a number of other problems, and in particular the treatment of compulsory insurance [eg motor].*

Brussels, 12 March 1981  
(13.03)

5439/81

RESTREINT

SURE 12

FISC 13

REPORT

from: Permanent Representatives Committee

to : Council

No. prev. docs.	8788/2/80	SURE 13	No. Cion prop.	R/95/76 (ES 3)
		REV 2		(COM/75 516 final
	4958/81	SURE 6		+ fin. 2 (f, d, e))
	5267/81	CRS/CRP 9		R/467/78 (ES 17)
		SURE 10		(COM/78 63 final)
		EXT 1		

Subject: Proposal for a second Council Directive on the co-ordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services

INTRODUCTION

The Commission proposal, forwarded to the Council on 30 December 1975 <sup>(1)</sup> and altered pursuant to the second paragraph of Article 149 of the Treaty on 16 February 1978 <sup>(2)</sup>, has been under discussion in the Council bodies for four years.

<sup>(1)</sup> OJ No C 32, 12.2.1976, p. 2  
<sup>(2)</sup> R/467/78 (ES 17)

.../...

Although the technical problems have not yet all been solved, the Permanent Representatives Committee has discussed the fundamental aspects of the proposal for a Directive in the course of seven meetings since October 1980. The Committee reached the conclusion that certain aspects require a debate and a political solution and therefore agreed to submit this report to the Council.

#### GENERAL RESERVATIONS

The Danish, Irish and Luxembourg delegations indicated their general reservations on the Directive. The Luxembourg delegation has sent the Secretariat a paper describing Luxembourg's special situation; this will be found in 5094/81 SURE 8 + COR 1 (f).

The Irish delegation referred to the Council statement of 18/19 December 1978 to the effect that "a solution which would afford to Ireland relief for a temporary period from the full provisions of Title III of the Directive on the free provision of services may be necessary". The delegation said it could accept a five-year suspension period as a satisfactory solution.

QUESTIONS PUT TO THE COUNCIL

1. AUTHORIZATION

Several delegations felt this was the key problem in the Directive; given a satisfactory solution regarding the procedure for authorization, concern over the underwriting of "services" business by agencies and branches might be allayed and agreement more easily reached on this and the other points still unresolved.

Following the discussions by the Permanent Representatives Committee, the position at present may be summarized as follows:

- eight delegations thought that special authorization was indispensable for the underwriting of services business. All these delegations, some of them already by way of compromise, could support the proposal by the Italian delegation, which provides for authorization to be given by the authorities of the Member State of establishment after obtaining the assent of the authorities of the Member State in which the services are to be provided;
- two delegations (UK and NL) thought that any undertaking established in a Member State of the Community within the meaning of the first co-ordination Directive should be able to underwrite services business; they did not therefore see the need for any special authorization and could not in any event agree to an authorization procedure which assigned any role at all to the authorities of the Member State serviced;

.../...

- the Commission representatives in principle agreed with the position of the latter two delegations, but wondered whether, in an attempt to satisfy the other delegations, it would be possible to provide for authorization to be given by the authorities of the Member State in which the insurer was established after informing the authorities of the Member State in which the services were to be provided, together with an "a posteriori" system for exchanging information between supervisory authorities accompanied by a safeguard mechanism to deal with abuses.

The Council is requested to give an opinion on:

- the desirability of special authorization for the provision of services;
- and if it is deemed desirable to have authorization given by the authorities of the Member State of establishment, the possible role to be played by the supervisory authorities of the Member State in which the services are provided:
  - = assent
  - = information only.



2. AGENCIES AND BRANCHES

The United Kingdom, Netherlands, Belgian, Danish and Greek delegations supported the Commission proposal which granted freedom to provide services to all the undertakings referred to in the first co-ordination Directive, i.e. head offices and agencies or branches.

The German, Italian, French, Luxembourg and Irish delegations wished to grant freedom to provide services only to the head offices.

In view of the complexity of the legal arguments put forward on either side, the delegations requested the Council Legal Service to prepare a note on the matter. The opinion of the Legal Service was circulated under reference 5343/81 JUR 57 SURE 11.

The Council is requested to decide whether agencies and branches shall benefit from freedom to provide services.

### 3. FISCAL PROBLEMS

The draft text of the Directive, as it stands after the Committee's discussions, provides in Article 15 that all insurance contracts concluded by way of freedom to provide services are to be subject solely to the tax system in force in the Member State where the service is provided. At present, taking account of the exemption of insurance contracts from VAT provided for in the Sixth VAT Directive (<sup>1</sup>), insurance contracts are subject in eight Member States to special taxes, while in two Member States they are not taxed.

Only the French delegation was against this solution. It requested that VAT should be applied to insurance contracts, on the understanding that for a transitional period each State would have the choice of applying VAT or a special tax.

Eight delegations (the Greek delegation reserved its position) said they were against the French proposal owing to the serious problems which would be created by any amendment to the Sixth VAT Directive. These delegations therefore said they were in favour of maintaining the existing system of special taxation.

Accordingly, the Council is requested to give an opinion on whether VAT should be applied as the tax system for insurance instead of the existing arrangements which involve either special taxes or no taxes.

---

(<sup>1</sup>) OJ No L 145, 13.6.1977, p. 1

4. LAW APPLICABLE TO THE CONTRACT

The Danish delegation took the view that the provisions regarding the law applicable to the contract, at present contained in Articles 5 and 6, should be either fundamentally amended or transferred from this Directive to a separate Directive which should be drawn up by a Working Party of experts on private international law. To explain its views on this, the delegation forwarded a note which was circulated under reference 5229/81 SURE 9.

It is suggested that the Council take note of the position of the Danish delegation and instruct the Permanent Representatives Committee to hold a more detailed discussion on the matter.

o

o

o

The Permanent Representatives Committee would inform the Council that numerous problems still remain to be solved in connection with this proposal for a Directive, in particular the problem of the treatment of compulsory insurance on which it is actively pursuing its discussions.



Brussels, 12 March 1981

5453/81

RESTREINT

PTS A 11

LIST OF "A" ITEMS

for: 696th meeting of the COUNCIL OF THE EUROPEAN  
COMMUNITIES  
(Economic and Financial Questions)

Brussels, Monday 16 March 1981 (10.30)

- Adoption in the official languages of the Communities of the Council Regulation adjusting the Community loan mechanism designed to support the balances of payment of Community Member States

5053/81 ECOFIN 15  
5036/81 ECOFIN 14  
+ COR 1 (d)



U.R. to weigh in  
on the political  
~~importance~~

We do have

considerable harmonisation  
of supervision by

the appropriate  
authorities in the  
different Member States

- but COREPER can  
pursue this

CONFIDENTIAL

Draft conclusions for Finance Council 16 March 1981  
(drafted for Presidency by Dutch attaché)

1. Mindful of the importance of the establishment of a common market for insurance contracts in accordance with the Rome Treaty, and in particular of Article 59 concerning freedom to provide services at the end of the transitional period, the Council expresses its preoccupation with the lack of progress made with respect to the non-life insurance services Directive for which the Commission submitted a proposal in 1975..
2. The Council <sup>(1)</sup> expresses its desire that the Permanent Representatives Committee ensures that the Council will be able to take the necessary decisions to finalize the Directive within 6 months. To that effect the Council instructs the Permanent Representatives:
  - (a) to involve themselves more directly with the preparation of the file and in particular to nominate a senior counsellor <sup>(2)</sup> in each Permanent Representation to participate regularly and actively in this work of preparation;
  - (b) to make regular reports to the Council, the first to be submitted not later than May, on the progress of the work and to submit to it for decision all problems which appear to be bottlenecks or of a nature that impede effective progress.
3. The Council decides that the Directive should be based on the principle that control over insurance transactions is ultimately exercised by the control authority in the country where the insurance company is established. Furthermore, the Directive should avoid any discriminatory or differential treatment between head offices on the one hand and agencies and branches on the other hand. <sup>(3)</sup> <sup>(4)</sup> <sup>(5)</sup>

CONFIDENTIAL



(D)

114

ECONOMIC SITUATION

This is the first of three discussions required each year by the 1974 Decision on Convergence. Formally the purpose is to consider whether the policy guidelines contained in last December's Annual Report ought to be amended.

2. The nub of the December guidelines was that policies should:

(i) give priority to reducing inflation and cutting oil imports

(ii) be "only moderately supportive in terms of cyclical demand management" (ie should offset, in varying degrees from country to country, the tendency of automatic stabilisers to increase budget deficits as a result of recession).

3. These guidelines were discussed at the Co-ordinating Group on 9 March on the basis of a communication from the Commission (copy attached). The communication concluded that the December guidelines remained appropriate and ought to be "pursued with even greater urgency".

4. The Council will not be asked to endorse the communication in full, but merely to confirm the guidelines. We have no problem about this; nor are others likely to object, though some of the smaller countries will probably be a bit uneasy.

5. There are separate briefs on two subjects which could be raised under this item on the agenda: the possibility of a collective approach to the US Government on its policy mix, and the need for more active employment measures.

6. The Council will be asked to adopt policy guidelines for Greece. An unremarkable Commission draft is attached.

Line to take

7. Agree that December guidelines remain appropriate. Endorse Commission's view that they should be followed with even greater urgency.



IN PREPARATION OF THE NEXT MEETING OF THE COORDINATING GROUP, TO BE HELD IN BRUSSELS ON 9 MARCH 1981 AT 14.30, PLEASE FIND BELOW A DRAFT COMMUNICATION OF THE COMMISSION TO THE COUNCIL ON THE ECONOMIC AND SOCIAL SITUATION IN THE COMMUNITY

THE ECONOMIC AND SOCIAL SITUATION IN THE COMMUNITY

1. RECENT ECONOMIC PERFORMANCE IN THE COMMUNITY

THE SLOW-DOWN IN ECONOMIC ACTIVITY IN 1980, WITH GDP GROWING 1.3 0/0 IN THE EC AS A WHOLE, WAS APPROXIMATELY AS FORESEEN BY THE COUNCIL IN DECEMBER OF LAST YEAR. OUTPUT PEAKED IN THE FIRST QUARTER OF 1980, BUT DECLINED THEREAFTER. HOWEVER, PRIVATE CONSUMPTION WAS PROBABLY BEGINNING TO GROW AGAIN IN REAL TERMS BY THE END OF THE YEAR, WHILE THE EC BUSINESS SURVEYS SHOWED FIRST SIGNS THAT THE SHARP DETERIORATION IN BUSINESS SENTIMENT MAY HAVE BEEN ARRESTED.

THERE WAS HARDLY ANY INCREASE IN EMPLOYMENT IN 1980, WHILE THE LABOUR FORCE CONTINUED TO EXPAND RATHER RAPIDLY. THE RESULT WAS A SHARP RISE IN UNEMPLOYMENT: THE AVERAGE RATE FOR THE YEAR WAS 6.0 0/0, AND BY THE BEGINNING OF 1981 HAD PASSED 7.0 0/0. OVER THE LAST TWELVE MONTHS THE UNEMPLOYMENT RATE INCREASED MOST IN DENMARK AND THE NETHERLANDS (UP BY ABOUT ONE HALF) AND THE UNITED KINGDOM (UP BY TWO-THIRDS). THE ADDITIONAL COST TO THE NATIONAL EXCHEQUERS OF THE RISE IN UNEMPLOYMENT AMOUNTS FOR THE COMMUNITY AS A WHOLE TO SOME 0.15 0/0 OF GDP FOR 1980 COMPARED TO 1979.



113  
THE DETERIORATION IN INFLATION PERFORMANCE WHICH HAD BEGUN IN 1979 WAS ACCENTUATED IN 1980. THE INCREASE IN CONSUMER PRICES IN THE COMMUNITY ON AVERAGE REACHED 12.1 0/0 IN 1980, COMPARED TO THE LOW POINT OF 7.3 0/0 IN 1978. DIVERGENCE BETWEEN CONSUMER PRICE RISES OF MEMBER STATES ALSO WIDENED TO TWICE THE AVERAGE FOR THE SEVENTIES AS A WHOLE (THE STANDARD DEVIATION ROSE TO 5.6 0/0). HOWEVER, A SOMEWHAT BETTER PERFORMANCE WAS EVIDENT IN THE SECOND HALF OF THE YEAR, ESPECIALLY IN THE UNITED KINGDOM WHERE THE ANNUAL RATE HAD FALLEN TO BELOW DOUBLE FIGURES.

THE DEFICIT THIS YEAR REEXPRESSED AS *The deficit in the community's current account in 1980,* A PERCENTAGE OF GDP, WAS THE LARGEST EVER RECORDED. IN CONTRAST WITH 1979, THERE WAS SOME IMPROVEMENT IN 1980 IN EXPORT IN RELATION TO IMPORT VOLUME. HOWEVER, THIS WAS MORE THAN OFFSET BY A TERMS OF TRADE DETERIORATION (2.8 0/0) CONSIDERABLY LARGER THAN THAT IN 1979 (ALTHOUGH THIS WAS STILL VERY MUCH SMALLER THAN THAT SUFFERED IN 1974 AFTER THE FIRST OIL-PRICE SHOCK).

EXCHANGE-RATES DEVELOPMENTS IN THE EMS IN 1980 WERE LIMITED TO MOVEMENTS PERMITTED BY UNCHANGED CENTRAL RATES. HOWEVER, THE UK POUND APPRECIATED 15 0/0 AGAINST THE ECU IN THE COURSE OF THE YEAR, AND THE YEN 24 0/0. THE US DOLLAR WAS ON A DECLINING TREND AGAINST THE ECU UNTIL MID-YEAR, BUT HAS SINCE RECOVERED SUBSTANTIALLY.

## 2. OUTLOOK FOR 1981

THE PRESENT CYCLE IS NOW SEEN AS BEING SHARPER AND DEEPER THAN ANTICIPATED. THE STARTING POINT, THE HIGH LEVEL OF ACTIVITY IN EARLY 1980 HAS BEEN AGAIN REVISED UPWARDS, WITH THE STEEPER FALL LATER IN 1980 THEN CARRYING A HEAVIER RECESSIONARY MOMENTUM OVER INTO 1981. DOMESTIC PRIVATE DEMAND (CONSUMPTION, STOCKBUILDING AND INVESTMENT) WHOLLY ACCOUNTS FOR THE MORE PRONOUNCED CYCLICAL PROFILE. FOREIGN DEMAND HAS STAYED ON THE EXPECTED PATH, WHILE GOVERNMENT CONSUMPTION IN VOLUME TERMS IS STILL EXPECTED TO GROW SLIGHTLY IN 1981. THUS THE REVISED FORECASTS PREPARED BY THE COMMISSION'S SERVICES IN FEBRUARY SUGGEST THAT THE UPTURN IN ACTIVITY MAY BE DELAYED UNTIL THE THIRD QUARTER OF 1981, TWO QUARTERS LATER THAN EARLIER EXPECTED. GDP GROWTH AT AN ANNUAL RATE OF ABOUT 2 0/0 IS NOW EXPECTED IN THE SECOND HALF OF 1981 AND INTO 1982. THE YEAR ON YEAR GROWTH OF GDP FOR 1981 FOR THE COMMUNITY AS A WHOLE IS REVISED DOWN FROM + 0.6 0/0 IN THE ANNUAL ECONOMIC REPORT TO - 0.6 0/0.

EMPLOYMENT COULD FALL BY NEARLY 1 0/0, AND BY THE END OF THE YEAR THE UNEMPLOYMENT RATE COULD BE ABOVE 7 1/2 0/0 (1) AND STILL RISING.

A SIGNIFICANT SLOWDOWN IN CONSUMER PRICES CAN BE EXPECTED DURING THE COURSE OF 1981, AS THE EFFECT OF MORE MODERATE WAGE SETTLEMENTS IN THE FIRST HALF OF THE YEAR IS REINFORCED BY SOME REBOUND OF PRODUCTIVITY IN THE SECOND HALF. ALTHOUGH CONSUMER PRICES FOR 1981 AS A WHOLE COULD BE UP BY AROUND 10 1/2 0/0 ON 1980 (TABLE 1), THE ANNUAL RATE IN THE SECOND HALF OF THE YEAR COULD, AT 8.2 0/0, BE 4 1/2 POINTS LOWER THAN IN THE SECOND HALF OF 1980. DIVERGENCE OF INFLATION RATES SHOULD ALSO LESSEN SOMEWHAT, WITH THE STANDARD DEVIATION OF CONSUMER PRICES INCREASES FALLING BACK TO 4.6 0/0.

THE COMMUNITY'S BALANCE OF PAYMENTS CURRENT ACCOUNT IS LIKELY TO CHANGE LITTLE DURING THE COURSE OF 1981 AND FOR THE YEAR AS A WHOLE COULD BE SLIGHTLY WORSE THAN THE HIGH DEFICIT RECORDED IN 1980. A FURTHER WORSENING OF THE TERMS OF TRADE IN 1981 WILL SLIGHTLY MORE THAN OFFSET AN IMPROVEMENT IN VOLUME MOVEMENTS.

(1) SEASONALLY ADJUSTED FIGURE

### 3. POLICY ISSUES

THE COUNCIL IS REQUIRED ( ACCORDING TO THE 1974 CONVERGENCE DECISION ) TO DELIBERATE IN MARCH AS REGARDS POSSIBLE ADJUSTMENTS TO THE ECONOMIC POLICY GUIDELINES ADOPTED IN THE ANNUAL REPORT IN DECEMBER.

1. AT THE TIME THE COUNCIL CONCLUDED THAT THE POLICY MIX SHOULD GIVE PRIORITY TO THE REDUCTION IN INFLATION, SAVINGS IN OIL IMPORTS, AND THE PURSUIT OF THE OTHER NECESSARY STRUCTURAL CHANGES IN THE COMMUNITY ECONOMY, AND BE ONLY MODERATELY SUPPORTIVE IN TERMS OF CYCLICAL DEMAND MANAGEMENT. THE WEAKER ECONOMIC OUTLOOK CANNOT IMPLY AN EASIER WAY OUT OF THE CONSTRAINTS. WHILE THE EVOLVING SITUATION CALLS FOR TECHNICAL ADJUSTMENTS TO SOME FINANCIAL POLICIES, THE FUNDAMENTAL LINE OF POLICY - TO REDUCE INFLATION AND PUSH AHEAD WITH STRUCTURAL ADAPTATION - HAS TO BE PURSUED WITH EVEN GREATER URGENCY.
2. CONTROL OF DOMESTIC MONETARY AGGREGATES AND EXCHANGE RATES WITHIN THE EUROPEAN MONETARY SYSTEM HAS ON THE WHOLE BEEN SATISFACTORY. " HOWEVER, MONETARY POLICY IN EUROPE HAS BEEN AND IS STILL CONFRONTED WITH THE NEED FOR A CONCERTED REACTION TO THE VERY HIGH AND VOLATILE INTEREST RATES PREVAILING IN THE UNITED STATES, AND TO THE APPRECIATION OF THE EXCHANGE RATES OF THE DOLLAR AND YEN. "
3. THE APPRECIATION OF THE YEN APPEARS TO BE JUSTIFIED IN THE LIGHT OF JAPAN'S TRADING PERFORMANCE. WITH RESPECT TO THE UNITED STATES' MONETARY POLICY, EUROPE IS MUCH AFFECTED BY BOTH INTEREST AND EXCHANGE RATE MOVEMENTS.
4. IF EUROPEAN INTEREST RATES NOW MOVED UP <sup>FURTHER</sup> / ON AVERAGE TOWARDS UNITED STATES LEVELS, IT IS QUITE LIKELY THAT AS A RESULT THERE WOULD BE NO CYCLICAL RECOVERY IN EUROPE THIS YEAR. ON THE OTHER HAND, A FURTHER SUBSTANTIAL DEPRECIATION OF EUROPEAN CURRENCIES AGAINST THE DOLLAR COULD RISK CAUSING A NEW ACCELERATION OF INFLATION IN THE COMMUNITY, THROUGH THE INCREASE IN IMPORT PRICES IN EUROPEAN CURRENCIES. MOREOVER, ERRATIC SWINGS IN EITHER EXCHANGE RATES OR INTEREST RATES ARE COSTLY TO THE ECONOMY THROUGH THE UNCERTAINTY THAT THEY INTRODUCE.
5. IN VIEW OF ITS LARGE CURRENT ACCOUNT DEFICIT ON THE BALANCE OF PAYMENTS, THE COMMUNITY SHOULD BE PREPARED TO ACCEPT HIGHER DOLLAR EXCHANGE RATES THAN PREVAILED IN 1980 ON AVERAGE. THE INEVITABILITY OF THIS DEFICIT IN THE SHORT-RUN MEANS THAT ITS FINANCING SHOULD BE CAREFULLY PREPARED. THIS IN ITSELF SHOULD POSE NO INSUPERABLE PROBLEMS., THE COMMUNITY HAS FOR ITS PART IN FEBRUARY RENEWED AND EXPANDED ITS OWN RECYCLING FACILITY.

EXPERIENCE CONFIRMS HOW QUICKLY TERCY CONDITIONS MAY CHANGE AS BETWEEN EMS CURRENCIES AND THE MAIN FLOATING FXCHANGE RATES, AND EUROPE SHOULD NOT MAKE FUNDAMENTAL CHANGES IN ITS DOMESTIC MONETARY POLICIES IN RESPONSE TO VOLATILE EXCHANGE RATE MOVEMENTS. THE UNITED STATES AUTHORITIES FOR THEIR PART SHOULD CONTRIBUTE TO THE INTERNATIONAL INTEREST BY MANAGING THEIR BUDGETARY-MONETARY POLICY MIX AND THE TECHNIQUES OF MONETARY POLICY WITH A VIEW TO REDUCING THE LEVEL OF INTEREST RATES CONSISTENT WITH A STABLE EVOLUTION OF MONEY SUPPLY. ~~THE COMMUNITY SHOULD ALSO CONSIDER SUGGESTING TO THE UNITED STATES AUTHORITIES THE REORGANISATION OF EXISTING CENTRAL BANK SWAP FACILITIES TO INCLUDE CONSOLIDATED LINES OF CREDIT BETWEEN THE FEDERAL RESERVE SYSTEM AND THE EUROPEAN MONETARY COOPERATION FUND. THIS WOULD FURTHER IMPROVE THE EFFECTIVENESS OF COORDINATED TRANSATLANTIC INTERVENTION POLICY, FOLLOWING THE POSITIVE INNOVATIONS IN THIS AREA ALREADY MADE IN THE RECENT PAST (IMPROVED CONSULTATION NETWORK, US INTERVENTION IN CERTAIN COMMUNITY CURRENCIES).~~

THE COMMUNITY, MEMBER STATES MUST MATCH THE DIFFICULTIES OF TRANSATLANTIC MONETARY CONDITIONS WITH INTENSIFIED COOPERATION. REGARDING INTEREST RATE ADJUSTMENTS, INTERVENTION POLICY AND OFFICIAL CAPITAL MOVEMENTS. IN ADDITION TO FULL USE OF THE MECHANISMS OF THE EUROPEAN MONETARY SYSTEM, THERE WOULD SEEM NOW TO BE OPPORTUNITIES FOR ADJUSTMENTS OF UNITED KINGDOM MONETARY POLICY AS REGARDS INTEREST RATES AND CRITERIA OF EXCHANGE RATE MANAGEMENT.

APART FROM THE INCREASE IN UNEMPLOYMENT A CONSEQUENCE OF THE WEAKER LEVEL OF ACTIVITY IN 1981 IS SOME INCREASE IN BUDGET DEFICITS OVER WHAT HAD BEEN FORECAST IN THE ANNUAL REPORT. HOWEVER, THE STRUCTURAL WEAKNESSES IN PARTS OF THE EUROPEAN ECONOMY ARE SUCH THAT A FULL PLAY OF THE 'AUTOMATIC STABILISERS' CANNOT BE RISKED IN ALL COUNTRIES. IN PARTICULAR, COUNTRIES WITH THE HIGHEST DEFICITS (BELGIUM, IRELAND, ITALY) SHOULD ACCEPT ACT TO PREVENT ~~THE~~ INCREASES. FURTHER INCREASES IN THESE COUNTRIES' DEFICITS CANNOT PROVIDE ANY SUSTAINABLE INCREASE IN ECONOMIC ACTIVITY. ON THE CONTRARY, INCREASED DEFICITS - WHETHER SPONTANEOUS OR DISCRETIONARY - ARE LIKELY TO CAUSE SWIFT AND SIGNIFICANT INTEREST RATE INCREASES, AND TO THREATEN STABILITY OF THE EXCHANGE RATE. AMONG THESE COUNTRIES, ITALY HAS MADE PROGRESS IN 1980 IN REDUCING THE BORROWING OF GENERAL GOVERNMENT TO WELL UNDER 10 0/0 OF GDP, AND THIS SHOULD BE CONSERVED IN 1981. IN OTHER COUNTRIES, SOME INCREASE IN BUDGET DEFICITS SHOULD BE PERMITTED TO SUPPORT ACTIVITY. INDEED THE 'AUTOMATIC STABILISERS' SHOULD BE ALLOWED TO OPERATE FULLY IN COUNTRIES WITH THE LEAST HIGH DEFICITS. HOWEVER, EVEN IN THESE CASES, PRIORITY MUST BE GIVEN TO RESTRUCTURING EXPENDITURE TO IMPROVE PRODUCTIVE POTENTIAL.

EXTENSIVE STRUCTURAL PROBLEMS HAVE TO BE OVERCOME TO ACHIEVE HIGHER TREND RATES OF GROWTH AND EMPLOYMENT. POLICY MUST INTENSIFY EFFORTS TO IMPROVE PRODUCTIVE POTENTIAL BY REDIRECTING BUDGETARY RESOURCES FROM SUBSIDIES THAT ARE SUPPORTING UNECONOMIC OR NON-PRIORITY ACTIVITIES, INTO ADDING PUBLIC OR PRIVATE INVESTMENT. THE INVESTMENT RATIO HAS DECLINED FROM 23 0/0 OF GDP IN 1970 TO 21 0/0 IN 1979 IN THE COMMUNITY AS A WHOLE. MEANWHILE, OVER THE SAME PERIOD IT SEEKS THAT (SUBJECT TO DIFFICULTIES OF STATISTICAL MEASUREMENT) INVESTMENT GRANTS REMAINED STATIC AT 1 0/0 OF GDP, WHEREAS SUBSIDIES (NOTABLY OPERATING SUBSIDIES, EXCLUDING TAX EXPENDITURES) ROSE FROM 1.8 0/0 OF GDP TO 2.6 0/0 WITH PARTICULARLY LARGE INCREASES RECORDED IN THE BENELUX COUNTRIES, IRELAND AND ITALY. JUSTIFICATIONS FOR HIGHER OR MORE RAPID FISCAL DEPRECIATION ALLOWANCES EXIST IN THE ACCELERATED OBSOLESCENCE OF EXISTING CAPITAL STOCK DUE TO THE HIGHER ENERGY PRICES, AND IN THE NEED TO ACHIEVE FUNDAMENTAL IMPROVEMENT IN INDUSTRIAL COMPETITIVITY MIS-A-VIS THIRD COUNTRIES. THE COMMISSION FOR ITS PART IS FOLLOWING THESE PRINCIPLES IN AREAS OF COMMUNITY RESPONSIBILITY, HAVING RECENTLY PROPOSED A REDUCTION OF STATE AIDS TO STEEL (1), AN INCREASE IN PRODUCERS' FINANCIAL CO-RESPONSIBILITY FOR SURPLUS AGRICULTURAL PRODUCTION (2), AND A STRENGTHENING IN COMMUNITY LOAN INSTRUMENTS FOR FINANCING INVESTMENT (3).

*In the case of Ireland the proportion of the reduced deficit is due significant public expenditure in view of the increase of subsidies in public investment*

- (1) COM (81) 50 FINAL
- (2) COM (81) 50 FINAL
- (3) COM (80) 670 FINAL

PROGRESS IS BEING MADE IN REDUCING THE COMMUNITY'S DEPENDENCE ON IMPORTED OIL. THE SHARE OF IMPORTED OIL

ZGROSS INLAND CON-

SUMPTION OF PRIMARY ENERGY FELL FROM 47.6 0/0 IN 1979 TO 44.2 0/0 IN 1980, AND IS EXPECTED TO FALL FURTHER TO 42.1 0/0 IN 1981. THE VOLUME OF NET OIL IMPORTS DROPPED 10.7 0/0 IN 1980 AND SHOULD FURTHER FALL 5 0/0 OR MORE IN 1981.

HOWEVER, MUCH MORE PROGRESS MUST BE ACHIEVED BEFORE THE COMMUNITY COULD CONSIDER ITS MACROECONOMIC POLICY TO BE NO LONGER CONSTRAINED BY ENERGY MARKET FACTORS. ENERGY PRODUCTION AND SAVINGS MUST BE BOOSTED BY EVERY POSSIBLE MEANS. OBSTACLES SUCH AS DELAYS IN INVESTING IN NUCLEAR POWER, OR FAILURE TO MAKE TIMELY ADJUSTMENTS TO ENERGY CONSUMPTION TAXES SO AS TO SUSTAIN THE 'PRICE MESSAGE', WILL ULTIMATELY EXACT AN EXTREMELY HIGH PRICE IN LIVING STANDARDS. SEVERAL COUNTRIES ARE RELATIVELY WELL ENDOWED IN HYDROCARBON RESOURCES (NETHERLANDS, UNITED KINGDOM) OR HAVE REASONABLE CHANCES OF BECOMING MUCH MORE SELF-SUFFICIENT (IRELAND, DENMARK)., FRANCE IS MAKING PARTICULARLY

RAPID PROGRESS WITH OTHER ENERGY FORMS. BELGIUM, GERMANY AND ITALY - WHILE MAKING EFFORTS IN CERTAIN AREAS OF ENERGY PRODUCTION OR SAVING - NEED URGENTLY TO STRENGTHEN MAJOR FEATURES OF THEIR NATIONAL ENERGY PROGRAMMES, OR THEIR IMPLEMENTATION. EXAMPLES OF BELOW-AVERAGE TAXATION OF ENERGY CONSUMPTION INCLUDE HEATING OIL IN GENERAL AS BETWEEN FORMS OF HYDROCARBON CONSUMPTION, AND, AS BETWEEN MEMBER STATES IN RELATION TO THE COMMUNITY AVERAGE, HEATING OIL IN GERMANY, BELGIUM AND THE UNITED KINGDOM, PETROL IN GERMANY AND LUXEMBOURG AND DIESEL OIL IN ITALY AND LUXEMBOURG.

THE FURTHER DETERIORATION IN THE LABOUR MARKET SITUATION SHOULD BE APPRAISED AS A FUNCTION OF ITS DIFFERENT FORMS AND CAUSES.

2. THE EXPECTED REDUCTION OF EMPLOYMENT IN 1981 COULD BE CORRECTED PROGRESSIVELY WITH THE RECOVERY IN THE SECOND HALF OF 1981. THE SPEED OF THIS RECOVERY DEPENDS ON THE RESPONSE OF SOCIAL PARTNERS TO THE NEED FOR HIGHER INVESTMENT AND STRUCTURAL CHANGE. PARTICULAR CONSIDERATION SHOULD IN THIS CONTEXT BE GIVEN TO THE NEED TO TAKE FULL ACCOUNT OF THE DETERIORATION OF EMPLOYMENT PROSPECTS AND TO GENERATE NEW JOBS. DEFENSIVE MEASURES AND SUBSIDIES WOULD IMPEDE THE PROCESS OF REALLOCATION AS MUCH AS AGGRESSIVE WAGE POLICIES. WITH LITTLE PRODUCTIVITY GROWTH AND FURTHER LOSSES IN 1981 ON THE TERMS OF TRADE, THERE IS ALMOST NO SCOPE FOR SIGNIFICANT REAL INCOME LOSS IN SOME COUNTRIES. IN SOME COUNTRIES STRONG EFFORTS ARE CURRENTLY BEING MADE TO MODERATE THE GROWTH OF NOMINAL INCOMES, AND THE BENELUX COUNTRIES IN PARTICULAR ARE IMPROVING THEIR COMPETITIVE POSITIONS AS A RESULT OF COMBINING A LOW INFLATION RATE WITH STABLE EXCHANGE RATES WITHIN THE EMS. IN OTHER COUNTRIES IT IS URGENT THAT MORE EFFORTS BE MADE TO REDUCE THE TREND OF GROWTH IN NOMINAL INCOMES, NOTABLY IN IRELAND AND ITALY. MOREOVER, THE SUBSTANTIAL INCREASE IN STRUCTURAL UNEMPLOYMENT EMPHASIZES THE NEED FOR WAGE CONTRACTS TO ALLOW FOR THE QUICKER ADJUSTMENTS OF INCOMES BETWEEN COUNTRIES, SECTORS AND FIRMS WHERE COMPETITIVITY AND PROFITS HAVE BEEN REDUCED.

*years in the Community  
not even the need to  
accept a real income  
loss in some countries*

PART OF THE TREND INCREASE IN UNEMPLOYMENT REFLECTS THE LONGER PERIODS OF SEARCH BETWEEN JOBS, FACILITATED BY UNEMPLOYMENT AND SOCIAL SECURITY BENEFITS. HOWEVER, THE WEAK GROWTH PERFORMANCE SINCE 1973 INCREASED THE NUMBER OF UNEMPLOYED. AMONG THE UNEMPLOYED CERTAIN GROUPS ARE IN A PARTICULARLY VULNERABLE POSITION: YOUNG PEOPLE WITHOUT SUFFICIENT TRAINING, WOMEN LOOKING FOR PART-TIME JOBS AND OLDER PEOPLE APPROACHING THEIR PENSION-AGE. TO AID THESE GROUPS, AND TO ALLEVIATE UNEMPLOYMENT IN GENERAL, IT IS VITAL THAT MEMBER STATES ASSURE SUFFICIENT RESOURCES FOR EXPANDED VOCATIONAL TRAINING AND RETRAINING, UNDERTAKE SUPPLEMENTARY EFFORTS TO HELP THE RECORD SUPPLY OF YOUNG PEOPLE INTO THEIR FIRST EMPLOYMENT, IMPROVE PROGRAMMES OF APPRENTICESHIP (AS OFFERED IN GERMANY) AND PROMOTE PRE-PENSION SCHEMES AND THE CREATION OF PART-TIME JOBS.

AN OLD PHENOMENON HAS ATTRACTED NEW INTEREST: THE GROWING SIZE OF UNRECORDED AND UNOBSERVED EMPLOYMENT WHICH SEEMS TO HAVE BEEN SPREADING RAPIDLY IN MANY INDUSTRIALISED COUNTRIES.



118

THE MULTIPLE AND CONTINUED EFFORTS TO REMEDY THE UNEMPLOYMENT SITUATION IN COMMUNITY COUNTRIES HAVE SHOWN SOME RESULT. MORE HAS TO BE DONE, BUT NO GENERAL AND QUICK PANACEA IS AVAILABLE. THE RESPONSIBILITY FOR EMPLOYMENT CREATION LIES AS MUCH WITH THOSE WHO DECIDE THE CONDITIONS OF EMPLOYMENT AT THE ENTERPRISE LEVEL AS WITH GOVERNMENTS IN THEIR MACROECONOMIC AND STRUCTURAL POLICIES AT THE NATIONAL AND COMMUNITY LEVEL.

#### 4. CONCLUSIONS

THE EUROPEAN AND OTHER NON-OIL PRODUCING COUNTRIES ARE NOW UNDERGOING THE NEW READJUSTMENT PROCESS DUE TO THE SECOND OIL PRICE SHOCK - WHOSE IMPACT ON GROWTH, PRICES AND THE BALANCE OF PAYMENTS IS SIMILAR TO THAT OF THE FIRST SHOCK IN 1973-74. THE DIFFICULT TASK OF GOVERNMENTS, TRADE UNIONS, EMPLOYERS AND HOUSEHOLDS LIES IN THE NEED TO AVOID THE POLICY ERRORS AND MISTAKEN REACTIONS THAT FOLLOWED IN 1974 AND 1975. THE CONSEQUENCES OF THE SECOND HEAVY TRANSFER OF RESOURCES IN FAVOUR OF OPEC HAVE TO BE ACCEPTED. THIS IMPLIES PRIORITIES FOR REDUCING THE GROWTH OF NOMINAL LABOUR COSTS AND FOR RESTRUCTURING THE PRODUCTIVE POTENTIAL OF OUR ECONOMIES THROUGH ACCELERATED INVESTMENT AND ENERGY SUBSTITUTION AND SAVINGS. THE SCOPE FOR GLOBAL POLICY ACTIONS IN THE COMMUNITY IS VERY LIMITED MAINLY BECAUSE THE HIGH BUDGETARY DEFICITS AFTER THE FIRST OIL SHOCK COULD NOT BE REDUCED DURING THE MODEST RECOVERY PERIOD 1976-79, AND BECAUSE PRESENT INFLATION RATES AND INFLATIONARY EXPECTATIONS IN MOST COUNTRIES ARE STILL EXCESSIVE. THE LIMITED POLICY CONTRIBUTIONS OF GOVERNMENTS COULD BE WIDENED IF PROGRESS IN COUNTERING INFLATION BECOMES MORE EVIDENT AND IF THE STRUCTURAL POLICY EFFORTS MAKE RAPID PROGRESS. ONLY IN THIS WAY IS IT POSSIBLE FOR MEMBER STATES TO HELP EACH OTHER THROUGH HAVING A COHERENT, COLLECTIVE PROGRAMME FOR ECONOMIC RECOVERY AND IMPROVEMENT IN THE EMPLOYMENT SITUATION.

THIS PROGRAMME OF POLICY COORDINATION IMPLIES FOR THE COMMUNITY :

- MAINTENANCE OF THE GENERALLY CONVERGENT MONETARY AND BUDGETARY POLICY ORIENTATIONS APPROVED IN DECEMBER 1980 AND PROGRESS IN STRENGTHENING THE EUROPEAN MONETARY SYSTEM.
- STRONGER COOPERATION BETWEEN THE COMMUNITY AND THE UNITED STATES IN MONETARY AND EXCHANGE RATE POLICIES.
- LIMITED SCOPE FOR DEMAND STIMULATORY ACTIONS THROUGH A QUALIFIED ACCEPTANCE OF AUTOMATIC BUDGET STABILISER, BUT MORE SUPPORT FOR INVESTMENT, A QUICKER RESTRUCTURING AND ENERGY SUBSTITUTION POLICY, AND IMPROVED LABOUR RETRAINING AND MOBILITY SCHEMES.

CORRIGENDUM :

POINT 3 - 12TH PARA. - SENTENCE NO. 3 SHOULD READ :

WITH LITTLE PRODUCTIVITY GROWTH AND FURTHER LOSSES IN 1981 ON THE TERMS OF TRADE, THERE IS ALMOST NO SCOPE FOR SIGNIFICANT REAL INCOME AGINS IN THE COMMUNITY AND EVEN THE NEED TO ACCEPT A REAL INCOME LOSS IN SOME COUNTRIES.

WHEN, ON 15 DECEMBER 1980, THE COUNCIL ADOPTED THE ANNUAL REPORT ON THE ECONOMIC SITUATION IN THE COMMUNITY (DECISION 30/12/85/EEC), IT WAS AGREED TO FIX THE FIRST ECONOMIC POLICY GUIDELINES FOR GREECE AT THE FIRST EXAMINATION OF THE ECONOMIC SITUATION BY THE COUNCIL IN 1981.

ACCORDINGLY, THE COMMISSION PROPOSES THAT THE COUNCIL APPROVE THE ECONOMIC POLICY GUIDELINES FOR GREECE CONTAINED IN THE ANNEX."

ANNEX  
-----

"IN GREECE, THE IMPROVEMENT IN THE CURRENT ACCOUNT BALANCE WAS ACHIEVED IN 1980 AT THE COST OF A MODERATE DECLINE IN DOMESTIC DEMAND AND A CONTROLLED DROP IN THE EXCHANGE RATE., AS A RESULT, A MORE FLEXIBLE ECONOMIC POLICY WAS POSSIBLE FOR 1981. THE POLICY HAS TWO AIMS : FIRST, TO CONTAIN THE UPTURN IN CONSUMPTION OF WHICH THERE WERE SIGNS TOWARD THE END OF 1980, WHILE STIMULATING THE RECOVERY OF INVESTMENT WHICH IS ESSENTIAL IF PRODUCTION STRUCTURES ARE TO ADJUST TO THE NEW EXTERNAL CONTEXT., AND SECOND, TO SLOW DOWN PRICES - RISING AT AN ANNUAL RATE OF 26 0/0 AT THE END OF 1980 - IN ORDER TO PRESERVE THE COMPETITIVENESS OF THE ECONOMY WHICH IS LIKELY, SOONER OR LATER, TO BE AFFECTED IF THE PRESENT RATE OF PRICE RISES PERSISTS.

TABLE 1 - MAIN ECONOMIC AGGREGATES, 1975-1981

116

	1979	1980	1981	1979	1980	1981
	GDP VOLUME, 0/0 CHANGE			PRIVATE CONSUMPTION DEFLATOR, 0/0 CHANGE		
DK	3.5	-0.9	-0.1	9.5	11.0	9.0
D	4.6	2.0	-0.7	3.79	5.4	4.5
GR	3.3	1.4	2.4	17.7	24.5	21.5
F	3.2	1.8	0.5	10.5	13.5	11.8
IRL	1.9	0.8	1.8	12.2	13.2	16.0
I	5.0	3.3	-0.3	14.9	21.2	13.7
NL	2.2	0.2	-0.6	4.6	6.5	6.3
B	2.4	1.2	-0.7	3.5	6.3	6.2
L	3.6	0.4	-1.0	5.8	6.3	6.3
UK	1.3	-2.0	-2.0	12.2	16.1	11.0
EC	3.5	1.3	-0.6	8.9	12.1	10.4
	UNEMPLOYMENT RATE, 0/0 OF CIVILIAN LABOUR FORCE			CURRENT ACCOUNT OF BALANCE PAYMENTS 0/0 GDP		
DK	5.3	6.2	7.6	-4.6	-4.1	-3.7
D	3.4	3.4	4.4	-0.7	-1.7	-1.6
GR (1)	(2.2)	(2.1)	(2.3)	-2.9	-2.6	-2.9
F	6.1	6.5	7.5	+0.1	-1.3	-1.8
IRL	7.9	3.9	10.9	-10.1	-8.3	-11.4
I	7.6	8.0	8.2	+1.6	-2.6	-1.4
NL	4.2	5.0	6.8	-1.4	-1.5	-0.9
B	8.6	9.3	10.7	-2.9	-5.6	-6.6
L	0.7	0.7	0.8	+28.7	+20.8	+13.0
UK	5.4	6.9	9.8	-0.9	+1.0	+0.3
EC	5.5	6.1	7.4	-0.5	-1.5	-1.6

 GENERAL GOVERNMENT NET LENDING MONEY SUPPLY, 0/0 CHANGE  
 (+) OR BORROWING (-), 0/0 GDP

DK	-3.1	-4.6	-5.7 (M2)	9.2	10.9	8.7
D	-3.0	-3.5	-3.8 (M3)	6.0	6.2	4.5
GR	:	:	:	:	:	:
F	-0.8	-0.6	-1.8 (M2)	14.4	10.5	10.0
IRL	-11.9	-13.5	-11.7 (M3)	12.0	18.9	12.0
I	-9.4	-7.3	-8.4 (M2)	20.3	12.3	13.1
NL	-2.0	-2.8	-3.2 (M2)	7.6	5.8	6.5
B	-7.2	-9.4	-9.7 (M2H)	6.0	3.0	5.0
L	+0.1	-0.9	-2.1	:	:	:
UK	-3.3	-2.3	-2.2 (M3)	12.7	19.5	10.2
EC	-3.6	-3.6	-4.0	11.2	10.1	8.2

(1) NOT COMPARABLE WITH OTHER COUNTRIES

 SOURCE : COMMISSION SERVICES BASED ON INFORMATION  
 AVAILABLE TO 24 FEBRUARY 1981.

A. KEES COMEU B

NNN/

262405 TRSY GKGH

WQIUH COMEU B



EHG(M)(81)3  
12 March 1981

COPY NO.

F

EUROPEAN COUNCIL, MAASTRICHT

23/24 MARCH 1981

ECONOMIC SITUATION IN THE COMMUNITY

Brief by HM Treasury

(Separate Annex on EMS attached)

OBJECTIVE

1. To reaffirm the need for priority to be given to securing a lasting reduction in inflation. To improve understanding of the respective policies of the U.S. and the Community countries. To emphasise that UK policies are in line with Community's agreed approach.

POINTS TO MAKE

2. (i) Inflationary impact of 1979-80 oil price rises on earnings has been better contained than in 1975 and recession shallower.
- (ii) Nevertheless inflation remains uncomfortably high in many countries and output is lower than expected last autumn.
- (iii) UK has achieved particularly sharp reduction in inflation, but output has fallen faster than in other countries and unemployment has risen more steeply.

(iv) Trough of recession now in sight in both UK and other countries. Gradual recovery of output likely. Wrong to abandon Community's agreed policy to combat inflation through firm fiscal and monetary restraint.

(v) UK remains committed to firm monetary policies supported by curbs on government borrowing so that interest rates do not bear too much of the burden. Tax increases in Chancellor's recent budget enabled UK to cut MLR by 2 per cent. UK three-month interest rates are now below those in U.S. and not out of line with most Community countries.

If it is suggested that European Council publicly criticises U.S. interest rate policy :-

(vi) Community cannot object to U.S. efforts to reduce inflation. Community countries as well as U.S. have repeatedly committed themselves to giving priority to reducing inflation through firm monetary and fiscal policies. We criticised the U.S. when the dollar was weak. We all have an interest in a strong dollar. World's principal reserve currency must retain its value.

(vii) It would be regrettable if a U.S. failure to control fiscal deficit put excessive strain on monetary policy.

The Administration is placing emphasis on fiscal policy, but we have to acknowledge constitutional difficulties faced by any U.S. administration in implementing fiscal policy. Both the Administration and Congress seem to recognise the importance of keeping tax and expenditure cuts in phase.

(viii) So far as volatility of U.S. interest rates is concerned, difficulties created for Community countries have already been pointed out to U.S. authorities by Central Bank Governors at Basle. Seriously doubt whether it would be prudent to go further and make critical remarks in Council communique. Monetary control method chosen by U.S. with emphasis on monetary base likely to result in some volatility of interest rates, but <sup>we</sup> /are not in the position to dictate to the U.S. on techniques.

(ix) On the level of interest rates, UK cannot see how it is possible to organise general reduction of world interest rates while inflation rate in main industrial countries continues excessive. There might be something to be said for a general resolve to ensure fiscal policy is kept tight so interest rates are not driven up. UK is playing its part: tax increases in recent budget were associated with interest rate cut.





BACKGROUND

References

A. Commission telegram 24138/SHA of 3/3/81

3. Outlook for EC economies even more gloomy than at Luxembourg Council in December. GNP growth of 1¼ per cent in 1980 was concentrated in first quarter of year. Subsequent recession, led by weak domestic demand, has been deeper and could be more prolonged than once thought likely. In UK, GDP fell by 2½ per cent in 1980. Trough of recession may now be in sight in both UK and rest of community, but industrial production is still falling or at best stationary in many member countries. Upturn is unlikely before mid-year at earliest and even then could be sluggish. Commission expects overall Community GNP to decline by ½ per cent in 1981 with only France, Greece and Ireland enjoying positive growth. (This compares with a fall of about 2 per cent in 1975.) Budget forecast for UK shows some recovery of output in the second half of 1981 but a fall of about 2 per cent for the year as a whole.

4. Consumer price inflation in the EC peaked last July at about 14 per cent over a year earlier. Improvement since has been modest, with rate falling to 12½ per cent by Q4 1980. But towards end of 1980 inflation began to accelerate in France, Germany and Italy. Little improvement seems likely before latter part of this year. In UK, year-on-year rate of inflation has fallen from 22 per cent last spring to 13 per cent in January. Budget forecast is for a further fall to 10 per cent by Q4 1981 and 8 per cent by Q2 1982.

5. Unemployment in member countries increased by 1.8 million in the year to January 1981 to 8.5 million. Steepest increases were in UK, Denmark and Netherlands. Commission expects further substantial increases in 1981. In UK, registered unemployment (seasonally adjusted and excluding school leavers) rose by 900,000 in the year to February to 2.3 million. The Government's working assumption is that GB unemployment in 1981-82 will average 2½ million (UK figure would be slightly higher).

6. Current account deficit for Community countries which was almost \$40 billion in 1980 is expected to be about \$30 billion in 1981. The German deficit of \$15 billion in 1980 is expected to show some reduction later this year. France seems likely to show a continued large deficit this year, but Italy and Netherlands may achieve some improvement. UK current account was in surplus by £2½ billion (almost \$6 billion) last year and is expected to show a further similar surplus in 1981, though declining through the year.

7. Venice Summit, IMF annual meeting and EC members all agreed last year to give priority to reducing inflation through firm monetary and fiscal policies. Germany, France, UK and U.S. have all announced lower monetary growth targets for 1981 than for 1980. These moves have been supported by fiscal policy measures to curb public borrowing and in particular to offset at least partially the tendency of automatic stabilisers to increase governments' deficits as a result of recession. UK target for £M3 growth in 14 months to April

120

1982 is 6-10 per cent. PSBR for 1981-82 is projected to be £10½ billion equivalent to 4¼ per cent of GDP compared with £13½ billion or 6 per cent of GDP in 1980-81.

8. Interest rates have fluctuated sharply in the past year but in general remain high. U.S. three-month rates rose to 17-18 per cent early last year before falling to around 8 per cent in the summer and rising again close to 20 per cent by the end of 1980. They have since eased to around 15 per cent. European interest rates in general fluctuated less than U.S. rates last year but have tended to rise in recent weeks. This move has been particularly marked in the case of Germany where domestic 3-month rates have escalated from 9½ per cent at the end of January to 15 per cent now. Other Continental EC countries have followed the Germans to a greater or lesser extent with French interest rates at 12½ per cent, Italy 17½ per cent, Belgium 13¾ per cent, the Netherlands 11¾ per cent and Denmark 15¼ per cent. In the UK MLR has fallen from 17 per cent to 12 per cent in the past year with a similar reduction in 3-month rates, so that now they are below U.S. rates and not out of line with most EC rates.

9. German Chancellor Schmidt and Finance Minister Mattoeffer have both been reported in the Press as critical of the level of U.S. interest rates. The Federal Chancellor also claimed in his telephone conversation with the Prime Minister on 24 February that the level of interest rates was inhibiting investment. He has also cited U.S. interest rates as one of

the factors behind the Dmark's weakness, although he has admitted that Germany's current account deficit is a further factor. The Dmark depreciated by almost 30 per cent against the U.S. dollar in the year to mid-February but has since rallied.

10. Bundesbank chairman Pöhl has said the fight against inflation is more important than interest rates. Schmidt, himself, has acknowledged the need for the U.S. to continue to follow firm policies to counter inflation. He has also said that in the longer-term he expects both the Dmark and the German balance of payments to be stronger reflecting Germany's underlying competitive strength.

11. The Germans themselves, therefore, have a rather ambivalent attitude towards U.S. interest rate policy. This reflects a lively debate going on in Bonn about the level of German interest rates which are the responsibility of the Bundesbank rather than the Federal Government. There is a perceived conflict between internal objectives which point to lower rates and the immediate external objective which needs higher interest rates to avoid a weak DM and its inflationary consequences. Furthermore, Schmidt is known to be anxious about the danger of a major world recession. The Dutch Government is under strong pressure to do something about unemployment. It is therefore quite possible that there will be an attempt at the Council to blame Europe's problems on the United States by accusing them of running an excessively tight monetary policy.

EUROPEAN MONETARY SYSTEM (EMS) (Annex to brief 3)

OBJECTIVES

- 1. To avoid commitments on the timing of UK entry.
- 2. To avoid going further than the last Council in setting a timetable for new developments.
- 3. If necessary, to agree to studies of any specific new proposals from Belgium.

POINTS TO MAKE [DEFENSIVE]

- 1. [UK attitude] We fully support the EMS, and acknowledge the contribution which it has made to stability in the exchange markets. We do not yet feel able to join the exchange rate mechanism. We must wait until conditions are right for the system and for ourselves. [Draw on paragraphs 5 and 6 below if pressed.]
- 2. [If the Belgians or others suggest changes in the working of the EMS.] There are a number of interesting suggestions on how the system might be developed further. Some could be far reaching. The Monetary Committee and the Committee of Governors are considering these questions and will no doubt be advising the Finance Council at an appropriate moment. [If necessary] The new Belgian ideas should also be looked at.



BACKGROUND

1. There is no reason for us to raise this subject, but the Belgians have hinted that they may do so. Their reasons are unclear.
2. It was originally envisaged that the "provisions and procedures of the EMS would be consolidated into a European Monetary Fund" by March 1981. A Fund could be anything from a fully fledged Community central bank to an empty charade, although there is unlikely to be much political support for the former given the loss of national control over economic policy that it would entail. The last European Council in December removed the March deadline and merely suggested that there should be further studies and progress "at an appropriate time". It is highly unlikely that the French or Germans will want to go beyond this before the French Presidential elections; and there are no signs that a new Franco-German initiative is being prepared for after the elections.
3. Over the last year the exchange rate mechanism operated smoothly until the German mark came under pressure in October 1980. After several months of heavy intervention the position of the mark was eased in February after the Bundesbank had acted to raise interest rates and the mark has now moved back to the top of the EMS band. The Belgian franc, which has been consistently weak for a long time, was left isolated at the bottom of the (2<sup>1</sup>/<sub>4</sub> per cent) EMS band despite an increase in Belgian interest rates.
4. The Belgians were critical of the way in which the Germans raised their interest rates and this resentment may underlie their wish to discuss the EMS. Alternatively, it

is possible that they wish to propose various technical modifications to the system such as those they suggested in a speech last month by M van Ypersele, a former chairman of the Monetary Committee and now chef de cabinet of the Belgian Prime Minister. It is important not to agree to these or any other proposals without further study.

5. UK and exchange rate mechanism. Two factors point to caution. First, the UK is alone in the Community in being self-sufficient in oil, while other member states are net importers. So sterling has tended to move in the opposite direction to other EMS currencies at times of disturbance in the oil markets. It is not certain, or even probable, that the exchange rate mechanism would have been as manageable if sterling had been a member. Second, the obligation to control sterling's agreed margin of fluctuation could conflict with our domestic monetary policy if we were obliged to intervene heavily to hold sterling down.

6. Others may suggest that conditions are now favourable for sterling to join because its exchange rate has come down a long way in the past month and the UK's inflation rate is now close to the Community's average. The answer is that whilst the improvement in inflation is encouraging, the sharp movement in sterling reinforces rather than retracts from the arguments in paragraph 5.

7. Nevertheless, the Government has made it clear in a number of public statements that we intend to join the exchange rate mechanism when we judge that conditions are right.



1. There is no easy way for the Community to conquer unemployment. Controlling inflation is an essential condition for sustainable growth of output and employment in the Community in the period ahead. Without that, our industry and commerce will find it harder to compete and so to create the jobs that are needed.
  
2. To promote employment we need particularly to move into the new high technology industries and to apply high technology to improving the efficiency of existing industries. The Council accordingly asks the Commission, drawing on the useful work already in hand for the Standing Employment Committee, to propose ways in which this process can be assisted and accelerated within the Community, including the use of measures to ease the structural changes in the labour market which must accompany it.
  
3. The Council supports the use of appropriate measures which assist the transition by helping those areas and groups in the Community which are particularly badly hit by unemployment. In this respect, the Council is particularly concerned at the problems caused by declining employment in traditional industries in various regions of the Community. Particular importance is attached to mitigating the social effects of restructuring in the steel and shipbuilding industries. It accordingly invites the Commission to pay special attention to these problems, particularly in formulating its proposals for revision of the European Social Fund and the European Regional Development Fund.



EXPLANATION OF UNITED KINGDOM APPROACH

1. The current level of unemployment must be central to any consideration of the economic situation in the Community. In January 1981 it reached 7½% of the active population (ie some 8½ million people) compared with 4.3% in 1975 and 2% in 1970. This represents a serious waste of human resources and imposes a severe burden in terms of human suffering and loss of dignity on those affected. The problem is worse because it is concentrated on particular social groups, notably the young, and in certain areas of the Community, particularly those dominated by declining industries.
  
2. This high level of unemployment is the result of the serious underlying problems that today afflict the Community's economy: the world economic recession, inflation, low levels of investment, slow growth in productivity, poor competitiveness and a high level of dependence on imported high cost energy. The two massive increases in oil prices in the last decade have rendered obsolete a substantial proportion of the capital equipment of the industrialised countries and of the Community countries in particular. Europe needs to replace this equipment and also to invest in new forms of energy production. The future standard of living of the Community and the level of employment that we will be able to sustain without excessive inflation will depend on the ability of the European countries to meet these investment needs, to adapt to changing conditions of employment and to equip ourselves with new skills.
  
3. These underlying problems must be successfully tackled if we are to secure a lasting reduction in unemployment. Employment measures which assist the transition are to be welcomed, but such measures must avoid

worsening competitiveness. Otherwise they lead to a loss of output to overseas competitors and the reduction in unemployment is not then sustainable. For our competitors will not stand still. New processes and techniques will continue to be developed and used outside the Community and the newly industrialised countries will become increasingly competitive in basic manufactured products. Unless we allow the structure of our industry to adapt to meet these challenges, still more jobs will be lost in the future.

4. These dangers are illustrated by the proposals that a number of organisations have made for a general reduction in the working week. But if, as is likely, this leads to an increase in unit labour costs, the effect is to exacerbate inflation, reduce competitiveness and depress unemployment in due course. Moreover, circumstances vary widely and to impose a uniform reduction in the working week throughout the Community would not take account of what individual firms could afford and could organise efficiently. This is not, of course, to say that other special employment measures particularly directed to helping groups worst affected by the recession might not have a part to play in relieving unemployment.

5. A lasting reduction in unemployment requires the creation of conditions for sustainable growth and these can only be achieved if inflation is brought down. A high level of inflation in the industrial countries could invite more oil price increases. But inflation also destroys the framework for business confidence and the basis for investment decisions. It upsets relative pricing, endlessly absorbs effort in adjusting to new price and wage levels and often squeezes profits in favour of wages. It has powerful direct and indirect effects on the profitability of industry and on its international competitiveness. Inflation is thus the enemy of unemployment, economic growth and structural adjustment.

*This means that both fiscal and monetary policy will have to continue to reflect the need to bring down inflation.*

6. In world economic conditions where newly industrialising countries are competing effectively in basic manufactured products and where competition between advanced industrialised countries becomes more severe, the companies and sectors most capable of survival will be those with:-

- (a) control of rapidly advancing technology;
- (b) adequate professional and technical management and highly-skilled labour;
- (c) highly sophisticated selling and distribution systems which can react to changing consumer preferences;
- (d) flexible manufacturing systems which can respond to consumer needs or product variety;
- (e) economic production units capable of responding to major segments of world demand.

High technology is an ingredient in most of these factors and it is this which needs to be developed within the Community.

7. Structural changes on the scale that are taking place inevitably create serious social and employment problems. These are particularly acute in areas of the Community where there is a concentration of declining industries such as steel and shipbuilding, and particularly for certain groups, notably young people seeking their first jobs in such areas. The Community already has in the Social and Regional Funds instruments which can play a part in dealing with these problems by providing support for training and retraining and for

new productive and infrastructure investment. In the current situation it is essential that a higher priority is given to these particular problems in the administration of these and other Community instruments and in the forthcoming reviews of their activities.

EUROPEAN COMMUNITIES  
THE COUNCIL

Brussels, 12 March 1981  
(13.03)

5461/81

RESTREINT

ECOFIN 19

TRANSLATION OF LETTER

from: Commission of the European Communities, signed by  
Mr A. GIOLITTI, Member  
dated: 11 March 1981  
to : Dr C.A. van der KLAUW, President of the Council of the  
European Communities

Subject: First quarterly examination of the economic situation  
in the Community  
- Commission communication

Sir,

Please find attached a Commission communication to the  
Council on the economic and social situation in the Community.

This communication is in accordance with Article 2 of the  
Convergence Decision of 18 February 1974.

(Complimentary close).

(s.) Antonio GIOLITTI

Encl.: COM(81) 95 final





127

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(81) 95 final

Brussels, 6th March 1981

## THE ECONOMIC AND SOCIAL SITUATION IN THE COMMUNITY

(Communication from the Commission to the Council in accordance with Article 2 of the Convergence Decision of 18th February 1974)



1. Recent economic performance in the Community

The slow-down in economic activity in 1980, with GDP growing 1,3% in the EC as a whole, was approximately as foreseen by the Council in December of last year. Output peaked in the first quarter of 1980, but declined thereafter. However, private consumption was probably beginning to grow again in real terms by the end of the year, while the EC business surveys showed first signs that the sharp deterioration in business sentiment may have been arrested.

There was hardly any increase in employment in 1980, while the labour force continued to expand rather rapidly. The result was a sharp rise in unemployment: the average rate for the year was 6,0%, and by the beginning of 1981 had passed 7,0%. Over the last twelve months the unemployment rate increased most in Denmark and the Netherlands (up by about one half) and the United Kingdom (up by two-thirds). The additional cost to the national exchequers of the rise in unemployment amounts for the Community as a whole to some 0,15% of GDP for 1980 compared to 1979.

The deterioration in inflation performance which had begun in 1979 was accentuated in 1980; the increase in consumer prices in the Community on average reached 12,1% in 1980, compared to the low point of 7,3% in 1978. Divergence between consumer price rises of Member States also widened to twice the average for the seventies as a whole (the standard deviation rose to 5,6%). However, a somewhat better performance was evident in the second half of the year, especially in the United Kingdom where the annual rate had fallen to below double figures.

The Community's current account deficit in 1980, expressed as a percentage of GDP, was the largest ever recorded. In contrast with 1979, there was some improvement in 1980 in export in relation to import volume. However, this was more than offset by a terms of trade deterioration (2,8%) considerably larger than that in 1979 (although this was still very much smaller than that suffered in 1974 after the first oil-price shock).

Exchange-rates developments in the EMS in 1980 were limited to movements permitted by unchanged central rates. However, the UK pound appreciated 15% against the ECU in the course of the year, and the Yen 24%. The US dollar was on a declining trend against the ECU until mid-year, but has since recovered substantially.

2. Outlook for 1981

The present cycle is now seen as being sharper and deeper than anticipated. The starting point, the high level of activity in early 1980 has been again revised upwards, with the steeper fall later in 1980 then carrying a heavier recessionary momentum over into 1981. Domestic private demand (consumption, stockbuilding and investment) wholly accounts for the more pronounced cyclical profile. Foreign demand has stayed on the expected path, while government consumption in volume terms is still expected to grow slightly in 1981. Thus the revised forecasts prepared by the Commission's services in February suggest that the upturn in activity may be delayed until the third quarter of 1981, two quarters later than earlier expected. GDP growth at an annual rate of about 2% is now expected in the second half of 1981 and into 1982. The year on year growth of GDP for 1981 for the Community as a whole is revised down from + 0,6% in the Annual Economic Report to - 0,6%.

Employment could fall by nearly 1%, and by the end of the year the unemployment rate could be above 7 1/2% (1) and still rising.

A significant slowdown in consumer prices can be expected during the course of 1981, as the effect of more moderate wage settlements in the first half of the year is reinforced by some rebound of productivity in the second half. Although consumer prices for 1981 as a whole could be up by around 10 1/2% on 1980 (Table 1), the annual rate in the second half of the year could, at 8,2%, be 4 1/2 points lower than in the second half of 1980. Divergence of inflation rates should also lessen somewhat, with the standard deviation of consumer prices increases falling back to 4,6%.

The Community's balance of payments current account is likely to change little during the course of 1981 and for the year as a whole could be slightly worse than the high deficit recorded in 1980. A further worsening of the terms of trade in 1981 will slightly more than offset an improvement in volume movements.

3. Policy issues

The Council is required (according to the 1974 Convergence Decision) to deliberate in March as regards possible adjustments to the economic

.....  
(1) Seasonally adjusted figure.

policy guidelines adopted in the Annual Report in December.

At the time the Council concluded that the policy mix should give priority to the reduction in inflation, savings in oil imports, and the pursuit of the other necessary structural changes in the Community economy, and be only moderately supportive in terms of cyclical demand management. The weaker economic outlook cannot imply an easier way out of the constraints. While the evolving situation calls for technical adjustments to some financial policies, the fundamental line of policy - to reduce inflation and push ahead with structural adaptation - has to be pursued with even greater urgency.

Control of domestic monetary aggregates and exchange rates within the European Monetary System has on the whole been satisfactory. However, monetary policy in Europe has been and is still confronted with the need for a concerted reaction to the very high and volatile interest rates prevailing in the United States, and to the appreciation of the exchange rates of the dollar and yen.

The appreciation of the Yen appears to be justified in the light of Japan's trading performance. With respect to the United States' monetary policy, Europe is much affected by both interest and exchange rate movements.

If European interest rates now moved further up on average towards United States levels, it is quite likely that as a result there would be no cyclical recovery in Europe this year. On the other hand, a further substantial depreciation of European currencies against the dollar could risk causing a new acceleration of inflation in the Community, through the increase in import prices in European currencies. Moreover, erratic swings in either exchange rates or interest rates are costly to the economy through the uncertainty that they introduce.

In view of its large current account deficit on the balance of payments, the Community should be prepared to accept higher dollar exchange rates than prevailed in 1980 on average. The inevitability of this deficit in the short-run means that its financing should be carefully prepared. This in itself should pose no insuperable problems; the Community has for its part in February renewed and expanded its own recycling facility. Experience confirms how quickly conditions may change as between EMS currencies and the main floating exchange rates, and Europe should not make fundamental changes in its domestic monetary policies in response to volatile exchange rate movements. The United States authorities for their part could contribute to the international interest by managing their budgetary-monetary policy mix and the techniques of monetary policy with a

.. / ..

view to reducing the level of interest rates consistent with a stable evolution of money supply.

Within the Community, Member States must match the difficulties of transatlantic monetary conditions with intensified cooperation as regards interest rate adjustments, intervention policy and official capital movements. In addition to full use of the mechanisms of the European Monetary System, there would seem now to be opportunities for adjustments of United Kingdom monetary policy as regards interest rates and criteria of exchange rate management.

Apart from the increase in unemployment a consequence of the weaker level of activity in 1981 is some increase in budget deficits over what had been forecast in the Annual Report. However, the structural weaknesses in parts of the European economy are such that a full play of the 'automatic stabilisers' cannot be risked in all countries. In particular, countries with the highest deficits (Belgium, Ireland, Italy) should act to prevent increases. Further increases in these countries' deficits cannot provide any sustainable increase in economic activity; on the contrary, increased deficits - whether spontaneous or discretionary - are likely to cause swift and significant interest rate increases. Among these countries, Italy has made progress in 1980 in reducing the borrowing of general government to well under 10% of GDP, and this should be conserved in 1981. In the case of Ireland the projection of a reduced deficit is also significant, particularly in view of the increased spending on public investment. In other countries, some increase in budget deficits should be permitted to support activity; indeed the 'automatic stabilisers' should be allowed to operate fully in countries with the least high deficits. However, even in these cases, priority must be given to restructuring expenditure to improve productive potential.

Extensive structural problems have to be overcome to achieve higher trend rates of growth and employment. Policy must intensify efforts to improve productive potential by redirecting budgetary resources from subsidies that are supporting uneconomic or non-priority activities, into aiding public or private investment. The investment ratio has declined from 23% of GDP in 1970 to 21% in 1979 in the Community as a whole. Meanwhile, over the same period it seems that (subject to difficulties of statistical measurement) investment grants remained static at 1% of GDP, whereas subsidies

.../...

(notably operating subsidies, excluding tax expenditures) rose from 1,8% of GDP to 2,6%, with particularly large increases recorded in the Benelux countries, Ireland and Italy. Justifications for higher or more rapid fiscal depreciation allowances exist in the accelerated obsolescence of existing capital stock due to the higher energy prices, and in the need to achieve fundamental improvement in industrial competitiveness vis-à-vis third countries. The Commission for its part is following these principles in areas of Community responsibility, having recently proposed a reduction of state aids to steel,<sup>(1)</sup> an increase in producers' financial co-responsibility for surplus agricultural production,<sup>(2)</sup> and a strengthening in Community loan instruments for financing investment.<sup>(3)</sup>

Progress is being made in reducing the Community's dependence on imported oil. The share of imported oil in gross inland consumption of primary energy fell from 47,6% in 1979 to 44,2% in 1980, and is expected to fall further to 42,1% in 1981. The volume of net oil imports dropped 10,7% in 1980 and should further fall 5% or more in 1981.

However, much more progress must be achieved before the Community could consider its macroeconomic policy to be no longer constrained by energy market factors. Energy production and savings must be boosted by every possible means. Obstacles such as delays in investing in nuclear power, or failure to make timely adjustments to energy consumption taxes so as to sustain the 'price message', will ultimately exact an extremely high price in living standards. Several countries are relatively well endowed in hydrocarbon resources (Netherlands, United Kingdom) or have reasonable chances of becoming much more self-sufficient (Ireland, Denmark); France is making particularly rapid progress with other energy forms. Belgium, Germany and Italy - while making efforts in certain areas of energy production or saving - need urgently to strengthen major features of their national energy programmes, or their implementation. Examples of below-average taxation of energy consumption include heating oil in general as between forms of hydrocarbon consumption, and, as between Member States in relation to the Community average, heating oil in Germany, Belgium and the United Kingdom, petrol in Germany and Luxembourg and diesel oil in Italy and Luxembourg.

---

(1) COM (81) 71 final

(2) COM (81) 50 final

(3) COM (80) 670 final

The further deterioration in the labour market situation should be appraised as a function of its different forms and causes.

The expected reduction of employment in 1981 could be corrected progressively with the recovery in the second half of 1981. The speed of this recovery depends on the response of social partners to the need for higher investment and structural change. Particular consideration should in this context be given to the need to take full account of the deterioration of employment prospects and to generate new jobs. Defensive measures and subsidies would impede the process of reallocation as much as aggressive wage policies. With little productivity growth and further losses in 1981 on the terms of trade, there is almost no scope for significant real income gains in the Community and even the need to accept a real income loss in some countries.

In some countries strong efforts are currently being made to moderate the growth of nominal incomes, and the Benelux countries in particular are improving their competitive positions as a result of combining a low inflation rate with stable exchange rates within the EMS. In other countries it is urgent that more efforts be made to reduce the trend of growth in nominal incomes, notably Ireland and Italy. Moreover, the substantial increase in structural unemployment emphasizes the need for wage contracts to allow for the quicker adjustments of incomes between countries, sectors and firms where competitiveness and profits have been reduced.

Part of the trend increase in unemployment reflects the longer periods of search between jobs, facilitated by unemployment and social security benefits. However, the weak growth performance since 1973 increased the number of unemployed. Among the unemployed certain groups are in a particularly vulnerable position: young people without sufficient training, women looking for part-time jobs and older people approaching their pension-age. To aid these groups and to alleviate unemployment in general it is vital that Member States assure sufficient resources for expanded vocational training and retraining, undertake supplementary efforts to help the record supply of young people into their first employment, improve programmes of apprenticeships (as offered in Germany) and promote pre-pension schemes and the creation of part-time jobs.

An old phenomenon has attracted new interest: the growing size of unrecorded and unobserved employment which seems to have been spreading rapidly in many industrialised countries.



The multiple and continued efforts to remedy the unemployment situation in Community countries have shown some results. More has to be done, but no general and quick panacea is available. The responsibility for employment creation lies as much with those who decide the conditions of employment at the enterprise level as with governments in their macroeconomic and structural policies at the national and Community level.

#### 4. Conclusions

The European and other non-oil producing countries are now undergoing the new readjustment process due to the second oil price shock - whose impact on growth, prices and the balance of payments is similar to that of the first shock in 1973-74. The difficult task of governments, trade unions, employers and households lies in the need to avoid the policy errors and mistaken reactions that followed in 1974 and 1975. The consequences of the second heavy transfer of resources in favour of OPEC have to be accepted. This implies priorities for reducing the growth of nominal labour costs and for restructuring the productive potential of our economies through accelerated investment and energy substitution and savings. The scope for global policy actions in the Community is very limited mainly because the high budgetary deficits after the first oil shock could not be reduced during the modest recovery period 1976-79, and because present inflation rates and inflationary expectations in most countries are still excessive. The limited policy contributions of governments could be widened if progress in countering inflation becomes more evident and if the structural policy efforts make rapid progress. Only in this way is it possible for Member States to help each other through having a coherent, collective programme for economic recovery and improvement in the employment situation.

This programme of policy coordination implies for the Community:

- maintenance of the generally convergent monetary and budgetary policy orientations approved in December 1980 and progress in strengthening the European Monetary System;
- stronger cooperation between the Community and the United States in monetary and exchange rate policies;
- limited scope for demand stimulatory actions through a qualified acceptance of automatic budget stabilisers, but more support for investment, a quicker restructuring and energy substitution policy, and improved labour retraining and mobility schemes.

Table 1: Main Economic Aggregates, 1979-81

8.-

	1979	1980	1981		1979	1980	1981
	GDP volume, % change				Private consumption deflator, % change		
DK	3,5	-0,9	-0,1		9,5	11,0	9,0
D	4,6	2,0	-0,7		3,9	5,4	4,5
GR	3,8	1,4	2,4		17,7	24,5	21,5
F	3,2	1,8	0,5		10,5	13,5	11,8
IRL	1,9	0,8	1,8		12,2	18,2	16,0
I	5,0	3,8	-0,8		14,9	21,2	18,7
NL	2,2	0,2	-0,6		4,6	6,5	6,3
B	2,4	1,2	-0,7		3,5	6,3	6,2
L	3,6	0,4	-1,0		5,8	6,3	6,3
UK	1,3	-2,0	-2,0		12,2	16,1	11,0
EC	3,5	1,3	-0,6		8,9	12,1	10,4
	Unemployment rate, % of civilian labour force				Current account of balance of payments % GDP		
DK	5,3	6,2	7,6		-4,6	-4,1	-3,7
D	3,4	3,4	4,4		-0,7	-1,7	-1,6
GR (1)	(2,2)	(2,1)	(2,3)		-2,9	-2,6	-2,9
F	6,1	6,5	7,5		+0,1	-1,3	-1,8
IRL	7,9	8,9	10,9		-10,1	-8,3	-11,4
I	7,6	8,0	8,2		+1,6	-2,6	-1,4
NL	4,2	5,0	6,8		-1,4	-1,5	-0,9
B	8,6	9,3	10,7		-2,9	-5,6	-6,6
L	0,7	0,7	0,8		+28,7	+20,8	+18,0
UK	5,4	6,9	9,8		-0,9	+1,0	+0,3
EC	5,5	6,1	7,4		-0,5	-1,5	-1,6
	General government net lending (+) or borrowing (-), % GDP				Money supply, % change		
DK	-3,1	-4,6	-5,7	(M2)	9,9	10,9	8,7
D	-3,0	-3,5	-3,8	(M3)	6,0	6,2	4,5
GR	:	:	:	:	:	:	:
F	-0,8	-0,6	-1,8	(M2)	14,4	10,5	10,0
IRL	-11,9	-13,5	-11,7	(M3)	12,0	18,9	12,0
I	-9,4	-7,8	-8,4	(M2)	20,3	12,3	13,1
NL	-2,0	-2,8	-3,2	(M2)	7,6	5,8	6,5
B	-7,2	-9,4	-9,7	(M2H)	6,0	3,0	5,0
L	+0,1	-0,9	-2,1	:	:	:	:
UK	-3,3	-2,3	-2,2	(LM3)	12,7	19,5	10,2
EC	-3,6	-3,6	-4,0		11,2	10,1	8,2

(1) Not comparable with other countries.

Source: Commission services, based on information available to 24 February 1981.

ADDENDUM

to the Communication from the Commission to the Council;  
Doc. COM(81)95 final

When, on 15 December 1980, the Council adopted the Annual Report on the economic situation in the Community (Decision 80/1265/EEC), it was agreed to fix the first economic policy guidelines for Greece at the first examination of the economic situation by the Council in 1981.

Accordingly, the Commission proposes that the Council approve the economic policy guidelines for Greece contained in the annex.

In Greece, the improvement in the current account balance was achieved in 1980 at the cost of a moderate decline in domestic demand and a controlled drop in the exchange rate; as a result, a more flexible economic policy was possible for 1981. The policy has two aims: first, to contain the upturn in consumption of which there were signs toward the end of 1980, while stimulating the recovery of investment which is essential if production structures are to adjust to the new external context; and second, to slow down prices - rising at an annual rate of 26% at the end of 1980 - in order to preserve the competitiveness of the economy which is likely, sooner or later, to be affected if the present rate of price rises persists.

These objectives are to be achieved by a package of measures concerning incomes, the budget and credit. As a complement to the adjustments made to the income tax rates and allowances to counteract fiscal drag, incomes policy has laid down, for the year, rules for the adaptation of wages designed simply to maintain purchasing power: this should help achieve the necessary slowdown in nominal pay rises and the moderation of private consumption. As for budgetary policy, it has provided for a substantial increase in public sector investment and an appreciably greater effort to assist certain categories of private investment. Lastly, monetary policy has considerably loosened the constraints on firms: for 1981, the increase in lending to the private sector is targeted to move roughly in parallel with the forecast increase in the value of gross domestic product; however, no immediate moves have been made to lower interest rates.

This package seems to achieve the best compromise possible between short-term constraints and medium-term necessities. Only during the first half-year will it be possible to assess whether the results achieved fully correspond to the objectives set as regards, in particular, slowing down price rises and limiting the increase in the external deficit. If they do not, certain elements of the current policy would have to be tightened up.

12/3/81.

128

*Nov 3, letter to him  
to discuss all this kind of*

CHANCELLOR OF THE EXCHEQUER

*this  
"over a  
cocktail"*

cc Sir Kenneth Couzens  
Mr Barratt  
Mr Hancock  
Mr Bottrill  
Mr Atkinson  
Mr Scholes

*Have  
with  
Sick  
John*

NEXT MONDAY'S FINANCE COUNCIL. G5 BUSINESS IN THE MARGINS

As reported to you in Sir Kenneth Couzens' note of 24 February about the last G5 Deputies meeting, the Germans hanker after a "trilateral" - yourself, Herr Matthoefffer, and M. Monory - in the margins of the next Finance Council, to discuss the 12 April G5.

2. This is not altogether desirable : the idea might be to get us to gang up on the US. Your logistic problems have been explained. There may nevertheless be an attempt at a brief talk over cocktails before lunch.

3. In case this happens, you will wish to be reminded of the likely topics for the G5 as at present foreseen. Sir K Couzens' telex of 23 February, and his note to you of 24 February, are attached for ease of reference (not copied to all).

4. Briefly :

a) IMF borrowing

i. Saudis coming along, but strong linkage with their quota claim. And they want OECD countries to do something as well. (They think that if non-OPECs are involved there will be no monkey business). Four of the G5 would lend. The US say they have no powers. Troublesome if US don't join in. They need to be pressed.

ii. If the Saudis don't come along, the IMF will have to borrow in the markets - probably within weeks. OK by the Americans. But France and Japan are opposed, and

the Germans anguished. Concern rather over-done. Fund has always been legally provided with borrowing powers. Agree that Fund quotas are the correct and ideal basis for Fund lending. Moral is to have a big enough Eighth Quota Increase to obviate need for borrowing. But market borrowing may be needed in the meantime.

- b) Saudi IMF Quota. Tiresome to single anyone out before Eighth Review. Awkward for Japanese. Justification - big Saudi lending - a bit weak. Will have to concede something, all the same. Saudis seeking quota of 2124, up from 1040. IMF Staff suggesting 1917. G5 Deputies suggested 1850 to prevent leap-frogging over Italians at 1860. Italians not very robust in Washington : seem to think they could accept 2124. Perhaps not feasible to keep the problem on ice until your G5 on 12 April. Might need to settle, and perhaps shift, G5 position for an IMF Board Meeting before 12 April.

*New since*

*G5 Deputies*

- c) IMF and the PLO. Post mortem on last summer's events in Mr Muldoon's Committee hasn't clarified things much. Anyway the important thing is not raking over the past, but what the US actually want to do about PLO observers next September - creeping ever closer. Secretary Regan is expected to tell you about this at the G5. France and Japan would abstain on a straight vote. Not clear we should vote against attendance.
- d) SDR allocation in next basic period. Mixed but on balance hostile feeling in G5 Deputies. US against, UK very doubtful, France against except for a small allocation slanted to LDCs (this skewing is not what the Articles provide for). Japan would like a study as an excuse for delay. Germany thinks we can't be too hard faced. Feeling

at Deputies that all would support US if, at your G5, they were really prepared to take the lead and stand firm on no allocation.

- e) World Bank. US contribution to IDA 6 has survived, but will be "rear-end loaded". No "bridging" after March. World Bank will generally have to scale down its ideas. (Clausen arrives in May and succeeds McNamara in July).
  
- f) Energy Affiliate. US think unnecessary (oil companies will finance anything worthwhile). Others doubtful whether the private markets would do all that was necessary for energy development in LDCs. UK sympathetic to US view, but thinks the affiliate would probably attract more OPEC funds in total for World Bank group. Secretary Regan expected to speak on this too at your G5. (N.B. French want this bit of the World Bank to be in Paris!).
  
- g) Monetary Policy and Interest Rates. Will have been discussed at ECO/FIN. Will no doubt still be a current and lively issue at your G5. Delicate. Not easy intellectually. Excellent to have a private and informal opportunity on 12 April for very high level exchange of views with the Americans.

5. You are to suggest a final agenda nearer the time.

*MHM*

MRS M HEDLEY-MILLER  
12 March 1981

13/3/81 . 131

1. SIR KENNETH COUZENS
2. CHANCELLOR

cc as attached list

## FINANCE COUNCIL : 16 MARCH

The Council will meet in Brussels on Monday 16 March. You will be attending for the morning session<sup>and</sup> for drinks before lunch. Thereafter Sir Kenneth Couzens will take your place. You will be accompanied by Mrs Gilmore, Mr Wiggins, Mr Fitchew and Mr Henes (the assistant secretary in the Department of Trade dealing with the insurance services directive). The Governor is also attending the meeting in his capacity as Chairman of the Committee of Central Bank Governors.

Administrative arrangements

2. Your flight takes off from Heathrow at 7.45 (BA 374), arriving at 9.40. The Council begins at 10.30 and will be followed by drinks and then lunch. There may be a further session after lunch. You will leave after the drinks to catch the 1445 flight (BA 383) with Mr Wiggins, arriving Heathrow at 1445. Lunch will be served on the plane. The rest of the party are booked on the 1545 flight (SN605), arriving Heathrow at 1545.

Agenda

3. The following items may be discussed:

- (1) 'A' point: adoption of regulation renewing the Community Loan Mechanism
- (2) agricultural price proposals
- (3) insurance services directive
- (4) economic situation in the Community
- (5) preparation for the European Council
- (6) G5 business
- (7) export credit
- (8) informal meeting of Finance Ministers



4. The formal agenda consists of items (1)-(5). Items (4) and (5) are likely to be dealt with during or after lunch. It is also possible that item (3) may not be reached in the morning session. Item (6) is not for the whole Council, but the Germans would like to discuss it with yourself and the French in the margins of the meeting. It will probably come up over drinks before lunch. Item (7) is likely to be discussed over lunch. You may wish to mention item (8) to Mr van der Stee if a suitable occasion arises in the margins of the meeting; it is not on the agenda.

#### Objectives

5. A list of briefs on the individual items is attached. The most important items for the UK are the agricultural price proposals and the insurance services directive.

6. For the agricultural price proposals our objectives, agreed at OD Committee, are:

1. to secure agreement that for 1981 there should be no supplementary budget for agriculture, and hence that the price proposals should be accommodated within the existing budget;
2. to obtain a unanimously agreed Council resolution stressing the need for a cautious price policy and requiring the future rate of growth of agricultural guarantee expenditure to be markedly below the rate of growth of the own resources base;
3. if a satisfactory resolution is not obtainable, to seek, in concert with the Germans, to break off the discussion rather than accept an unsatisfactory text.

7. The insurance services directive would give insurers freedom to operate across frontiers within the Community. Thus, for example, a UK insurance company can already do business in France by setting up a branch in France; but the directive would allow it to cover French risks direct from the UK. This would be particularly important for Lloyds whose unusual structure makes foreign branches difficult to operate. It would also be important for other insurers because foreign branches are obliged to operate under foreign, rather than UK, law and supervision. Our insurers estimate that they would gain well over £50 million of business a year if the directive was agreed.

8. The directive has been under discussion for over five years. There is a strong case for it because the Treaty of Rome provides that such freedom should be introduced, but most other Member States are dragging their feet because their insurers would suffer. The subject suffers from considerable technical complexity which has provided ample scope for delaying tactics.

9. There is no chance of final agreement at the Finance Council. Our objectives are:

1. to inject a sense of urgency into the negotiations and impose a firm timetable;
2. to resolve at least some of the questions in the report from COREPER in a satisfactory way.

10. The discussion of the economic situation in the Community is the first of three required each year by the 1974 Convergence Decision. Formally the purpose is to consider what adjustments, if any, are needed to the guidelines to Member States for the conduct of economic policy in 1981 which were contained in the 1980 Annual Report agreed last December. The earlier guidelines are likely to be confirmed with a short addition to cover Greece. Any discussion is likely to be concentrated on the next item.

11. We cannot predict what form the discussion will take on preparations for the European Council. Both the Governor, as Chairman of the Committee of Governors, and M Haberer, as Chairman of the Monetary Committee, will make oral reports. The Governor should be able to give you an outline of his report on the plane on Monday. Discussion is likely to range over three topics:

1. unemployment
2. interest rates
3. exchange rates

On the first you could draw on the material (attached) which the Prime Minister recently authorised us to pass to the Dutch for possible inclusion in the Presidency Conclusions to the European Council. On the second and third you could draw on the (attached) brief on the Economic Situation for the European Council.

12. Separate briefs are attached on G5 business and export credit.

13. If a suitable opportunity arose you could mention the informal meetings of Finance Ministers to Mr van der Stee. The question is whether we need such a meeting during our Presidency. You could say that the UK obviously wants to carry out its obligations, but that we do wonder whether two meetings a year are really necessary. What are Mr van der Stee's views?

Press

14. Sir Kenneth Couzens will see the press supported by Mrs Gilmore at the end of the meeting. It is possible that there will also be time for you to see them briefly just before you leave.

but see Hancock's

separate note.

KEC

J Scholes

J SCHOLES  
13 March 1981

KEC

13/3

LIST OF BRIEFING

- PA. Item (1) 'A' point
  - A Item (2) agricultural price proposals
- B. Item (3) insurance service directive
- C. [Chancellor's and Sir Kenneth Couzens' copy only] supplementary material for B.
- D. Item (4) economic situation in the Community
- E. Item (5) preparation for European Council:
  - unemployment (material recently given to the Dutch)
- F. interest rates etc. (brief for European Council)
- G. Item (6) G5 business
- H. Export credit
- I. [Chancellor's and Sir Kenneth Couzens' copy only] Personality notes

CIRCULATION

With attachments:

Principal Private Secretary  
Financial Secretary  
Minister of State (C)  
Sir K Couzens  
Mr Byatt  
Mr Hancock  
Mrs Hedley-Miller  
Mr Lovell  
Mr Ashford  
Mr Edwards  
Mr Fitchew  
Mrs Gilmore  
Mr Hawtin  
Mr Culpin  
Mr Gray  
Mr Mercer  
Mr Seebohm  
Mr Norgrove  
The Governor - B/E  
Mr Balfour - B/E  
Mr Wentworth - Cabinet Office  
Mr Spreckley - FCO  
Mr Henes - D/Trade  
Mr Butt - UKREP (6 copies)  
Mr Appleyard - Paris  
Mr Boyd - Bonn  
Mr Anson - Washington  
Mr Adams - Rome

Steering brief only:

Chief Secretary  
Minister of State (L)  
Sir D Wass  
Mr Barratt  
Mr Unwin  
Mr Bottrill  
Mr Ridley

AA

137

ITEM 1 'A' POINT : COMMUNITY LOAN MECHANISM

Line to take: agree

Background

This was discussed and agreed at the last Finance Council. It could not be adopted then because the texts had to be finalised. In any case there are no UK interests at stake.

13/3/81 138

CHANCELLOR OF THE EXCHEQUER

- cc CST
- Financial Secretary
- MST (C)
- MST (L)
- Sir D Wass
- Sir K Couzens
- Mr Ryrie
- Mr Middleton
- Mr Lovell
- Mr Ashford
- Mr Edwards
- Mr Fitchew
- Mr P Gray
- Mr Culpin
- Mr Scholes
- Mrs Gilmore

ECO/FIN COUNCIL, 16 MARCH: CAP EXPENDITURE

1. I refer to Mr Fitchew's brief of today's date and, in particular, the section on what to do if there is no agreement on a resolution.

2. I have been in touch this afternoon with the German Ministry of Finance. They share our assessment which is that it is extremely unlikely that the Finance Council will agree to a resolution that either the German Ministry of Finance or the British Treasury would regard as in any way satisfactory. They also share our view that it would be much better to break off the discussion in disagreement than to acquiesce in an unsatisfactory resolution.

3. That being so, I have suggested to the official concerned, Dr Heck, that you and Mr Matthöfer should make it clear to the press afterwards that:-

- (i) The British and German positions were very close together, but
- (ii) The other delegations were not prepared to agree to a resolution which would establish the principle of financial control, and
- (iii) That you were both very surprised at the attitude of these other delegations which seemed not to be interested in a genuine reform of the CAP which would submit <sup>it</sup> to the type of financial discipline which we all regard as essential for domestic expenditure programmes.

4. Dr Heck said that he would recommend this to Mr Matthöfer and that he would expect him to agree.
5. Unfortunately Mr Matthöfer will not arrive until the last minute so that it is unlikely that you will be able to have a bilateral discussion with him before the Council. But Dr Heck will be available at 10.00 a.m. and we have arranged for him to speak to Sir K Couzens. If you were able to have even a brief word with Mr Matthöfer that would be very desirable.
6. I should also like to suggest that you should leave the Council after the CAP discussion, even if it means missing the insurance item, so as to be sure to have time to give a press conference yourself on the CAP guidelines issue.
7. MAFF officials have undertaken to advise Mr Walker to make a statement in the Agricultural Council that would include a reference to the need to ensure that in future years agricultural policy must be so managed that the rate of growth of agricultural expenditure is markedly lower than the rate of growth of the own resources base. If he does in fact say this, and the fact that he has said it is reported to the press, both the German Government and British public opinion are likely to be suitably impressed. Perhaps you would find time for a word with Mr Walker before the Councils begin.

D.H.

D J S HANCOCK  
13 March 1981



13/3/81 .

(A)

140

CONFIDENTIAL

1. MR LOVELL <sup>A.M.B.</sup>
2. CHANCELLOR

cc CST  
FST  
MST(C)  
MST(L)  
Sir D Wass  
Sir K Couzens  
Mr Ryrie  
Mr Hancock  
Mr Middleton  
Mr Ashford      Mr Wiggins  
Mr Edwards      Mrs Gilmore  
Mr Gray  
Mr Culpin

Mr Butt (UKREP) - 6 copies  
Mr Boyd (Bonn)  
Mr Appleyard (Paris)  
Mr Andrews (MAFF) - 4 copies  
Mr Spreckley (FCO)  
Mr Wentworth (Cabinet Office)

BRIEF

ECO/FIN COUNCIL 16 MARCH: CAP EXPENDITURE

Objective

To obtain agreement to a satisfactory Council resolution providing that in 1982 and future years the growth rate of agricultural expenditure should be kept markedly lower than the growth rate of the own resources base.

Background

2. At Thursday's meeting of OD it was agreed that at Monday's Eco/Fin Council our objective should be to get a Council Resolution which includes a guideline for the future containment of agricultural expenditure in the terms set out in paragraph 1 above.

3. Discussion at the Eco/Fin Council is likely to be based upon a draft Resolution produced by the Dutch Presidency. The precise wording of this draft is still uncertain. Annex A below contains the Dutch Presidency's initial draft, which was lengthily and inconclusively debated at COREPER yesterday (UKREP Telno 881 of 12 March also attached below). The draft has now been remitted to a Working Group

141

CONFIDENTIAL

meeting which is (this afternoon) still in session. The likelihood is that the result will be a composite text littered with the usual apparatus of square brackets and footnotes, showing the widely divergent positions of different Member States. The Annex A below also contains side-by-side with the draft text the amendments proposed by Sir Michael Butler in yesterday's COREPER. We will report further as soon as a new text emerges.

4. It is already clear from yesterday's discussion that there will be great difficulty in obtaining a satisfactory agreed text at Eco/Fin. The Italians and Irish in particular seem to be strongly opposed to any wording which suggests either that there is any difficulty in financing this year's price settlement or that any form of financial guideline should be laid down for CAP expenditure. Our main, if not solely, ally is Germany and it will be important to work closely together with Herr Schulmann throughout the Council and in particular that both countries should follow the same line, if no acceptable Council Resolution can be agreed.

5. Your main objective at the meeting will be to secure the acceptance of the last but two paragraphs in the UK amendments set out in Annex A below. The first of these paragraphs sets out the "markedly below" formula agreed at OD yesterday. The second paragraph is also essential to make it clear that the formula is intended to be regarded as an operational limit and not just a hopeful target.

6. The main arguments we suggest you deploy in supporting this formula are set out as a speaking note in Annex B below. One of the arguments included in Annex B is that the Commission's last projections for 1982 show that even a 6% growth in CAP expenditure could take the Budget up to the 1% ceiling. These projections are now out of date. Our requests in the Agri/Fin Group for updated expenditure and revenue estimates have received no response from the Commission. However the Tugendhat Cabinet have told us that the latest work in DG XIX suggests that the position in 1982 will be even more restrictive than suggested by the triennial estimate referred to above. They are hopeful that Mr Tugendhat would be able to say this to the Eco/Fin Council on Monday, if you prime him with the right question. We suggest it would be helpful if you had a quick word with Mr Tugendhat before the start of the Council to confirm this.

Possible criticisms from other Member States

7. A number of other Member States, in particular Ireland and Italy, are likely to be critical of a 1982 financial guideline in the form we are proposing. Their arguments are likely to include the following:

CONFIDENTIAL

- No real financial problem provided Member States are prepared to raise the 1% VAT ceiling.
- A financial ceiling is incompatible with previous Community practice that once Agriculture Ministers made their decisions, the financial consequences of them must automatically be met.
- Even if a guideline is acceptable it must be regarded only as an ex-ante target, not as an ex-post limit.
- "Markedly below" is too restrictive.

The answers to most of these points are simply to say that, with the approach of the 1% limit, which a number of Member States will insist on being maintained, the system of open-ended guarantee cannot be continued. The Council must therefore face up to the fact that there will no longer be scope for supplementary FEOGA budgets as there have been in the past. To say, as does our formula, that the Commission must take the responsibility for remaining within the agreed financial guideline is no more than a re-statement of their existing financial responsibilities. It is true that agricultural expenditure is inherently more difficult to predict and liable to fluctuations than other types of expenditure. But it should normally be the case within such a large budget as that enjoyed by FEOGA that excess spending on one product can be offset by savings elsewhere. Nor are we seeking to pre-judge what measures the Agriculture Council might have to take to keep within the ceiling if necessary. Some defensive speaking notes covering these possible criticisms are attached below as Annex C.

Points to be avoided in Eco/Fin Resolution

8. As a general tactic you should argue that the Eco/Fin Resolution should concentrate on the issues which are directly the responsibility of Finance Ministers - inflation, the economic situation and, above all, the budgetary impact of CAP decisions. But there are a number of specific points which we should seek to avoid in the Eco/Fin Resolution.

- (a) Any form of words implying a definite commitment to reduce our positive MCAs as part of the 1982 price package;

CONFIDENTIAL

(b) To ensure that reference to "economy measures" are sufficiently general to avoid any commitment to ones which would damage the UK (eg. "progressive" coresponsibility levy, removal of butter subsidy); but do not exclude "improvements in market management".

(c) Any suggestion that the need to maintain farm incomes should take precedence over other considerations.

(d) To avoid references to the regional impact of the CAP (a euphemism for more spending in Italy and Ireland) or to the special circumstances of countries with a large agricultural population (ditto).

9. The present draft of the Resolution contains nothing unacceptable on (b)-(d) but does contain an unhelpful formula on dismantling positive MCAs. Following yesterday's OD meeting we must clearly resist this formula or seek to get it appropriately diluted. The best line to take in the first instance would seem to be that action on positive MCAs is a detailed question, which is properly the province of the Agriculture Council and that accordingly the Resolution should contain no reference to them. The Chancellor could also suggest that reductions in MCAs are irrelevant to budgetary savings or a financial guideline. A speaking note making these points and seeking to distinguish the UK positive MCA from that in other Member States is at Annex D.

10. It is, however, clear that there will be considerable pressure from other Member States, for an even stronger formula than that in the Dutch draft. The French are asking for a commitment to phase them out within 2 years. A fallback position is therefore necessary for us to use against the possibility that some reference to MCAs may be a necessary price to pay for getting a unanimously agreed Resolution containing our formula on limiting expenditure. An acceptable fallback must nonetheless avoid any definite commitment to reducing our MCA and make it clear that full account must be taken of the cost and income position of UK farmers. We suggest the following form of words which has been agreed with MAFF officials:

144

CONFIDENTIAL

"The Commission's proposals for gradually dismantling positive MCAs are intended to contribute to the restoration of the unity of the market. Decisions on these proposals are a matter for the Agriculture Council. In this connection, however, full consideration must be given to the relative cost and income position of farm producers in the Member States concerned".


11. In the likely event of disagreement between delegations and the Council you might make a second attempt to focus attention on those issues for which Finance Ministers cannot deny they are responsible (see the first sentence of paragraph 8 above). In the last resort, however, if we cannot get unanimous acceptance of a satisfactory Resolution containing our expenditure formula we recommend that you should, in concert with the Germans, make it clear that we prefer to have no Resolution at all than an unsatisfactory one. We recommend that, in so doing, you should say that we regarded it as extremely unsatisfactory that the Council had failed to face up to its responsibilities and that it might well be necessary for the Council to return to the question at a later stage. This would make it clear that we had not abandoned the attempt to introduce an expenditure constraint and make it easier for us to pursue the objective in the Agriculture Council at the same time.

12. We have considered the alternative option of going for a disagreed Resolution, ie. an "On the one hand some Member States .... on the other hand other Member States....." formula. We believe this to be unsatisfactory. It would look weak and it would leave the Council divided with positions polarised, thus making it more difficult for us to continue our campaign in the Agriculture Council or revert to it at a later stage in Eco/Fin. If, however, the Germans insisted on having some sort of Resolution, we might have to think again.

Agri-Fin Report

13. The Council will also have before it the report from the Agri-Fin Group. This has not yet been received. But it does no more than set out the main preoccupations of different Member States and is unlikely to be discussed in detail. Separate briefing will be provided if necessary.

Detailed briefing on Commission price proposals you may like to include in your dossier the briefing provided for Thursday's OD meeting.

  
G. E. FITCHEW  
13 March 1981

DUTCH PRESIDENCY RESOLUTION

AMENDMENTS PROPOSED BY  
UK IN COREPER

1. The Council recalls the conclusions it came to on 11 February 1980.

2. The Council has taken note of the Commission's communication of 5 December 1980 concerning the CAP. It endorses the Commission's aim of maintaining the CAP and the economic and social benefits it has brought. The solutions to be worked towards should leave the basis of the CAP intact and take account of the difficult economic and financial situation and in particular the difficult budgetary situation. This will require a cautious prices policy and efficient market management in this and subsequent years. Substantial economies are also unavoidable.

Paragraph 2 At the end of the third sentence add:

"Arising from the approach of the 1% VAT ceiling and the high proportion of the budget taken by agricultural expenditure"

Paragraph 2 <sup>from</sup> third sentence:

After "require" insert "as a minimum"

3. The Council emphasises how important it is for the Commission's agricultural price proposals for 1981-82 to accord with the general policy on combating inflation, limiting public expenditure [and reducing the proportion of total Community expenditure accounted for by agricultural expenditure.] As regards inflation the Commission's proposals [as a whole do not conflict with the anti-inflation policies of the Community and Member States.] [As regards limiting expenditure and reducing the proportion of the Community budget accounted for by agricultural expenditure the proposals are acceptable. The Council would

Paragraph 3 amend the second sentence as follows:

"As regards inflation the Commission's proposals must be considered in the light of the commitment of the Community to reduce the rate of inflation and the degree of divergency between Member States (Annual Economic Report).

Paragraph 3 amend third and fourth sentences as follows:

"As regards limiting expenditure it appears that the Commission proposals constitute a first step to dealing with surpluses and

point here to the economies proposed to offset the cost of increased prices. These arguments are supported by the greater emphasis than hitherto on the guiding role of the market. The introduction of the principle of the producers' financial co-responsibility should help to contain agricultural expenditure in future. The Commission's proposals to dismantle positive MCAs will encourage better allocation of production and make a contribution to the desired restoration of unity of the market.

4. The proposals will for 1981 come within the available budget appropriations for agriculture. For this to be so the economies proposed and an improvement in market management will need to be achieved. Should there be unexpected increases in any items of expenditure this year they will be financed, having due regard for special market conditions, from savings elsewhere in the agriculture sector.

come within the 1981 FEOGA provision provided that their economy proposals and improvements in market management are agreed".

Paragraph 3 delete last sentence on MCAs

OR

See ~~Submission~~: p 10

Paragraph 4 delete and replace by the following three new paragraphs:

On the information available to it the Council is doubtful whether the underlying evolution of the budgetary situation, setting aside conjunctural influences, will produce an acceptable budgetary outcome in 1982. Accordingly in future years, agricultural policy must be so managed that the growth rate of agricultural expenditure is markedly lower than the growth rate of the own resources base.

If it seems likely that the above guidelines will be breached in any year, the Commission should act to offset any increase in costs by savings within the Guarantee Section. To the extent that measures to be taken fall within the competence of

the Council, the Commission must present proposals in good time.

The Eco/Fin Council would be grateful if their agricultural colleagues would take account of these views in considering the price proposals and would arrange for further consideration by Eco/Fin if they see any difficulties about taking their decisions within these guidelines".





which provides such a guideline for 1982 and subsequent years. The guideline provides, for the reasons I have just explained, the rate of growth of agricultural spending should be markedly lower than that of the own resources base. I strongly commend this guideline, which I regard as an essential element in our Resolution, to the Council.

No or detailed points  
 E.G. MCFUR : do not  
 ROUND SUN RESER M  
 APPROPRIATE  
 CONCLUDE BY SAYING THAT  
 I CAN ~~WELL~~ ~~USE~~ ~~AND~~ ~~REASON~~  
 WITH H. MATTHEWSON: "IT" ~~RETURN~~  
 OF ISSUES NOT POSSIBLE, THEN  
 BEST NOT BE IN RESOL AND  
 UNDESIRABLE FOR ANOTHER  
 REASON  
 I HOPE, IN THE  
 AN THIS STATE, THAT IN WILL  
 BE POSSIBLE TO CLEARLY NOT BE  
 A ~~SATISFACTORY~~ RESOL THAT IS  
 SATISFACTORY, I WOULD NOT AS  
 FIN - MINS CAN BE ON UPON THE  
 WHICH WE CAN OFFER AN THIS  
 UNDESIRABLE ISSUE

FINANCIAL GUIDELINE - DEFENSIVE SPEAKING NOTES

(a) No problem if 1% VAT ceiling raised

Totally inappropriate response given ~~that~~<sup>e</sup> inflationary pressures which we all have to fight and the restrictive stance which all of us are having to adopt in face of the many other claims on taxable capacity, UK - and several other member states - cannot accept an increase in the ceiling. Crucial therefore to adjust policies to ensure expenditure is contained.

(b) Ceiling incompatible with past practice of automatically meeting financial consequences of agricultural policy decisions

No longer acceptable for system of open-ended guarantee to continue unconstrained, whatever the circumstances. Cannot operate rational expenditure policies on that basis, so equally inappropriate in the Community. Support for agriculture, like other sector, must pay regard to general economic and financial situation.

(c) Guideline can only be ex-ante target, not an ex-post limit

Essential to impose a genuine constraint, not simply an expression of hope. Council must face up to the fact that there will no longer be scope for FEOGA supplementary budgets as in the past. In emphasising Commission's responsibility for keeping within the agreed guideline, formula is no more than a restatement of their existing financial responsibilities. Agricultural expenditure is subject to ~~fluctuations~~<sup>fluctuations</sup>, but increases in one area can normally be matched by savings elsewhere. And ceiling does not prejudge what economy measures Agriculture Ministers should take, if these prove necessary.

(d) "Markedly below" too restrictive

No. At present agricultural expenditure dominates the budget. If there is to be genuine restructuring, involving the development of other Community policies, agricultural expenditure must grow markedly slower than the growth of total Community income. The present balance of policies is wrong and a less restrictive formula would not suffice.

No A DENIED P.D.M. SUMO LMO  
 DO NOT RELAX ALSO RETI  
 DO MCAS AS APPROPRIATE

SPEAKING NOTE ON MCAs

Opening position

- 1. Do not accept it as appropriate to include reference to MCAs in guidelines issued by Eco/Fin Council.
- 2. Eco/Fin should be concerned with overall financial and budgetary position, and with setting general framework within which agricultural issues are settled. Proposals for positive MCAs are a detailed point, and would be quite wrong for us to interfere in proper province of Agriculture Council.
- 3. Moreover reductions in positive MCAs are irrelevant to budgetary savings and hence to a financial guideline. As far as UK is concerned positive MCA leads to net benefit to Community Budget - reducing the UK MCA would worsen Budget position. Therefore perverse to include call for MCA reduction in an Eco/Fin resolution.

Supplementary comments on UK MCA

4. Essential to recognise totally different position of UK and Germany/Benelux:

(a) Benelux and German MCAs are "fixed" within EMS and have not changed since last price fixing. Sterling is volatile and we have had positive MCAs for only 10 months following 7 years of negative MCAs. UK MCA has already dropped nearly 5 points since price proposals were published.

*Effect on budget*

(b) Proposal bears harshly on UK because of relatively high inflation rate whereas other countries with positive MCAs have low rates.

*?*

(c) No evidence that UK positive MCAs have led to distortion.

153

Brussels, 13 March 1981

5483/81	
	RESTREINT

ECOFIN 20  
AGRIFIN 95

NOTE FROM THE PRESIDENCY

Subject: Economic and financial aspects of the Commission proposals on the fixing of prices of certain agricultural products and certain related measures for the 1981/1982 marketing year

- Draft conclusions

Delegations will find attached

- on the left-hand pages, the draft conclusions drawn up by the Presidency for the meeting of the ECO/FIN Council on 16 March 1981;
- on the right-hand pages, the amendments proposed by the delegations.

1. The Council recalls the conclusions it came to on 11 February 1980 <sup>(1)</sup>.
2. The Council has taken note of the Commission communication of 5 December 1980 concerning the common agricultural policy <sup>(2)</sup>. It endorses the Commission's aim of maintaining the common agricultural policy and the economic and social benefits it has brought.

The solutions to be worked towards should leave the bases of the CAP <sup>(4)</sup> intact <sup>(3)</sup> <sup>(5)</sup> and take account of the difficult general financial and economic situation and in particular the difficult budgetary situation <sup>(6)</sup><sup>(7)</sup> <sup>(8)</sup>.

This will require a cautious <sup>(9)</sup> prices policy and efficient market management in this and subsequent years. Substantial economics are also unavoidable <sup>(10)</sup><sup>(11)</sup>.

No (1) The IRL and GR delegations propose deleting this sentence.

Yes ✓ The D delegation proposes the following expanded text:  
"The Council gives a reminder of the conclusions it came to on 11 February 1980 which it confirmed by its decision of 30 May 1980".

Amendment (2) In the view of the IRL delegation the AGRI Council has not yet "taken note" of the Commission communication in question.

No (3) The DK/IRL/I/F/L/B delegations propose replacing "should leave the bases of the CAP intact" by "should lead to the consolidation of the CAP".

No (4) The IRL delegation proposes adding "and its mechanisms".

No? (5) The B/I/IRL/F/L/GR delegations propose inserting the following phrase: "in order to guarantee those who work in agriculture a reasonable development in terms of individual earnings".

No (6) The F/L/I/DK/GR delegations propose deleting the word "difficult".

No (7) The IRL delegation proposes deleting "and in particular the difficult budgetary situation".

← (8) The UK delegation proposes the following addition: "arising from the approach to the 1% ceiling and the high proportion of agricultural spending in the Community budget".

No (9) The GR and I delegations want to replace "cautious" by "appropriate".

(10) The I delegation wants to delete "substantial".

✓ (11) The D delegation proposes replacing this paragraph by the following:

✓ "Under these circumstances a cautious prices policy and efficient market management taking account of market forces are required in this and subsequent years. It is also essential to achieve substantial savings".



3. The Council has examined the Commission's agricultural price proposals for 1981/1982 in the light of the general financial and economic policy of the Member States, and particularly with regard to the fight against inflation and the limitation of public expenditure <sup>(1)</sup>.

[<sup>(2)</sup>]

As regards inflation, the Commission proposals <sup>(3)</sup> as a whole do not conflict with the anti-inflationary policy of the Community and the Member States <sup>(4)</sup><sup>(5)</sup>.

(1) The D delegation proposed wording this subparagraph as follows:

"The council emphasizes how important it is for the decisions fixing the agricultural prices for the marketing year 1981/1982 on the basis of the Commission proposals to accord with the general policy of combatting inflation, limiting public expenditure and reducing the proportion of total Community expenditure accounted for by agricultural expenditure. [ In this connexion it will be necessary for the price increases to be less than the general rise in costs, which will have to be ascertained above all by reference to those Member States where the increases in costs are smallest."

No  
Maff  
D. S. W.

(2) The IRL and GR delegations proposed replacing the second, third and fourth subparagraph of this paragraph by the following text:

"The Council considers that the Commission proposals as a whole are consonant with general policy and, furthermore, that they do not pre-empt future decisions on structural changes. The abolition of positive MCAs would encourage better allocation of production, eliminate expenditure due to distortions of competition, and restore the unity of the markets. The Council is not, however, satisfied that the proposals would be sufficient to reverse the downward trend of agricultural incomes nor that they would contribute effectively to greater economic convergence in the Community."

pattern

(3) The D delegation proposed replacing "the Commission proposals as a whole do not conflict with ..." by "decisions on the Commission proposals will, as a whole, have to be consonant with ...".

(4) The UK delegation proposed wording this subparagraph as follows:

"As regards inflation decisions on the Commission proposals must be taken in the light of the commitment of the Community to reducing the rate of inflation and divergencies in the rate between Member States (Annual Economic Review 1980/81)."

(5) The I and GR delegations proposed wording this subparagraph as follows:

"As regards inflation, decisions on the Commission proposals must ensure comparable support for agricultural revenues in each country, taking account of their import on the various economic sectors."

.../...

As regards limiting public expenditure and containing agricultural expenditure, the Commission proposals are acceptable (1) [ (2) ] (3). The Council would point here to the economies proposed to offset the cost of increased prices (4) and the greater emphasis than hitherto on the guiding role of the market (5)(6). The introduction of the principle of the producer's financial co-responsibility should help to contain agricultural expenditure in future (7)(8)(9)

[ (10) ]

- (1) The F. I. GR delegations proposed replacing: "the Commission proposals are acceptable" by: "the Commission proposals help to do so".
- (2) The I delegation proposed inserting the following sentence:  
"The Council stresses that the main aim in this connection is to achieve a better balance within agricultural expenditure."
- (3) The D delegation proposed amending this sentence as follows:  
"As regards limiting public expenditure and reducing the proportion of the Community budget accounted for by agricultural expenditure, the Council thinks it necessary to adjust the agricultural policy so that the rate of increase of agricultural expenditure remains considerably less than the rate of growth of own resources in the coming years."
- (4) The D delegation proposed amending this sentence as follows:  
"The Council would point here to the need to achieve economies making it possible to offset the cost of increased prices and the greater ...".
- (5) The D delegation proposed supplementing this sentence as follows:  
"... which means reviewing the aid policy and rendering the action of intervention machinery more flexible."
- (6) The UK delegation proposed replacing the first two sentences of this subparagraph by the following text:  
"As regards limiting public expenditure, decisions on the Commission's proposals must come within the available budgetary appropriations for the EAGGF Guarantee Section,\* and to this end the economies proposed and improvements in market management are essential. The decisions should begin to deal with the problem of cap surpluses." \* in 1981
- (7) The I delegation proposed deleting the second and third sentences of this subparagraph and replacing them by the following text:  
"The Council would stress that economies must be achieved in sectors where there are structural surpluses."
- (8) The B and F delegations proposed amending this last sentence as follows:  
"Participation by producers and a stricter observance of the Community preference should also help to contain agricultural expenditure."



(<sup>9</sup>) The DK delegation proposed wording this sentence as follows:

"The introduction of the producer's co-responsibility should help to contain agricultural expenditure in future."

(<sup>10</sup>) The GR and I delegations requested that the following subparagraph be inserted:

"The Council points out that the common agricultural policy must also encourage the convergence of the economies of the Member States, in particular by reducing discrepancies in the income of farmers in the least favoured regions. It therefore considers that the outcome of negotiations on the agricultural prices for the marketing year 1981/1982 must also comply with this aim as regards their effect on the value added per person engaged in agriculture."

The Commission's proposals to dismantle positive MCAs will encourage better allocation of production and trade and make a contribution to the desired restoration of the unity of the market (1)(2)(3)(4).

RELEVANT TRENDS IN MARKET CONDITIONS

- (1) The United Kingdom delegation wanted this paragraph deleted.
- (2) The German delegation proposed replacing this paragraph with the following:

? ACCEPT

"The gradual dismantling of positive MCAs should be considered in the light of trends in costs and farm incomes."

- (3) The Italian delegation proposed the following alternative wording:

"The Council believes that those positive monetary compensatory amounts which, as acknowledged by the Commission itself, have created distortions in competition to the advantage of certain countries both with regard to production and trade, and which result in a significant budgetary load on the Community should be abolished."

- (4) The French, Irish, Belgian, Danish and Greek delegations proposed the following amendment to the text:

"The Commission's proposals to dismantle positive MCAs will encourage better allocation of production and trade, make a contribution to the desired restoration of the unity of the market and will result in savings in the budget. A complete and rapid dismantling of the MCAs should be programmed."



4. The proposals will, for 1981, come within the available budget appropriations for agriculture. For this to be so, the economies proposed and an improvement in market management will need to be achieved. Should there be unexpected increases in any items of expenditure this year, they must be financed, having due regard for special market conditions, from savings elsewhere in the agricultural sector. (1)

[<sup>(2)</sup>]

[<sup>(3)</sup>].

(1) The I delegation proposed the deletion of paragraph 4.

The DK, F, GR, IRL delegations proposed the deletion of the last sentence.

The D delegation proposed replacing the first sentence of the paragraph with the following:

✓ "The proposals should, for 1981, come within the available budget appropriations for agriculture and should not encroach on the budget for 1982."

The UK delegation proposed replacing this paragraph with the following:

✓ "On the basis of the information available to the Council it is doubtful that the evolution of the underlying budgetary situation, setting aside purely conjunctural influences, will produce an acceptable budgetary outcome in 1982 and subsequent years. In future years, agricultural policy must be so managed that the growth rate of agricultural expenditure is markedly lower than the growth rate of the own resources base.

If it seems likely that the above guidelines will be breached in any year, the Commission should act to offset any increase in costs by savings within the Guarantee Section. To the extent that measures to be taken fall within the competence of the Council, the Commission must submit its proposals in good time."

(2) The D delegation proposed the addition of a paragraph 5 to the text of the Presidency, to read as follows:

✓ Furthermore, the Council believes that it is imperative to improve substantially the Community budgetary procedure to comply with its decision of 11 February and 30 May 1980. In doing so, it should first of all ensure that when the budget is being drawn up account is taken of the general economic situation, of the different Community policies and of their financial implications and of the limited availability of budget resources. When implementing the budget, the Community institutions should comply rigorously with budgetary estimates during the financial year. The Council therefore requests the Commission:

- within the framework of the powers conferred on it to comply with budgetary estimates in its management of the agricultural market, and where measures required to achieve that end fall within the Council's jurisdiction to submit the necessary proposals to it in good time;



159

- to forward financing proposals along with those proposals which have financial implications;
- to propose for the EAGGF - Guidance Section - an improved procedure for expenditure commitments which will ensure that where appropriations are exceeded it is not only a posteriori that it is noted and that it is not possible thus to anticipate the decisions of those Institutions required to act in this matter."

(3) The United Kingdom delegation proposed the addition of a new paragraph to read as follows:

"The ECO/FIN Council would be grateful if their agricultural colleagues would take account of these views in considering the Commission's price proposals on prices and economies and would arrange for further consideration by ECO/FIN if they see any difficulty about taking their decision within these guidelines."



13/3/81 160



COMMENTS ON OTHER DELEGATIONS' AMENDMENTS

PAGE 1A FOOTNOTE 3 - "CONSOLIDATION OF CAP"

Prefer "leave basis of CAP intake" more in line with 30 May Agreement. What does "consolidation" mean anyway?

PAGE 1A FOOTNOTE 5 - "GUARANTEE .... EARNINGS"

Suggest this is unnecessary. Article 39 of Treaty already refers to agricultural earnings as one of the objectives of the CAP. But it also refers to other objectives eg "reasonable prices for consumers". Can't have one without the other reference.

PAGE 2A FOOTNOTE 5 - "COMPARABLE SUPPORT FOR AGRICULTURAL REVENUES IN EACH COUNTRY"

Not acceptable. Relative prices must be left for Agriculture Council to decide. In any case price decisions must also have regard to demand/supply balance and trends of expenditure. A particular level of revenue for particular producers or regions cannot be guaranteed.

PAGE 3A FOOTNOTE 2 - "A BETTER BALANCE WITHIN AGRICULTURE EXPENDITURE"

Cannot agree that this is the main aim. As Finance Ministers are concerned must be the overall expenditure constraint. For Agriculture Council to decide on relativities.

PAGE 3A FOOTNOTE 7 - "ECONOMIES .... WHERE THERE ARE STRUCTURAL SURPLUSES"

Insert "particularly" before "where".





PAGE 3A FOOTNOTE 8 - "STRICTER OBSERVANCE OF COMMUNITY PREFERENCE"

Delete. Do not know what this means. All of us surely observe existing rules on Community preference as strictly as possible. Any new proposals must be considered on merits, including impact on efficiency and problems that increased preference may cause our trading partners .

PAGE 3B FOOTNOTE 10 - "REDUCING DISCREPANCIES .... IN THE LEAST FAVOURED REGIONS"

Again a question of price rlativities which we must leave to Agriculture Council.





1) Don't think he went the  
 debate to try to solve the  
 points of substance. We could  
 waste most of the morning. The  
 best conclusion to-day would be  
 that Cooper should really put  
 some steam into the work  
 + report back in 3 months.

Michael



Chance for

There is no word in  
the Suggested Opening Statement  
to the effect that we are not  
destroying the basis of the  
CAD. What about:

" The approach I describe  
is essential to the continuance  
& preservation of the CAD  
and the defence of its  
positive ~~the~~ aspects. "

Only the UK has  
The draft conclusions  
- personal favour



RESTRICTED

13/3/81

H  
164

EXPORT CREDIT CONSENSUS

Line to Take

1. The Community needs to adopt a constructive approach to the reform of the Consensus, which is now under increasing strain. Preservation of the Consensus is necessary to avoid a destructive credit race.
  
2. The Community's proposals for change should cover all aspects of the Consensus, not just the interest rate issue. It is particularly important to achieve greater transparency and tighter discipline on mixed credits. This is an area of increasing concern where more and more countries are taking defensive action of one kind or another. Specifically, the Community should propose the introduction of prior notification requirements for mixed credit offers with grant elements in the 15-25% range.
  
3. On interest rates, the Community must try to resolve the problem posed by countries, such as Japan, whose market rates are below those of the Consensus minima and who rely on officially supported finance for exports. Otherwise it may be difficult to reach agreement on a further increase in minimum interest rates. In the present state of European-Japanese trade relations, any arrangement which appeared to accord Japan specially favourable treatment would not be acceptable.

Background

1. We understand the Dutch Presidency have proposed this issue for discussion over lunch, in order to urge the need for a constructive Community position if the Consensus is to be preserved as an effective international discipline on financing terms.
2. Consensus Participants failed to reach agreement in Paris last December on the key issue of bringing minimum interest rates more into line with market rates. The EC proposal for an increase in interest rates (1% for rich/intermediate countries and 0.8% for poorer countries) was unacceptable to the Japanese without a loophole allowing their Exim Bank to offer credits at below matrix rates reflecting their lower market interest rates. Participants did however agree to consider the level of minimum interest rates at each annual review of the Arrangement; and a new deadline of October 1981 was set for a solution on the lines agreed at the Venice Summit.
3. Since December the Americans have carried out their threat to derogate from Consensus rules on maximum credit length in selected cases, and a number of countries (including ourselves) have announced new mixed credit facilities as defensive measures. But, contrary to some recent press reports, there has so far been no general breakdown in discipline under the Consensus.
4. Within the Community, the Germans have pressed for a flexible approach to the problem of low interest rate currencies (until recently they have been in this category themselves; and they support an eventual solution under which Consensus minimum rates would be differentiated by currency). Other Participants, including ourselves, are more cautious, pending further analysis of the Japanese situation and the position of the new US administration. Ministers have yet to decide what approach the UK should now support.
5. The Commission has not so far put forward specific proposals for its negotiating mandate at the annual review meeting of Consensus Participants in May. These are likely to come before the ECOFIN Council on 13 April; and detailed discussion of possible approaches to the interest rate problem should await that meeting.



This is the Dutch  
Presidential captrane.

We should say we  
would be happy to  
explore it in

Cooper,  
beginning  
Wednesday

---

EUROPEAN COMMUNITIES  
THE COUNCIL

Brussels, 13 March 1981

5452/81

RESTREINT

OJ/CONS 12  
ECOFIN 18

PROVISIONAL AGENDA

for: 696th meeting of the COUNCIL OF EUROPEAN COMMUNITIES  
(Economic and financial questions)  
Brussels, 10.30 on Monday 16 March 1981

1. Adoption of the agenda .
2. (Poss.) Approval of the list of "A" items  
5453/81 PTS A 11
3. First quarterly examination of the economic situation  
in the Community  
5461/81 ECOFIN 19
4. Preparation of economic, financial and monetary items  
likely to be raised at the next European Council
5. Economic and financial aspects of the fixing of  
agricultural prices for the 1981/1982 marketing year  
5371/81 ECOFIN 17  
AGRIFIN 86  
5483/81 ECOFIN 20  
AGRIFIN 95

.../...

5452/81

OJ/CONS 12  
ECOFIN 18  
R

ert/LG/gj

F

6. Proposal for a Second Council Directive on the co-ordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services

8788/2/80 SURE 13 REV 2

(x)

5094/81 SURE 8

(x)

+ COR 1 (f)

5229/81 SURE 9

(x)

5343/81 JUR 57

SURE 11

5439/81 SURE 12

FISC 13

7. Other business
- 

---

(x) Out of stock

CONFIDENTIAL

For ECOFIN folder

168



cc Sir K Couzens  
Mr Barratt  
Mr Hancock  
Mr Bottrill  
Mr Atkinson  
Mr Scholes

MRS HEDLEY MILLER

ECOFIN: G5 BUSINESS IN THE MARGINS

The Chancellor was grateful for your note of 12 March. He has commented that it is not very satisfactory trying to discuss these issues over a cocktail.

2. On the PLO issue, the Chancellor suggests that we should consider our position fairly quickly, since the Foreign Secretary and the Prime Minister may be inclined to take a different view from us. The Chancellor himself would be inclined to take a "relatively dove-like" position - if that would really help to oil the IMF wheels.

Jw

A J WIGGINS  
13 March 1981

13/3/81.

(B)

169

ECO/FIN COUNCIL 16 MARCH 1981  
DRAFT INSURANCE SERVICES DIRECTIVE  
Covering brief by HM Treasury

#### DOCUMENTS

Reference A is a report in French from Coreper dated 12 March setting out the key issues for discussion now. The English version will be available on the day of the meeting. This and the Department of Trade brief are the only essential papers.

Reference B is the complete draft directive indicating all the objections and counter-proposals tabled by each member state.

Reference C is a legal opinion stating conclusively (in our eyes) that any directive must apply equally to head offices of insurance companies and to their branches or agencies in other member states. It can be taken as read.

Reference D is a paper by Luxembourg stating that without safeguards the directive would allow their domestic insurance industry to be swamped. It seems that this point will not be discussed, but if it is one could suggest that on the contrary Luxembourg might be a tax efficient place from which to offer cross-border services. The Irish have the same problem but seem to be content with a transitional period of protection.

Reference E is a paper by Denmark on choice of law. This is not for discussion but for reference back to COREPER, preferably with a tight deadline.

#### QUESTIONS

The COREPER paper (Reference A) poses questions to which answers are required. The easiest way to react to them is probably to look first at the "ESSENTIAL FACTS" part of the Trade brief from page 4 and then, for the tactical handling at the meeting, at the "POINTS TO MAKE" starting on page 1.

#### CONCLUSIONS

Reference F is a draft by the Dutch Presidency of the conclusions which the meeting might reach. It is broadly acceptable subject to the comments on pages 5 and 6 of the Trade brief.

ECO/FIN COUNCIL 16 MARCH 1981

DRAFT INSURANCE SERVICES DIRECTIVE

Brief by Department of Trade

References

A	Report from Coreper	doc 5439/81
B	Text of draft directive	doc 8788/2/80 REV2
C	Council Legal Services Opinion	doc 5343/81
D	Luxembourg statement	doc 5094/81
E	Danish paper on choice of law	doc 5229/81
F	Presidency draft conclusions	

OBJECTIVES

1. To inject a sense of urgency into the negotiations and impose a firm timetable.
2. To resolve at least some of the questions in the report from Coreper and in a liberal sense.

POINTS TO MAKE

General

1. Grateful to Presidency for ensuring directive finally surfaced at political level. Council must now make a determined effort to implement what is a fundamental Treaty right as soon as possible. The directive an important first step in that direction and long overdue.
2. Coreper have put few, clear, straightforward questions for orientation. Council should make every effort to answer them and thus open way for adoption of the directive as a whole next time.

3. Must set firm date for further and preferably final discussion. Coreper to prepare final report on all outstanding problems [including any questions not resolved today] for May Finance Council. [Failure to agree - or at least to make very substantial progress - at that meeting would oblige us to refer the matter upwards.]

Authorisation

1. First Question: the existence of a harmonised supervisory regime, set up by the Establishment directives, makes separate authorisation unnecessary and unjustified. Judgements of the European Court support that.

2. Given our answer to the first question, the second does not apply. If there were separate authorisation, we would not be prepared to do more than inform the receiving Member State of it. We could not contemplate making such authorisation dependent on that state's favourable opinion as that would infringe the independence of Member States' jurisdiction.

View of  
RECEIVED  
S228  
CANDY  
BE  
DECISION  
NO REPLY  
A VERT.

3. We are not opposed, however, to providing for some influence on the part of the receiving Member State over the behaviour of insurers doing services business into its territory. The second part of the Commission's compromise proposal might be studied by Coreper, for report back in May.

4. [If Presidency revive their compromise]. First part of compromise most welcome since it disposes of problems of separate authorisation. Second part presents difficulties, but further study might overcome these. Suggest three, possibly complementary, approaches for Coreper to study for May:

- (i) establish consultative machinery to deal with requests for suspension, including a

possible role for the Commission;

(ii) suspension only after conviction, or at least at a much later stage of litigation;

(iii) refine definition of "rules in force on its territory"; at present very wide and exposes insurers to great uncertainty.

Branches and Agencies

1. Opinion of Council Legal Services settles the matter. Any exclusion of agencies and branches from the provisions of the directive would constitute a restriction on freedom of services and would be invalid under the Treaty. This confirms our view and that of the Commission. There is nothing for us to decide; branches and agencies are included.

Taxation

1. The UK has never taxed insurance premiums.

2. Officials have identified a host of objections to VAT on insurance, and in particular to its existence in some states and not in others.

OUTSIDE VAT: SMD CONTINUED

3. Article 15 is accepted by vast majority as workable basis which would ensure collection and remission of taxes due. We see no reason to change matters for sake of one Member State when a workable alternative is already available and more generally acceptable.



Law applicable to the contract

1. The UK is not enamoured of Article 5 either, and has some technical amendments still on the table. But we doubt whether a major revision or agreement on deferment are possible in a reasonable time. Can agree Coreper should examine, but should report back in May.

ESSENTIAL FACTSGeneral

1. The EEC Treaty gives freedom to providers of services, including insurers, to operate throughout the Community, and the direct effect of the relevant Articles (59 & 60) has been confirmed by the European Court. But nearly 25 years after the Treaty was signed, this freedom is still not fully effective; contrary national laws and non-discriminatory national controls eg over insurance prevent it. The services directive is designed to remove these obstacles for insurance of large industrial, commercial and professional non-life risks. Our insurers estimate that they would gain over £55M net in a first year, and more thereafter, from the directive.

2. Since 1962, the Community has had a programme for establishing a common market in services, including insurance. It has not got far. For insurance, effective right of establishment (ie the right of, say, a UK company to set up a subsidiary, branch or agency in, say, France) is well towards completion on the basis of a harmonised regulatory system; but freedom of services (ie the right of the UK insurer to cover a French risk direct from the UK) is a long way from completion.

3. The present draft directive was proposed by the Commission in 1975, but has made very slow progress, mainly because certain Member States (mainly France, Italy, Belgium and Germany in descending order of obstructiveness) do not want to open up their markets to competition and see business - and money - go abroad. Only the Dutch and the Commission have reasonably consistently fought with us for a liberal directive. Between 1978 and 1980, it was considered at 33 two-day meetings at expert level but came no nearer agreement. In June 1980 the Commission finally prompted Coreper into calling for a report on the outstanding issues; despite heavy pressure from the UK and the Commission, and a co-operative Presidency, those issues remain the same nine months later. It is clear that they will only be resolved at a political level; hence this first batch of questions for Ministers, submitted at Commissioner Tugendhat's instigation. Each section of the report (Reference A) ends with one or two questions to Ministers. This brief deals with them in sequence.

4. The Presidency are hoping that the Council will reach the following conclusions:

- (i) express concern at lack of progress;
- (ii) instruct Coreper to take a closer interest, appointing senior attachés group, reporting back regularly to Council and at latest next May on all remaining obstacles. Final adoption within 6 months.
- (iii) question of agencies and branches settled once and for all.

These conclusions would be in general acceptable, though we would wish to argue for a shorter deadline than 6 months, eg by the summer break. The June European Council could then be used to launch a final phase during the UK Presidency. There may be a suggestion that the dossier be referred to State Secretaries (ie junior Ministers). This is a notoriously unreliable way of making progress in Brussels.

#### Authorisation

5. The issue is whether insurers should need separate authorisation to do services business, and, if so, whether from their own supervisor or from that of the recipient country. Our view has consistently been that they should not - from either source. In the light of the European Court cases of Wesemael and Follachio, we have maintained - at one time with the Dutch and the Commission - that an insurer authorised in one Member State under the now uniform Community regulatory system should automatically be acceptable to all other Member States. But the Commission have now accepted the notion of separate authorisation and the Dutch Presidency have shown a readiness to look for compromises, so we may well need to be prepared to explore ways of meeting other Member States' anxieties. Their main concern is that they should have some control over the activities of foreign insurers doing services business into their territory from outside. That is a legitimate concern but leaves the question of how direct and how draconian such control can be. It cannot go as far as usurping other Member States' jurisdiction.

6. Our requirements for a satisfactory package would be:

176

CONFIDENTIAL

(i) no special authorisation for services; authorisation for establishment business is ipso facto for services too;

(ii) any suspension of such authorisation must also, therefore, ultimately lie with the authorities of the country of establishment.

We are prepared to look at any reasonable refinements which Member States may wish to introduce, such as intergovernmental consultation in cases of alleged misconduct by insurers, a firmer commitment to act on the case of proven misconduct, or possible mediating role for the Commission, a closer definition of the misconduct itself. We could even possibly, as part of a deal, accept special authorisation for services, but only by the country of establishment. But we must retain the final say.

7. Of the "compromises" in the report, the Italian one will not do since it would give the recipient Member State a right of veto. The Commission's compromise is a little more promising and may be all there is to build on. It would at least keep the final say in the hands of the country of establishment, assuming that the "safeguards" are satisfactory, though it does require separate authorisation for services.

8. It is not clear yet whether the Presidency will revive a compromise proposal which originally received support from nobody but the Commission, but in which we could express a strong, if critical, interest if it reappeared. It consisted of two elements:

(a) authorisation is automatically for services as well as establishment business.

(b) the Member State where the service is provided may require the country of establishment to suspend that authorisation on the allegation of the violation of the rules in force on its territory.

The first part would be welcome. The second would need further work to satisfy a number of objections: it infringes Member States' freedom to exercise their own jurisdiction independently; a penalty would be imposed on the prima-facie presumption, rather than proof, of guilt; and an insurer's reputation in another Member State could easily be wrecked by a series of arbitrary suspensions. But if the receiving country's role were less decisive, the suspension less premature and the grounds less vague, then there might be an acceptable basis for agreement.

#### Branches and Agencies

9. The issue is whether freedom of services applies not only to insurers' head offices but also to their agencies and branches in other Member States. We, and the Commission, have always said that it does; Article 59 of the Treaty bestows the freedom on "nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended". That is precisely what, say, a UK insurer's branch established in France would be when insuring, say, a German - or even an Englishman. The Council Legal Services have now conclusively confirmed that and Germany (who asked for the Opinion), France, Italy and Luxembourg ought now to accept it, though they have not so far done so. They may claim that the need for a restrictive authorisation procedure is greater if

branches and agencies are included. We do not accept that; the existing supervisory regime already makes special provision for branches and agencies.

### Taxation

10. All Member States except the UK and Ireland tax insurance contracts. The incidence varies widely but is highest in France (up to 30% of premiums) where it brings in some 8 billion Francs (1.6% of total tax revenue). So the desire to prevent evasion is understandable. But 8 out of 10 Member States accept that Article 15 of the draft directive would achieve that (the Greeks are at present reserved). Only the French insist on VAT, if necessary for themselves alone pending further harmonisation. They intend to set their case out in full at the Council.

11. Eight delegations and the Commission are opposed, and a formidable battery of objections has been put together. On the one hand it would reopen the 6th VAT Directive - itself a frail compromise - which specifically excludes insurance, and would need a fresh Commission proposal and consultation with the Parliament; on the other it would have adverse implications in the areas of distortion of competition, deflection of trade, double taxation, mutual assistance arrangements and possibly own resources. The 6th VAT Directive's requirements for accountable fiscal representatives could also seriously undermine the principle of freedom of services without need for establishment. So, while the difficulties may not be insuperable nor the disadvantages insufferable, there is no good reason for the majority to put themselves out for one country, especially when a more generally acceptable alternative can be found on the basis of Article 15.

179

12. Nevertheless, if it is suggested that the matter be remitted for further technical discussions, we can reluctantly accept that.

Law applicable to the contract

13. We would prefer the parties to an insurance services contract to have a free choice of the law governing it, with the EEC Convention on the law applicable to contractual obligations (agreed in June 1980) applying to direct insurance contracts as it does to most other commercial and consumer contracts. But others have insisted on the narrower freedom provided in Article 5. That Article has taken years to draft and, subject to a number of technical amendments, we can accept it though we do not like it. The Danes do not like it either and cannot accept it; they have put in a paper suggesting it be either improved, or dropped from this directive and dealt with separately. While that objective is laudable, it is probably unattainable, and trying for it will only play into the hands of those seeking delay. We will want to be sympathetically discouraging. At this stage the Council is only asked to note the Danish request and remit it to Coreper; that remit should have a tight deadline.

Department of Trade  
13 March 1981

IF 531821187  
ET404 RET 135673479 - 000017 RT ID: TY  
EL-BV-0B-0-52-0001-2-04-01

SKP:TCZ00033336 - 00021 CUST:CI 21

REF1 033336  
File Desc 2: PO--CH/GH/0086 PART A 1

Srv: 16/03 12:30pm GMT

For: RQBY\*

RENE RIPLEY

R



HALF

531821187



PLUS BOX NUMBER

E	T	4	0	4
---	---	---	---	---

CUSTOMER ID

T